

TAX

TRADE OF DUAL-USE ITEMS: NEW EU RULES ADOPTED

VdA EXPERTISE



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Regulation (EU) 2021/821, of 20 May, setting up a new Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items and reformulating the previous regime provided for by Regulation (EC) 428/2009, of 5 May 2009, entered into force on 9 September 2021.

Dual-Use Items

Dual-use items are any items, including software and technology, which can be used for both civil and military purposes and whose commercialization raises concerns in the context of proliferation of weapons of mass destruction, international security and human rights violations.

Trade of Dual-Use Items: new EU rules

The new Regulation replaces the previous regime for the control of exports, transfer, brokering and transit of dual-use items, namely through:

- The upgrade of the European Union ("EU") legislation on export controls of sensitive dual-use items and cyber-surveillance tools in order to prevent serious human rights violations;
- The introduction of control rules covering a wider range of emerging dual-use technologies;
- The enforcement of cooperation between the Member States and the Commission and between the EU and third countries on the effectiveness of EU-wide and global export controls;
- The emphasis of the role of private companies in the combat of risks to international security that dual-use items might represent, with the creation of obligations for companies which become subject to due diligence obligations, in line with the *principle of due diligence*;
- The implementation of the *principle of transparency*, which aims to provide economic operators and citizens in general with information on the implementation of the controls provided for in the Regulation.

The Main Changes

The new Regulation has strengthened and refined certain aspects of the old regime and establishes the following main changes:

- The concepts of export, re-export and transit have been clarified by referring to the definitions laid down in the Union Customs Code;
- A license for the provision of technical assistance in the context of trade in dual-use items and an export license for large-scale projects have been introduced;
- New general EU export authorisations have been introduced covering both the export of cryptographic items and intra-group technology transfers under certain circumstances;
- A coordination mechanism has been set up bringing together all the entities involved in the control of external trade in dual-use goods. This mechanism aims to improve the exchange of information between customs authorities and licensing authorities and to consolidate cooperation between licensing authorities and customs in Member States;
- An export license has been created for cyber-surveillance items;
- The regulation introduces a new provision, allowing a Member State to introduce export controls on items not listed in the Regulation provided those items are subject to controls based on a national list established by another Member State.

VdA is available to advise you on any issues related to the new rules on dual-use goods.

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