

EU Publishes the Recast Regulation

2021-06-11 04:00

Reading Time : **1 min**

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Akin Gump published a client alert on the European Union (the “EU”) published Regulation (EU) 2021/821 (the “Recast Regulation”) in its Official Journal, which marked the final step with respect to modernizing its existing dual use legislation under Council Regulation (EC) No 428/2009 (the “EU Dual Use Regulation”). The Recast Regulation will enter into force 90 days after its publication in the Official Journal, meaning that it will commence on 9 September 2021. When compared to the proposal first issued by the European Commission (the “Commission”) in 2016 (the “Commission Proposal”), the Recast Regulation reflects the desire of the Member States of the EU (“Member States”) for a more limited update to the existing controls than first envisaged. In particular, the Recast Regulation is void of the more substantive provisions relating to cyber surveillance and human rights, which proved controversial both with EU decision-makers and industry. There are several changes including two new EU General Export Authorisations (UGEAs), amended controls on cyber surveillance and technical assistance, certain broader definitions (e.g. the definition of exporter has been expressly extended to cover ‘hand carries’), a clearer licensing gateway for non-EU exporters, as well as provisions allowing for increased coordination and transmissible controls between Member States. However, the Recast Regulation can at best be viewed as a modest update that has arguably skirted around some of the biggest issues and challenges facing the control of sensitive dual use items both now and in the future. In particular, it has become evident that measures implementing stricter controls on emerging technologies and human rights and national security protections will have to be implemented via other legislation. This will inevitably lead to a greater compliance burden for industry, as the lack of a harmonised system to deal with these varied challenges will require additional resources to account for national variations. To read the full alert, please click [here](#).

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