

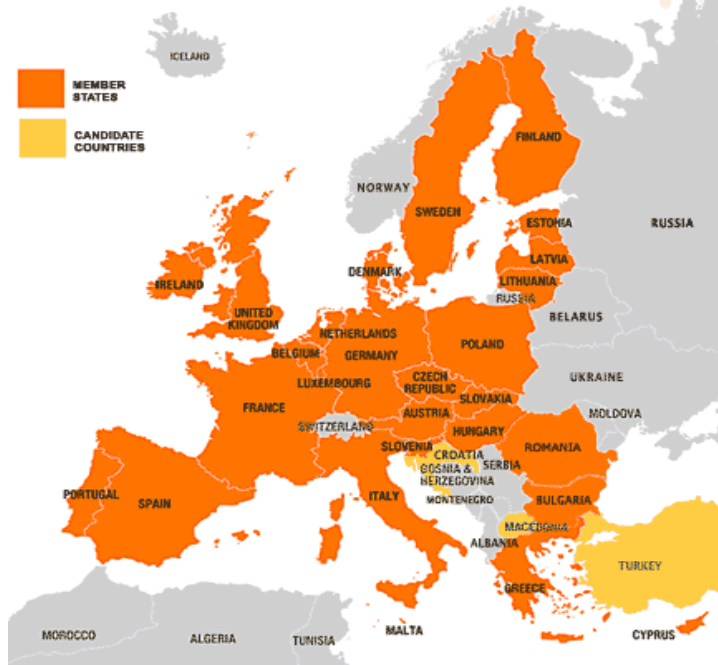
Update on EU Export Control Laws

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EU Facts

- The EU is
 - 493 million consumers
 - 27 national systems
 - 6 Member States as major defence producers
 - An under performer on the international stage
 - A bewildering array of national ties and royalties to third countries
 - Still very much a work in progress !

What is the EU ?

- European Union (three pillars)
 - European Community
 - Common Foreign & Security Policy
 - Justice and Home Affairs
- European Community ex EEC, EURATOM, ECSC
- CFSP and JHA - inter-governmental only

Score Card – 08/09

- EU 1334/2000 updated control lists (Oct 08)
- Recast to 1334/2000 adopted April 09
- New Proposal to increase number of CGEAs

- Update to EU Iran Sanctions List (Mar 08)
- New Code of Conduct on Arms Exports (Dec 08)
- Intra EU movements – defence products (April 09)

EU Defence Sector

Limits on EU Action - Defence

- Article 296 (1) EU Treaty

'a Member State may take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material'.

Directive on Intra EU movements of defence related products

- Measure adopted by Council of Ministers on 28 April 09
- Single Market measure – Art 95
- Comes into force 2 years after date of entry into force
- Entry into force 20 days after date of publication in OJEU
- Around July 2011

Directive on Intra EU movements of defence related products

- Recital 2
 - The Treaty provisions establishing the internal market apply to all goods and services provided in return for remuneration, including defence-related products, but do not preclude Member States under certain conditions from taking other measures in individual cases where they consider it necessary for the protection of their essential security interests.

Directive on Intra EU movements of defence related products

- Internal EU transfers only
- Scope – items defined on the common EU Military List
- Specific benefits expected for SME suppliers within the EU

Directive on Intra EU movements of defence related products

- Prior authorisation required from MS in which items are located
- Removes requirement of authorisation from MS through which items are moved
- General transfer licences to be used by MS to authorise movements to
 - Armed forces within the EU
 - Authorised defence contractors
- Where justified MS have power to override authorisations to transfer

Directive on Intra EU movements of defence related products

- Licences to be granted by MS – on terms and conditions they establish
 - General
 - (
 - aII suppliers to categories of transferees eg certified undertakings)
 - Global (specific supplier to various MS - 3 years)
 - Individual

EU Dual Use

POST SCRIPT :

At the time of the ACI Conference the only unofficial text of the new EU Dual Use Regulation was a copy of the Council of Ministers text dated 28/4/2009. Some debate ensued during the conference about the completeness of this text.

Subsequently the official version of the text was published in the Official Journal of the EU. This text contained no material differences from the Council text of 28/4/09.

Accordingly all the comments contained in this section remain complete and accurate.

Dual Use 1334 Update

- COUNCIL REGULATION (EC) No 1167/2008 of 24 October 2008 amending and updating Regulation (EC) No 1334/2000 setting up a Community regime for the control of exports of dual-use items and technology.

1334 Recast

- Hurrah ! Text adopted by Council on 28th April 2009
- But the recast is much less than the Commission had hoped for.

1334 Recast – What's new?

- Brokering services require authorisation:
 - the negotiation or arrangement of transactions for the purchase, sale or supply of dual-use items from a third country to any other third country; or
 - the selling or buying of dual-use items that are located in third countries for their transfer to another third country.
- Excludes the sole provision of ancillary services - transportation, financial services, insurance or re-insurance, or general advertising or promotion.

1334 Recast What's New?

- "global export authorisation" shall mean an authorisation granted to one specific exporter in respect of a type or category of dual-use item which may be valid for exports to one or more specified end users and/or in one or more specified third countries;

1334 Recast

- Member States, in cooperation with the Commission, shall take all appropriate measures to establish direct channels of communication between them and create difficulties for one or more Member States. (Art 19)

1334 Recast

- Assembly created from Massachusetts Company's Multiple Company
U
se Coordination Group set up under Article 22. (Art 19.4)

1334 Recast – Art 23

- A Dual-Use Coordination Group chaired by a representative of the Commission shall be set up. Each Member State shall appoint a representative to this Group.
- It shall examine any question concerning the application of this Regulation which may be raised either by the chair or by a representative of a Member State.

1334 Recast – Annex II CGEA

- Exporters that use the Community General Export Authorisation (EU 001) shall notify the competent authorities of the Member State where they are established of their first use of the Community General Export Authorisation no later than 30 days after the date when the first export took place.
- Exporters shall also report in the Single Administrative Document the fact that they are using this authorisation EU 001 by indicating in box 44 the reference X002.

1334 Recast – Set Backs

- Commission proposal to remove Annex IV and move to prior notification dropped.
- Annex IV to be updated with regard to MS public policy and security interests (Art 15.2)
- ~~in Community transfer of firms listed in Annex IV require prior authorisation Annex IV Pt 2~~
s cannot be covered by a general authorisation. (Art 22)



1334 Recast – Set Backs

- Each Member State shall take appropriate measures to ensure proper enforcement of all the provisions of this Regulation. In particular, it shall lay down the penalties applicable to infringements of the provisions of this Regulation or of those adopted for its implementation. Those penalties must be effective, proportionate and dissuasive (Art 24).
- Dropped – requirement that criminal penalties be imposed in relation to the most serious offences.

1334 Recast – Set backs

- The list of dual-use items set out in Annex I shall be updated by the Commission in accordance with the following criteria:
 - a) the evolution of the international situation;
 - b) the ratification of relevant international treaties (Article 15.1)
- Council rejected proposal that updating be made by comitology procedure.

1334 Recast – Dropped

- Power to Commission to negotiate Mutual Recognition Agreements with third countries
- Exemption for multi-nationals in relation to intangible transfers to subsidiaries
- Certification procedure for use by trusted exporters - removing burden of prior approval
- Mandatory time deadlines for responding to licence applications
- Simplification of additional items that Member States can add to Annex 1

1334 Recast – In force

- 90 days from date of publication in the OJEU

DU New Proposal COM(2008)854

- Objective - to increase the number of truly EU general authorisations from ONE to SEVEN
- Common format:
 - Specifies items covered
 - Lists countries of destination
 - Applies conditions of use

DU New Proposal COM(2008)854

- EU002 Low Value Shipments
- EU 003 Export after repair/replacement
- EU 004 Temp export for Exhibition of Fair
- EU 005 Computers and related equipment
- EU 006 Telecoms and Info Security
- EU 007 Chemicals

COM(2008)854 – Initial Comments

- EU002 Low Value Shipments – linked to AEO status
- EU 003 Export after repair/
replaceme
n
t - by far the largest number of countries included (115)
- EU 004 Temp export for Exhibition of Fair (28)
- EU 005 Computers and related equipment excludes
China and Taiwan
- EU 006 Telecoms and Info Security
- EU 007 Chemicals

COM(2008)854 – Prospects ?

- Recast took 3 years of legislative discussion and at least 2 years of prior debate
- Discussions on 854 started with Council 09
- Upside - based on concept of applying what is already done by 7 Member States who do use General licences
- Unlikely to see conclusion before end 2010.

Conclusions

- Small improvements in DU – larger movement on military controls
- Commission's aim is to remove disparities between MS - still have a long way to go
- Forum shopping must still be an important commercial consideration
- EU-US relations remain an issue !

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