

CHAPTER IV UPDATING OF LIST OF DUAL-USE ITEMS

Article 15

1. The lists 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.

Comment:

Since the Treaty on the Functioning of the European Union entered into force, the process has changed and the proposal shall be adopted by the Council and the European Parliament, according to the ordinary legislative procedure (Article 207(2) TFEU).

In December 2011, facing the lengthy delay to adopt the annual update of Annex I, the Commission tabled a new proposal to amend the Regulation, empowering the Commission to adopt the annual update by delegated acts. In April 2014, the Parliament and the Council finally adopted such proposal. It constitutes paragraph 3 of the present article.

2. Annex IV, which is a subset of Annex I, shall be updated with regard to Article 30 of the Treaty establishing the European Community, namely the public policy and public security interest of the Member States.

Comment:

Chapter III of the EC Treaty (presently the TFEU) prohibits all quantitative restrictions between Member States. However, Annex IV of this Regulation establishes a list of items to be controlled between Member States. This intra-EU limitation of the free movement of goods might be considered as a quantitative restriction. Therefore it has to be ruled in conformity with the exception provisions established by Article 36 TFEU (former Article 30 TEC) which states that: *“the provisions of Articles 34 and 35 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States”*.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 23a concerning updating the list of dual-use items set out in Annex I. The updating of Annex I shall be performed within the scope set out in paragraph 1 of this Article. Where the updating of Annex I concerns dual-use items which are also listed in Annexes IIa to IIg or IV, those Annexes shall be amended accordingly.

Comment:

This provision has been implemented for the first time in 2014.