Regulation (EU) No 388/2012 of the European Parliament and of the Council of 19 April 2012 amending Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items

REGULATION (EU) No 388/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 19 April 2012

amending Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure[(1)],

Whereas:

(1) Council Regulation (EC) No 428/2009[(2)] requires dual-use items (including software and technology) to be subject to effective control when they are exported from or transit through the Union, or are delivered to a third country as a result of brokering services provided by a broker resident or established in the Union.

(2) In order to enable Member States and the Union to comply with their international commitments, Annex I to Regulation (EC) No 428/2009 establishes the common list of dual-use items referred to in Article 3 of that Regulation, which implements internationally agreed dual-use controls. These commitments were undertaken within the context of participation in the Australia Group, the Missile Technology Control Regime, the Nuclear Suppliers Group, the Wassenaar Arrangement and the Chemical Weapons Convention.

(3) Regulation (EC) No 428/2009 provides for the list set out in Annex I to be updated in conformity with the relevant obligations and commitments, and any modification thereof, that Member States have accepted as members of international non-proliferation regimes and export control arrangements, or by ratification of relevant international treaties.

(4) Annex I to Regulation (EC) No 428/2009 should be amended in order to take account of changes agreed within the Australia Group, the Nuclear Suppliers Group, the Missile Technology Control Regime and the Wassenaar Arrangement, subsequent to the adoption of that Regulation.

(5) In order to facilitate references for export control authorities and operators, an updated and consolidated version of Annex I to Regulation (EC) No 428/2009 should be published.

(6) Regulation (EC) No 428/2009 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 428/2009 shall be replaced by the text in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the thirtieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 19 April 2012.

For the European Parliament

The President

M. SCHULZ

For the Council

The President

M. BØDSKOV

***Changes to legislation:** There are currently no known outstanding effects for the Regulation (EU) No 388/2012 of the European Parliament and of the Council. (See end of Document for details)*

ANNEX

ANNEX I

List referred to in Article 3 of this Regulation

LIST OF DUAL-USE ITEMS

This list implements internationally agreed dual-use controls including the Wassenaar Arrangement, the Missile Technology Control Regime (MTCR), the Nuclear Suppliers' Group (NSG), the Australia Group and the Chemical Weapons Convention (CWC).

GENERAL NOTES TO ANNEX I

1. For control of goods which are designed or modified for military use, see the relevant list(s) of controls on military goods maintained by individual Member States. References in this Annex that state "SEE ALSO MILITARY GOODS CONTROLS" refer to the same lists.

2. The object of the controls contained in this Annex should not be defeated by the export of any non-controlled goods (including plant) containing one or more controlled components when the controlled component or components are the principal element of the goods and can feasibly be removed or used for other purposes.

NB: In judging whether the controlled component or components are to be considered the principal element, it is necessary to weigh the factors of quantity, value and technological know-how involved and other special circumstances which might establish the controlled component or components as the principal element of the goods being procured.

3. Goods specified in this Annex include both new and used goods.

4. In some instances chemicals are listed by name and CAS number. The list applies to chemicals of the same structural formula (including hydrates) regardless of name or CAS number. CAS numbers are shown to assist in identifying a particular chemical or mixture, irrespective of nomenclature. CAS numbers cannot be used as unique identifiers because some forms of the listed chemical have different CAS numbers, and mixtures containing a listed chemical may also have different CAS numbers.

NUCLEAR TECHNOLOGY NOTE (NTN)(To be read in conjunction with Section E of Category 0.)

The "technology" directly associated with any goods controlled in Category 0 is controlled according to the provisions of Category 0.

"Technology" for the "development", "production" or "use" of goods under control remains under control even when applicable to non-controlled goods.

The approval of goods for export also authorises the export to the same end-user of the minimum "technology" required for the installation, operation, maintenance and repair of the goods.

Controls on "technology" transfer do not apply to information "in the public domain" or to "basic scientific research".

GENERAL TECHNOLOGY NOTE (GTN)(To be read in conjunction with Section E of Categories 1 to 9.)

The export of "technology" which is "required" for the "development", "production" or "use" of goods controlled in Categories 1 to 9, is controlled according to the provisions of Categories 1 to 9.

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) No 388/2012 of the European Parliament and of the Council. (See end of Document for details)*

"Technology" "required" for the "development", "production" or "use" of goods under control remains under control even when applicable to non-controlled goods.

Controls do not apply to that "technology" which is the minimum necessary for the installation, operation, maintenance (checking) and repair of those goods which are not controlled or whose export has been authorised.

NB: This does not release such "technology" specified in 1E002.e., 1E002.f., 8E002.a. and 8E002.b.

Controls on "technology" transfer do not apply to information "in the public domain", to "basic scientific research" or to the minimum necessary information for patent applications.
GENERAL SOFTWARE NOTE (GSN)(This note overrides any control within Section D of Categories 0 to 9.)

Categories 0 to 9 of this list do not control "software" which is either:

a. Generally available to the public by being:

1. Sold from stock at retail selling points, without restriction, by means of:

a. Over-the-counter transactions;

b. Mail order transactions;

c. Electronic transactions; or

d. Telephone order transactions; and

2. Designed for installation by the user without further substantial support by the supplier; or

NB: Entry a. of the General Software Note does not release "software" specified in Category 5 — Part 2 ("Information Security").

b. "In the public domain".
EDITORIAL PRACTICES IN THE *OFFICIAL JOURNAL OF THE EUROPEAN UNION*

In accordance with the rules set out in paragraph 6.5 on page 108 of the Interinstitutional style guide (2011 edition), in texts published in the *Official Journal of the European Union* in the English language:
— a comma is used to separate whole number from decimals (e.g. 3,67 cm),
— a space is used to indicate thousands in whole numbers (e.g. EUR 100 000).

The text reproduced in this Annex follows the above-described practice.

By contrast — and by way of information — in the original English version of the same text:
— a full stop is used to separate whole numbers from decimals (e.g. 3,67 cm),
— a comma is used to indicate thousands in whole numbers (e.g. EUR 100 000).
ACRONYMS AND ABBREVIATIONS USED IN THIS ANNEX

An acronym or abbreviation, when used as a defined term, will be found in "Definitions of Terms used in this Annex".

Acronym or abbreviation	Meaning
ABEC	Annular Bearing Engineers Committee
AGMA	American Gear Manufacturers' Association

AHRS	attitude and heading reference systems
AISI	American Iron and Steel Institute
ALU	arithmetic logic unit
ANSI	American National Standards Institute
ASTM	the American Society for Testing and Materials
ATC	air traffic control
AVLIS	atomic vapour laser isotope separation
CAD	computer-aided-design
CAS	Chemical Abstracts Service
CCITT	International Telegraph and Telephone Consultative Committee
CDU	control and display unit
CEP	circular error probable
CNTD	controlled nucleation thermal deposition
CRISLA	chemical reaction by isotope selective laser activation.
CVD	chemical vapour deposition
CW	chemical warfare
CW (for lasers)	continuous wave
DME	distance measuring equipment
DS	directionally solidified
EB-PVD	electron beam physical vapour deposition
EBU	European Broadcasting Union
ECM	electro-chemical machining
ECR	electron cyclotron resonance
EDM	electrical discharge machines
EEPROMS	electrically erasable programmable read only memory
EIA	Electronic Industries Association
EMC	electromagnetic compatibility
ETSI	European Telecommunications Standards Institute
FFT	Fast Fourier Transform
GLONASS	global navigation satellite system
GPS	global positioning system