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**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

concerning the

**position of the Council on the adoption of 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**

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1. BACKGROUND

Date of transmission of the proposal to the European Parliament and to the Council 7 November 2011
(document COM(2011) 704 final – 2011/0310 COD):

Date of the position of the European Parliament, first reading: 23 October 2012

Date of adoption of the position of the Council: 3 March 2014

2. OBJECTIVE OF THE PROPOSAL FROM THE COMMISSION

The proposal provides for amendments to Council Regulation (EC) No 428/2009 as regards the procedure to update the EU control list.

The objective is to empower the Commission to update the EU list of controlled dual-use items in Annex I to Regulation (EC) No 428/2009 through delegated acts, in accordance with Article 290 TFEU, in order to ensure full compliance with international security obligations and to maintain the competitiveness of EU economic operators. The Commission proposal also aims at empowering the Commission to remove 'destinations' (i.e. countries) from the list of countries benefiting from EU General Export Authorisations (EUGEA) in Annex II, in order to allow for a swift EU response to international circumstances.

3. COMMENTS ON THE POSITION OF THE COUNCIL

The Council's position endorses the core elements of the Commission's proposal but envisages some amendments to the original Commission proposal with respect to the removal of certain destinations (countries) benefiting from facilitated export procedures and the scope of delegated acts.

The Council position suggests aligning Parliament's scrutiny of delegated power to the agreement on "Trade Omnibus II". A "Commission statement on delegated acts", recalling the Commission's commitment under the framework agreement to provide information to Parliament on expert groups, will be attached to the Regulation.

The Council position also envisages certain amendments as regards the review and validity of the delegation of powers, which would be limited to 5 years and tacitly extended subject to

presentation of a report, unless the European Parliament or the Council opposes such extension no later than 3 months before the end of the period.

Lastly, the Council position includes an accompanying "Joint Statement by the European Parliament, the Council and the Commission on the review of the dual-use export control system", as well as a "Commission statement on updating the Regulation" (see below).

4. CONCLUSION

The Commission accepts the position taken by the Council.

STATEMENTS

Joint Statement by the European Parliament, the Council and the Commission on the review of the dual-use export control system

The European Parliament, the Council and the Commission recognise the importance of continuously enhancing the effectiveness and coherence of the EU's strategic export controls regime, ensuring high level of security and adequate transparency without impeding competitiveness and legitimate trade in dual-use items.

The three institutions consider that modernisation and further convergence of the system is needed in order to keep up with new threats and rapid technological changes, to reduce distortions, create a genuine common market for dual-use items (uniform level playing field for exporters) and continue serving as an export control model for third countries.

To this end, it is essential to streamline the process for updating the control lists (Annexes to the Regulation); strengthen risk assessment and exchange of information, develop improved industry standards, and reduce disparities in implementation.

The European Parliament, the Council and the Commission acknowledge the issues regarding the export of certain information and communication technologies (ICT) that can be used in connection with human rights violations as well as to undermine the EU's security, particularly for technologies used for mass-surveillance, monitoring, tracking, tracing and censoring, as well as for software vulnerabilities.

Technical consultations have been initiated in this respect, including in the framework of EU Dual Use Peer Visit, the Dual Use Coordination Group, and the export control regimes, and actions continue to be taken to address situations of urgency through sanctions (pursuant to Article 215 TFEU), or national measures. Efforts will also be intensified to promote multilateral agreements in the context of export control regimes, and options will be explored to address this issue in the context of the on-going review of EU dual-use export control policy, and the preparation of a Commission Communication. In this context the three institutions took note of the agreement on 4 December 2013 by the Participating States of the Wassenaar Arrangement to adopt controls on complex surveillance tools that enable unauthorised access to computer systems, and on IP-network surveillance systems.

The European Parliament, the Council and the Commission also commit to further development of existing "catch-all" mechanism for dual-use items falling outside the Annex I of the Regulation, in order to further enhance the export control system and its application within the European single market.

Commission Statement on delegated acts

In the context of this Regulation, the Commission recalls the commitment it has taken in paragraph 15 of the Framework Agreement on relations between the European Parliament and

the European Commission to provide to the Parliament full information and documentation on its meetings with national experts within the framework of its work on the preparation of delegated acts.

Commission Statement on plans for updating the Regulation

In order to ensure a more integrated, efficient and coherent European approach to the movement (exports, transfer, brokering and transit) of strategic items, the Commission will put forward a new proposal for updating the Regulation as expeditiously as possible.
