

# Review

## EU, Competition & Trade

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### The European Union facilitates intra-Community transfer of defence-related products

**The EU published a Directive on simplifying the terms and conditions of intra-Community transfers of defence-related products. The directive promises to significantly facilitate certain types of intra-Community transfers of products listed in the Common Military List of the European Union.**

EU arms trade is currently subject to 27 national licensing regimes, which diverge widely. The Member States have acknowledged that these disparities may impede the movement of defence-related products and distort competition within the internal market.

In order to address these issues the EU adopted Directive 2009/43/EC on simplifying terms and conditions of transfers of defence-related products within the Community (the "[Transfer Directive](#)").<sup>1</sup>

The Transfer Directive requires Member States to facilitate intra-Community transfers of items listed in the Common Military List of the European Union by introducing systems of general and global licences. Member States may even entirely exempt certain intra-Community transfers from the licence requirement.

#### **GENERAL AND GLOBAL TRANSFER LICENCES WILL FACILITATE INTRA-COMMUNITY TRANSFERS**

The Transfer Directive encourages Member States to use general and global, rather than individual, licences for intra-Community transfers of defence-related products.

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After June 2012 intra-Community transfer of military products will become easier for firms showing full compliance with export controls.

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<sup>1</sup> Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community (Text with EEA relevance), OJ 2009 L146/1.

Use of such licenses can significantly facilitate and speed up a company's daily business administration, as not each single shipment needs prior approval from the authorities.

General licences are established by national law or an administrative act, rather than in response to an application. They directly authorise a supplier that fulfils the terms and conditions of the licence to transfer specified (categories of) defence-related products to certain (categories of) recipients located in another Member State. Member States may make the use of a general licence subject to prior registration.

The Transfer Directive requires Member States to introduce general licences for at least four types of transfers, where:

- The recipient is part of the armed forces of a Member State or a contracting authority in the field of defence, purchasing for the exclusive use by the armed forces of a Member State;
- The recipient is a certified undertaking (see below);
- The transfer is made for the purposes of demonstration, evaluation or exhibition; and
- The transfer is made for the purposes of maintenance and repair, if the recipient is the originating supplier of the defence-related product.

Global transfer licences are issued to individual suppliers, on their request. They authorise the supplier to transfer (categories of) defence-related products to certain (categories of) recipients during three years.

Where a Member State grants a transfer licence in accordance with the Transfer Directive it may impose limitations on any consequent *export* from the EU.

Member States must regularly check suppliers' records and have the right to withdraw, suspend or limit the use of transfer licences under certain conditions.

## **EASIER TRANSFERS TO CERTIFIED RECIPIENTS**

For a company's day-to-day business, the most attractive general licence is probably that for certified recipients. For suppliers to benefit from this general licence, a recipient must undergo a detailed certification process.

This certification shall establish the reliability of a recipient undertaking, in particular its capacity to observe potential export limitations of defence-related products received under a transfer licence.

The Transfer Directive sets out detailed – rather tough – criteria the Member States must apply in assessing a recipient's reliability. A recipient undertaking will be assessed against the following criteria:

- Proven experience in defence activities taking into account, in particular, the undertaking's record of compliance with export restrictions, any court decisions on this matter, any authorisation to produce or commercialise defence-related products and the employment of experienced management staff;
- Relevant industrial activity in defence-related products within the Community including, in particular, capacity for system/sub-system integration;
- The appointment of a senior executive as the dedicated officer personally responsible for transfers and exports;

- A written commitment of the undertaking to take all necessary steps to observe and enforce all specific conditions related to the end-use and export of any specific component or product received;
- A written commitment of the undertaking to provide to the competent authorities detailed information in response to requests and inquiries concerning the end-users or end-use of all products exported, transferred or received under a transfer licence from another Member State; and
- A description of the internal compliance programme or transfer and export management system implemented in the undertaking. The description must provide details of the organisational, human and technical resources allocated to the management of transfers and exports, the chain of responsibility within the undertaking, internal audit procedures, awareness-raising and staff training, physical and technical security arrangements, record-keeping and traceability of transfers and exports.

Certificates may be valid for a maximum of five years, and the national authorities must monitor the recipient's compliance with the above criteria at least every three years. Certificates issued by one Member State shall be recognised in the entire EU.

Member States must publish a national list of certified recipients. The Commission will publish a central register of certified recipients on its website.

## EXEMPTIONS

In addition to facilitating the transfer of defence-related products through general and global transfer licences, Member States may exempt transfers of defence-related products from the authorisation requirement where:

- The supplier or the recipient is a governmental body or part of the armed forces;
- Supplies are made by the European Union, NATO, IAEA or other intergovernmental organisations for the performance of their tasks;
- The transfer is necessary for the implementation of a cooperative armament programme between Member States;
- The transfer is linked to humanitarian aid in the case of disaster or as a donation in an emergency; or
- The transfer is necessary for, or after, repair, maintenance, exhibition or demonstration.

## OUTLOOK

The Transfer Directive is not directly binding on individuals. Member States must implement respective national laws until 30 June 2011 and they shall apply as from 30 June 2012.

The system promises significant facilitation to intra-Community trade of defence-related products. In order to fully benefit from this facilitation companies will, however, have to comply with the strict certification requirements set out above.

Businesses are well advised to ensure strict adherence to export control rules and to start preparing well in advance for the certification process. It is important to have a well functioning internal export control system and proper record keeping in place. Also the relevant staff should receive regular technical and compliance training.

## **FURTHER INFORMATION**

For further information on EU export and intra-Community transfer of dual-use and military products please contact a member of our Export Control Group. We are also glad to assist you, if you have any questions regarding our compliance trainings and programs.

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