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INDUSTRY TRADE ASSOCIATION for STRATEGIC PRODUCTS

Refonte du règlement Double Usage

428/2009 → **2021/821**

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MODERNIZATION PROCESS

EU Export Control Regulation 2021/821

- June 2000   Regulation 1334/2000
- April 2004   UNSC Resolution 1540
- May 2009   Regulation 428/2009
- Dec 2010   Arab Spring
- June 2011   Commission Green Paper
- April 2014   Priorities for a set of 'concrete policy options

MODERNIZATION PROCESS

- September 2016   Commission new regulation Proposal
- January 2018   EP Position
- June 2019   Council Position
- Oct. 2019 - Nov. 2020   Trilogues and final Trilogue on 9.11.2020
- November 2020   Released of an Informal text of new Regulation
- 20 May 2021   Adoption and JO publication, into force 90 days later
- **9 September 2021**   **Entry into force of the Dual Use Reg. 2021/821**

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ACTORS and FOCUS

ACTORS

- European Commission (Commission),
- European Parliament (EP) and the
- Council of the EU (Council)
- Professional Industry Institutions (MEDEF, BusinessEurope,SIEPS)

FOCUS

- strengthening controls on so-called 'emerging technologies', such as cybersurveillance items, additive manufacturing (3D printing), and artificial intelligence (AI)
- human security controls
- reducing exporters' regulatory burden
- harmonizing national implementation

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Proposals did not make it into the regulation

- **EU-autonomous list of goods**

- **New Dual Use definition**

- **Due diligence obligation**

- **Limitations on the duration of licenses (to one year)**

- **ICP requirement for all licensing procedures**

- **New licensing criteria**

- **Control of emerging technologies**

- **EU general license for low-value goods shipments and frequency converters**

- **EU general transfer license for Annex IV goods**

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MAIN IMPROUVEMENTS

- **Dual Use definition remain unchanged**
- **Due diligence replaced by suggested ICP**
- **Large Project License (individual and global)**
- **2 additional general Licenses (cyber, intragroup)**
- **Duration of the licence (two years)**
- **Digitalization of licensing**
- **Industry outreach**
- **Working groups involving indistry**

MAIN FUTURE RISKS

- **Basis for an EU autonomus list**
- **Definitions of cyber-security**
- **Due diligence on the exporter 's shoulder**
- **Human Rights and terrorism scope integrated in the regulation**

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Coordination of member states

- **harmonization**,
- **simplification,**
- **enhanced information-sharing**,
- **cooperation with third-countries**.
- **transparency,**
- **enforcement,**
- **EU training program**
- **Coordination of national controls on emerging technologies**

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- **List of Articles**

- **Common list of items** subject to control (the 'dual-use list'). This list, updated annually, is a composite of the control lists of the **multilateral export control regimes**—the Australia Group (AG), the Missile Technology Control Regime (MTCR), the Nuclear Suppliers Group (NSG), and the Wassenaar Arrangement (WA).

- Set of **'catch-all controls'** capturing items that do not appear (yet) on the dual-use list. These controls apply to unlisted items that may (a) contribute to a **WMD program**, (b) have a '**military end use**' in a state subject to an arms embargo, or (c) be used as **parts and components in a military item** that has been exported illegally.

- Mechanism allowing member states to have **additional dual-use items** subject to national list-based controls 'for reasons of **public security or human rights considerations**.

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- Set of **'common criteria' for assessing export licenses** requiring member states to apply the eight criteria of the EU Common Position on Arms Exports.

- Set of **six (now eight) EU General Export Authorizations** (EUGEAs), allowing exporters to carry out multiple shipments under a single license, as well as provisions for member states to create National General Export Authorizations (NGEAs) for transfers that they view as less sensitive.

- Mechanisms for **inter-governmental information exchange** through meetings of national officials in the Council Working Party on Dual-use Goods (Dual-use Working Party) chaired by the rotating national presidency of the Council, the Dual-use Coordination Group chaired by the Commission, and via the Dualuse e-System (DUeS).

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Updated definitions and key control parameters

• Key definitions are updated e.g. "**export/re-export**", exporter, transit ..

• **New definitions** are introduced e.g. "**supplier of technical assistance**", "**cyber-surveillance items**", "**internal compliance program**","**essentially identical transaction**" etc

• Key **control parameters are clarified** e.g. concerning the application of controls with respect to natural persons (incl. **researchers**), the determination of the **competent authority**, the **compliance requirements** for companies etc

• Assessment criteria are clarified e.g. with respect to **terrorism** (Art. 8)

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Harmonization, simplification and digitalization of licensing

- **Harmonization of licensing parameters**, max. license validity (2y), **end-use statements**, **ICP requirements**, individual, global and general licenses,

- The recast also allows member states to issue '**Large Project Authorizations" (validity 4y and more**) for multiple transfers connected to a specific large scale project

- **New EU General Export Authorizations** (EUGEAs) for **Intra-group Technology Transfers (EU007**) and for **Encryption (EU008)**

- Harmonization of EUGEA basic conditions and requirements (registration, notification and reporting under EUGEAs and **delegation of competence to the Commission to amend destinations and items in Annex I and II** in consideration of technology and political developments

- Encourages states to adopt **electronic licensing procedures** and interconnection of IT systems, cloud

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Services, brokering and technical assistance and transit

- **Brokering, technical assistance and transit controls are updated** and harmonized for listed items and WMD proliferation and military end-use in embargo countries

- The scope of **brokering controls is clarified** with respect to foreign nationals providing brokering services from the territory of the EU

- The scope of **technical assistance controls is clarified/extended** with respect to foreign nationals providing services from the territory of the EU, the provision of service by EU nationals from a third country and transfers of technology towards third-country nationals in the EU

- Controls on **transit are clarified** e.g. with respect to natural persons, entities not resident or established in the EU, transhipment etc

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Enhanced information- exchange and enforcement

The new Regulation provides for the development of "**direct cooperation and exchange of information**" between Member States and COM

1 - Expanded information-exchange on **licensing e.g. licensing and export data, EUGEA users, application of assessment criteria, internal compliance programs etc**

2 - Information-exchange in compliance with **data protection standards and security or commercial confidentiality requirements**

- The new Regulation provides for the introduction of information-exchange and inter-agency cooperation on enforcement, incl. the creation of an **Enforcement Coordination Mechanism** and the development of an **EU training program**

- Role of the **Dual-Use Coordination Group**, development of dedicated **IT tools and interconnection of IT systems**

3 – **Catch all information sharing and possible implementation in the MS**

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Transparency and outreach to industry

The new Regulation prescribes **high transparency requirements (Art. 24.2), including the publication of an annual report** with detailed licensing data – EU and Member States, (types of) items, destinations - and other data regarding the administration and enforcement of controls)

• The new Regulation **promotes outreach** and the development of a "**Partnership with the private sector**", e.g. through the development of **guidelines** (e.g. Art. 24.1), **the setting of joint Technical Expert Groups** (Art. 21.1), the clarification of key requirements for **due diligence and internal compliance programs** etc

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Cooperation with third countries and the global convergence of controls

• The new Regulation **mandates the EU** to ramp up **cooperation with third-countries** in order to promote the global convergence of export controls and promote international security and a level-playing field

• The new Regulation points to the development of "**Export Control Dialogues**" with partners, capacity-building and outreach to third countries and multilateral export control regimes (MECRs)

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KEY FUTURE CHANGES AND PRIORITIES

1 - new enforcement coordination mechanism

2 - new controls on exports of cyber-surveillance items

3 - new public report for exports of dual-use items

4 - expanded mechanism to control unlisted items, including emerging technologies.

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KEY steady CONFIRMATIONS

1 - EU dual-use list—remains tied to the **multilateral export control regimes** and decision-making on **licensing stays at the national level**

2 – EU **dual use definition remain unchanged** and **related to non- proliferation**

3 – **Due Diligence remains** the privilege of the **national authorities**

4 – **Catch all clause remain originated by the authorities**

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Recommendations to the exporters_1/2

1. Effective resource allocation

Export controls are becoming more complex and challenging to implement and the risk of penalties higher. Financial and human resources assigned to work in the area mast be commensurate with the range of tasks that they will need to perform.

2. Internal Compliance Program

Conduct export control capacity-building work and promote ICP including Self-Assessment, Management engagement, Internal network organization of Export Control Officers, Process Manual, Training and Communication

3. Guidelines on catch-all controls and reporting requirements

Participate and contribute with your expertise to the establishment of the guidelines in preparation

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Recommendations to the exporters_2/2

4. Emerging technologies technical experts' group and guidelines

Participate and contribute to the emerging technologies technical expert's group at the EU level. This group should help share information and improve technical understanding across the Commission and member states. It should include national technical experts and representatives from the Commission Joint Research Centre and should regularly invite stakeholders, including compliance practitioners, and technical experts from industry and research

5. Achieving harmonized controls on cloud computing and cybersecurity

Organize the management of the intangible technology, data bases consultation and your data migration to the cloud considering the export control constraints (creation and consultation)

6. Create your own Export Control credit history

Build your own experience requesting export licenses through the free visitor gate of EGIDE. Request DHL license if you want classify a product and practice the local authority (SBDU in France) to let you enter into the system and let you recognize like a reliable exporter.

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