

Recast of the EU Dual-Use regulation: an update on the legislative export control framework within the EU

Background

Almost five years after the European Commission published its proposal to replace Council Regulation (EC) No 428/2009 (“Dual-use Regulation”), a recast of the Dual-Use Regulation was published in the Official Journal of the European Union on June 9, 2021 (Regulation 2021/821). The new Dual-use Regulation will enter into force on September 9, 2021 and will replace the current Dual-Use Regulation that was introduced in 2009.

The new regulation is aimed at strengthening controls on a broader spectrum of evolving dual-use items (i.e. items which can be used for both civilian and military purposes) and the coordination between EU Member States to support the efficient enforcement of controls across the EU.

Important changes

The key changes introduced by the recast are the following:

- Two additional **Union General Export Authorizations (‘UGEAs’)**: there are two new UGEAs included in the recast: EU007 concerning the intra-group export of software and technology and EU008 concerning encryption. This should reduce the administrative burden for businesses and the relevant authorities responsible for licensing.
- New controls on **cyber-surveillance technology**: the recast focuses more on the control of cyber-surveillance items. This is, for example, achieved by introducing a ‘catch-all’ article on the export of cyber-surveillance items not listed in Annex I if the items are or may be intended for “*use in connection with internal repression and/or the commission of serious violations of human rights and international humanitarian law.*”
- Obligation for an **Internal Compliance Programme (‘ICP’)**: contrary to the current Dual-Use Regulation, the recast explicitly mentions that the relevant stakeholders (exporters, brokers, etc.) should implement an ICP in order to obtain global export authorizations. (note: this was already current practice in the Netherlands)
- **Technical assistance**: the recast harmonizes the rules regarding technical assistance within the EU. A new provision is introduced which places a licensing requirement on technical assistance related to all dual-use items in Annex I. Technical assistance means “*any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may take forms such as instruction, advice, training, transmission of working knowledge or skills or consulting services, including by electronic means as well as by telephone or any other verbal forms of assistance.*”

Determining your next steps

When dealing with dual-use items it is recommended to determine whether the recast of the EU Dual-Use Regulation has an impact on your business. KPMG Meijburg & Co has extensive experience in the field of (EU) export controls and can assist you with assessing the impact of the new export control legislation in the EU on your business and (planned) transactions.

Furthermore, we could assist with other challenges in respect of export controls, such as developing an ICP, classification of dual-use items, obtaining export authorizations and ad hoc advice. In case you wish to receive more information on the recast of the EU Dual-Use Regulation or would like to exchange thoughts on export control-related subjects, please contact our Trade & Customs team or your advisor at KPMG Meijburg & Co.

KPMG Meijburg & Co
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