Council Regulation (EC) No 394/2006 of 27 February 2006 amending and updating Regulation (EC) No 1334/2000 setting up a Community regime for the control of exports of dual-use items and technology

COUNCIL REGULATION (EC) No 394/2006

of 27 February 2006

amending and updating Regulation (EC) No 1334/2000 setting up a Community regime for the control of exports of dual-use items and technology

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) Regulation (EC) No 1334/2000[(1)] requires dual-use items (including software and technology) to be subject to effective control when they are exported from the Community.

(2) In order to enable Member States and the Community to comply with their international commitments, Annex I to that Regulation establishes the common list of dual-use items and technology referred to in Article 3 of that Regulation, which 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).

(3) Article 11 of that Regulation provides for Annex I and Annex IV to be updated in conformity with the relevant obligations and commitments, and any modification thereof, that each Member State has accepted as a member of the international non-proliferation regimes and export control arrangements, or by ratification of relevant international treaties.

(4) Annex I and IV to that Regulation should be amended in order to take account of changes adopted by the Wassenaar Arrangement, the Australia Group, the Missile Technology Control Regime and the NSG subsequent to the amendments made by Regulation (EC) No 1504/2004.

(5) In order to ease references for export control authorities and operators, an updated and consolidated version of the Annexes to that Regulation should be published.

(6) Regulation (EC) No 1334/2000 should be amended accordingly,

HAS ADOPTED THIS REGULATION:

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 394/2006. (See end of Document for details)*

Article 1

Annexes to Regulation (EC) No 1334/2000 shall be replaced by the text appearing in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the 30th 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 Brussels, 27 February 2006.

For the Council

The President

U. PLASSNIK

***Changes to legislation:** There are currently no known outstanding effects for the Council Regulation (EC) No 394/2006. (See end of Document for details)*

ANNEX

ANNEX **L**IST OF DUAL-USE ITEMS AND TECHNOLOGY(referred to in Article 3 of Regulation (EC) No 1334/2000)

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). No account has been taken of any items that Member States wish to place on an exclusion list. No account has been taken of any national controls (non-regime origin controls) that may be maintained by Member States.

GENERAL NOTES TO ANNEX I1.

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.N.B.: 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.

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.

"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.

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

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 394/2006. (See end of Document for details)*

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

N.B.: Entry a. of the General Software Note does not release "softwar"e specified in Category 5 — Part 2 ("Information Securit"y).

b. "In the public domain".

EDITORIAL PRACTICES

In accordance with the rules set out in paragraph 101 on page 86 of the Interinstitutional Style Guide (1997 edition), for texts in English published in the *Official Journal of the European Communities*:

~~a c~~omma is used to separate the whole number from the decimals,

~~wh~~ole numbers are presented in series of three, each series being separated by a thin space.

DEFINITIONS OF TERMS USED IN THIS ANNEX

Definitions of terms between 'single quotation marks' are given in a Technical Note to the relevant item.

Definitions of terms between "double quotation marks" are as follows:

N.B.: Category references are given in brackets after the defined term.

"Accuracy" (2 6), usually measured in terms of inaccuracy, means the maximum deviation, positive or negative, of an indicated value from an accepted standard or true value.

"Active flight control systems" (7) are systems that function to prevent undesirable "aircraft" and missile motions or structural loads by autonomously processing outputs from multiple sensors and then providing necessary preventive commands to effect automatic control.

"Active pixel" (6 8) is a minimum (single) element of the solid state array which has a photoelectric transfer function when exposed to light (electromagnetic) radiation.

"Adapted for use in war" (1) means any modification or selection (such as altering purity, shelf life, virulence, dissemination characteristics, or resistence to UV radiation) designed to increase the effectiveness in producing casualties in humans or animals, degrading equipment or damaging crops or the environment.

"Aircraft" (1 7 9) means a fixed wing, swivel wing, rotary wing (helicopter), tilt rotor or tilt-wing airborne vehicle.

N.B.: See also "civil aircraf"t.

"All compensations available" (2) means after all feasible measures available to the manufacturer to minimise all systematic positioning errors for the particular machine-tool model are considered.

"Allocated by the ITU" (3 5) means the allocation of frequency bands according to the current edition of the ITU Radio Regulations for primary, permitted and secondary services.

N.B.: Additional and alternative allocations are not included.

"Angular position deviation" (2) means the maximum difference between angular position and the actual, very accurately measured angular position after the workpiece mount of the table has been turned out of its initial position (ref. VDI/VDE 2617, Draft: 'Rotary tables on coordinate measuring machines').

"Asymmetric algorithm" (5) means a cryptographic algorithm using different, mathematically-related keys for encryption and decryption.

N.B.: A common use of "asymmetric algorithm"s is key management.

"Automatic target tracking" (6) means a processing technique that automatically determines and provides as output an extrapolated value of the most probable position of the target in real time.

"Basic gate propagation delay time" (3) means the propagation delay time value corresponding to the basic gate used in a "monolithic integrated circuit". For a 'family' of "monolithic integrated circuits", this may be specified either as the propagation delay time per typical gate within the given 'family' or as the typical propagation delay time per gate within the given 'family'.

N.B. 1":Basic gate propagation delay tim"e is not to be confused with the input/output delay time of a complex "monolithic integrated circui"t.

N.B. 2:'Family' consists of all integrated circuits to which all of the following are applied as their manufacturing methodology and specifications except their respective functions:

a. *The common hardware and software architecture;*

b. *The common design and process technology; and*

c. *The common basic characteristics*.

"Basic scientific research" (GTN NTN) means experimental or theoretical work undertaken principally to acquire new knowledge of the fundamental principles of phenomena or observable facts, not primarily directed towards a specific practical aim or objective.

"Bias" (accelerometer) (7) means an accelerometer output when no acceleration is applied.

"Camming" (2) means axial displacement in one revolution of the main spindle measured in a plane perpendicular to the spindle faceplate, at a point next to the circumference of the spindle faceplate (Reference: ISO 230/1 1986, paragraph 5.63).

"Carbon fibre preforms" (1) means an ordered arrangement of uncoated or coated fibres intended to constitute a framework of a part before the "matrix" is introduced to form a "composite".