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EU defence transfers and procurement

New licensing and rules

3 November 2026

Directive (EU) 2026/2383 changes how licences and controls apply to transfers of defence-related products within the EU and revises the procedures and thresholds that govern the procurement of defence equipment.[1]

Published on 3 November 2026, the directive requires member states to introduce further general transfer licences, permits wider exemptions and changes procurement procedures and thresholds. Its practical effect will nevertheless depend on national implementation. Member states retain their own licence conditions and export policies, and they must apply the new measures by 24 February 2028. Companies should use the intervening period to assess their transfer arrangements and the revised certification requirements.

Background

Directive 2009/43/EC (the Transfers Directive) requires authorisation from the dispatching member state for intra-EU transfers of the military goods, software and technology listed in its annex. Suppliers may use a published general licence if eligible, a global licence for repeated transfers or an individual licence for a single transfer. According to the European Commission (Commission), general licences typically permit transfers within one to three days, compared with six to seven weeks for a simple individual licence. Yet only one-third of respondents to its preliminary survey had used one.[2]

Directive 2009/81/EC (the Procurement Directive) governs defence and sensitive security contracts above specified values. The Commission proposed amendments to both directives in June 2025, as part of the EU's defence readiness programme. The adopted text broadens the available transfer and procurement procedures, while leaving important decisions to national authorities.

Transfers within the EU

Every member state must publish general licences for three additional categories: transfers between certified suppliers and certified recipients; projects funded under a "Union defence industrial programme" and structured intra-EU industrial partnerships. Such partnerships are stable groups, consortia, joint ventures or similar structures whose members, established in different member states, cooperate on designing, producing, supplying or supporting a defence product. Partnership licences must cover intangible transfers of software and technology, while a recital states that the EU-funded project licence should do so. Across all licences, member states must avoid disproportionate reporting requirements for these intangible transfers.

The EU-funded licence covers all listed products but only transfers necessary for specific projects; member states may extend it to later phases of a project's life cycle. They cannot require end-use certificates or export limits where the funding agreement or contract already commits participants not to share products beyond the project without authorisation. The directive does not define "Union defence industrial programme", and its recitals identify only the European Defence Fund as an example. Participants in other programmes should therefore confirm that their projects qualify.

Exemptions remain a national choice, so companies cannot rely on them until the relevant member state has adopted them. They may cover transfers to EU institutions and bodies, including the European Defence Agency; between certified companies; for EU-funded projects and within structured partnerships.

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[1] Directive (EU) 2026/2383 of the European Parliament and of the Council of 21 October 2026 amending Directives 2009/43/EC and 2009/81/EC, as regards the simplification of intra-EU transfers of defence-related products and the simplification of security and defence procurement [2026] OJ L 2026/2383, recitals (1), (5), (8), (9), (11), (15) and (16) and arts 1(1)– (7), 2(1), (2), (5)–(7), (9), (10)(b), (11), (12), (19), (25) and (26), 3 and 4.

[2] 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 [2009] OJ L146/1, arts 1(2), 2, 3(2)–(4), 4(1), (5), (6) and (9), 5(1), 6, 7 and 9(1)–(3); Commission, Commission Staff Working Document Accompanying the document Communication from the Commission to the European Parliament and the Council: Defence Readiness Omnibus (SWD(2025) 820 final) 10.

Further grounds concern urgency arising from a crisis, assistance under the EU mutual defence clause and military assistance under unanimously agreed EU action. A recital recommends deciding partnership exemptions case by case. The Commission may add further grounds, including transfers necessary for intra-EU cooperation.

The directive leaves national licence conditions largely intact. It omits the Commission's proposed powers to harmonise minimum coverage, licence conditions and export limits for components. Parliament and the European Council acknowledged disagreement over the means of achieving harmonised implementation.[3] Member states retain control over onward exports and may suspend or withdraw licences on security grounds, so companies operating across several jurisdictions must continue to check each set of terms. Authorities may no longer exclude suppliers for reasons unrelated to their capacity to meet transfer and export control obligations.

Certification

Certification, previously available only to recipients, is extended to suppliers. Both parties must be certified to use the new route, although the Commission had proposed that one certified party should suffice. The new general licence must cover at least the products covered by the existing licence for certified recipients, which remains available. A recital anticipates that the new licence will cover more.

Authorities will assess a company's record on transfer and export controls, as well as its due diligence on export risks. The description of its internal compliance programme, countersigned by the responsible senior executive, must cover reporting, corrective measures, information security and transaction screening. Certified companies must report changes to their organisation or defence activities without delay, and the Commission's public register of certified undertakings, which currently lists only certified recipients, will also list certified suppliers. Removing the requirement for "capacity for system/sub-system integration" may help component manufacturers, although "proven experience in defence transfers and export activities" is required. Certificates last no more than five years, and authorities must check holders against the criteria at least every three years. With no transitional provision for existing certificates, current holders should expect assessment against the new requirements.

Defence procurement

The thresholds rise from €432,000 to €2 million for supplies and services, and from €5,404,000 to €10 million for works. The Commission's periodic revision mechanism is removed, leaving the amounts fixed until legislators amend them. Below these thresholds, general EU principles, including transparency and equal treatment, continue to apply, but more contracts will fall under national procurement rules.

Buyers gain open procedures, in which any interested company may tender, and fully electronic dynamic purchasing systems for commonly used purchases, which remain open to new participants. Innovation partnerships allow buyers to fund the development of products, services or works unavailable on the market, then purchase them if agreed performance levels and maximum costs are met. Framework agreements may run for 10 years rather than seven, while the period for repeat works or services without a contract notice increases from five to seven years. Buyers may procure jointly across borders, including through another member state's central purchasing body. The cooperative research exclusion also extends to substantial upgrades, late-joining member states and follow-on work from research managed and funded by EU bodies.

Contracts may be modified without retendering where clear review clauses in the original documents permit it. Other grounds cover necessary additional works, services or supplies where economic or technical reasons preclude changing contractor and a change would cause serious inconvenience or duplicated costs; and unforeseeable events, provided the contract's overall nature remains unchanged. Under either ground, each price increase is capped at 50% of the original contract value, successive changes must not circumvent the rules and a notice must be published. A replacement contractor meeting the original selection criteria may succeed following restructuring, merger, acquisition or insolvency if no other substantial changes occur. Non-substantial modifications are also permitted, regardless of value. Changes cumulatively below both the relevant procurement threshold and 10% of contract value (15% for works) need no assessment of whether they are substantial if the contract's overall nature remains unchanged.

Exports and non-EU suppliers

The new licences cover only intra-EU transfers, even where EU-funded projects have partners elsewhere. National export policies remain unchanged, subject to the restriction on imposing export limits for EU-funded projects described above. US rules impose additional requirements for US-origin items. Under the International Traffic in Arms Regulations, transferring a "defense article" to an end-user, end-use or destination other than that stated on the US licence requires prior written State Department approval unless an exemption applies. An EU general licence does not remove that requirement.[4]

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[3] Commission, Proposal for a Directive of the European Parliament and of the Council amending Directives 2009/43/EC and 2009/81/EC, as regards the simplification of intra-EU transfers of defence-related products and the simplification of security and defence procurement (COM(2025) 823 final) arts 1(2)(d), 1(3)(a)(i), 1(3)(b), 2(2) and 2(10)(b)–(c); Joint statement by the European Parliament and the Council on the simplification of intra-EU transfers of defence-related products and the simplification of security and defence procurement [2026] OJ C 2026/5559.

[4] International Traffic in Arms Regulations, 22 CFR § 123.9(a).

The Directive introduces no buy-European rule, while the existing procurement recitals leave member states discretion over non-EU participation.[5] Proposed direct-award routes for joint purchases and follow-on production, broadly restricted to European contractors without outside control, were omitted. The proposed joint-purchase route also capped non-European component costs at 35%. Similar eligibility conditions, with exceptions, remain under the €150 billion Security Action for Europe (SAFE) defence loans (Regulation (EU) 2025/1106, Article 16), making financing terms relevant alongside tender conditions. For transfers, the partnership definition concerns establishment rather than ownership: EU subsidiaries of non-EU groups therefore appear eligible, subject to national licence terms.

Implementation and preparation

The Directive enters into force on 23 November 2026. Member states must adopt and publish implementing legislation by 24 November 2027 and apply it by 24 February 2028; current national rules govern until implementation. Spain is likely to amend Royal Decree 679/2014 on defence trade controls and Law 24/2011 on defence contracts. The Commission has announced a further defence market package, including revision of the Procurement Directive.[6] Parliament and the European Council have requested further initiatives and an impact assessment of future procurement changes, including measures to encourage purchases from Europe's defence industry. European sourcing requirements may therefore return to the agenda. The Commission must review both directives by 1 January 2031.

Suppliers should map recurring transfers against the new routes in each member state and consider whether certification suits their transfer patterns, given the compliance obligations it entails. Existing holders should review their programmes, particularly transaction screening, while project participants should check whether funding agreements or contracts contain the commitments relevant to end-use certificates and export limits. Bidders should assess how higher thresholds, longer frameworks and the modification rules affect forthcoming procurements and contract terms.

How can we help?

Our International Trade & Foreign Investment Practice Group advises defence and aerospace businesses on EU, UK and US export controls and sanctions. We can help classify products, compare national licence routes, prepare or review certification compliance programmes and address export licensing and US-origin controls. On procurement, we can review tender conditions, framework agreements and modification clauses, and assess eligibility under SAFE and other EU funding programmes. As member states implement the Directive, we can also track developments and help companies adjust their transfer arrangements before the new rules apply.

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[5] Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC [2009] OJ L216/76, recital (18).

[6] Commission, 'Opening Statement by Commissioner Kubilius at the European Parliament SEDE Committee hearings' (1 October 2026) SPEECH/26/2040.

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