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

2007/0279(COD) - 16/12/2008 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 545 votes to 66 with 44 abstentions, a legislative resolution amending the proposal for a directive of the European Parliament and of the Council on simplifying terms and conditions of transfers of defence-related products within the Community. The report had been tabled for consideration in plenary by Heide **RÜHLE** (Greens/ALE, DE), on behalf of the Committee on the Internal Market and Consumer Protection.

The amendments were the result of a compromise between the Council and the Parliament. The main amendments - adopted under the 1st reading of the codecision procedure - were as follows:

**Subject matter**: Members clarified that the aim of the Directive is to simplify rules and procedures applicable to the intra-Community transfer of defence-related products in order to ensure 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 the possibility for Member States to pursue and further develop intergovernmental co-operations, whilst respecting its provisions.

**Definitions:** Parliament clarified the definitions for "defence-related product" and "transfer". It inserted a definition for "passage through" which means the transport of defence-related products through one or more Member States other than the Member State of dispatch and the Member State of destination.

**General provisions**: the transfer of defence-related products between Member States shall be subject to prior authorisation. No further authorisation by other Member States shall be required for the passage through Member States or for the entrance on the territory of the Member State where the recipient is located of defence-related products without prejudice to the application of provisions necessary for the protection of public security or public policy such as, inter alia, the safety of transport. Member States may exempt transfers of defence-related products from the obligation of prior authorisation set out in the first paragraph in any of the following cases:

a) the supplier or the recipient is a governmental body or a part of armed forces;

b) supplies made by the EU, NATO, IAEA or other intergovernmental organisations for the performance of their tasks;

c) the transfer is necessary for the implementation of a co-operative armament program between Member States;

d) the transfer is linked to humanitarian aid in case of disaster or as a donation in an emergency;

e) the transfer is necessary for or after repair, maintenance, exhibition, or demonstration.

On a request by a Member State or on its own initiative, the Commission may include cases: (a) where the transfer takes place under such conditions as not to affect public policy or public security, (b) where the obligation of prior authorisation has become incompatible with international commitments of the Member States subsequent to the adoption of the directive, or c) where it is necessary for intergovernmental co-operations. Those measures will be adopted in accordance with regulatory procedure with scrutiny.

Member States shall ensure that suppliers wishing to transfer defence-related products from their respective territories may use general transfer licences or apply for global or individual transfer licences. Member States must determine all the terms and conditions of transfer licences, including any limitations on the export of defence-related products to recipients in third countries, having regard inter alia to the risks for preservation of human rights, peace, security and stability created by the transfer. Member States may avail themselves of the possibility to request end-use assurances, including end-user certificates. They 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, of public policy or public security or for non-compliance with the terms and conditions attached to the licence.

**General transfer licences** : general transfer licences shall be published at least in the following cases: 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 company certified in accordance with Article 9; (c) for the purpose of demonstrations, evaluations and exhibitions; d) for the purpose of maintenance and repair, if the recipient is the originating supplier of defence-related products. Member States may lay down the conditions for registration prior to first use of a general transfer licence.

**Global transfer licences**: Member States shall decide to grant global transfer licences to an individual supplier, on its request, authorising transfers of defence-related products to recipients in one or several other Member States. A global transfer licence shall be granted for a period of 3 years, renewable.

**Individual transfer licences**: Member States shall decide to grant these to an individual supplier on its request authorising one transfer of a specified quantity of specified defence-related products to be transmitted in one or several shipments to one recipient in one or more of the following cases, inter alia : where it is necessary for the protection of its essential security interests, or for the protection of public policy; where it is necessary for compliance with international obligations and commitments of Member States; or where a Member State has serious reasons to believe that the supplier will not be able to comply with all the terms and conditions necessary to grant it a global licence.

**Information by suppliers**: Suppliers of defence-related products must 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. They must inform, within a reasonable time, the competent authorities of the Member State from which territory they wish to transfer defence-related products of their intention to use a general transfer licence for the first time. Member States may determine the additional information that may be required on defence-related products transferred under such a licence.

Member States shall ensure and regularly check that suppliers keep detailed and complete records of their transfers, in accordance with the legislation in force in the respective Member State and shall determine the reporting requirements attached to the use of a general, global or individual transfer licence. Such records shall include commercial documents containing specified information. Suppliers must keep the records for a period at least equal to that provided for in relevant national legislation relating to record keeping requirements for economic operators in force in the respective Member State, and in any event for not less than 3 years from the end of the calendar year in which the transfer took place.

**Certification**: the certification shall establish the reliability of a recipient company in particular as regards its capacity to observe export limitations of defence-related products received under a transfer licence from another Member State, which shall be assessed according to the specified criteria. Competent authorities shall monitor compliance of the recipient with the criteria at least every 3 years. Member States must publish and regularly update a list of certified recipients and inform the Commission, the European Parliament and the other Member States. The Commission shall make publicly available a central register of recipients certified by Member States on its website.

Safeguard measures: if a licensing Member State considers that there is a serious risk that any certified recipient in another receiving Member State will not respect any condition attached to a general transfer licence or if a licensing Member State considers that public policy, public security or its essential security interests could be affected, it shall inform the other Member State and request verification of the situation.

**Sanctions**: a new article states that Member States shall lay down rules on penalties applicable to infringements of the provisions adopted in implementation of the Directive, in particular in the event that false or incomplete information required is provided as regards the respect of export limitations attached to a transfer licence. Member States shall take all measures necessary to ensure that those rules are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

**Review and reporting**: the Commission shall review the functioning of the Directive and report 5 years after the date of transposition. It shall evaluate in particular whether, and to what extent, the objectives of this Directive have been achieved, with regard to the functioning of the internal market. In its report, the Commission shall review the application of articles on certification, export limitations, customs procedures, exchange of information and safeguard measures, and shall evaluate its impact 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.