

# World**ECR**

## **BRUSSELS**

### **The city and its lawyers**



# BRUSSELS

## THE HUB OF EUROPE

Brussels is the hub or beating heart of the European Union's legal framework. For many law firms, being close to that heart is seen as essential. In this special Brussels Focus, Tom Blass examines the importance of the city for European export controls and sanctions and meets some of the leading lawyers operating out of the de facto capital of Europe.

**T**hey used to say that all roads led to Rome. But now it is Brussels that is charged with keeping the 'Pax Europa'. For many EU citizens, the city is less a place than it is an abstraction, responsible for every trivial thing with an ill-defined cause. If in doubt, blame Brussels, has become a kind of comforting watchword.

Brussels, the great grey metropolis, soldiers on, endeavouring to improve the lives of citizens across 28 sovereign nations: albeit that it is sometimes guilty of failing to discern the individual needs of each of those 500 million people.

Europe's manufacturers and importers also regard the collective

institutions of the European Union – for the most part located in Brussels – with the same kind of ambivalence: the EU gives (increasing collective competitiveness, broadening access to markets), but it also takes (imposing rules along the way, which can be difficult and costly to abide by). But Brussels is a fact of life with which one must make one's accommodation and strive to understand, a view that is not lost on international business and its advisors: the city is home to the offices of major law firms from the U.S., UK, France, Germany, Spain, the Netherlands, Poland, Austria, Switzerland, Norway, Greece, Italy, Cyprus... and this list does not purport to be exhaustive!

In the world of export controls and sanctions, 'Brussels' signifies a number of key institutions and pieces of legislation. Primarily, there is DG Trade, the Directorate General with oversight of European Council Regulation No. 428/2009, which establishes the Community Regime for the control of exports, transfer, brokering and transit of dual-use items. And there is the Foreign Affairs Council, responsible for external action from foreign policy to defence, as well as humanitarian aid. This is the council wherein Member State politicians thrash out the EU's policy on 'restrictive measures', or sanctions. As in the United States, 'sanctions' and export controls' related legal practice

have tended to converge. In some cases, quite literally – EU Iran sanctions prohibit export of a raft of products. And in both arenas, however inclement the weather can be in Brussels, the Belgian city has become a hot spot.

### Blueprints and eurocrats

In matters of export controls and sanctions, the rule of thumb is that



**John Grayston: ‘Brussels provides the “blueprint” legislation against which we try to spot the differences between the ways in which the Member States apply their versions of the rules.’**

while the Brussels institutions make the rules, they’re enforced, and mostly interpreted, by the regulatory authorities within the Member States themselves (a situation that gives rise to the oft-quoted refrain that the ‘playing field needs levelling’).

In a sense, this is an anomaly within the EU, at odds with other areas of policy. In the broader trade law arena, DG Trade is empowered to enforce the rules that it sets, just as DG Competition levies penalties upon companies that it believes has breached competition (anti-trust) rules. As lawyer John Grayston observes, the absence of that enforcement role means that some regard it as a ‘ship of lost souls’, lacking the power to adjudicate where difficult decisions are required.

‘Compare its respective roles in export controls and customs cases for example,’ says Grayston. ‘In the case of customs, individual Member State regulators make decisions, but if there’s a conflict, it’s escalated to the Commission.’

The reason for that difference lies in the jurisdictional ambivalence that underpins export controls and sanctions in Europe: as issues pertaining to foreign policy and security, jurisdiction is in effect shared between Member States on the one hand and the Commission on the other.

But if Brussels makes the laws but doesn’t enforce them, why have a presence in Brussels? Lisa Peets of Covington & Burling is clear about the need to be in the city: ‘Even though the law is enforced at the national level,

being in Brussels means that you can go back to the Commission and discuss with them what the intent was of a certain provision if it’s unclear. Once we have an understanding of that intent, that helps us to negotiate at the national level.’

And there are other benefits of being in situ, according to Peets. ‘Having a Brussels office prevents a silo-ed understanding of the law,’ she

adds. ‘It is a kind of cross-fertilisation. Brussels is a small place – people know each other. There’s even a cross-fertilisation of ideas with your competitors. It’s an exciting place – for example, you might meet members of the European Parliament, or of the European External Action Task Force, other lawyers – with all of whom you can share ideas about law or policy...’

Ultimately, Brussels provides the ‘master plan’ informing secondary legislation within Member States: as John Grayston puts it, ‘Brussels provides the “blueprint” legislation against which we try to spot the differences between the ways in which the Member States apply their versions of the rules.’

### The heart of the matter

For many non-European businesses, Brussels is Europe (in fact, Brussels’



**Lisa Peets, Covington & Burling: ‘Having a Brussels office prevents a silo-ed understanding of the law.’**

status as the ‘capital of Europe’ is purely de facto. It has no official status as such).

‘There’s a strategic advantage in being in Brussels,’ says Arnoud Willems, of the Brussels office of Sidley Austin, ‘and that is that for many global

companies, it’s the obvious choice for their European headquarters – we’re at the hub here.’

Willems says that typically the kind of advice his firm is asked to give is on strategic matters requiring an overview of European law (not the intricacies of Member State law). This might be looking at how and whether various financial flows do or don’t comply with sanctions, or it might relate to supply chain management.

Ten years ago, work related to sanctions was a niche activity. Under the Common Foreign and Security Policy (‘CFSP’), the EU has enjoyed and exercised the right to impose autonomous sanctions, whether arms embargoes or ‘smart sanctions’ prohibiting transactions with individuals, (in addition to implementing UN Security Council resolutions). In December 2009, the CFSP was revamped and empowered by the coming into effect of the Treaty of Lisbon, which created a High Representative of the Union for Foreign Affairs and Security Policy.

The few years that have since elapsed have seen, as is well known, a slew of sanctions-related activity – embodying the European Union’s response to political change in North Africa (Libya, Egypt, Tunisia) and continuing concerns about Iran’s nuclear programme.

Unsurprisingly it is the Iran sanctions that occupy the greatest attention. While U.S. businesses have long been restricted from trade with Iran, their EU counterparts were not substantially impacted until the coming into force of Council Decision 2010/413/CFSP, which in conjunction with its amended version (Council

Decision 2012/35/CFSP) puts Iran at the top of the compliance agenda for businesses, many of which had scarcely considered that they might fall foul of sanctions.

There’s little doubt that this ramping up is in part at least shaped by

# Foreign Trade and Logistics

- Export controls
- Dual-use and licensing
- Economic and financial sanctions
- Extra-territorial application of US law
- Customs duties and imports
- Risk analysis
- Compliance programmes

**Graf von Westphalen**  
**Attorneys-at-law and Tax Advisors**

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U.S. policy direction. But it would be a major error to see the EU rules as a diluted attempt to replicate their counterparts originating from Washington. As one lawyer put it, 'It used to be the case that businesses applied the adage "If it works in the U.S., it'll work anywhere else". But they're realising that just because they

European law – much of the advice clients seek is currently related to U.S. export control reform. Office managing partner Curtis Dombek says that they're often asked to advise upon 'the treatment of products that were on the US Military List and will migrate to the new 600 series on the Civilian Control List under the jurisdiction of the

McGuireWoods' team of lawyers consists of a euroglottal bunch: Melin, himself, is native Belgian. Colleague Alessandro Nucara is admitted both in Italy and Belgium (and speaks Spanish); Vassilis Akritidis is admitted in Greece. Having such a diverse team is useful, says Melin, because while EU law converges on Brussels, as noted above, it is in the Member States that it is interpreted and enforced. Melin says his objective is to capture work from the firm's U.S. client base – companies from 'Florida, Chicago – across the U.S. and active in a whole range of industries such as life science, aerospace and defence and transportation.'

Melin's comments on the value of concentrated diversity are echoed by Lisa Peets of Covington & Burling: 'We have lawyers from 15 different countries, with different legal backgrounds and language skills – that gives us the ability to engage with staff of the Member State regulators in their own languages. It also equips us to better answer questions like: Is there an obligation to disclose under local law? Would a self-disclosure trigger an investigation by the authorities? Those are the kind of things that those trained in local law can help with and which is extremely helpful.'

Yves Melin believes the tension between EU law and its implementation in any one of 28 Member States is something that takes some explaining. For example, different regulators (such as BAFA in Germany and the Export Controls



***Curtis Dombek, Sheppard Mullin: lawyers in the firm's Brussels office are currently busy advising on U.S. export control reform and its impact for 'EU subsidiaries, and European companies purchasing from the United States'.***

comply with home legislation doesn't mean that they're covered in Europe.'

Nonetheless, U.S. companies represent a significant part of the market. John Grayston points out: 'Export control advice is still very much linked to the U.S. Lots of our clients are the European subsidiaries of U.S. parents, or have some exposure to the U.S. experience. They need to understand how the two are integrated.'

The flip side of that observation is that the U.S. rules are as pertinent to the operations of many EU corporations as the EU rules.

Sheppard Mullin is well known in the United States for the quality of its export control practice, and while the team in the Brussels office includes UK qualified lawyers – and advises on

Export Administration Regulations. Many companies now have to build whole new compliance structures to accommodate these changes. It isn't just U.S. companies that are affected, but also their EU subsidiaries, and European companies purchasing from the United States.'

Yves Melin is a partner at the Brussels of McGuireWoods. He is one of a trade law team that was recruited from rival U.S. firm Squire Sanders in the summer. Melin explains: 'Typically, our clients are U.S. companies who, perhaps having settled for a U.S. export control or sanctions violation, set up an internal compliance programme in the United States, and then start to look at their operations in the European Union.'



## Brussels' 'black box'...

The growth and complexity of sanctions and export controls practice (particularly the former) has taken many by surprise. Yohan Benizri of Sidley Austin points out that the appointment of the current DG Trade, Commissioner, Karel de Gucht in 2010 coincided with the first shoots of the Arab Spring – and the realisation among Member States that a collective stance on major foreign policy issues carries more weight than the sum of individual responses. It embraced that realisation with an energy bordering on the exuberant: currently there are designations directed at 26 states and many more individuals, entities, and terrorist organisations.

Sanctions are a controversial tool, easily applied, their impact and effectiveness is difficult to evaluate: in the worst case scenario, they impose economic distress on those whom they are intended to assist, while failing to achieve their objectives.

While Europe purports to speak with one voice – in the case of sanctions pronouncements via the Foreign Affairs Council of the European Union – intense discussion between foreign ministers precedes the issue of a united message. Indeed, lawyers often refer to the Council as a 'black box' during which foreign ministers 'negotiate' who to sanction and how. 'There is no text of these talks,' one lawyer told *WorldECR*. 'But from what we understand, the result is as much a reflection of what is politically acceptable as it is the Council's security concerns.'

In the past year, the European courts have, indeed, overturned some significant sanctions designations. In January this year, the General Court of the EU overturned sanctions against two Iranian banks, Mellat and Saderat, which the Council had included as part of its squeeze on

Iran's financial sector, citing lack of evidence. The Court noted: '[A]cts which establish restrictive measures against entities allegedly involved in nuclear proliferation are acts of the Council, which must, therefore, ensure that their adoption is justified. Consequently, when adopting an initial act establishing such measures, the Council must assess the relevance and the validity of the information and evidence submitted to it...'

In the Mellat case, it said, there was 'nothing in the Court file to suggest that the Council checked the relevance and the validity of the evidence concerning the applicant submitted to it before the adoption of [the designation]. On the contrary, the incorrect statement, in those acts, that the applicant was a State owned bank, the inaccuracy of which is not denied by the Council, is an indication that no such checking took place.'

The Council is challenging the EU General Court's judgment, but there's a perception that court scrutiny will oblige the Council to be more scrupulous in its designations. With sanctions now firmly established as the prime tool (or arguably, the only tool) at the disposal of the EU foreign policy, it's inevitable that sparks will fly in the future, as national interests and international allegiances come up against the fundamental rights embodied in the EU charter – where the two do not neatly align.

Not all law firms handling export controls and sanctions-related work take on challenges to designations. Nonetheless, the growing body of case law in sanctions cases is closely followed by those in the field, for the light that it sheds on tension between transparency, the rule of law, and security that is increasingly attendant on this area of practice.

Organisation in the UK) take remarkably different approaches to voluntary disclosure: in some jurisdictions it is acknowledged and encouraged by the authorities. In others, by contrast, it is ill-advised and liable to exacerbate, not ameliorate, an existing issue. Likewise, licensing procedure differs between Member States – as, indeed, do available

authorisations ('CGEAs') available across the EU piste. Further, each country has its own unique 'catch-all' control lists: one Member State may block an export that another would allow.

Where there is confusion or disagreement, an appeal to the Commission can provide clarification. Dr. Lothar Harings, who divides his

found themselves unsure as to whether they could continue business with Pars Oil and Gas: one of 60-plus subsidiaries of the Iranian Oil and Gas Company ('NIOC').

Pars is not itself a listed entity, although the NIOC was designated by the EU in October 2012. The German regulator BAFA told Harings that any transaction with Pars would have constituted a breach on the grounds that it would be 'making economic resources available' to its parent. But having taken soundings from the French authorities, Harings discovered that other regulators were taking a less restrictive view of Pars.

Harings sought definitive advice from within the EU Commission as to how best to move forward, resulting in new guidance emerging from the Council which advised that, 'taking into account circumstances' (including the many European oil and gas companies with contracts with POGC), transactions are permissible, and do not intrinsically breach prohibitions on



***Yves Melin, McGuireWoods: 'Typically our clients are U.S. companies who, perhaps having settled for a U.S. export control or sanctions violation set up an internal compliance programme in the United States, and then start to look at their operations in the European Union.'***

licences, with some countries (Germany, France, the UK, the Netherlands), offering their own national authorisations in addition to the common general export

time between the Brussels and Hamburg offices of his law firm, Graf von Westphalen, describes a typical case. Harings represents a significant cohort of German oil companies who

'making economic resources available' to the listed NIOC.

Konstantinos Adamantopolous, a partner at the Brussels office of law firm Holman Fenwick Willan agrees that this structure of Europe, with Brussels as both hub and interchange between the spokes (i.e. the Member States) demands a presence in the city: 'For us there are three key elements,' he says. 'First, many multinational companies want a centralised view – but the national authorities don't give a coherent picture of the whole. Secondly, this is where the dialogue channels are. And thirdly, the European courts are here.'

Elaborating on the theme of coherence, he echoes the oft-made complaint that Member State regulators' approach to enforcement varies

from one to the other: 'You have those that take it very seriously, those that take it quite seriously, and those where, quite frankly, it's difficult to know



***Konstantinos Adamantopolous, Holman Fenwick Willan: 'Many multinational companies want a centralised view – but the national authorities don't give a coherent picture of the whole.'***

whether they're doing anything at all.'

This, he says, creates a risk exposure, rather than an opportunity for regulatory arbitrage: in the sense that a business may 'get away' with a structure or transaction under the nose

of one regulator, but vulnerable to a prosecution or other enforcement activity of another. Still, he says, compliance-aware businesses are

trying to stay ahead of the rules: 'The big players are undertaking more work in house, in terms of compliance and classification of goods,' even if some of the bodies tasked with enforcing the regulations are lacklustre in approach.

## ...And green paper

In the past few years, lawyers advising on sanctions have had to keep abreast with a fast-moving legislative backdrop. The law can almost change overnight, as it follows the contours of international events and attempts to pre-empt the evasive actions of potential designated parties. And it has caught an increasing number of industries in its sweep. Non-sanctions related export controls on dual-use goods haven't seen the same helter-skelter pace of change: nonetheless, reform – or at least review – is afoot.

Council Regulation 428/2009 is the master legislation that controls the export, transfer, transit and brokering of dual-use items. In 2011, a Green Paper was published that asks, in effect, whether existing dual-use export controls are fit for purpose in a changing world. There are a number of known issues with the existing regime. As noted elsewhere in this article, there is concern regarding discrepancies in the way that the regime is applied by different Member States.

There is also the oft-made criticism that it takes far too long for the EU to update its export control list (i.e. implementing the Wassenaar Arrangement recommendations). In an interview with *WorldECR* in the current issue of the journal, Commissioner Karel de Gucht says that this is a point he accepts: 'Under the Lisbon Treaty a full legislative procedure now applies for updates to the EU control list, which leads to long adoption times. We need swifter procedures for technical adaptation and the Commission has proposed, in November 2011, a simpler procedure for technical updates to the control list,' adding that he's confident that 'good progress' is being made.

The underlying question, says Yves Melin of McGuireWoods, is whether Member States will be prepared to give the Commission greater powers: 'I'd welcome more harmonisation. Until then, we're going to continue to see some distortions in the way that the Regulation is interpreted.'

Europe changes slowly – it must accommodate the

concerns and scrutiny of 28 Member States. One significant recent shift has been the increased involvement of the European Parliament in Europe's legislative process. This stems directly from the Treaty of Lisbon which entered force in 2009 and now gives the Parliament equal decision-making rights with the European Council of Ministers.

Laurent Ruessmann, a partner at Field Fisher Waterhouse's office in Brussels, says: 'From a lobbying point of view, the Lisbon Treaty has added a whole new perspective. There's a triangular relationship between the Commission, the Council and Members of European Parliament (MEPs), which means, for example, that for businesses trying to inform the legislative debate, Parliament plays a crucial role.'

The extent that the Parliament actively inputs into debate largely rests on the interest and motivation of individual MEPs. Dutch MEP Marietje Schaake, for example, is pushing for legislation that will tighten the rules on the export of surveillance equipment and remain fit for purpose to meet the threats proffered by the increasing sophistication of 'digital arms'. Other MEPs have taken it upon themselves to monitor EU sanctions against Belarus and to ensure that economic pressure is maintained against the East European state in the face of reported human rights abuses and oppression of civil society.

These valuable contributions aside, not everyone is confident that the European Parliament's involvement enhances the efficiency of the Brussels machine. Blame for the fact that it takes so long for the Commission to ensure that Annex 1 of the dual-use regulation is updated in line with the Wassenaar Arrangement changes is at least in part pinned on the legislative necessity for Parliament to approve the changes. 'This issue is raised by the Green Paper,' says Ruessmann's colleague Jochen Beck, 'I think that it is an element of the system that the Commission is preparing to change.'



# MEET THE LAWYERS

Finding the right export controls/sanctions advisor in Brussels can prove a daunting exercise. *WorldECR* meets some of the leading law firms in the heart of Europe.

*The Brussels legal market is truly cosmopolitan, with native Belgian lawyers rubbing shoulders with members of firms from throughout the European Union, the United States and beyond. Not all specialise in trade issues, let alone export controls and sanctions, but increasingly many are developing that capacity, and there are signs that firms without it are looking at acquiring experienced practitioners – as evidenced by the recent movement of lawyers from Crowell & Moring to Field Fisher Waterhouse, and from Squire Sanders to McGuireWoods. Further movement is expected as businesses and their advisers increasingly see convergence between these two very specialist areas of law and others, whether compliance or transactionally-focused.*

*While export control and sanctions practices in Brussels may be grappling with the same regulations, there is, it seems, no ‘typical’ practice profile. Firms come to export controls from a number of perspectives, reflecting their lawyers’ interests,*

*nationality, and the strengths of their colleagues. And of course, to a great extent, practice is driven by firms’ existing client bases – both in Brussels and within their wider networks.*

This summer, the Brussels office of **Field Fisher Waterhouse** invested deeply into its export controls/sanctions capabilities with the recruitment of specialists U.S./Belgian Laurent Ruessmann, and Jochen Beck (Austrian) from U.S. firm Crowell & Moring. The office, which was established in 2007, is today home to 46 lawyers, including 17 partners.

The office advises clients from a broad spectrum of industry sectors, including chemicals, metals, aerospace and defence, automobile and auto parts, insurance, publishing, software and IT, electronics and semi-conductors. Team members have experience advising on EU sanctions, for example, on insurance and reinsurance issues under the Iran embargo; financial sanctions under the

North Korean embargo; product classifications; the application of catch-all clauses, including recent changes under Belgian (Flemish) law; and controls over technology transfers, for example, in relation to server transfers. The team also provides in-house compliance training for clients. Recent instructions have seen the firm

- Representing a client in a dawn raid by German authorities and succeeding in obtaining beneficial settlement terms for an export control violation in a matter involving a complex rule of origin question under article 22(2) of the EU Dual-use Regulation (intra-EU transfer with subsequent export);
- Assist an international high-tech company in the preparation for an export control audit by the UK authorities – the firm identified past violations, prepared respective disclosures and implemented a compliance system that let the company pass the audit successfully;
- Advise during negotiations of a multi-million euro acquisition where



the buying party claimed that the firm's client, the seller, had committed several export control violations over a continued period of time, in an attempt to lower the sales price. The team provided a comprehensive assessment of the application of the export control laws to the underlying facts and fully refuted the allegations as unsubstantiated, securing the full purchase price for the client.

**Holman Fenwick Willan** is a UK-headquartered international law firm, well known for its trade and shipping practices, which has offices across Europe, Asia and Australia. The firm opened its Brussels office in 2008, and out of its eight lawyers, five deal with export control and sanctions issues. It's a polyglottal, international office: Konstantinos Adamantopoulos, head of the trade practice, is a *Dikigoros*, qualified in Greece. His colleagues are Dutch, Belgian, Belarusian, and Canadian. He estimates that around 25% cent of his working time is related to export control issues and 40% cent to sanctions.

Industry sectors the team has advised include, on the sanctions front, chemicals, construction and oil and gas. As at time of writing, the team is advising on Iran sanctions issues and is busy with litigation before the EU General Court. The office is also typically instructed on M&A due diligence where there are potential export control issues.

Adamantopoulos says that the kinds of challenges that clients come up against include 'know your customer' and end-use issues. Recent work has included:

- Advising a multinational specialised chemicals manufacturer on exports of outdoors protective garments capable of suppressing thermal signature, to several third countries under EU dual-use regulations;
- Advising an international battery producer in customs proceedings alleging the export of dual-use goods without prior export classification. The case involved complex issues relating to the exhaustion of jurisdiction when dual-use goods are transferred between Member States

## Export control and sanctions law firms in Brussels

**Covington & Burling**  
**Field Fisher Waterhouse**  
**Graf von Westphalen**  
**Grayston & Company**  
**Holman Fenwick Willan**  
**McGuireWoods**  
**Sheppard Mullin**  
**Sidley Austin**

*This list does not purport to be exhaustive*

and undergo works and processing before being exported – and resulting in a settlement;

- Advising an international company on the EU and national export control rules governing the export of car paints to a military in the Middle East – focusing both on export controls for military and dual-use goods as well as embargoes and denied persons.

**Sheppard Mullin's** Brussels office specialises in advising EU companies and EU subsidiaries of U.S. businesses on U.S. export controls – in addition to advising on transatlantic compliance issues and EU law. Office managing partner is Curtis Dombek, who was appointed to the President's Export Council Subcommittee on Export Administration in 2011, and appointed to the Regulations and Procedures technical Advisory Committee of the Commerce Department in 2012.

Dombek estimates that 40% of the team's time is spent on export control matters and 40% on sanctions – with the remainder given over to advising on customs and free trade agreements, and occasional anti-boycott and FCPA work.

On the export control side, clients typically are drawn from aerospace and defence (including UAVs, defence services and facilities engineering), telecommunications (satellites and C3), sensors, semiconductor devices, software (including encryption and cybersecurity), oil & gas, chemicals, and the nuclear industry. So far as sanctions are concerned, the office serves clients from of all of these sectors and also

banking and real estate clients. The team has acted for AsiaSat, GE Capital Corporation, Parsons Corporation, Semtech, and Newport Corporation.

Currently keeping the firm busy is advising on U.S. export control reform, especially changes in USML in categories VIII (aircraft), XI (electronics), XII (sensors) and XV (satellites); compliance with U.S. and EU export controls for cross-border R&D and production programmes in the above-mentioned industry sectors; compliance with the expanded U.S. and EU sanctions affecting indirect global business with the embargoed countries; the

liberalisation of sanctions affecting Myanmar and how to begin operating there in compliance with the remaining sanctions; ITAR brokering rule changes; CFIUS and ITAR licensing compliance for foreign acquisitions and investments in U.S. businesses. Recent successes for the firm include:

- Obtaining clearance from the U.S. State Department for Chinese investment in a European satellite operator with U.S.-owned satellites and technology;
- Negotiating special technology safeguards for an avionics development joint venture with AVIC of China to satisfy regulators with respect to compliance with export control restrictions on the aerospace technology involved;
- Designing and obtaining clearance from the U.S. State Department for a satellite operator reorganisation – and creating a new, innovative structure that resolved the regulators' export control concerns;
- Settling, on the basis of a warning letter, a series of ITAR violations involving UAV technology.

**Covington & Burling**, another U.S.-headquartered firm, opened its office in Brussels in 1990. Key members of the export control/sanctions team are partner Lisa Peets, who has UK/U.S. nationality, is admitted in District of Columbia and New York, and is a registered foreign lawyer in England and Wales, and Agnieszka Polcyn, who is Polish and admitted to the Belgian Bar.



Arnoud Willems,  
Sidley Austin



Dr. Lothar Harings,  
Graf von Westphalen



Laurent Ruessmann,  
Field Fisher Waterhouse



Lisa Peets,  
Covington & Burling

Covington advises EU and U.S. multinational clients, including banks, manufacturers, healthcare and pharmaceutical companies, oil and gas services, technology providers and defence companies.

Alongside routine day-to-day questions, the firm advises on more unusual scenarios such as export control and sanctions issues related to the launch of IPOs as well as broader investigations and follow-on dealings with national authorities. Lisa Peets says that a recurring issue for clients is the notification and authorisation requirements relating to funds transfers pursuant to the Iran sanctions.

Peets observes that the firm's clients are also increasingly concerned about the unintended consequences of the EU sanctions: for example, in the case of Iran, the reluctance of banks to transfer funds to and from Iranian parties, even where those transfers are legitimate, such as where they relate to the supply of humanitarian goods. She adds that they're seeing compliance increasingly arise as an issue in corporate transactions.

German firm **Graf von Westphalen** opened an office in Brussels 21 years ago. Currently, the office is staffed by three lawyers. Office head, Dr. Lothar Harings is a member of the board of the European Forum for External Trade, Customs and Excise Duties and a member of the advisory board of the Center for Foreign Trade Law at the University of Münster. The Brussels office works closely with colleagues in Hamburg, including Marian Niestedt, joint head of the trade team.

Harings spends around 75% of his working time handling export control and sanctions issues. Colleagues include

Michael Lux, former head of unit of DG TAXUD, who is specialised in customs and excise duties, and associate Philipp Scheel, who is primarily involved advising in sanctions and export control matters.

On the export control side, the firm's clients come from a wide range of industry sectors, including pharmaceuticals and chemicals, healthcare, electronics, telecommunication, oil & gas, industrial plants, laser technology, and automotive.

On the sanctions side, in addition to acting for clients in these sectors, Harings and his colleagues are active advising clients in banking and insurance, from engineering companies, and inspection and verification companies.

Recently, the team has been focused on telecommunications, chemicals, and automotive sector trade issues, and also on export control issues related to technology transfer matters, especially those arising out of R&D and joint ventures with third-country companies. The firm also frequently advises on U.S. trade control matters, in particular re-export prohibitions and their impact on European businesses. The firm enjoys a close working relationship with U.S. firm Alston & Bird, with which it often jointly advises clients.

On the sanctions side, the Brussels office of Graf von Westphalen is dealing with the prohibition to make economic resources available to listed entities, with the financial restrictions and with restrictions on providing insurance.

Recent significant matters include:

- Playing a role in the discussion of how to interpret the prohibition to make economic resources available in respect of the National Iranian Oil Company and its subsidiaries;

- Advising suppliers to the oil and gas industry as to how to continue their business despite prohibitions on the provision of technical assistance for the oil and gas industry in Iran;
- Assisting in the development of the South Pars Gas Field in Iran – the world's largest gas field.

**Sidley Austin** has been providing trade law expertise to clients from its Brussels office since 2003. Of the office's 30 lawyers today, half are trade practitioners, all of whom handle export control and sanctions issues to a greater or lesser extent. In addition to the EU-qualified lawyers, several team members are U.S.-qualified.

Office managing partner in Brussels is Stephen Spinks, while the trade team is managed by partner Arnoud Willems (a former lieutenant in the Royal Dutch Navy, and legal officer at Royal Philips Electronics), working closely alongside senior associate Yohan Benizri.

The team advises on exports of both military and dual-use goods and enforcement of the relevant controlling regulations.

Willems typically assists *Fortune* 500 companies in complying with export controls and economic sanctions, developing and implementing compliance programmes, conducting internal investigations and defending enforcement actions. Benizri's practice includes designing and implementing global compliance programmes, advising on supply chain restructuring and financial transparency obligations, as well as freezing-of-funds measures.

Increasingly, the team is being asked for export control advice by companies in the high-tech, chemicals and manufacturing sectors, while, on the



John Grayston,  
Grayston & Company



Konstantinos Adamantopoulos,  
Holman Fenwick Willan



Yves Melin,  
McGuireWoods



Curtis Dombek,  
Sheppard Mullin

sanctions front, they've seen an increase in instructions from the financial, pharmaceutical and manufacturing sectors.

Recent matters have included:

- Acting for a large group of manufacturing companies on the regularisation of several transactions involving Iranian interests in different EU Member States – undertaken without a single penalty being imposed on the firm's client;
- Developing a novel structure for processing lawful payments to non-listed Iranian entities, authorised by the UK competent authorities and approved by the financial institution involved, despite strict internal policies;
- Designing and implementing a comprehensive compliance programme, including standard procedures and training activities, for a major security systems company with business units in more than 40 countries.

**McGuireWoods** has had an office in Brussels for 20 years. Its export control and sanctions practice has been bolstered recently by the arrival of a four-strong, well-known international trade and competition team (partners Vassilis Akritidis and Yves Melin, senior counsel Alessandro Nucara, and associate Yongqing Bao) which first came together at the firm Hammonds, which later merged with Squire Sanders, from where the lawyers have joined McGuireWoods.

Between them, the team is experienced in dealing with most of the EU regulatory authorities, and has

particular experience with those in Belgium, France, Netherlands, Luxembourg, Italy, Spain, Greece and Cyprus. In the United States, McGuireWoods has a strong export control practice and a stable of clients in the life sciences, aerospace and defence, and transportation industries.

Typically, clients seeking advice include export control-savvy U.S. businesses looking to establish internal compliance programmes in the EU, or looking to undertake voluntary disclosures.

The team is also seeing a convergence between export controls and other areas of practice, including data protection issues: not long before his arrival at the firm, Melin had advised a large international chemicals manufacturer on the interaction between U.S. export control rules and Belgian data protection law, including on how to export to the U.S. data relating to Belgian employees so as to comply with a U.S. obligation to report crimes by company employees.

**Grayston & Partners** is an independent Brussels firm, established in 2007 by Englishman John Grayston, who had been practising in Brussels for 15 years both as partner in charge of the Brussels offices of Taylor Joynson Garrett (now Taylor Wessing) and, later, at Eversheds. The firm provides 'cost-effective, high-value added trade, regulatory and commercial advice to international clients, whether or not based in the EU.'

Grayston, who is also a member of the Brussels bar, works with a multinational team of lawyers and trade advisors, who include, among others,

Giani Pandey, who previously worked in DG Competition of the European Commission; Italian lawyer, Davide Rovetta, also Brussels-admitted; and Maurizio Gambardella, a member of the Milan bar. Between them, the team members are qualified to provide national customs and export control advice in a number of key EU Member States, including the UK, Benelux, Germany, Italy and France.

On the export control side, the firm advises on classification and licence applications and on the application of EU dual-use controls and the way that they're implemented and applied by Member States. Key focal points for the firm's work are the relationship between EU and Member State national controls with those of third-country trading partners and export compliance issues arising out of the extraterritorial application of U.S. laws.

On the sanctions side, the firm regularly acts for individuals and companies active in locations or regions subject to EU sanctions. Here the team often works closely with the in-house legal/compliance team. Sanctions regimes it has advised on include those related to Iran, Syria, Belarus, Myanmar, Iraq, Zimbabwe and Ivory Coast. The client base, which is equally international, includes companies and individuals from all over Europe, the U.S. and offshore financial centres.

Another key area of practice for the team is representing clients who wish to contest listing decisions of the EU before the EU Council or in the European courts as is representation before national administrations in compliance matters such as voluntary disclosures and notification and exemption proceedings.

# Covington & Burling LLP

Covington & Burling LLP is a leading international law firm with over 800 lawyers across ten offices in Europe, the United States and Asia. Our lawyers are recognised nationally and internationally for their legal skills and the depth of their expertise in litigation, transactions, and regulatory proceedings. In responding to the needs and challenges of our clients, our lawyers draw upon the firm's expertise and experience in a broad array of industries to provide solutions to difficult, complex, and novel problems.

Since opening in 1990, Covington's Brussels office has brought excellence, creativity and practicality to our representation of clients in Europe.

We have a strong European practice in the fields of economic sanctions and export controls. In these fields, we advise clients on the impact of EU and national provisions and represent clients in dealings with the competent EU and EU Member State authorities. We also represent clients in sanctions-related disputes before EU Courts. Our clients include leading companies in virtually all sectors of the global economy such as oil and gas, software and high-technology, pharmaceutical and biotechnology, aerospace and defence, manufacturing, logistics and financial services.

Whether the issue relates to day-to-day operations, commercial or corporate deals, an organisation-wide compliance investigation, or the development and implementation of compliance policies and mechanisms, our European team has deep experience. In addition to advising on the application of EU and national export controls and sanctions regulations, we assist in investigating and remedying potential breaches of EU and UK trade controls laws. We also provide counsel to clients on the scope and applicability of the full range of international trade control measures in Europe and work closely with Covington's anti-corruption group in client engagements around the world.

Our practice, which benefits from the experience of our broader International Trade team, has long maintained a strong reputation in the area of international trade controls. Covington's International Trade group has previously been awarded *Chambers & Partners*' highest honour, the 'Award for Excellence in International Trade', and is recommended by leading global publications.

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# Field Fisher Waterhouse

In 2007, Field Fisher Waterhouse Brussels' office was created by three partners. It has since expanded to a team of 46 lawyers (including 17 partners) and built up a recognised EU International Trade and Regulatory practice.

With four partners and seven associates, the EU International Trade and Regulatory Group is one of the largest teams in this field in Brussels, and a recognised market leader. It stands at the vanguard of legal and scientific development and enjoys an enviable reputation as a formidable and dedicated team.

The Group's core practice focus is on export controls and economic sanctions, and related topics such as customs, product safety, and chemicals, as well as international trade (anti-dumping, anti-subsidy and safeguards) and investment, market access rules, data privacy, anti-fraud investigations, preferential trade agreements, dispute settlement, food and cosmetics, life sciences and environmental matters.

In the area of export controls and sanctions, the EU International Trade and Regulatory Group helps companies ensure compliance with the respective regulations of the EU and Member States (such as the UK, Germany and Belgium). For example, the Group provides (multijurisdictional) classification advice in relation to products and technology; it advises on the interpretation and application of export and end-use controls in relation to physical exports, intra-EU transfers and technology transfers; and it advises on the increasingly complex EU sanctions regimes, such as those against Iran, Syria and North Korea. The Group further assists multinational companies in the establishment, implementation and maintenance of internal compliance programmes under EU laws, and in communications with authorities and in challenges before the EU courts.

FFW's EU International Trade and Regulatory Group has worked with clients in a variety of industries, including aerospace, defence, agriculture and food products, automotive, chemicals and pharmaceutical products, ferrous and non-ferrous metals, semiconductors, computers and accessories and other electronic equipment, consumer products, textiles and nonwovens, construction and renewable energy products, other durable goods and equipment, oil and gas, publishing, aviation, banking, insurance and financial services, and other service sectors.

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**Field Fisher Waterhouse**

# Grayston & Company

Grayston & Company is an independent law firm specialising in all aspects of EU regulatory law, based in Brussels. Our client base is predominantly international. We often work with companies and law firms with no formal presence in Brussels or in the EU.

Our expertise in the areas of export control and sanctions forms part of the firm's leading position as a provider of advice and counselling in all aspects of EU customs law. As part of this practice, our lawyers provide national customs and export control advice in key EU Member States, including the UK, Benelux, Germany, Italy and France. Our export control advice is predominantly in relation to the application of the EU Dual Use Regulation and in particular the application of these rules by Member States. We have extensive experience in classification and licence applications in the UK, Germany, Belgium, Netherlands, Denmark and Latvia. A key focal point for our work is often the relationship between EU and national controls and those of the U.S.A. and other major third-country trading partners of the EU.

We are a leading Brussels practice in the area of EU sanctions. Our lawyers have long experience of working on 'traditional' EU sanctions issues, including blocking measures for Cuba and the embargo on trade with the former Yugoslavia. More recently, we have been advising on smart sanctions and new procedures to adopt EU sanctions on Ivory Coast, Libya, Syria and Iran.

We have extensive experience of engaging with national authorities in relation to sanctions issues. We are regularly involved in contesting sanctions issues – both listing decisions and decisions in relation to scope of coverage of sanctions measures – before national administrations, courts and also before the European Courts of Justice.

Our EU customs practice provides advice on all aspects of customs and related indirect tax issues for imports and exports to or from EU Member States. We have leading experts in the areas of classification and valuation of goods and unrivalled knowledge of the internal working procedures of the EU Commission in customs and indirect tax. Our lawyers provide advice on customs procedures in key Member States as well as on appeal procedures including for refund applications.

Grayston & Company Brussels provides advice on: Competition/anti-trust and public procurement; EU export controls; EU sanctions; EU Customs issues; National administrative procedures and enforcement proceedings; Voluntary Disclosure procedures; Internal compliance programmes and training.

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# Holman Fenwick Willan LLP

Holman Fenwick Willan LLP ('HFW') is an international law firm advising businesses engaged in all aspects of international commerce. With offices in South America, Europe, the Middle East, and the Asia Pacific region, the firm has built a reputation worldwide for excellence and innovation and focuses on a limited number of core sectors.

The Brussels office opened in January 2008, and provides a platform for the development of HFW's antitrust, EU and WTO trade law capabilities. Two partners, Konstantinos Adamantopoulos and Folkert Graafsma, advise on a number of issues before the WTO and the European courts.

HFW's International Trade Practice advises clients on, and resolves issues related to, the impact of regulations mandated by the European Union and World Trade Organization. Our primary objective is to help clients overcome commercial obstacles related to market access and import and export-related difficulties that result from government intervention and market regulations worldwide.

International trade is a major focus of HFW, and we are committed to developing this team into one of the world's leaders. We are particularly well-known for:

- Export controls and customs matters: our services to clients include counselling on EU, WTO Member State, and non-WTO countries' export controls, anti-boycott regulations, embargoes, and sanctions regimes, as well as compliance with related legislation.

Examples of this advice have included matters such as: i) export and re-export of sophisticated or other 'special' products, services and technology, such as exports of certain dual-use products and services (military and non-military) to 'sensitive' or otherwise targeted countries and regions; and ii) international trade sanctions (e.g. in relation to Iran and Syria).

- Trade defence and WTO: HFW's International Trade Remedies Practice helps clients successfully defend against anti-dumping, anti-subsidy, safeguard and trade sanctions proceedings, access new export markets, overcome foreign investment restrictions and eliminate illegal foreign tariffs and discriminatory regulations. We also regularly represent clients before the European Courts in Luxembourg on trade defence cases.

HFW also has direct experience in representing governments in trade disputes before the WTO's Dispute Settlement Body, and regional conflict resolution organisations.

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holman fenwick willan 

# McGuireWoods LLP

McGuireWoods has had a solid presence in Brussels for more than 20 years, and possesses one of the best international trade law practices in the city. Our experience is recognised by clients and peers alike. Our International Trade Law team is composed of seven international trade law specialists, qualified in several major jurisdictions in Europe and China, who are native speakers or fluent in English, Chinese, Dutch, French, Greek, Italian and Spanish. The team specialises in advising clients on how EU and World Trade Organization (WTO) trade rules affect the movement of goods and the provision of services in the EU and globally.

Our team advises corporate clients on all aspects of the export control rules of the EU and its Member States, including rules governing the importation, transit and export of military and dual-use goods and related services and technologies, and issues related to embargoes and other trade sanctions. We advise our clients on their reporting and licensing responsibilities, help them prepare applications, classification requests and reports, and assist them in devising and implementing compliance programmes.

We represent both U.S. and non-U.S. companies from a variety of industries, including defence and aerospace, energy, financial services, food and beverage, pharma, mining, and technology. Beyond export controls, our lawyers have in-depth experience in all international trade disciplines, including co-operation in EU trade remedies investigations, customs law and procedures and compliance programmes, the representation of sovereign governments before the WTO's Dispute Settlement Body, and duty suspensions.

Other international trade services include:

- Trade remedies (anti-dumping, anti-subsidy and safeguards)
- Customs assistance and compliance
- WTO, free trade agreements and regional agreements
- Duty suspension
- IP border enforcement proceedings
- EU litigation
- Lobbying and Advocacy
- Market access

McGuireWoods has more than 900 lawyers in 19 offices in the U.S., UK, and Belgium. Our lawyers speak 35 languages and provide seamless global advice through our network firms in 128 countries.

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# McGUIREWOODS



# Sheppard Mullin

Sheppard Mullin is a leading global firm of over 600 lawyers. Our ability to attract the world's most dynamic companies is supported by a truly diverse practice, which includes specific expertise in: aerospace and defence, government contracts, export controls, economic sanctions, anti-corruption, Customs and trade regulatory, competition, commercial litigation and arbitration, cross-border mergers and acquisitions, telecommunications and intellectual property in addition to internationally recognized practices in labour and employment, white collar defence, real estate, finance, bankruptcy, pharmaceuticals and health care.

Curtis Dombek, resident in Brussels, was appointed in 2011 to the President's Export Council Subcommittee on Export Administration and has worked directly with the U.S. Commerce Department to formulate and draft the regulations implementing the U.S. Export Control Reform. Sheppard Mullin Brussels thus has unique insight into these new regulations which are of major importance to the EU aerospace and defence industry.

We number many Fortune 100 multinationals among our clients and have deep international trade regulatory experience in complex matters of cross-border jurisdiction, re-exports, the indirect effect of U.S. economic sanctions as well as Wassenaar and EU controls. Our trade regulatory lawyers have:

- Obtained U.S. State Department clearance for the sale of a satellite investment by a European investment company to an Asian sovereign fund
- Secured EU approval for the export of test equipment on a South Korean aerospace programme
- Prepared an export compliance programme for EU R&D programmes of a global telecommunications manufacturer
- Successfully defended a UK-based multinational professional services firm in a U.S. sanctions investigation
- Defended a European manufacturer in one of the largest U.S. government antiboycott investigations ever conducted
- Obtained CFIUS clearance for a large EU company in the acquisition of U.S. security firm
- Defended a U.S. high-tech manufacturer in high-profile export enforcement proceedings leading to dismissal of criminal charges
- Counseled one of the world's largest offshore drilling companies on international financial, contractual, management and staffing issues related to compliance with U.S. economic sanctions
- Conducted a global FCPA investigation for a multinational consumer products company with the gathering of evidence and interviewing of witnesses in Europe, Asia and Latin America

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# Sidley Austin LLP

Sidley is a leader in helping companies navigate the complex, overlapping and ever-changing export control and sanctions regimes in force across the globe. Our highly experienced export controls and economic sanctions team draws on extensive private sector and government experience and helps clients understand and shape export control laws, develop and implement compliance programs, conduct internal investigations and defend against civil and criminal enforcement actions.

COMPLIANCE • SUPPLY CHAIN RESTRUCTURING  
FINANCIAL TRANSFERS • TROUBLE SHOOTING

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**‘Sidley Austin has earned an enviable reputation for success in trade matters – and a worldwide stable of governments and big-name corporate clients who rely on the firm when the stakes couldn’t be higher.’**  
*Law360 2012/2013*

**‘Sidley Austin LLP “simply has incomparable experience” in trade matters.’**  
*The Legal 500 EMEA 2013*

Sidley Austin LLP is a global law firm committed to providing excellent client service, fostering a culture of cooperation and mutual respect, and creating opportunities for lawyers of all backgrounds. With more than 1,700 lawyers in 19 offices around the world, talent and teamwork are central to Sidley’s successful results for clients in all types of legal matters, from complex transactions to ‘bet the company’ litigation to cutting-edge regulatory issues.

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# WorldECR

The journal of export controls and compliance

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