

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

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The Commission presents a report on the transposition of Directive 2009/43/EC simplifying terms and conditions for transfer of defence-related products within the EU. It notes that Directive 2009/43/EC applies to a field within the internal market, so far subject to frequent exceptions by Member States due to its security implications. The Directive will contribute to strengthening the internal market, reducing administrative burden, strengthening the EU defence industrial base, and increasing integration and security of supply. It will also improve efficiency of export control, taking into account the Member States' security objectives.

The Directive had to be transposed by Member States by 30 June 2011 at the latest and should be applied from 30 June 2012 onwards.

Transposition by Member States: although the Directive contained a transposition period of more than two years after its publication in the Official Journal of the EU, a timely transposition seemed to have been difficult for several Member States.

The Commission received an official notification of the national legislation transposing the Directive from 20 Member States. Other Member States have informed the Commission that they are in advanced stages of the procedure.

The Commission **launched infringement procedures for non-communication** against the Member States that did not communicate the national rules transposing the Directive. At the moment 7 Member States have not yet communicated transposition. 1 Member State has communicated partially.

Whilst timely transposition proved challenging for Member States, **the level of transposition indicates a good integration into national law of the key features of the Directive**, namely: (i) a simplified licencing system coherent across the EU; (ii) a Common Military List replacing previous different ammunition lists established at national level, and (iii) certification of defence companies resulting in increased mutual trust and common recognition of defence companies' reliability.

Challenges of transposition: challenges still lie ahead in finalising the transposition in all Member States and, most important, in ensuring proper implementation of the Directive. This will result in the simplification of rules and procedures of transfer of the defence-related products within the EU and consequently ensure the proper functioning of the internal market in the sector of defence.

As regards the Annex of the Directive, although it should be identical at all times to the **Common Military List of the EU**, practice shows that the procedure for amendment of the Annex takes at least seven months. Consequently, it differs from the Common Military List of the EU during at least seven months of the year. Moreover, the Commission Directive amending the Annex must be transposed by Member States and requires a national legislative or administrative procedure. Therefore, one can assume that national legislations transposing the Annex will never be identical to the Common Military List of the EU that applies at that moment, unless the Member States transposes the Common Military List of the EU without awaiting the amendment of the Annex. These discrepancies lead to legal and administrative divergences for national authorities and defence-related undertakings within the EU and goes against the intention of the legislator for a strict correspondence between the Annex of the Directive and the Common Military List of the EU.

The Commission is of the opinion that it is **necessary to simplify the procedure for aligning the Annex of the Directive and the Common Military List of the EU**. This issue will be further analysed by the Commission, in cooperation with the Council and the European Parliament.

The Commission will closely monitor the transposition and the implementation of the Directive with the support of the Committee, with a view to assisting Member States throughout the process and timely identifying their needs. The Commission will review the implementation and report to the European Parliament and the Council by 30 June 2016.