

Defence-related products: simplifying terms and conditions of transfers within the Community

2007/0279(COD) - 06/05/2009 - Final act

PURPOSE: to simplify and harmonise licensing conditions and procedures for defence-related goods and services.

LEGISLATIVE ACT: Directive 2009/43/EC of the European Parliament and of the Council simplifying terms and conditions of transfers of defence-related products within the Community

CONTENT: following a first reading agreement with the European Parliament, the Council adopted this Directive simplifying the terms and conditions for transfers of defence-related products within the Community. The aim of the Directive is to simplify the rules and procedures applicable to the intra-Community transfer of defence-related products in order to ensure the proper functioning of the internal market. The Directive does not affect the discretion of Member States as regards policy on the export of defence-related products. Its application will be subject to Articles 30 and 296 of the Treaty. It does not affect Member States' ability to pursue and further develop intergovernmental cooperation, whilst complying with the provisions of the Directive.

Conditions for the granting of licences: the Directive provides that any transfer of defence-related products within the Community will be **subject to prior authorisation through general, global or individual transfer licences** granted or published by the Member State from whose territory the supplier wishes to transfer defence-related products. Member States will be able to exempt transfers of defence-related products from the obligation of prior authorisation in specific cases listed in the Directive.

Member States are free to deny or grant prior authorisation. In line with the principles establishing the internal market, such authorisation will be valid throughout the Community and no further authorisation for passage through other Member States or entrance onto the territory of other Member States will be required.

These new rules are intended to contribute to the development of a single market for defence products and equipment, thereby reinforcing the competitiveness of Europe's defence industry. The gradual establishment of a European defence equipment market is deemed essential for strengthening the defence industrial and technological base in Europe and developing the military capabilities required to implement European security and defence policy.

The Directive aims to reduce obstacles to the circulation of defence-related goods and services within the internal market, as well as to diminish distortions of competition, by simplifying and harmonising licensing conditions and procedures. In view of the specific features of the defence market and the need to protect national security, licensing requirements will be replaced by a streamlined system of general licenses, to which individual licensing would remain the exception.

EU governments procuring from suppliers established in other countries will see security of supply improved by reducing licence application costs and by allowing more predictable conditions.

Member States shall also ensure that **suppliers of defence-related products inform recipients** of the terms and conditions of the transfer licence, including limitations, relating to the end-use or export of the

defence-related products. The **certification** shall establish the reliability of the recipient undertaking, in particular as regards its capacity to observe export limitations of defence-related products received under a transfer licence from another Member State.

Member States may withdraw, suspend or limit the use of transfer licences they have issued at any time for reasons of protection of their essential security interests, on grounds of **public policy or public security**, or as a result of non-compliance with the terms and conditions attached to the transfer licence. Where a licensing Member State considers that public policy, public security or its essential security interests could be affected, it shall inform that other Member State and request verification of the situation.

Scope: the Directive, which covers all defence-related products that correspond to those on the EU's Common Military List, will also increase opportunities for small and medium-sized enterprises to supply components, thereby contributing to making the European market more dynamic. The Directive should not apply to defence-related products which only pass through the territory of the Community, namely to those products which are not assigned a customs-approved treatment or use other than the external transit procedure or which are merely placed in a free zone or free warehouse and where no record of them has to be kept in an approved stock record.

Review and reporting: by 30/06/2012, the Commission shall report on the measures taken by the Member States with a view to the transposition of the Directive, and in particular Articles 9 to 12 (certification, export limitations, customs procedures and exchange of information) and Article 15 (safeguard measures). By 30/06/2016, the Commission will report on the implementation of the Directive and evaluate in particular whether, and to what extent, the objectives of the Directive have been achieved, with regard, inter alia, to the functioning of the internal market. In its report, the Commission will review the application of Articles 9 to 12 and Article 15 (see above) and evaluate the impact of the Directive on the development of a European defence equipment market and a European defence technological and industrial base, having regard, inter alia, to the situation of small and medium-sized enterprises. If necessary, the report shall be accompanied by a legislative proposal.

The new legislation will combine with a [directive](#) on defence and security procurement.

ENTRY INTO FORCE: 30/06/2009.

TRANSPOSITION: 30/06/2011.

APPLICATION: from 30/06/2012.