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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	4 November 2020
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2020) 692 final
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Council Regulation (EC) No 428/2009 by granting a Union General Export Authorisation for the export of certain dual-use items from the Union to the United Kingdom of Great Britain and Northern Ireland

Delegations will find attached document COM(2020) 692 final.

Encl.: COM(2020) 692 final

EUROPEAN
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Brussels, 4.11.2020
COM(2020) 692 final

2020/0313 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Council Regulation (EC) No 428/2009 by granting a Union General Export Authorisation for the export of certain dual-use items from the Union to the United Kingdom of Great Britain and Northern Ireland

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The United Kingdom submitted on 29 March 2017 the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union In accordance with Article 50, the Union negotiated with the United Kingdom an agreement setting out the arrangements for its withdrawal, taking account of the framework for our future relationship ('Withdrawal Agreement')[1]. According to the terms of the Withdrawal Agreement, the United Kingdom is no longer a Member State of the European Union since 31 January 2020, and the Unions' primary and secondary law will cease to apply to the United Kingdom, after the end of a transition phase on 31 December 2020.

Council Regulation (EC) No 428/2009 of 5 May 2009 ("the Regulation") setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items[2] creates a common system of controls for export of dual-use items, in line with the international commitments and obligations of the Member States and of the European Union (EU). Under the Regulation, an authorisation shall be required for the export of dual-use items to third countries. This authorisation may take the form of an individual, global or general authorisation.

In order to support the EU's competitiveness and establish a level playing field for all Union exporters, while at the same time ensuring a high level of security and full compliance with international obligations, Council Regulation (EC) No 428/2009 provides for "Union General export authorisations" for the export of certain dual-use items to certain third countries under certain conditions. In particular, Annex IIa to the Regulation provides for a Union General Export Authorisation ("EU001") for certain low-risk transactions, e.g. exports to Australia, Canada, Japan, New Zealand, Norway, Switzerland (incl. Liechtenstein), and the United States of America.

The withdrawal of the United Kingdom from the Union affects the trade of dual-use items between the EU and the United Kingdom: according to Council Regulation (EC) No 428/2009, the export of dual use items from the EU to the United Kingdom will require, as of 1 January 2021, an export authorisation issued by the competent national authority of the Member State where the exporter is established. This would create considerable administrative burden for competent authorities of the MS and for EU's exporters, affecting their competitiveness.

Therefore, in order to mitigate these risks and the impact of the withdrawal of the UK the EU's competitiveness, it is appropriate to add the United Kingdoom to Annex IIa of the Regulation and therefore control exports to the UK under the Union General Export Authorisation EU001. There are a number or reasons why the United Kingdom should be added to the list of countries included in the EU001:

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[1] Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ L 29, 31.1.2020, p. 7 ("Withdrawal Agreement").

[2] OJ L 134, 29.5.2009, p. 1.

- The United Kingdom is a party to relevant international treaties and a member of international non-proliferation regimes and maintains full compliance with related obligations and commitments;

- The United Kingdom applies proportionate and adequate controls effectively addressing considerations about intended end use and the risk of diversion consistent with the provisions and objectives of this Regulation.

Therefore, adding the United Kingdom to the to the list of countries included in the EU001, will not negatively affect EU and international security, while ensuring a uniform and consistent application of controls throughout the EU and providing a level playing field for EU exporters.

- **Consistency with other Union policies**

The EU export control regime for dual-use items provides that export authorisations are normally issued by the national competent authorities based on case-by-case assessments. A requirement for a specific authorisation for export to the United Kingdom is likely to cause significant administrative burden for exporters and competent authorities and risk creating an uneven playing field for exporters in the Member State, thus affecting the good functioning of the internal market and of the Common Commercial Policy. These disruptive effects could be mitigated by adding the United Kingdom to the list of destinations covered by EU001. This proposal is thus consistent with the general approach to contingency measures to address a withdrawal of the United Kingdom without agreement.

Moreover, considering that the United Kingdom is an important destination for dual-use exports and that it is committed to and ensures full compliance with relevant international obligations and commitments, adding the United Kingdom to the list of destinations covered by EU001 is also consistent with the objectives of this Regulation with respect to international and EU security as well as consistent with how export of dual use items to other States (which are in a position comparable to that of the UK from the point of view of the objectives of the Regulation) is controlled under EU law.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis is Article 207 of the Treaty on the Functioning of the European Union (TFEU).

- **Subsidiarity (for non-exclusive competence)**

Not applicable as international trade is an exclusive EU competence.

- **Proportionality**

The proposed Regulation is considered proportionate as it will avoid disproportionate trade disruptions and excessive administrative burden for EU exports of dual-use items to the UK while preserving international and EU security. It does not go beyond what it necessary to achieve this objective and it refrains from any broader changes.

- **Choice of the instrument**

This proposal contains a limited amendment to address a very specific and one-off situation. Since the list of third countries covered by EU001 is established by the Regulation and considering that the Commission has no power to add other countries to that list, a regulation of the European Parliament and Council appears to be the only adequate form of legal act to address this situation.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable due to the exceptional and one-off nature of the event necessitating this proposal.

- **Stakeholder consultations**

The specific circumstances surrounding the withdrawal of the United Kingdom from the Union and the continuously evolving situation posed major limitations on the possibility to consult publicly on the proposal. However, the challenges arising from the United Kingdom's withdrawal from the EU and possible solutions have been raised by various stakeholders and Member States' representatives.

- **Impact assessment**

In line with the Better Regulation Guidelines, an impact assessment is not needed, due to the exceptional nature of the situation. There are no materially different policy options available except for the one proposed.

- **Fundamental rights**

The proposal has no impact on the application or protection of fundamental rights.

4. BUDGETARY IMPLICATIONS

Not applicable.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Not applicable.

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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(2) thereof,

Having regard to the proposal from the European Commission,

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) On 29 March 2017, the United Kingdom submitted the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union. In accordance with Article 50, the Union negotiated with the United Kingdom the Withdrawal Agreement[3]. According to the terms of the Withdrawal Agreement', the United Kingdom is no longer a Member State of the European Union since 31 January 2020, and the Unions' primary and secondary law will cease to apply to and in the United Kingdom, after the end of a transition phase on 31 December 2020.

(2) Council Regulation (EC) No 428/2009[4] sets up a common system for the control of exports of dual-use items in order to protect the Union and international security and to provide a level playing field for Union exporters.

(3) Regulation (EC) No 428/2009 provides for "Union General export authorisations" which facilitate controls on low-risk exports of dual-use items to certain third countries. Currently, Australia, Canada, Japan, New Zealand, Norway, Switzerland, including Liechtenstein, and the United States of America are covered by Union General export authorisation No. EU001.

[3] Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ L 29, 31.1.2020, p. 7).

[4] 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 (OJ L 134, 29.5.2009, p. 1).

(4) The United Kingdom is a party to relevant international treaties and a member of international non-proliferation regimes, maintains full compliance with related obligations and commitments

(5) The United Kingdom applies proportionate and adequate controls to effectively address considerations about intended end use and the risk of diversion consistent with the provisions and objectives of Regulation (EC) No 428/2009.

(6) Adding the United Kingdom to the to the list of countries included in the EU001, should not negatively affect the security of the Union or international security.

(7) Considering that the United Kingdom is an important destination for dual-use items produced in the Union, it is appropriate to add the United Kingdom to the list of destinations covered by the Union General export authorisations No. EU001 in order to ensure a uniform and consistent application of controls throughout the Union, to promote a level playing field for Union exporters and to avoid an unnecessary administrative burden, while protecting Union and international security.

(8) Given the urgency entailed by the circumstances of the United Kingdom's withdrawal from the European Union, it is necessary to allow for a prompt application of the provisions provided for in this Regulation concerning the inclusion of the United Kingdom in the Union General export authorisation No EU001. Therefore, this Regulation should enter into force on the day following that of its publication in the Official Journal of the European Union,

HAVE ADOPTED THIS REGULATION:

Article 1

Annex IIa of Council Regulation (EC) No 428/2009 is amended as follows:

(1) the title "Exports to Australia, Canada, Japan, New Zealand, Norway, Switzerland, including Liechtenstein, and United States of America" is replaced by the following:

"Exports to Australia, Canada, Japan, New Zealand, Norway, Switzerland, including Liechtenstein, United Kingdom and United States of America";

(2) in Part 2 the following is inserted after "Switzerland, including Liechtenstein":

"- United Kingdom (without prejudice to the application of this Regulation to and in the UK in respect of Northern Ireland in accordance with Annex 2, point 47, of the IE/NI Protocol, listing the provisions of Union law referred to in Article 5(4) of the Withdrawal Agreement)[5]".

[5] OJ C 66 I, 19.02.2019, p. 1.

Article 2

Entry into force and application

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,

For the European Parliament	*For the Council*
The President	*The President*