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COUNCIL REGULATION (EC) No 149/2003

of 27 January 2003

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

(OJ L 30, 5.2.2003, p. 1)

Corrected by:

►**C1** Corrigendum, OJ L 52, 27.2.2003, p. 11 (149/2003)

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COUNCIL REGULATION (EC) No 149/2003

of 27 January 2003

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 the Member States and the Community to comply with their international commitments, Annex I to Regulation (EC) No 1334/2000 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, the Nuclear Suppliers Group, the Australia Group and the Chemical Weapons Convention.

(3) Article 11 of Regulation (EC) No 1334/2000 provides for Annex I and Annex IV to that Regulation 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) In order to take account of changes adopted by the Wassenaar Arrangement, the Australia Group and the Missile Technology Control Regime during the years 2001 and 2002, Annexes I, II and IV to Regulation (EC) No 1334/2000 should be modified.

(5) In order to ease references for export control authorities and operators, it is necessary to publish an updated and consolidated version of the Annexes to Regulation (EC) No 1334/2000, taking into account all the amendments accepted by the Member States in international forums during the years 2001 and 2002.

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

HAS ADOPTED THIS REGULATION:

Article 1

The Annexes to Regulation (EC) No 1334/2000 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.

([1]) OJ L 159, 30.6.2000, p. 1. Regulation as last amended by Regulation (EC) No 880/2002 (OJ L 139, 29.5.2002, p. 7).

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ANNEX I

LIST 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.

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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.

   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.*

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.

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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 "software" specified in Category 5 — Part 2 ("Information Security").*

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 comma is used to separate the whole number from the decimals,

— whole numbers are presented in series of three, each series being separated by a thin space.