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NOTE

from : General Secretariat of the Council/Presidency
to : Permanent Representatives Committee (Part 1)

Subject : **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**
Preparation of a trialogue

I. INTRODUCTION

1. The Commission presented the aforementioned proposal on 5 December 2007¹.
2. The European Parliament's Committee on the Internal Market and Consumer Protection (IMCO) approved its report on 7 October 2008².
3. The European Parliament Plenary could adopt its first-reading opinion in December 2008.

¹ 16534/07.

² A6-0410/2008 of 15 October 2008.

II. STATE OF PLAY

4. The Working Party on Competitiveness and Growth has examined the proposal on several occasions under the Slovenian and French Presidencies. Following informal contacts with the European Parliament, the Council and the Parliament have made joint efforts to harmonise their positions *ad referendum* in order to reach a common understanding of the proposal with a view to a possible first-reading agreement on this matter.
5. It should be noted that the report approved by the IMCO Committee on 7 October 2008 already takes account of a number of aspects which are of crucial importance to the Council, in particular as regards the scope of the Directive (references to Articles 30 and 296 of the Treaty and to intergovernmental cooperation). Other aspects are also in line with the Council's position, such as the possibility of pre-registration for the use of general licences, specifications regarding information to be provided by suppliers and penalties.
6. The Presidency encloses herewith a proposal for a compromise to be used as a basis for the forthcoming negotiations with the European Parliament with a view to reaching a first-reading agreement.
7. The points raised by delegations in 10947/1/08 REV 1, together with those submitted by delegations within the Working Party, have been taken into account by the Presidency in its overall assessment of the situation.
8. Denmark, Malta and the United Kingdom have entered parliamentary scrutiny reservations.

III. QUESTIONS TO BE RESOLVED

(a) maintaining Member States' right to exempt certain transfers from prior authorisation

(Article 4(1), (1a) and (1b)):

The Council text (see DS 757/4/08 REV 4) aimed to reserve the possibility of national exemptions, with any extension of such exemptions being subject to notification of the Commission and publication formalities. During informal contacts, the Parliament felt that this mechanism was inadequate, since such derogations could deprive the proposal of its substance.

The new arrangements are based on:

- a new paragraph 1a, which lists current exemptions which would not be affected by the text;
- a new paragraph 1b, which provides for the use of a regulatory committee procedure with scrutiny for adding new cases of exemptions in the future.

In the course of technical exchanges with the Presidency, the European Parliament said that it could accept the principles of such a system, subject to the wording which would eventually be adopted.

At the Working Party's meeting on 17 November, the arrangements were accepted in principle by most of the delegations, although some entered scrutiny reservations.

Delegations are invited to indicate at the COREPER meeting whether they are able to confirm their agreement to the text proposed by the Presidency.

(b) limiting the use of individual transfer licences (Article 7):

The Commission proposal lays down a restrictive list of three cases in which the use of individual licences is possible: (a) where the request for a licence is limited to one transfer; (b) where it is necessary for the protection of essential security interests; or (c) where it is necessary for compliance with international obligations and commitments of Member States.

This restrictive list is supported by some delegations, which consider these three cases to be sufficient to cover the control requirements in the general structure of the instrument. A significant number of delegations want this list to be left open-ended through the addition of the words "in particular". The Commission also stated that it was wholly opposed to the addition of the words "in

particular", claiming that this would call the entire structure of the instrument into question. The Parliament is also opposed to such an amendment to the Commission proposal.

In order to resolve this question and with a view to the discussions with the European Parliament, the Presidency proposes not to include the words "in particular". On the other hand, it proposes:

- to add, at the end of subparagraph (b), a reference to the protection of public policy after the reference to the protection of essential security interests
- to add a subparagraph (d) incorporating a fourth case in which it would be possible to use individual licences; this new subparagraph would read as follows:

"(d) where a Member State has reasonable doubt about whether the supplier would be able to comply with all the terms and conditions necessary to grant him a global licence."

Delegations are invited to indicate whether they are able to agree to this.

(c) the binding or non-binding nature of possible consultation with the Member State of origin (having defined export limitations) of a defence-related product prior to its exportation to a third country by the exporting Member State (Article 10(2)):

Under the Commission proposal, the Member State which must issue an export licence to an undertaking shall consult the Member State of origin in cases where the undertaking has received defence-related products under a transfer licence from that State and has not succeeded in having the export limitation lifted by the latter.

Member States have hitherto failed to reach agreement on this point. Some delegations claim that the binding nature of this mechanism is important to them, while others consider it to be unacceptable since the Directive is concerned with the internal market and must not affect the export policies of Member States, as stated explicitly in Article 1(2) of the Directive.

At the Working Party's meeting on 17 November, a substantial majority of delegations indicated that they could accept the deletion of paragraph 2. Against that background, delegations are requested to state whether they can confirm this position.

If this option should prove unacceptable, the Presidency would point out that it proposed, during the Working Party's proceedings, a compromise solution whereby a recital would state that exporting Member States should consult the Member States of origin in the case referred to in Article 10(2). If this second option were to be adopted, the Presidency would be prepared if necessary to state in the recitals that the Directive is without prejudice to the European Union Code of Conduct on Arms Exports of 8 June 1998, which continues to apply in full.

The European Parliament, for its part, wants to establish a right of veto in the Member State of origin of the defence-related product. This amendment has been rejected by all the Member States.

Delegations are invited to indicate whether they are able to agree to this.

IV. OTHER QUESTIONS

(a) the committee procedure to be used for updating the Annex (Articles 13 and 14):

The Commission proposal provides for a regulatory procedure with scrutiny. The Parliament considers the use of such a procedure to be justified.

The Presidency considers that there are legal arguments for not using the regulatory procedure with scrutiny in this case, in particular because the Commission will not have any margin of discretion when it carries out such updating activities. Under those circumstances, it proposes to continue to adhere to this position at this stage, since Member States have hitherto indicated that they are able to agree to it.

(b) the deadline for transposition (Article 17(1)):

The Council proposes extending the deadline from 18 to 24 months. The Parliament is not in favour of this.

The Presidency proposes to adhere to the 24-month deadline, explaining to the Parliament that Member States need to have sufficient time to transpose this Directive under the best possible conditions.

(c) the correlation table (Article 17(1)):

In the Directive, the Commission proposes that Member States should submit a correlation table to the Commission. The Parliament is in favour of this proposal, while the Council formally opposes it. Against this background, the Presidency proposes to follow to the letter the Interinstitutional Agreement on better law-making of 16 December 2003³.

The Presidency would also point out that 10947/1/08 REV 1 contains footnotes which have not all been removed.

V. CONCLUSION

The Committee is invited to resolve the outstanding issues referred to in sections III and IV of this note and to authorise the Presidency to enter into dialogues with the European Parliament with a view to reaching a first-reading agreement.

³ OJ C 321, 31.12.2003, p. 1.

COMPROMISE PROPOSAL FROM THE PRESIDENCY⁴

⁴ New text compared to the Commission's proposal, is indicated in **bold/underlined** and deletions are marked with strikethrough. Additions in ***bold/italics*** are those amendments voted by the IMCO Committee that the Presidency deems acceptable. Square brackets [] indicate areas where uncertainties remain.

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**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission⁵,

Having regard to the opinion of the European Economic and Social Committee⁶,

Having regard to the opinion of the Committee of the Regions⁷,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁸,

Whereas:

- (1) The Treaty provides for the establishment of an internal market, including the abolition between Member States of obstacles to freedom of movement for goods and services, and the institution of a system ensuring that competition in the common market is not distorted.
- (2) The Treaty provisions establishing the internal market apply to all goods and services provided against remuneration including defence-related products but do not preclude Member States under certain conditions from taking other measures in individual cases where they consider it necessary to protect essential interests of their security.

⁵ OJ C , , p. .

⁶ OJ C , , p. .

⁷ OJ C , , p. .

⁸ OJ C , , p. .

- (3) The laws, regulations and administrative measures in Member States concerning the transfer of defence-related products within the Community contain disparities, which may impede the free movement of defence-related products and may distort competition within the internal market, *hampering innovation, industrial cooperation and the competitiveness of the defence industry market in the European Union.*
- (4) The objectives pursued generally by the laws and regulations of Member States include the preservation of human rights, peace, security and stability through systems of strict control and restriction of exportation and proliferation of defence-related products to third countries as well as to other Member States.
- (5) Such restrictions on the movement of defence-related products within the Community cannot be abolished generally through direct application of the principles of free movement of goods and services provided by the Treaty as those restrictions may be justified on a case by case basis in accordance with Articles 30 or 296 of the Treaty, **which continue to be applicable by Member States provided their conditions are met.**
- (6) Those laws and regulations of Member States therefore need to be harmonised in such a way as to simplify the intra-community transfer of defence-related products in order to ensure proper functioning of the internal market. **The directive only deals with rules and procedures as far as defence-related products are concerned, and does not consequently affect transfer policies of Member States, such as the determination of the type of licence for every defence-related product.**
- (7) Harmonisation of those laws and regulations of Member States should not give prejudice to *international obligations and commitments* of Member States ~~under relevant international non-proliferation regimes, to export control arrangements, to treaties or to discretion of Member States on export policy~~ **of defence-related products.**
- (7a) The directive should not harmonise national regulations on export of defence-related products to third countries.**

- (8) This directive should not apply to defence-related products which only pass through the territory of the Community, that is 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.
- (9) This directive should cover all the defence-related products which correspond to those listed in the Common Military List of the European Union⁹ including ~~sub-systems, components, spare parts,~~ **and technologies** ~~transfer, maintenance and repair.~~
- ~~(10) In order to deal with similar risks associated with the transfer of defence-related products which are not listed in the Annex to this directive, Member States should be able to apply this directive to those defence-related products and thus make transfer of those defence-related products subject to the same rules.~~
- (11) The objectives of preservation of human rights, peace, security and stability pursued generally by Member States laws and regulations restricting the transfer of defence-related products require that the transfer of those products within the Community remains subject to authorisation by originating Member States and guarantees in the receiving Member States.
- (12) In view of the safeguards provided in this directive for the protection of those objectives Member States would no longer need to introduce or maintain other restrictions for the achievement of those objectives, **subject to articles 30 and 296 of the treaty.**
- (13) This directive should not give prejudice to the application of provisions necessary for the protection of **public policy or public security, such as** the safety of transport.

⁹ OJ L 88, 29.3.2007, p. 58.

(13a) This directive is without prejudice to the application of Council directive 91/477/EEC on control of the acquisition and possession of weapons¹⁰, in particular its Articles 11 to 14. This directive is without prejudice to the application of Council directive 93/15/EEC¹¹ on the harmonisation of the provisions relating to the placing on the market and supervision of explosives for civil uses, in particular its Article 10.

(14) Any transfer of defence-related products within the European Community should be subject to prior authorisation through general, global or individual transfer licences granted or published by the Member State where the supplier is established and **from which territory the supplier wishes to transfer defence-related products.** ~~In line with the principles constituting the internal market the authorisation should be valid throughout the Community and no further authorisations for the transit through other Member States or for import in other Member States should be necessary.~~

(14a) Member States should be free to deny or grant authorisation. In line with the principles constituting the internal market the authorisation should be valid throughout the Community and no further authorisations for the ~~transit~~ **passage** through other Member States or for ~~import in~~ **the entrance on the territory of** other Member States should be necessary.

(15) Member States should determine **which is** the type of licence for defence-related products or categories of defence-related products **suitable for each type of transfer and which** terms and conditions **need to be attached to** each of the transfer licences, taking into account the sensitivity of the transfer.

(16) As regards ~~sub-systems and~~ components, Member States should refrain from export limitations as far as possible by accepting recipients declaration of use taking into account the degree of integration of such ~~sub-systems and~~ components into the recipient's own products.

¹⁰ **As last amended by directive 2008/51/EC of the European Parliament and of the Council of 21 May 2008, OJ L 256, 13.9.1991, p. 51 and OJ L 179, 8.7.2008, p. 5.**

¹¹ **OJ L 121, 15.5.1993, p. 20-36.**

(16a) Member States should determine the recipients of transfer licences in a non-discriminatory way unless necessary to protect their essential security interests.

- (17) In order to facilitate transfers of defence-related products, general licences should be published by Member States' regulation providing authorisation to transfer defence-related products to any company fulfilling the terms and conditions defined in each general licence.
- (18) A general licence should be published for transfers of defence-related products to armed forces in order to greatly increase security of supply for all Member States which choose to procure within the Community.
- (19) A general licence should be published for transfers of ~~sub-systems and~~ components to certified European defence companies in order to foster cooperation between and integration of those companies, in particular by facilitating optimisation of supply chains and economies of scale.
- (20) Member States participating in a cooperation programme may publish a general licence for transfers of defence-related products to recipients in other participating Member States necessary for the execution of that cooperation programme. That would improve conditions for the participation in cooperation programmes by companies established in the participating Member States.
- (21) Member States should be able to publish further general licences for the cases where the risks for the preservation of human rights, peace, security and stability ~~are~~ *is very* low in view of the nature of the products and the recipients.
- (22) In cases where general licence cannot be published, Member States should grant global licences on request to individual companies, except in cases where the request is limited to one transfer or where the nature of the product and the recipient justify the granting of an individual licence in view of the protection of their essential security interests or compliance with relevant international **obligations and commitments of Member States** ~~non-proliferation regimes, export control arrangements or treaties.~~ **Member States may grant renewable global licences.**

- (23) Companies should inform the competent authorities of the use of general licences in view of the preservation of human rights, peace, security and stability as well as to allow transparent reporting of transfers of defence-related products in view of democratic control.
- (24) Degree of latitude of Member States in determining terms and conditions of general, global and individual transfer licences should be flexible enough to allow ongoing cooperation under the existing international framework on export control. As the decision to authorise or deny an export is and should remain at the discretion of each Member State, such cooperation should only stem from the voluntary coordination of export policies.
- (25) ~~For the application of this directive,~~ Member States should remain entitled to pursue and further develop their ~~current~~ intergovernmental cooperation as ~~implemented~~ *inter alia* in the Letter of Intent, **whilst respecting the provisions of this directive.**
- (26) In order to compensate for the progressive substitution of general ex-post control for individual ex-ante control in the Member State of origin of the defence-related products, conditions for mutual confidence and trust should be created by the inclusion of guarantees which ensure that defence-related products are not exported in violation of export limitations to third countries. *This principle should also be observed in instances where defence-related products are transferred several times between Member States before being exported to a third country.*
- (27) Member States cooperate in the framework of the European Union Code of Conduct on Arms Exports, adopted by the Council on 8 June 1998, through voluntary application of common criteria as well as denial notification and consultation mechanisms in view of increasing convergence in the application of their export policies of defence-related products to third countries.
- (28) Suppliers should inform recipient of any limitations attached to the transfer licences in order to allow the building of mutual trust in the ability of the recipients to respect such limitations after the transfer, in particular in the case of a request for export to third countries.

- (29) It should be for the companies to decide whether the benefits flowing from the possibility to receive defence-related products under a general transfer licence justify the request for certification. Transfers within a group of companies should benefit from a general transfer licence in cases where the members of the group are certified in their respective Member States of establishment.
- (30) Common criteria for certification are necessary in order to allow the building of mutual trust, in particular in the ability of the recipients to respect export limitations of defence-related products received under a transfer licence from another Member State.
- (31) In order to facilitate mutual confidence, recipients of transferred defence-related products should refrain from the export of those products where the transfer licence contains export limitations.
- (32) Companies should declare to their competent authorities, at the time of requesting an export licence to third countries, whether they have abided by any export limitations attached to the transfer of the defence-related product by the Member State which issued that transfer licence.
- (33) Companies should furnish proof of the export licence at the common external frontier of the Community to the competent customs authority at the moment of export to a third country of a defence-related product received under a transfer licence.
- (34) The list in the Annex of defence-related products should be updated in **strict** conformity with the Common Military List of the European Union (CML).
- (35) It is necessary for the progressive building of mutual trust and confidence that Member States determine effective measures, **including penalties**, sufficient to ensure enforcement of the provisions of this directive and in particular those providing that companies respect the common criteria of certification and limitations of further use of transferred defence-related products following a transfer.

- (36) In cases where a Member State of origin has reasonable doubt whether a certified recipient would respect any condition attached to its general transfer licence **or if a licensing Member State considers that public policy, public security or its essential security interests could be affected**, it should not only inform the other Member States and the Commission, but also be able to provisionally suspend the effect of its transfer licences to such company having regard to its responsibility for the preservation of human rights, peace, security and stability.
- (37) To foster mutual trust, the application of the laws regulations and administrative provisions adopted to ensure compliance with this directive should be deferred. That would allow, before application of those provisions, to evaluate the progress made on the basis of a report prepared by the Commission which is based on the information submitted by the Member States on the measures taken.
- (38) The Commission should publish regularly a report on the implementation of this directive which may be accompanied by legislative proposals, where appropriate.
- (39) Since the objectives of the action to be taken, namely the achievement of the internal market through the introduction of a compulsory licensing system for defence-related products, cannot be sufficiently achieved by the Member States in view of the divergence of present licensing procedures and of the cross-border nature of transfers and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this directive does not go beyond what is necessary in order to achieve those objectives.
- (40) The measures necessary for the implementation of this directive should be adopted in accordance Council decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers of the Commission¹².

¹² OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

(41) In particular power should be conferred on the Commission to amend the Annex. Since those measures are of general scope and are designed to amend non-essential elements of this directive, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

(42) In accordance with point 34 of the Interinstitutional Agreement on better law-making¹³, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables which will, as far as possible, illustrate the correlation between this directive and the transposition measures, and to make them public.

¹³ **OJ C 321, 31.12.2003, p. 1.**

HAVE ADOPTED THIS DIRECTIVE:

Chapter I
Subject matter, scope and definitions

Article 1

Subject matter

1. **The aim of this directive is to simplify rules and procedures ~~on~~ **applicable to the intra-Community** transfer of defence-related products ~~within~~ **in order to ensure proper functioning of** the internal market.**
2. This directive does not affect the ~~export policies~~ *discretion* of Member States *as regards policy on the export of defence-related products*.
3. **This directive shall apply, subject to Articles 30 and 296 of the Treaty.**
4. **This directive does not affect the possibility for Member States to pursue and further develop intergovernmental cooperations, whilst respecting the provisions of this directive.**

Article 2

Scope

1. This directive applies to defence-related products **as listed in the Annex**.
2. ~~Member States may apply the provisions of this directive mutatis mutandis to defence-related products other than those included in the Annex, but whose transfer within the Community poses similar risks to the preservation of human rights, peace, security and stability.~~
3. ~~When a Member State makes use of the possibility set out in paragraph 2, it shall publish a list of those products and inform the Commission and the other Member States thereof.~~

Article 3
Definitions

For the purposes of the present directive, the following definitions shall apply:

- (1) “defence-related product” means any product ~~specifically designed for military use~~ ~~and~~ listed in the Annex;
- (2) “transfer” means any transmission **or movement** of a defence-related product **from a supplier** to a recipient in another Member State ~~in the context of a commercial transaction~~;
- (3) “supplier” means the legal or natural person established within the Community who is legally responsible for a transfer;
- (4) “recipient” means the legal or natural person established within the Community who is legally responsible for a receipt of a transfer in another Member State;
- (5) “transfer licence” means an authorisation by a national authority of a Member State for suppliers to transfer defence-related products to a recipient in another Member State;
- (6) “export licence” means an authorisation to supply defence-related products to a recipient **legal or natural person** in any third country.
- (7) **“passage through” 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.**

Chapter II
Transfer licences

Article 4
General provisions

1. The transfer of defence-related products between Member States shall be subject to prior authorisation ~~except where applicable national law or regulation provides that no such authorisation is required~~. No further authorisation by other Member States shall be required for the ~~passage~~ transit through Member States or for the import in the entrance on the territory of the Member State where the recipient is located other Member States of defence-related products without prejudice to the application of provisions necessary for the protection of public order ~~order~~ policy or public security such as, inter alia, the safety of transport.
- 1a. Notwithstanding paragraph 1, 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 European Union, NATO or IAEA 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 ~~first~~ 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.

1b. On a request by a Member State or on its own initiative, the Commission may amend paragraph 1a in order to include cases:

- a) where the transfer takes place under such conditions as not to affect public policy or public security, or**
- b) where the obligation of prior authorisation has become incompatible with international commitments of the Member States subsequent to the adoption of this directive, or**
- c) where it is necessary for intergovernmental cooperations as referred to in Article 1(4).**

Those measures, designed to amend non-essential elements of this directive by supplementing it, shall be adopted in accordance with regulatory procedure with scrutiny referred to in Article 14(3).

- 2. Member States shall ~~grant~~ **ensure that** suppliers established on their respective territories **wishing to transfer defence-related products from their respective territories may use general transfer licences, or apply for** global or individual transfer licences **according to Articles 5, 6 and 7.**
- 3. Member States shall ~~choose~~ **determine** the type **of** licence for defence-related products or categories of defence-related products concerned according to the provisions of this Article and Articles 5, 6 and 7.
- 4. Member States shall determine **all** the terms and conditions of transfer licences, ~~in particular~~ **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, whilst observing Community law, avail themselves of the possibility to request end-use assurances.**
- 4a. ~~Member States may pursue and extend existing intergovernmental cooperation in order to achieve the objectives of this directive.~~

5. Member States shall determine the terms and conditions of transfer licences for ~~sub-systems and~~ components on the basis of an assessment of the sensitivity of the transfer according **inter alia** to the following criteria:
- (a) the nature of the ~~sub-systems and~~ components in relation to the products in which they are to be incorporated and in relation to any end-use of the finished products which might give rise to concern;
 - (b) the significance of the ~~sub-systems and~~ components in relation to the products into which they are incorporated.
6. Except where Member States consider that the transfer of ~~sub-systems or~~ components is sensitive, Member States shall refrain from imposing any export limitations for such ~~sub-systems or~~ components if the recipient provides a declaration of use by which it declares that the ~~sub-systems or~~ components subject to that transfer licence are integrated **or to be integrated** into its own products and therefore cannot be at a later stage transferred or exported as such.
7. Member States may ~~revoke~~ **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.**
8. ~~Member States shall determine the recipients of transfer licences in a non-discriminatory way unless necessary to protect their essential security interests.~~

Article 5
General transfer licences

1. Member States shall publish general transfer licences directly granting authorisation to suppliers, established on their respective territories, who fulfil the terms and conditions attached to the licence, to perform ~~several~~ transfers of ~~several~~ defence-related products **to be specified in the licence** to a category or categories of recipients located in another Member State.

- 1a. General transfer licences shall be published at least in the following cases :**
 - (a) 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 ;**
 - (b) 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.**

2. Member States participating in an intergovernmental cooperation programme between Member States concerning the development, production and use of one or more defence-related products may publish a general transfer licence for transfers to other Member States which participate in that programme which are necessary for the execution of that programme.

- 3. Member States may lay down ~~define~~ the conditions of for registration before the prior to first use of a general transfer licence without prejudice to other provisions of this directive.**

Article 6
Global transfer licences

1. Member States shall **decide to** grant global transfer licences to an individual supplier, on its request, authorising ~~one or several~~ transfers of ~~one or several~~ defence-related products to ~~one or several~~ recipients in **one or several other** Member States.

2. Member States shall determine in each global transfer licence the defence-related products or categories of products covered by the global transfer licence, the authorised recipients or category of recipients, ~~and the duration of the licence.~~

A global transfer licence shall be valid for a period of ~~at least~~ three years, **which Member States may renew.**

Article 7
Individual transfer licences

Member States shall **decide to** grant individual transfer licences 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 ~~only in either~~ **in one or more of the following cases** :

- (a) where the request for a licence is limited to one transfer;
- (b) where it is necessary for the protection of its essential security interests, **or for the protection of public policy;**
- (c) where it is necessary for compliance with **international** obligations and commitments of Member States ~~under the relevant international non-proliferation regimes, export control arrangements or treaties;~~
- (d) **where a Member State has reasonable doubt whether the supplier would be able to comply with all the terms and conditions necessary to grant him a global licence.**

Chapter III
Information, certification and exportation after transfer

Article 8
Information by suppliers

1. Member States shall ensure that suppliers of defence-related products inform recipients of the terms and conditions of the transfer licence relating to the **end-use or** export of the defence-related products.

2. Member States shall ensure that suppliers ~~notify~~ **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.**

3. Member States shall ensure ***and regularly check*** that suppliers keep detailed ***and complete*** records of their transfers, in accordance with the ~~practice~~ **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 the following information:
 - (a) the description of the defence-related product **and its reference according to the list in Annex** ;
 - (b) the quantity **and value** of the defence-related product and the dates of transfer;
 - (c) the name and address of the supplier and of the recipient ;
 - (d) where known, the end-use and end-user of the defence-related product;
 - (e) proof that the information on an export limitation attached to a transfer licence has been transmitted to a **the** recipient of **those** defence-related products.

4. The records referred to in paragraph 3 shall be kept for at least three years from the end of the calendar year in which the transfer took place. They shall be provided on request of the competent authorities of the Member State **from** which **territory** the supplier is established **transferred the defence-related products.**

Article 9

Certification

1. Member States shall designate competent authorities to carry out the certification of recipients, established on their respective territories, **of defence-related products under licences published by other Member States according to Article 5 paragraph 1a (b).**
2. The certification shall establish **the reliability of a recipient company** in particular **as regards its** capacity of a recipient to observe export limitations of defence-related products received under a transfer licence from another Member State, **which shall be assessed** according to the following criteria:
 - (a) proven experience ~~and reputation~~ in defence activities, **taking** in particular **by into account the record of compliance with export restrictions, any court decisions on this matter, the** authorisation to produce ~~and~~ **or** commercialise defence-related products and ~~by~~ **the** employment of experienced management staff;
 - (b) relevant industrial activity in defence-related products within the Community, in particular capacity of system/sub-system integration;
 - (c) the appointment of a senior executive as the dedicated officer personally responsible for transfers and exports ;
 - (d) a written commitment of the company, signed by the senior executive referred to in point c), that his company will take all the necessary steps to observe and enforce all specific conditions related to end-use and export of any specific received component or product

- (e) a written commitment of the company, signed by the senior executive referred to in point c), to provide to the competent authorities with due diligence 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 by the company ;
- (f) a description, countersigned by the senior executive referred to in point (c), of the internal compliance programme, or the **transfer and export** management system, implemented in the company.
- (g)** The description referred to in point (f) of the **second** ~~first sub~~ paragraph shall provide details of the organisational, human and technical resources allocated to the management of transfers and exports, the chain of responsibility in the company's structure, internal audit procedures, awareness-raising and staff training, physical and technical security arrangements, record-keeping and traceability of the transfers and exports.

3. Certificates shall contain the following information:

- (a) the competent authority issuing the certificate;
- (b) the name and address of the recipient;
- (c) a statement of the conformity of the recipient with the criteria referred to in paragraph 2;
- (d) the date of issue and the period of validity of the certificate.

For the purposes of point (d), the duration of the certificate shall in any case not exceed 5 years.

4. Certificates may contain further conditions relating to the following:
 - (a) the provision of information required for the verification of compliance with the common criteria;
 - (b) the suspension or revocation of the certificate.
5. Competent authorities shall regularly monitor compliance of the recipient with the criteria referred to in paragraph 2, and with any condition attached to the certificates referred to in paragraph 4.
6. Member States shall recognise any certificates issued **according to this directive** in another Member State.
7. If a competent authority finds that the holder of a certificate established on the territory of the respective Member State no longer satisfies the criteria referred to in paragraph 2 and any conditions referred to in paragraph 4, it shall take appropriate measures. Such measures may include revocation of the certificate. The competent authority shall inform the Commission and the other Member States of its decision.
8. Member States shall publish and **regularly** update ~~regularly~~ a list of certified recipients and inform the Commission, ***the European Parliament*** and the other Member States thereof.

The Commission shall make publicly available ***a central register of recipients certified by Member States on its website*** ~~this information on its Web-site.~~

Article 10

Export limitations

1. Member States shall ensure that recipients of defence-related products, when applying for an export licence, ~~confirm to~~ **inform their** competent authorities, in cases where such products received under a transfer licence from another Member State have export limitations attached to them, that they have respected the terms of those limitations.
2. ~~Where consent from the originating Member State for the contemplated export is required but has not been obtained, Member States shall consult the originating Member State.~~

Chapter IV

Customs and administrative cooperation

Article 11

Customs ~~cooperation~~ procedures

1. Member States shall ensure that, when completing the formalities for the export of defence-related products at the customs office responsible for handling the export declaration, the exporter shall furnish proof that any necessary export licence has been obtained.
2. Without prejudice to Council Regulation (EC) no 2913/92¹⁴, a Member State may also, for a period not exceeding 30 **working** days, suspend the process of export from its territory ~~, or, if necessary, otherwise prevent of~~ the defence related products received from another Member State under a transfer licence and incorporated in another defence related product **or, if necessary, otherwise prevent them** from leaving the Community from its territory, where it considers that:

¹⁴ OJ L 302, 19.10.1992, p. 1.

- (a) relevant information ~~on limitations of export to third countries concerning the defence related products included in the transfer licence~~, was not taken into account when the export licence was granted **or**;
 - (b) circumstances have materially changed since the grant of the export licence.
3. Member States may provide that customs formalities for the export of defence-related products may be completed only at certain customs offices.
4. Member States availing themselves of the option set out in paragraph 3 shall inform the Commission of the empowered customs offices. The Commission shall publish that information in the C series of the Official Journal of the European Union.

Article 12

Exchange of information

Acting in liaison with the Commission, Member States shall take all appropriate measures to establish direct cooperation and exchange of information between **their national** competent authorities.

Chapter V

Updating of List of defence-related products

Final provisions

Article 13

Adaptation of the Annex

1. The Commission shall update the list of defence-related products set out in the Annex ~~in conformity with~~, **so that it strictly corresponds to** the Common Military List of the European Union.

2. ~~Those m~~ **Measures pursuant to paragraph 1** designed to amend non-essential elements of ~~this directive~~ shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14(2).

Article 14

Committee

1. The Commission shall be assisted by a committee.
2. Where reference is made to this paragraph, Articles 5 ~~a(1) to (4)~~, and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
- 3. Where reference is made to this paragraph, Articles 5 a(1) to (4), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.**

Chapter VI

Final provisions

Article 15

Safeguard measures

1. 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 ~~evaluation~~ **verification** of the situation.
2. In case the doubts **mentioned in paragraph 1** continue to persist, the Member State may provisionally suspend the effect of its general transfer licence with regard to such companies. It shall inform the other Member States and the Commission of the reasons for the safeguard measure. The Member State which issued the safeguard measure may decide to lift the safeguard measure if it considers that it is not longer justified.

Article 15a

Penalties

The Member States shall lay down rules on penalties applicable to infringements of the provisions adopted for the implementation of this Directive, in particular in the event that false or incomplete information, required under Article 10, paragraph 1, is provided as regards the respect of export limitations attached to a transfer licence. The Member States shall take all measures necessary to ensure that those rules are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

Article 16

Review and Reporting

1. The Commission shall report on such measures taken by Member States in view of the transposition of this directive, and in particular of Articles 9-12, 15 thereof, by [12 months of the date of transposition of the directive].
2. The Commission shall *review the ~~functioning~~ implementation of this Directive and*, beginning not later than [5 years after the date of entry into force of this directive], submit ~~regularly~~ a report to the European Parliament and the Council *by [5 years after the date of transposition]. It shall evaluate in particular whether, and to what extent, the purposes of this Directive have been achieved, with regard to inter alia the functioning of the Internal Market. In its report, the Commission shall review the application of Articles 9 to 12 and 15 of this Directive and shall evaluate the ~~on the implementation of the directive~~ and its impact on *the* developments of ~~the~~ a European defence equipment market and ~~the~~ a European defence technological and industrial base, *having regard inter alia to the situation of small and medium-sized enterprises. If necessary, that report shall be accompanied by a legislative proposal, where appropriate.**

Article 17
Transposition

1. Member States shall adopt and publish, by [*date of entry into force* + ~~18~~ **24** *months*] at the latest, the laws, regulations and administrative provisions necessary to comply with this directive. They shall forthwith communicate to the Commission the text of those provisions ~~and a correlation table between those provisions and this directive.~~

They shall apply those provisions from [*date of entry into force* + *36 months*].

When Member States adopt those provisions, they shall contain a reference to this directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this directive.

Article 18
Entry into force

This directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 19
Addressees

This directive is addressed to the Member States.

Done at Brussels, [...]

For the European Parliament
The President

For the Council
The President

see Commission proposal