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EUROPEAN COMMISSION

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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

EXPLANATORY MEMORANDUM

The EU dual-use export control system, as set out in Regulation 428/2009¹, requires an authorisation for the export of dual-use items² listed in the Annex to the Regulation.

Decisions to control the export of dual-use items are taken by consensus in international export control regimes (Australia Group (AG) for biological and chemical items; Nuclear Suppliers Group (NSG) for civil nuclear items, the Missile Technology Control Regime (MTCR) and the Wassenaar Arrangement (WA) for conventional arms and dual-use goods and technologies). These decisions are taken in order to limit the risk of sensitive dual-use items being used for military purposes and/or in proliferation programmes. With a view to making such controls as effective as possible, the international export control regimes bring together the major suppliers of dual-use items. By agreeing to control trade in specific items, they effectively work together to limit the proliferation risk, while ensuring that legitimate trade is not hindered.

Technological progress in today's world means that there is a need to regularly update the list of controlled items. Article 15 of Regulation 428/2009 specifies that "the list of dual-use items set out in Annex I shall be updated in conformity with the relevant obligations and commitments, and any modification thereof, that Member States have accepted as members of the international non-proliferation regimes and export control arrangements, or by ratification of relevant international treaties".

The last update of Annex I of the Regulation occurred on the occasion of the adoption of Regulation 428/2009 on 5 May 2009. Since this time, all of the international export control regimes have taken decisions to modify and update their control lists. Consequently, there is a need to make the necessary modifications to Annex I. These modifications will ensure that the commitments made by EU Member States in the regimes are fully applied across the entire EU and that EU exporters have legal certainty as to which items require export licenses.

To facilitate the decision making process, a summary of the necessary changes is detailed below. For the purpose of clarity and ease of use of Annex I, the Commission is proposing to replace the entire Annex I with a new text incorporating the changes outlined below.

Modifications to the definitions and the general note

Definition and General Note	Regime	Nature of change
General Note 4.	AG	Note for CAS number added
All compensations available	WA	Definition amended
CE	WA	Definition deleted
Civil aircraft	WA	Reference to Category amended

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 Dual-use items are defined in Regulation 428/2009 as "items, including software and technology, which can be used for both civil and military purposes, and shall include all goods which can be used for both non-explosive uses and assisting in any way in the manufacture of nuclear weapons or other nuclear explosive devices".

Computer element	WA	Definition deleted
Critical temperature	WA	Reference to Category amended
Digital transfer rate	WA	Reference to Category amended
Dynamic adaptive routing	WA	Definition deleted
Energetic materials	WA	New definition
FADEC Systems	WA	New definition
FADEC	WA	Definition deleted
Fibrous or filamentary materials	WA	Reference to Category amended
Focal plane array	WA	Reference to Category amended
Full Authority Digital Engine Control	WA	Definition deleted
Fuel cell	WA	New definition
Hybrid computer	WA	Definition deleted
Interconnecting radar sensors	WA	Definition deleted
Laser	WA	Nota Bene amended
Laser duration	WA	Reference to Category amended
Personalized smart card	WA	Definition deleted
Production facilities	MTCR	Definition amended
Q-switched laser	WA	Definition deleted
Real time processing	WA	Reference to Category amended
Source code	WA	Reference to Category amended
Space-qualified	WA	Reference to Category amended
Superconductive	WA	Reference to Category amended

Modifications to items in categories 1-9

Category 1		
1A001.b.	WA	Sub-entry for components for fluorinated compounds amended

1A002 <i>Note 1</i>	WA	Note 1 to control entry for composite structures amended
1A007	Edit	Control entry amended to define energetic materials
1B001, a., b. & <i>Tech Note</i>	WA	Control entry and sub-entries for composite materials production equipment amended; new Technical Note added
1B001.g.	WA	New sub-entry for tow placement machines added
1C002.b.	WA	Sub-entry for metal alloy made from powder or particulate material amended
1C006.c.1.	WA	CAS number added to sub-entry for dibromotetrafluoroethane
1C007.f.1.	WA	CAS number added to sub-entry for aluminum oxide
1C008.b.1.a.	WA	CAS number added to sub-entry for certain thermoplastic liquid crystal copolymers
1C008.b.2.a., b. & c.	WA	CAS number added to sub-entry for certain thermoplastic liquid crystal copolymers
1C010, a. & c.	WA	Control entry and sub-entries for fibrous and filamentary material amended.
1C010.b. & <i>Note</i>	WA	Sub-entry and parameters for carbon fibrous and filamentary material amended; Note amended and expanded
1C010.e., <i>Note 1 & 2, & Tech Note</i>	WA	Sub-entry for prepregs re-written including new Notes and Technical Note
1C011.c.	WA	CAS number added to sub-entry for guanidine nitrate
1C111.a.4.k.	MTCR	CAS number added to sub-entry for diimido oxalic acid dihydrazine
1C111.a.4.n.	MTCR	CAS number added to sub-entry for hydrazinium diperchlorate
1C111.a.5, 5.a., 5.b., <i>Note & Tech Note</i>	MTCR	New sub-entry for high energy density material including Note and Technical Note
1C111.c.6.h.	MTCR	CAS number added to sub-entry for diethyl ferrocene
1C111.c.6.o. <i>Note</i>	MTCR	New decontrol note for certain ferrocene derivatives
1C117, a., b., c. & <i>Tech Note</i>	MTCR	Control entry for tungsten and molybdenum material re-written; new Technical Note added
1C226	MTCR	Control entry amended due to amendment in 1C117
1C351	AG	Sub-entry for white pox virus removed
1E002.c.1.c.1.	WA	CAS number for zirconia added to sub-entry

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Category 2		
2B006.a. & <i>Tech Note</i>	WA	Sub-entry for Coordinate Measuring Machines amended and new Technical note added
2B206.a. & <i>Tech Note</i>	NSG	Sub-entry for Coordinate Measuring Machines amended; Technical note 1 deleted; Technical Note 2 renamed
2B350.a., b., c., d., e., f., h., i., j. & <i>Tech Note 2</i>	AG	Local definition of alloys added to sub-entries for corrosive resistant chemical manufacturing equipment and new Technical Note added for alloys.
2B350.g.8. & <i>Tech note</i>	AG & Edit	Technical note added for nominal size of valve and minor editorial change to sub-entry
2B351	AG 2008	Control entry for toxic gas monitoring systems amended.
2E003.f. <i>Note N.B.</i>	Edit	Missing N.B. for Deposition Techniques Table added.

Category 3		
3A001.b.8.b.	WA	Sub-entry amended.
3A001.b.11. & <i>N.B.</i>	WA	New sub-entry for frequency synthesizer assemblies; new Nota Bene.
3A002.b.	WA	Sub-entry deleted and control moved to 3A001.b.11.
3A002.e., 1., & 2.	WA	Sub-entry for network analysers amended to include 2 new sub-paragraphs.
3A228.c.	Edit	Sub-entry for switching devices amended to avoid double coverage.
3B001.c.1. & 2.	WA	Sub-entry for anisotropic plasma dry etching equipment amended to include 2 new sub-paragraphs.
3B001.e., <i>Note & Tech Note</i>	WA	Sub-entry for automatic loading wafer handling system and associated Note amended and new Technical Note added.

Category 4		
4A001.b.	WA	Sub-entry for computers having information security functions deleted. Controls now to be found in Cat 5 Part 2.
4A003.b.	WA	APP parameter for sub-entry for digital computers amended.

4A003.g.	WA	Sub-entry for equipment aggregating the performance of digital computers amended.
4D Note	WA	Note amended
4D001.b.1.	WA	Parameter in sub-entry for software for digital computers amended.
4D003	WA	Control entry deleted. Controls now to be found in Cat 5 Part 2.
4E001.b.1.	WA	Parameter in sub-entry for technology for digital computers amended.

Category 5 Part 1		
Cat 5 Pt 1 <i>Note 1 N.B.</i>	WA	New Nota Bene added for laser telecommunications equipment.
5B001.b.1. Tech Note	WA	Sub-entry and Tech Note deleted for certain equipment employing digital techniques.
5B001.b.3.	WA	Sub-entry deleted for certain equipment employing optical switching.
5D001.d.1.	WA	Sub-entry deleted for certain software for equipment employing digital techniques.
5D001.d.3.	WA	Sub-entry deleted for certain software for equipment employing optical switching.
5E001.c.1. & <i>Tech Note</i>	WA	Parameter in sub-entry for certain technology for equipment employing digital techniques amended and Tech Note amended.
5E001.c.3.	WA	Sub-entry for certain technology for equipment employing optical switching amended.
Category 5 Part 2		
Cat 5 Pt 2 <i>Note 4</i>	WA	New decontrol Note for certain equipment employing cryptography.
5A002.a. & <i>N.B.</i>	WA	Sub-entry for information security items and Nota Bene amended.
5A002.a. Note a. & <i>Tech Note</i>		Note a. amended and new Tech Note added.
5A002.a. Note b.	WA	Note b. deleted as now covered by new Note 4.
5A002.a. Note c.	WA	Note c. deleted as now covered by new Note 4.

5A002.a. Note h.	WA	Note h. deleted as now covered by new Note 4.
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Category 6		
6A001.a.1.a.	WA	Sub-entry for bathymetric survey systems amended.
6A001.a.1.a.2.	WA	Sub paragraph amended.
6A001.a.1.d., d.1., & d.2.	WA	Sub entry and sub-paragraphs for certain acoustic systems amended.
6A001.a.1.e., <i>N.B</i> & <i>Tech Note</i>	WA	New sub-entry for active individual sonars, including Nota Bene and Tech Note.
6A002.c.2	WA	Sub-entry for FPA direct view imaging equipment amended.
6A003 <i>N.B.</i>	WA	Nota Bene amended to
6A003.b.2. <i>Note</i>	WA	New decontrol Note added to sub-entry for scanning cameras.
6A003.b.4.	Edit	Editorial amendment to imaging camera sub-entry
6A003.b.4. <i>Note</i>	Edit	Editorial amendment to imaging camera Note.
6A003.b.4.c., <i>Note 4.c.</i>	WA	New sub-paragraph added to decontrol Note.
6A005.d.1. Tech Notes 1., 2. & 3.	WA	Technical Note to semiconductor lasers sub-entry amended to include 2 new Tech Notes.
6A005.d.1.b.1.	WA	Parameter in sub-entry for individual multiple-transverse mode semiconductor laser amended.
6A005.d.1.c.	WA	Sub-entry for individual semiconductor laser arrays amended to bars and parameter amended.
6A005.d.1.d., d.1., d.2., d.3., d.4. & <i>Tech Note</i>	WA	Sub-entry for semiconductor stacked arrays rewritten and includes 4 new sub-paragraphs and Tech Note.
6A005.d.1.e. & <i>Notes</i>	WA	New sub-entry for semiconductor stacked arrays including 2 new sub-paragraphs and 3 new Notes.
6A008 & <i>Note</i>	WA	Decontrol Note amended to include certain precision approach radar.
6A008.e.	WA	Sub-entry for radars incorporating electronically steerable array antennas amended.
6A008.f.	WA	Note to sub-entry for radar capable of heightfinding non-cooperative targets deleted.
6A008.l.4.	WA	Sub-paragraph for radar having data processing sub-systems amended.

6C004.b.1., 2. & 3.	WA	CAS numbers added to sub-parameters for electro-optic material.
6C004.e.	WA	CAS numbers added to sub-entry for optical glass material.
6D003.a.5.	WA	New sub-entry for certain software for detecting divers or swimmers.
6D003.h.1.	WA	Sub-entry for Air Traffic Control software rewritten to include the 2 sub-paragraphs.

Category 7		
7A005, a., b., <i>Note & Tech Note</i>	WA	Control entry for global navigation satellite systems re-written including new Note and Technical Note
7A101 <i>Note</i>	MTCR	Note to control on linear accelerators amended.
7B001 <i>Tech Note 2</i>	WA	Tech Note amended
7D003.b.2.	WA	Sub-entry for software for GNSS reference data amended
7E004.b.6. <i>N.B.</i>	WA	Nota Bene amended.

Category 8		
8A002.f.	WA	Control entry for electronic underwater imaging systems deleted from Cat 8. Controls now to be found in Cat 6.
8A002.j.	Edit	Editorial amendment to define Fuel cell.

Category 9		
9A001.a.	WA	Sub-entry for aero gas turbines amended to include FADEC technology
9A003	WA	Control entry for components for gas turbines propulsion systems amended to include FADEC technology
9A101	MTCR	Control entry for turbojet and turbofan engines amended.
9B002	WA	Control entry for certain test systems for gas turbines engine development amended to include FADEC technology

9D003	WA	Control for software for FADEC systems amended
9E003.a.9.	WA	Sub-entry for FADEC technology moved to 9E003.h.
9E003.h. & <i>Note</i>	WA	New sub-entry for FADEC technology including a new Note

Commission proposal

In the light of the above considerations it is necessary to replace Annex 1 of Regulation (EC) No 428/2009.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending 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,

Having regard to the proposal from the Commission,

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

Acting in accordance with the ordinary legislative procedure,

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 items³ 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 European Union to comply with their international commitments, Annex I to Regulation (EC) No 428/2009 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. These commitments were taken within the context of participation in the Australia Group, the Missile Technology Control Regime (MTCR), the Nuclear Suppliers Group (NSG), the Wassenaar Arrangement and the Chemical Weapons Convention (CWC).
- (3) Article 15 of Regulation (EC) No 428/2009 provides for 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 the 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 ease 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,

³ OJ L 134, 29.05.2009, p. 1.

HAVE ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 428/2009 shall be replaced by 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 Brussels,

For the European Parliament
The President

For the Council
The President