Regulation (EU) No 1232/2011 of the European Parliament and of the Council of 16 November 2011 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 1232/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 16 November 2011

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,

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

Whereas:

(1) Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items[(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) It is desirable to achieve uniform and consistent application of controls throughout the Union in order to avoid unfair competition among Union exporters, harmonise the scope of Union General Export Authorisations and conditions of their use among Union exporters and ensure efficiency and effectiveness of the security controls in the Union.

(3) In its communication of 18 December 2006, the Commission put forward the idea of the creation of new Union General Export Authorisations in a bid to enhance the industry's competitiveness and establish a level playing field for all Union exporters when they export certain specific dual-use items to certain specific destinations while at the same time ensuring a high level of security and full compliance with international obligations.

(4) Regulation (EC) No 428/2009 repealed Council Regulation (EC) No 1334/2000 of 22 June 2000 setting up a Community regime for the control of exports of dual-use items and technology[(3)] with effect from 27 August 2009. However, the relevant provisions of Regulation (EC) No 1334/2000 continue to apply for export authorisation applications made before that date.

(5) In order to create new Union General Export Authorisations for the export of certain specific dual-use items to certain specific destinations, the relevant provisions of Regulation (EC) No 428/2009 need to be amended by adding new Annexes thereto.

(6) The competent authorities of the Member State where the exporter is established should be provided with the possibility of prohibiting the use of the Union General Export Authorisations under the conditions set out in Regulation (EC) No 428/2009 as amended by this Regulation.

(7) Since the entry into force of the Treaty of Lisbon, arms embargoes under the Union's common foreign and security policy are adopted by Council decisions. Pursuant to Article 9 of the Protocol (No 36) on transitional provisions, the legal effects of common positions adopted by the Council under Title V of the Treaty on European Union prior to the entry into force of the Treaty of Lisbon are to be preserved until they are repealed, annulled or amended in implementation of the Treaties.

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

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 428/2009 is hereby amended as follows:

(1) in Article 2, point 9 is replaced by the following:

9. "Union General Export Authorisation" shall mean an export authorisation for exports to certain countries of destination available to all exporters who respect its conditions and requirements for use as listed in Annexes IIa to IIf.;

(2) in Article 4(2), the words 'decided by a common position or a joint action' are replaced by the words 'imposed by a decision or a common position';

(3) Article 9 is amended as follows:

(a) paragraph 1 is replaced by the following:

1. Union General Export Authorisations for certain exports as set out in Annexes IIa to IIf are established by this Regulation.

The competent authorities of the Member State where the exporter is established can prohibit the exporter from using these authorisations if there is reasonable suspicion about his ability to comply with such authorisation or with a provision of the export control legislation.

The competent authorities of the Member States shall exchange information on exporters deprived of the right to use a Union General Export Authorisation, unless they determine that the exporter will not attempt to export dual-use items through another Member State. The system referred to in Article 19(4) shall be used for this purpose.;

(b) in paragraph 4, point (a) is replaced by the following:

(a) exclude from their scope items listed in Annex IIg;

(c) in paragraph 4(c), the words ‘decided by a common position or joint action’ are replaced by the words ‘imposed by a decision or a common position’;

(4) in the first sentence of Article 11(1), the reference to ‘Annex II’ is replaced by a reference to ‘Annex IIa’;

(5) in Article 12(1)(b), the words ‘a common position or joint action’ are replaced by the words ‘a decision or a common position’;

(6) in Article 13, paragraph 6 is replaced by the following:

6. All notifications required pursuant to this Article shall be made via secure electronic means including the system referred to in Article 19(4).;

(7) Article 19 is amended as follows:

(a) in paragraph 2(a), the words ‘Community General Export Authorisations’ are replaced by the words ‘Union General Export Authorisations’;

(b) paragraph 4 is replaced by the following:

4. A secure and encrypted system for the exchange of information between Member States and, whenever appropriate, the Commission shall be set up by the Commission, in consultation with the Dual-Use Coordination Group set up pursuant to Article 23. The European Parliament shall be informed about the system’s budget, development, provisional and final set-up and functioning, and network costs.;

(8) in Article 23, the following paragraph is added:

3. The Commission shall submit an annual report to the European Parliament on the activities, examinations and consultations of the Dual-Use Coordination Group, which shall be subject to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents[(4)].;

(9) Article 25 is replaced by the following:

Article 25

1 Each Member State shall inform the Commission of the laws, regulations and administrative provisions adopted in implementation of this Regulation, including the measures referred to in Article 24. The Commission shall forward the information to the other Member States.

2 Every 3 years the Commission shall review the implementation of this Regulation and present a comprehensive implementation and impact assessment report to the European Parliament and the Council, which may include proposals for its amendment. Member States shall provide to the Commission all appropriate information for the preparation of the report.

3 Special sections of the report shall deal with:

a the Dual-Use Coordination Group and its activities. Information that the Commission provides on the Dual-Use Coordination Group’s examinations and consultations shall be treated as confidential pursuant to Article 4 of Regulation (EC) No 1049/2001. Information shall in any case be considered to be confidential if its disclosure is likely to have a significantly adverse effect upon the supplier or the source of such information;

b the implementation of Article 19(4), and shall report on the stage reached in the set-up of the secure and encrypted system for the exchange of information between Member States and the Commission;

c the implementation of Article 15(1);

d the implementation of Article 15(2);

e comprehensive information provided on the measures taken by the Member States pursuant to Article 24 and notified to the Commission under paragraph 1 of this Article.

4 No later than 31 December 2013, the Commission shall submit to the European Parliament and to the Council a report evaluating the implementation of this Regulation with a specific focus on the implementation of Annex IIb, Union General Export Authorisation No EU002, accompanied by, if appropriate, a legislative proposal to amend this Regulation, in particular as regards the issue of low-value shipments.;

(10) the following Article is inserted:

Article 25a

Without prejudice to the provisions on mutual administrative assistance agreements or protocols in customs matters concluded between the Union and third countries, the Council may authorise the Commission to negotiate with third countries agreements providing for the mutual recognition of export controls of dual-use items covered by this Regulation and in particular to eliminate authorisation requirements for re-exports within the territory of the Union. These negotiations shall be conducted in accordance with the procedures established in Article 207(3) of the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community, as appropriate.;

(11) Annex II is renumbered as Annex IIa and is amended as follows:

(a) the title is replaced by the following:
UNION GENERAL EXPORT AUTHORISATION NO EU001(referred to in Article 9(1) of this Regulation)Exports to Australia, Canada, Japan, New Zealand, Norway, Switzerland, including Liechtenstein, and United States of AmericaIssuing authority: European Union;

(b) Part 1 is replaced by the following:

Part 1 This general export authorisation covers all dual-use items specified in any entry in Annex I to this Regulation, except those listed in Annex IIg.;

(c) Part 2 is deleted;

(d) Part 3 is renumbered as Part 2 and is amended as follows:

(i) in the first paragraph, the word ‘Community’ is replaced by the word ‘Union’;

(ii) the word ‘Switzerland’ is replaced by the words ‘Switzerland, including Liechtenstein’;

(iii) the words ‘the Community General Export Authorisation’ and ‘this Community General Export Authorisation’ are replaced by the words ‘this authorisation’;

(iv) the words ‘decided by a common position or joint action’ are replaced by the words ‘imposed by a decision or a common position’;

(12) Annexes IIb to IIg, as set out in the Annex to this Regulation, are inserted.

Article 2

This Regulation shall enter into force on the 30th day following 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, 16 November 2011.

For the European Parliament

The President

J. BUZEK

For the Council

The President

W. SZCZUKA