

Basic information	
2007/0279(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Defence-related products: simplifying terms and conditions of transfers within the Community	
See also 2019/2204(INI)	
Subject 2.10.01 Customs union, tax and duty-free, Community transit 2.80 Cooperation between administrations 3.40.09 Defence and arms industry	

Key players																
European Parliament	<table border="1"> <thead> <tr> <th>Committee responsible</th><th>Rapporteur</th><th>Appointed</th></tr> </thead> <tbody> <tr> <td>IMCO Internal Market and Consumer Protection</td><td>RÜHLE Heide (Verts/ALE)</td><td>02/04/2008</td></tr> </tbody> </table> <table border="1"> <thead> <tr> <th>Committee for opinion</th><th>Rapporteur for opinion</th><th>Appointed</th></tr> </thead> <tbody> <tr> <td>AFET Foreign Affairs</td><td>BEER Angelika (Verts/ALE)</td><td>29/01/2008</td></tr> <tr> <td>ITRE Industry, Research and Energy</td><td>SWOBODA Hannes (PSE)</td><td>27/02/2008</td></tr> </tbody> </table>	Committee responsible	Rapporteur	Appointed	IMCO Internal Market and Consumer Protection	RÜHLE Heide (Verts/ALE)	02/04/2008	Committee for opinion	Rapporteur for opinion	Appointed	AFET Foreign Affairs	BEER Angelika (Verts/ALE)	29/01/2008	ITRE Industry, Research and Energy	SWOBODA Hannes (PSE)	27/02/2008
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Key events			
Date	Event	Reference	Summary
05/12/2007	Legislative proposal published	COM(2007)0765 	Summary

15/01/2008	Committee referral announced in Parliament, 1st reading		
25/02/2008	Debate in Council		
07/10/2008	Vote in committee, 1st reading		Summary
15/10/2008	Committee report tabled for plenary, 1st reading	A6-0410/2008	
01/12/2008	Debate in Council		
15/12/2008	Debate in Parliament		
16/12/2008	Decision by Parliament, 1st reading	T6-0603/2008	Summary
16/12/2008	Results of vote in Parliament		
23/04/2009	Act adopted by Council after Parliament's 1st reading		
06/05/2009	Final act signed		
06/05/2009	End of procedure in Parliament		
10/06/2009	Final act published in Official Journal		

Technical information	
Procedure reference	2007/0279(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Amendments and repeals	See also 2019/2204(INI)
Legal basis	EC Treaty (after Amsterdam) EC 095
Stage reached in procedure	Procedure completed
Committee dossier	IMCO/6/57418

Documentation gateway				
European Parliament				
Document type	Committee	Reference	Date	Summary
Committee draft report		PE408.013	19/06/2008	
Amendments tabled in committee		PE412.025	11/09/2008	
Committee opinion	AFET	PE406.006	12/09/2008	
Committee opinion	ITRE	PE405.889	15/09/2008	
Committee report tabled for plenary, 1st reading/single reading		A6-0410/2008	15/10/2008	
Text adopted by Parliament, 1st reading/single reading		T6-0603/2008	16/12/2008	Summary

Council of the EU			
Document type	Reference	Date	Summary

Draft final act	03732/2008/LEX	06/05/2009	
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European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2007)0765 	05/12/2007	Summary
Document attached to the procedure	SEC(2007)1593 	05/12/2007	
Document attached to the procedure	SEC(2007)1594 	05/12/2007	
Commission response to text adopted in plenary	SP(2009)402	29/01/2009	
Follow-up document	COM(2012)0359 	29/06/2012	Summary
Follow-up document	COM(2016)0760 	30/11/2016	Summary
Follow-up document	SWD(2016)0398 	30/11/2016	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES1660/2008	23/10/2008	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act

Directive 2009/0043 OJ L 146 10.06.2009, p. 0001	Summary
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Delegated acts

Reference	Subject
2021/2589(DEA)	Examination of delegated act
2022/2872(DEA)	Examination of delegated act

2023/2871(DEA)	Examination of delegated act
2025/2961(DEA)	Examination of delegated act

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

2007/0279(COD) - 30/11/2016 - Follow-up document

This report concerns the evaluation of Directive 2009/43/EC of the European Parliament and of the Council simplifying the conditions for intra-EU transfers of defence-related products. It assesses the extent to which the objectives of the Directive have been achieved, in particular with regard to the functioning of the internal market.

Assessment of the Directive: the report concludes that, overall, the Directive provides an **appropriate basis** for resolving problems relating to the transfer of defence-related products in Europe. Its tools still correspond to the needs and risks originally identified.

In the period 2012-2014, for example, between **500 and 600 global transfer licenses** were issued each year in 21 Member States. The vast majority of transfers are still made through **individual transfer licenses**, while only a small proportion have been made with global transfer licenses and general transfer licenses. The use of prior authorisation exemptions varies significantly. In addition, the use of **certification** was lower and slower than expected.

Since the Directive has only recently been implemented, its influence on the development of an industrial and technological defence base in Europe and a European defence equipment market is not yet apparent.

Although the Directive is on track to achieve the objectives set out initially, it is nevertheless possible to improve its coherence. Therefore, instead of amending the Directive, the Commission plans to focus its efforts on **improving its implementation**, developing guidance and recommendations and promoting its use.

Way forward: in line with the [European defence action plan](#), the way forward in the report is to:

- strengthen adherence to the existing legislative framework on transfers of defence-related products;
- improve the availability of general transfer licenses throughout the European Union;
- find a solution to the limited application of the certification system.

On the basis of the findings of the evaluation, the contributions of the Member States and the sector throughout Europe, the Commission intends to:

- **improve the implementation of the Directive in the Member States** by establishing a dialogue with the national authorities in order to resolve the remaining problems in this respect. In particular, it is necessary to reduce the perception that the certification system would be of little benefit;
- **allow Member States to extend the scope of their general transfer licenses** to other products and components, provided that they do not add transfer conditions which would be contrary to the conditions set out in the **recommendations adopted by the Commission** with a view to promoting the harmonised use of general transfer licenses for armed forces and certified recipients;
- work with Member States to **harmonise the other general transfer licenses** specified in the Directive, namely general transfer licenses for demonstration, evaluation or exhibition purposes and general transfer licenses issued for maintenance and repair. This collaboration could lead to further recommendations to Member States;
- have an exchange of views with Member States to identify areas where **certification** could be more harmonised in the European Union and to examine possibilities to encourage certification in the sector;
- launch work to better determine the products governed by the directive and subject to the licensing requirements;
- publish, in early 2017, a **practical guide** specifically aimed at SMEs providing explanations of the instruments of the Directive as well as advice on how best to use these instruments;
- examine the possibilities for **simplification** and acceleration of annual updates to the Annex to the Directive;
- **improve access to information** on national systems through the establishment of a one-stop shop for information exchange between Member States and within the defence sector.

Lastly, the Commission will examine issues that may require a **revision of the Directive in the longer term**, such as: (i) making the exemptions binding and expanding the scope of the Member States; (ii) revising the certification system; (iii) introducing direct notification requirements to the Commission to ensure an effective monitoring system; (iv) creating new general transfer licenses; and v) translating the Commission's recommendations on general transfer licenses into binding provisions.

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.

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.

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

2007/0279(COD) - 05/12/2007 - Legislative proposal

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

LEGISLATIVE ACT: Directive of the European Parliament and of the Council.

CONTENT: in spite of coordinating efforts being undertaken between a limited number of Member States, the European defence market remains fragmented and divided. Twenty seven national licensing regimes currently exist. These regimes diverge widely in terms of procedure scope and required delays. Further, in all EU Member States, the export of defence related products (including comprehensive military equipments as well as sub-systems, components, spare parts, technologies) are subject to national licensing schemes. This patchwork of schemes not only imposes a significant administrative burden on companies, it also includes significant lead times – up to several months. These burdens are out of proportion with actual control needs: license applications for intra-Community transfers are rarely rejected. Such divergences constitute a major impediment to industrial competitiveness, and a considerable obstacle to the emergence of a European Defence Equipment Market (EDEM) as well as the functioning of the Internal Market. According to a study carried out for the European Commission in 2005, the direct and indirect cost of obstacles to intra-community transfers amounts to EUR 3.16 billion per year. The processing of licences has a direct cost of EUR 434 million per year while indirect costs have been estimated at EUR 2.73 billion/year.

The purpose of this proposal, therefore, is to reduce existing obstacles to the circulation of defence-related goods and services (products) within the Internal Market, and to diminish the resulting distortions of competition. To do so, this proposal focuses specifically on simplifying and harmonising licensing conditions and procedures for the transfer of defence-related products. This proposal forms part of a package of defence related proposals:

- On public procurement. See [COD/2007/0280](#) and
- Transfers of defence-related products (the subject of this summary).

In addition, the Commission has prepared a Communication for a stronger and more competitive defence industry. See [COM/2007/0764](#).

Following an in-depth impact assessment, the Commission decided to propose a way forward that incorporates a two-fold approach:

- firstly, on the matter of simplification, the proposal requires Member States to grant general and global licences for intra-EU transfers. Individual licensing should be kept for exceptional circumstances only.
- secondly, on the matter of harmonisation, the proposal requires Member States to establish systems of general licences for two types of transfers of defence related products: transfers to governments in any other Member State; and transfers to recipients in other Member States certified in accordance with the common criteria in the Directive. Further, Member States are required to determine for each licence the terms and conditions of its use regarding, in particular, defence related products covered and their possible uses as well as reporting obligation of companies using the licences.

The proposal includes two elements to foster confidence between Member States:

- Member States will be required to certify, according to common requirements, those companies who wish to source according to general licences issued in other Member States.
- When applying for an export licence, companies would have to confirm to their competent authorities that they respect the export limitations issued by the originating Member States.

The proposal has implications on the Community budget. These relate to the following new tasks:

- Work in the Council for updating the Annex of the Common Military List.
- Reporting on measures taken by the Member States to implement the provisions of this Directive.
- Reporting on the functioning of the Directive and its impact on developments of the European defence equipment market and the European defence technological and industrial base.
- Organising work for the “Cooperation Group”.
- Monitoring compliance of procedures and methods of cooperation between the Member States.

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

2007/0279(COD) - 29/06/2012 - Follow-up document

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 licensing 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.