

CLIENT ALERT

European Commission Issues Green Paper To Launch Reform Of The EU's Dual-Use Export Controls

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The European Commission (the "Commission") has recently issued a Green Paper on the reform of the EU's dual-use export controls (the "Green Paper"). The objective is to initiate a broad public debate and invite input from the business world and other stakeholders on the current deficiencies and future of the EU's dual-use export control system, particularly in relation to the trade distorting effects of disparate Member State implementation and the impact of export control reform efforts elsewhere (such as in the U.S.). On the basis of this consultation, the European Commission will make formal proposals for amendments of the existing EU dual-use regime, Council Regulation No. 428/2009 (the "Dual-Use Regulation").

In the Green Paper, the Commission recognizes a risk that the combination of the foreign availability of certain items and the simplification of export control procedures in certain third countries, including the U.S., could make it more difficult for EU exporters to compete on global markets. The Commission is taking a critical look at the current level of harmonization of EU dual-use export restrictions, questioning whether the current EU framework provides a level playing field for exporters.

The Commission is in particular inviting comments on the following points:

- **Expansion of general authorizations.** Currently, four types of authorizations are available under the Dual-Use Regulation, three of which are issued by Member States (individual, global and national general export licenses) and the EU General Export Authorization (EU GEA) EU001 found in Annex II of the Dual-Use Regulation. In 2008, the Commission proposed six additional EU General Export Authorizations, but none have yet been adapted.
- **Addressing of trade distortions arising from Member State catch-all controls.** Article 4 of the Dual-Use Regulation allows Member States under certain circumstances to require an authorization for the export of items not included on the EU control list. This practice distorts EU trade (and foreign investment in the EU), however, to the extent competitors in some Member States may continue to freely trade a particular item for which other Member States have imposed an authorization requirement.
- **Assessment of recent transit and brokering rules.** The 2009 revision of the Dual-Use Regulation applied new controls on brokering services and on goods in transit. The Commission is inviting comments on the usefulness of these additional restrictions.
- **Examination of divergences resulting from additional controls imposed by Member States.** The Dual-Use Regulation allows Member States to introduce certain additional national restrictions in relation to catch-all controls (Article 4(5)), brokering, transit and intra-EU transfer controls, as well as with regard to additional lists of items controlled due to public security or human rights considerations (Article 8). The Commission is investigating possible divergences among Member States in these areas.
- **Consideration of modified criteria to decide on an export authorization request.** Article 12 of the Dual-Use Regulation provides a set of criteria that are used to assess authorization requests. The Commission invites consideration of changes or alternatives in the interest of simplifying treatment of those requests.

- **Modification of the treatment of Member State denials and improved exchange of information.** Article 13 of the Dual-Use Regulation addresses the issuance of export authorisation denials, consultations and information exchange. Under the Dual-Use Regulation, Member States are obliged to review their denials every three years with a view to their revocation, amendment or renewal. The Commission is asking for comments regarding the suggestion of an automatic revocation of a denial after three years, and general consideration of a more extensive exchange of information between Member States.
- **Addressing of the negative effects of intra-EU transfer controls.** The Commission explicitly acknowledges that intra-EU transfer controls may even have the “perverse effect” of reducing the competitiveness of companies working in more than one EU Member State, as compared to competitors operating in third countries.
- **Assessment of the quality of the EU control list and Member State implementation.** The Commission seeks input regarding the quality of the EU control list, whether it is updated sufficiently regularly enough and whether businesses have experienced differences in interpretation of control list entries across EU Member States. Finally, the Commission is asking about the relative strictness of the EU’s control list in comparison with that of other countries.

Overall, the questions raised by the Commission demonstrate its commitment to a further harmonization of the EU’s export control system and the reduction of adverse effects on EU competitiveness. Business and industry exporting from the EU should seize the opportunity and submit their views and comments on the Green Paper before October 31, 2011.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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