



EUROPEAN
COMMISSION

Brussels, 23.2.2023
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COMMISSION DELEGATED REGULATION (EU) .../...

of 23.2.2023

**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 Group², the Missile Technology Control Regime³, the Nuclear Suppliers Group⁴, the Wassenaar Arrangement⁵ and the Chemical Weapons Convention⁶.

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 timely updates of Annex I to Regulation (EU) 2021/821 of the European Parliament and of the Council in light of the decisions of multilateral export control regimes.

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'.*

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 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>

The current list of dual-use items was last updated by Commission Delegated Regulation (EU) 2023/66⁷, taking account of the control list changes adopted by the international non-proliferation regimes and export control arrangements during 2021. At its Plenary meeting in July 2022, the Australia Group subsequently agreed on further changes to the control lists to respond to risks associated with certain items e.g. that could be exploited for biological weapons purposes. These items should now be added to the EU Control List through an additional amendment of Annex I to Regulation (EU) 2021/821 of the European Parliament and of the Council. This delegated act therefore presents amendments to the EU list of dual-use items in order to reflect the decisions of the Australia Group.

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 Commission⁸, 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 on 12 December 2022.

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.

⁷ Commission Delegated Regulation (EU) 2023/66 of 21 October 2022 amending Regulation (EU) 2021/821 of the European Parliament and of the Council as regards the list of dual-use items (OJ L 9, 11.1.2023, p. 1).

⁸ 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).

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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) Pursuant to Regulation (EU) 2021/821 dual-use items are 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.
- (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 2022, and therefore Annex I to Regulation (EU) 2021/821 should be amended to include items subject to control under the Australia Group. In order to facilitate references for export control authorities and economic operators, Annex I to that Regulation should be replaced.
- (4) Regulation (EU) 2021/821 empowers the Commission to update the list of dual-use items set out in Annex I 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.
- (5) In order to ensure full compliance with international security obligations as soon as possible, this Regulation should enter into force on the day following that of its publication.
- (6) Regulation (EU) 2021/821 should therefore be amended accordingly,

¹ OJ L 206, 11.6.2021, p. 1.

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EU) 2021/821 is replaced by the text in the Annex 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, 23.2.2023

For the Commission
The President
Ursula VON DER LEYEN