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COVER NOTE

From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

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To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

No. Cion doc.: C(2021) 7424 final

Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 20.10.2021 amending Regulation (EU) 2021/821 of the European Parliament and of the Council as regards the list of dual-use items

Delegations will find attached document C(2021) 7424 final.

Encl.: C(2021) 7424 final



Brussels, 20.10.2021
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COMMISSION DELEGATED REGULATION (EU) .../...

of 20.10.2021

amending Regulation (EU) 2021/821 of the European Parliament and of the Council as regards the list of dual-use items

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

According to Regulation (EU) 2021/821 of the European Parliament and of the Council¹ dual-use items - items that can be used for both civilian and military purposes or can contribute to the proliferation of weapons of mass destruction - are to be subject to effective control when they are exported from or transit through the European Union, or are delivered to a third country as a result of brokering services.

Annex I to Regulation (EU) 2021/821 of the European Parliament and of the Council establishes a common list of dual-use items subject to controls in the Union: the 'list of dual-use items'. Decisions on the items subject to controls are taken within the framework of the international non-proliferation regimes and export control arrangements, namely the Australia Group, the Missile Technology Control Regime, the Nuclear Suppliers Group, the Wassenaar Arrangement and the Chemical Weapons Convention.

The list of dual-use items set out in Annex I to Regulation (EU) 2021/821 of the European Parliament and of the Council needs to stay current in order to ensure full compliance with international security obligations, guarantee transparency, maintain the Union's competitiveness and facilitate references for export control authorities and economic operators. This requires updating and consolidating Annex I to Regulation (EU) 2021/821 of the European Parliament and of the Council, which should be published at regular intervals.

Article 17(1) of Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 provides that *'the Commission is empowered to adopt delegated acts ... in order to amend the list of dual-use items set out in Annexes I and IV' ... 'in conformity with the relevant obligations and commitments, and any modifications thereof, that Member States and, where applicable, the Union have accepted as members of the international non-proliferation regimes and export control arrangements, or by ratification of relevant international treaties'*. Article 17(1) further sets out that *'where the amendment of Annex I concerns dual-use items which are also listed in Annex II or IV, those Annexes shall be amended accordingly'*.

The current list of dual-use items was last updated by Commission Delegated Regulation (EU) 2020/1749², taking account of the control list changes adopted by the international non-proliferation regimes and export control arrangements in 2019 and until end of February 2020. The changes to the control lists adopted by the international non-proliferation regimes and export control arrangements until the end of 2020 now require another amendment of Annex I to Regulation (EU) 2021/821 of the European Parliament and of the Council. The delegated act therefore presents a variety of amendments to the EU list of dual-use items concerning the control parameters, the technical definitions and descriptions and the removal or addition of dual-use items. The amendments to the list of dual-use items in Annex I also necessitate consequential amendments to Annex IV.

¹ Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (OJ L 206, 11.6.2021, p. 1).

² Commission Delegated Regulation (EU) 2020/1749 of 7 October 2020 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 (OJ L 421, 14.12.2020, p. 1).

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In line with paragraph 4 of the Common Understanding on delegated acts between the European Parliament, the Council and the European Commission³, appropriate and transparent consultations, including at expert level, have been carried out in the preparation of this delegated act. The relevant documents have been transmitted in a timely and appropriate manner to the European Parliament and to the Council. The Dual-Use Coordination Group was duly consulted at its meeting via videoconference on 8 June 2021.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Article 17(1) and 17(2) of Regulation (EU) 2021/821 of the European Parliament and of the Council empowers the Commission to adopt delegated acts concerning the amendment to the list of dual-use items set out in Annex I, Annex II and Annex IV.

³ See Annex to the Interinstitutional Agreement of 13 April 2016 between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (OJ L 123, 12.5.2016, p. 1).

COMMISSION DELEGATED REGULATION (EU) .../...

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items¹, and in particular Article 17(1) thereof,

Whereas:

- (1) Regulation (EU) 2021/821 requires dual-use items to be subject to effective control when they are exported from or in 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) Annex I to Regulation (EU) 2021/821 establishes the common list of dual-use items that are subject to controls in the Union. Decisions on the items subject to controls are taken within the framework of internationally agreed dual-use controls including the Australia Group², the Missile Technology Control Regime³, the Nuclear Suppliers Group⁴, the Wassenaar Arrangement⁵ and the Chemical Weapons Convention⁶.
- (3) The list of dual-use items set out in Annex I to Regulation (EU) 2021/821 needs to be updated regularly in order to ensure full compliance with international security obligations, to guarantee transparency, and to maintain the competitiveness of economic operators. The control lists adopted by the international non-proliferation regimes and export control arrangements have been changed during 2020, and therefore Annex I to Regulation (EU) 2021/821 should be amended accordingly. In

¹ OJ L 206, 11.6.2021, p. 1.

² The Australia Group (AG) is an informal forum of countries which, through the harmonisation of export controls, seeks to ensure that exports do not contribute to the development of chemical or biological weapons. Further information is available at: <http://www.australiagroup.net/>

³ The Missile Technology Control Regime (MTCR) is an informal political understanding among states that seek to limit the proliferation of missiles, complete rocket systems, unmanned air vehicles, and related technology. Further information is available at: <http://mtcr.info/>

⁴ The Nuclear Suppliers Group (NSG) is a group of nuclear supplier countries that seeks to contribute to the non-proliferation of nuclear weapons through the implementation of two sets of Guidelines for nuclear exports and nuclear-related exports. Further information is available at: <http://www.nuclearsuppliersgroup.org/>

⁵ The Wassenaar Arrangement (WA) has been established in order to contribute to regional and international security and stability, by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies, thus preventing destabilising accumulations. Further information is available at: <https://www.wassenaar.org/>

⁶ The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (the Chemical Weapons Convention or CWC) aims to eliminate an entire category of weapons of mass destruction by prohibiting the development, production, acquisition, stockpiling, retention, transfer or use of chemical weapons by States Parties. Further information is available at: <https://www.opcw.org/chemical-weapons-convention>

order to facilitate references for export control authorities and economic operators, Annex I to that Regulation should be replaced.

- (4) Annex IV to Regulation (EU) 2021/821 establishes authorisation requirements for certain intra-Union transfers.
- (5) The amendments to the list of dual-use items set out in Annex I necessitate consequential amendments to Annex IV for dual-use items which are also listed in Annex IV.
- (6) Regulation (EU) 2021/821 empowers the Commission to update the list of dual-use items set out in Annex I as well as Annex IV by means of delegated acts, in conformity with the relevant obligations and commitments, and any amendment thereof, that Member States and, where applicable, the Union have accepted as members of the international non-proliferation regimes and export control arrangements, or by ratification of relevant international treaties.
- (7) Considering the importance of ensuring full compliance with international security obligations as soon as practically possible, this Regulation should enter into force on the day following that of its publication.
- (8) Regulation (EU) 2021/821 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) 2021/821 is amended as follows:

- (1) Annex I is replaced by the text in Annex I to this Regulation.
- (2) Annex IV is replaced by the text in Annex II to this Regulation.

Article 2

This Regulation shall enter into force on the 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, 20.10.2021

For the Commission
The President
Ursula VON DER LEYEN