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PROPOSAL

from:	Commission
dated:	10 December 2007
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

Delegations will find attached a proposal from the Commission, submitted under a covering letter from Mr Jordi AYET PUIGARNAU, Director, to Mr Javier SOLANA, Secretary-General/High Representative.

Encl.: COM(2007) 765 final

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 5.12.2007
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2007/0279 (COD)

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

(presented by the Commission)

{SEC(2007) 1593}
{SEC(2007) 1574}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. Grounds for and objectives of the proposal

In all Member States, the export of defence related products (including comprehensive military equipments as well as sub-systems, components, spare parts, technologies …) is subject to national licensing schemes. The European defence market is consequently fragmented into 27 national licensing regimes which diverge widely in terms of procedure, scope and required delays, despite coordinating efforts between a limited number of Member States.

This patchwork of licensing schemes not only imposes a significant administrative burden on companies, but also induces significant lead times – up to several months. These burdens nowadays clearly appear to be out of proportion with actual control needs: license applications for intra-Community transfers are indeed hardly ever rejected.

Furthermore, defence industries and EU governments cannot fully rely on their supply chains because of the legal uncertainty resulting from the need for individual authorisation of transfers.

These 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.

The objective of this proposal is to reduce these obstacles to the circulation of defence-related goods and services (products) within the Internal Market, and to diminish the resulting distortions of competition, by simplifying and harmonizing licensing conditions and procedures. In view of the specific features of the defence market and the need to protect national security, it is not proposed to abolish licensing requirements but rather to replace them by a streamlined system of general or global licenses, to which individual licensing would remain the exception. Such system would provide guarantees as to the reliability of the recipient to respect restrictions prescribed by the Member State of origin. This would make an important contribution to:

- strengthening the European defence industry's competitiveness, by facilitating its specialisation and by favouring industrial cooperation throughout the EU;

- improving security of supply of European defence products (purchases and maintenance) for Member States.

1.2. General context

Groups of Member States, and the European Union, have tried to address these issues by the following *ad ho*c or partial arrangements:

– Defence ministers of six Member States signed in 1998 a Letter of Intent (LoI, followed up by the Farnborough Agreement in 2000), which aimed i.a. at facilitating the restructuring of the European defence industry via *inter alia* common measures with regard to export

procedures. The agreement committed the signatory nations to applying simplified export procedures to transfers. No further Member State has subsequently joined the LoI.

– In the framework of the Common Foreign and Security Policy, the Council adopted in 1998 a Code of Conduct on Arms Exports in order to strengthen cooperation between Member States and to promote convergence with regard to exports of conventional weapons. Furthermore, the Council is preparing to adopt the updated Code as a common position based on Article 15 of the EU Treaty.

– Recently, the Member States created a European Defence Agency whose goals include the "support to the creation in liaison with Commission, as appropriate, of an internationally competitive European Defence Equipment market, providing further impulse and input to the development and harmonisation of rules and regulations affecting the European defence market, particularly by an EU wide application of rule and procedures adapted from those negotiated in the Letter of Intent (LoI) Framework Agreement process".

The Agency's Steering Board adopted a regime for a Code of Conduct applicable from July 2006 on defence procurement under situations covered by Article 296 TEC. This Code of Conduct encourages *inter alia* subscribing Member States to simplify intra-Community transfers and transits of defence goods and technologies.

Following 50 years of European integration, the Commission proposal recognises that, provided certain conditions are met, intra-community transfers no longer pose the same threat to national security as exports to a third country or a region in crisis. Presently, transfers within the EU are processed in a similar way as exports to third countries, effectively assimilating Member States to third countries. By dealing with the risk of undesired re-export in a clear manner, the EC proposal aims at reinforcing mutual trust, and so paves the way for simplified transfers within the EU.

According to a study carried out for the European Commission in 2005 entitled "*Intra-Community Transfers of Defence Products*"[1], the direct[2] and indirect[3] cost of obstacles to intra-community transfers amount to € 3.16 billion/year. The processing of licences has a direct cost of € 434 million/year while indirect costs have been estimated at € 2,73 billion/year. Although it is very difficult to assess benefits stemming from smoother industrial cooperation and from greater security of supply for Member States, it is widely acknowledged that industrial cooperation is hampered by the existence of separate national licensing regimes. Pan-European defence companies also face difficulties in cross-border cooperation between different plants because of diverging licensing regimes.

The proposal follows the line proposed by the Commission in its 2003 Communication on industrial and market issues "Towards an EU Defence Equipment Policy"[4].

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1 http://ec.europa.eu/enterprise/regulation/inst_sp/defense_en.htm

2 Structural and procedural costs related to the execution of the licensing processes itself: Cost for preparing, submitting, and managing the 11 400 annual licence requests for intra-Community transfers

3 Opportunity cost (other than direct costs) linked to the maintenance of barriers to intra-community transfers.

4 COM(2003) 113, 11.3.2003.

1.3. Existing provisions in the area of the proposal

The Community has not yet adopted secondary legislation in the area of the proposal.

1.4. Consistency with the other policies of the Union and international cooperation

This proposal belongs to a defence package consisting of: an umbrella communication and two legislative initiatives, on public procurement and on transfers of defence-related products respectively.

– Facilitating transfers will complement the proposal on defence procurement: indeed, open defence markets presuppose a reasonable expectation from the buyer that ordered products will be delivered without undue administrative obstacles. Furthermore, although licences are hardly ever refused, the "theoretical" possibility that such refusal may take place is an incentive for Member States to prefer sourcing military equipment from a national producer rather than from (possibly more advantageous) European competitors. Facilitating intra-community transfers contributes to making the defence procurement directive more effective and help to enhance the openness of defence markets of Member States.

– Common Foreign Security Policy (CFSP): Whilst having as primary objective the completion of Internal Market for defence products, the initiative will also contribute to achieving CFSP objectives, such as improving the security of supply of Member States armed forces, as well as industrial policy objectives, such as the promotion of a strong European Defence Technological and Industrial Base (EDTIB). Improved industrial cooperation should generate economies of scale (and therefore lead to more "value for money" defence equipment), thus allowing Member State armed forces to maximise the effectiveness of their defence equipment investments.

– Lisbon agenda: the latter consideration links up to the Lisbon objectives such as strengthening the international competitiveness of European (defence) industries and secure employment in Europe.

– LoI: The proposal is compatible and complementary to ongoing work in LoI. It will indeed provide the necessary common tools that could subsequently be further developed on an inter-governmental basis.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

2.1. Consultation of interested parties

Consultation methods, main sectors targeted and general profile of respondents:

From March 2006 to September 2006, the Commission organised a public consultation. This was followed between September 2006 and July 2007 by three rounds of workshops with industry and Member States. Throughout the preparatory phase, the Commission services had close contacts with a variety of stakeholders: industry representative bodies (notably the Aerospace and Defence Association - ASD), non-governmental organisations, local authorities and company representatives.

Throughout the consultation process a page on the DG ENTR website has been regularly updated providing all the relevant documents.

Summary of responses and how they have been taken into account:

An open consultation was conducted over the internet from 21 April 2006 to 15 September 2006. The Commission received 25 responses. The results of this consultation are available on the Europa web site: http://ec.europa.eu/enterprise/regulation/inst_sp/defense_en.htm

2.2. Collection and use of expertise

Scientific/expertise domains concerned:

The necessary expertise on transfers of defence products has been fully assured during the process of consulting and assessing the views of stakeholders.

Methodology used:

The consultants who made the initial study, and provided elements for the Impact Assessment Study, worked in close collaboration with experts in export control from industry and national administrations. They also regularly conferred with experts from the ASD and academics. Furthermore, the Commission services frequently requested the opinion of experts from industry and from the Member States on specific matters.

Main organisations/experts consulted:

Defence industries represented in ASD, individual companies, academics, national competent authorities.

Summary of advice received and used:

Initial comments from the industry and from Member States pointed to the following principal options:

– relinquish the option of a central computerized traceability system;

– take the Council's Common Military List (CML) as the scope of the directive;

– retain the requirement of national licensing: promoting a licence-free zone in the EU would go beyond what is achievable in the present context (no common foreign policy and incomplete political integration). However, the Commission was advised that it could help in promoting a simplified and harmonised licensing system;

– promote the certification of companies receiving defence related products as a means to assure Member States of the reliability of the company as regards the respect of export limitations after the transfer.

Means used to make the expert advice publicly available:

Opinions collected from industrial and Member State experts were made available on the Europa web site: http://ec.europa.eu/enterprise/regulation/inst_sp/defense_en.htm

2.3. Impact assessment

The Commission carried out an impact assessment to back up this proposal. The report is accessible on the Europa website:
http://ec.europa.eu/enterprise/regulation/inst_sp/defense_en.htm

The impact assessment examined two possible options: no policy change, or a legislative initiative. Consideration of a third possibility, non-legislative action, quickly showed that its likely effects on national "hard-law" licensing regimes would be insignificant. Such an option would not substantially differ from current national practices and was therefore assimilated into the option “no policy change”.

"No policy change" would involve relying on possible intergovernmental arrangements to lighten the administrative burden of extensive licensing. However, past intergovernmental agreements have shown little success, and their restriction to only few Member States could potentially undermine the twofold objective of fostering security of supply for all Member States and exploiting the full range of Europe's competencies and niche capabilities, in particular those competencies that are to be found in the new Member States.

Within the broad range of possibilities of legislative action, the option of creating a licence-free zone and managing the issuing of intra-community transfer licences at EU level was considered, but was finally discarded because of the current lack of a common foreign policy and insufficient political integration between Member States.

The other examined legislative option was to simplify and approximate national licensing schemes and regulatory practices through the progressive development of general and global licences, on the one hand, and security and confidence-building measures such as certification of defence companies and guarantees as to the respect by companies of export limitations, on the other.

Bearing in mind that simplification could make progress only if strong security guarantees were provided, the impact analysis suggested that the best combination would be:

– to provide for global and general national licensing in order to best address the variety of transfers and the differing sensitivities of defence products;

– to promote general licensing in cases where security concerns (in particular as regards the prevention of undesired re-export) were under control: transfers to EU governments, transfers to certified companies and where appropriate transfers relating to intergovernmental cooperation programmes.

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. Summary of the proposed action

This proposal aims at simplifying and harmonising transfers of defence products within the EU. The approach is twofold:

– concerning simplification, the proposal requires Member States to grant general and global licences for intra-EU transfers and individual licensing should be kept for exceptional circumstances;

– concerning 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; transfers to recipients in other Member States certified in accordance with the common criteria in the directive. Furthermore, Member States are required to determine for each licence the terms and conditions of its use, in particular as regards the defence related products covered and their possible uses as well as reporting obligations of companies using the licences.

In order to accompany the progressive development of general and global licences with guarantees for the protection of national security, the proposal includes two elements to foster confidence between Member States, in particular as regards the respect by companies of export limitations attached to transfers by the originating Member State:

– Member States would have 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.

This proposal should also be seen as a contribution to achieve greater openness of defence markets between Member States. The use of general licences for defence related products procured from suppliers established in another Member State will greatly improve security of supply in a EU-wide supply base.

3.2. Legal basis

Article 95 of the EC Treaty.

3.3. Subsidiarity principle

As explained in the interpretative communication adopted by the Commission in the public procurement context[5], Treaty provisions on free movement of goods apply in full to these products. The Community has thus an exclusive competence for the organisation of the conditions for free circulation by harmonising the conditions of licensing for the transfer of defence-related products within the European Community. In particular as regards the creation of mutual confidence, it is necessary to provide the authorities of the country of origin with guarantees as to the respect of export limitations by the destination companies. By common measures designed to ensure the respect of export limitations by companies, administrative cooperation and control at external frontiers, the proposal will provide a significant added value. In addition to administrative cooperation, it is likely to increase the level of mutual confidence among Member States, which is a prerequisite in defence and security matters.

As previous experience suggests, action led solely at Member State level is unlikely to provide a level playing field in a timely manner. Some Member States have taken actions to facilitate the circulation of defence products and intergovernmental cooperation work is ongoing in the LoI framework between the six major defence producing Member States. However, the benefits of purely national initiatives have been reserved to exporting

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[5] Interpretative Communication on the application of Article 296 of the Treaty in the area of defence procurement - COM(2006) 779, 7.12.2006.

companies in the Member States concerned and they have not been able to address the problems of these companies to improve the security of cross-frontier supply with components. A simple extension of such agreements to further Member States might face substantial difficulties.

At the same time, the degree of intervention of the Community does not exceed what is necessary to achieve the Community objectives. As long as the proposed measures secure mutual confidence between Member States, there is no need for centralised decisions on licensing of products or for further harmonisation of common external policies. Subsidiarity is safeguarded by the respect of policy decisions by Member States in the framework of their defence and foreign policies and their coordination within the CFSP.

3.4. Proportionality principle

The proposal complies with the proportionality principle for the following reasons:

The proposal will reduce work for national authorities and industry by substituting general and global for individual licences as far as possible. While it will require the establishment of certification procedures in all Member States, most large companies in the defence sector are to a large extent already scrutinized by national governments in view of the sensitivity of the sector - for example, through compliance programmes or similar supervision. Normal monitoring activities of national authorities will continue.

3.5. Choice of instruments

The proposed instrument is a directive.

Other means would not be adequate for the following reasons:

Member States are primarily responsible for the simplification of licensing. In providing Member States a larger leeway as to the best way to set up global and general licensing, a directive also better takes into account the specificities and the acute sensitivity of defence matters. A directive is therefore the best-suited instrument.

4. BUDGETARY IMPLICATION

The proposal has implications for the Community budget flowing from the following new tasks:

- to cooperate in Council work in view of the update the Annex of the Common Military List;
- to report on the measures taken by Member States to implement the provisions of this directive;
- to report 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;
- to organise the work of the Cooperation group (below);

– to monitor of the compliance of procedures and methods of cooperation between Member States and use its powers if necessary.

The abovementioned tasks could require additional staff and technical assistance as detailed in the financial sheet annexed to the proposal for a directive.

The Commission envisages the creation of a Cooperation group composed of Member States representatives and chaired by a representative of the Commission. The tasks of the group will be to examine any issue concerning the application of this directive which may be raised either by the chairman or by a representative of a Member State and, inter alia to evaluate:

– implementing measures in each Member State based on a Commission report;

– the use of the safeguard clause;

– measures which should be taken by Member States to inform operators of their obligations under this directive;

– and to provide guidance concerning licence forms.

5. ADDITIONAL INFORMATION

5.1. Simplification

The proposal provides for simplification of administrative procedures for public authorities, and simplification of administrative procedures for private parties.

The proposal will reduce national authorities' workload by bringing down the number of licence applications.

For defence companies, the proposal will greatly reduce the burden associated to licence applications.

5.2. Review/revision/sunset clause

The proposal includes a review clause.

5.3. European Economic Area

The proposed act concerns an EEA matter and should therefore be extended to the European Economic Area.

2007/0279 (COD)

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 Commission[6],

Having regard to the opinion of the European Economic and Social Committee[7],

Having regard to the opinion of the Committee of the Regions[8],

Acting in accordance with the procedure laid down in Article 251 of the Treaty[9],

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.

(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.

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6 OJ C , , p. .
7 OJ C , , p. .
8 OJ C , , p. .
9 OJ C , , p. .

(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.

(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.

(7) Harmonisation of those laws and regulations of Member States should not give prejudice to obligations of Member States under relevant international non-proliferation regimes, to export control arrangements, to treaties or to discretion of Member States on export policy.

(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 Union[10] including sub-systems, components, spare parts, technology 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.

(13) This directive should not give prejudice to the application of provisions necessary for the protection of public order such as the safety of transport.

(14) Any transfer of defence related products within the European Community should be subject to prior authorisation through general, global or individual transfer licences

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[10] OJ L 88, 29.3.2007, p. 58.

granted or published by the Member State where the supplier is established. 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.

(15) Member States should determine the type of licence for defence related products or categories of defence related products and the terms and conditions of 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 recipients own products.

(17) In order to facilitate transfers of defence related products, general licences should be published by Member States' regulation providing authorization 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 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 non-proliferation regimes, export control arrangements or treaties.

(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.

(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.

(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 recipients 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 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 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, 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 Commission[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.

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

HAVE ADOPTED THIS DIRECTIVE:

Chapter I
Subject matter, scope and definitions

Article 1
Subject matter

1. This directive lays down the rules and procedures on transfer of defence-related products within the internal market.

2. This directive does not affect the export policies of Member States.

Article 2
Scope

1. This directive applies to defence-related products.

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 of a defence-related product 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 in any third country.

Chapter II
Transfer licences

Article 4
General provisions

1. 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 transit through Member States or for the import in other Member States of defence related products without prejudice to the application of provisions necessary for the protection of public order such as the safety of transport.

2. Member States shall grant suppliers established on their respective territories general, global or individual transfer licences.

3. Member States shall choose the type 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 the terms and conditions of transfer licences, in particular any limitations on the export of defence-related products to recipients in third countries, having regard to the risks for preservation of human rights, peace, security and stability created by the transfer. 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 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 into its own products and therefore cannot be at a later stage transferred or exported as such.

7. Member States may revoke or limit the use of transfer licences they have issued at any time, for reasons of protection of their essential security interests.

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 a category or categories of recipients located in another Member State, at least in the following cases

   (a) the recipient is part of the armed forces of a Member State;

   (b) the recipient is a company certified in accordance with Article 9.

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.

Article 6
Global transfer licences

1. Member States shall grant global transfer licences to an individual supplier on its request authorizing one or several transfers of one or several defence related products to one or several recipients in another Member State.

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 3 years.

Article 7
Individual transfer licences

Member States shall grant individual transfer licences to an individual supplier on its request authorizing one transfer of defence related products to one recipient only in either 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;

(c) where it is necessary for compliance with obligations and commitments of Member States under the relevant international non-proliferation regimes, export control arrangements or treaties.

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 export of the defence related products.

2. Member States shall ensure that suppliers notify the competent authorities of their intention to use a general transfer licence for the first time.

3. Member States shall ensure that suppliers keep detailed records of their transfers, in accordance with the practice in force in the respective Member State. Such records shall include commercial documents containing the following information:

   (a) the description of the defence-related product;

   (b) the quantity 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 recipient of 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 in which the supplier is established.

Article 9
Certification

1. Member States shall designate competent authorities to carry out the certification of recipients established on their respective territories.

2. The certification shall establish in particular the capacity of a recipient to observe export limitations of defence-related products received under a transfer licence from another Member State according to the following criteria:

   (a) proven experience and reputation in defence activities, in particular by authorisation to produce and commercialise defence related products and by 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 export management system, implemented in the company.

The description referred to in point f) of the first subparagraph 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 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 und update regularly a list of certified recipients and inform the Commission and the other Member States thereof.

The Commission shall make publicly available 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 the 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.

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Chapter IV
Customs and administrative cooperation

Article 11
Customs cooperation

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 2913/92[12], a Member State may also, for a period not exceeding 30 days, suspend the process of export from its territory, or, if necessary, otherwise prevent the defence related products received from another Member State under a transfer licence and incorporated in another defence related product from leaving the Community from its territory, where it considers that:

[12] 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;

(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 competent authorities.

Chapter V
Updating of List of defence related products

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 the Common Military List of the European Union.

2. Those measures 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 5a(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, it shall inform the other Member State and request evaluation of the situation.

2. In case the doubts 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 16
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, 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 on the implementation of the directive and its impact on developments of the European defence equipment market and the European defence technological and industrial base, accompanied by a legislative proposal, where appropriate.

Article 17
Transposition

1. Member States shall adopt and publish, by *[date of entry into force + 18 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	*For the Council*
The President	*The President*

ANNEX

List of defence related products

ML1 Smooth-bore weapons with a calibre of less than 20 mm, other arms and automatic weapons with a calibre of 12,7 mm (calibre 0,50 inches) or less and accessories, as follows, and specially designed components therefor:

a. Rifles, carbines, revolvers, pistols, machine pistols and machine guns:

Note ML1.a. does not control the following:

1. Muskets, rifles and carbines manufactured earlier than 1938;

2. Reproductions of muskets, rifles and carbines the originals of which were manufactured earlier than 1890;

3. Revolvers, pistols and machine guns manufactured earlier than 1890, and their reproductions;

b. Smooth-bore weapons, as follows:

1. Smooth-bore weapons specially designed for military use;

2. Other smooth-bore weapons, as follows:

a. Of the fully automatic type;

b. Of the semi-automatic or pump-action type;

c. Weapons using caseless ammunition;

d. Silencers, special gun-mountings, clips, weapons sights and flash suppressers for arms controlled by sub-items ML1.a., ML1.b. or ML1.c.

Note 1 ML1 does not control smooth-bore weapons used for hunting or sporting purposes. These weapons must not be specially designed for military use or of the fully automatic firing type.

Note 2 ML1 does not control firearms specially designed for dummy ammunition and which are incapable of firing any controlled ammunition.

Note 3 ML1 does not control weapons using non-centre fire cased ammunition and which are not of the fully automatic firing type.

Note 4 ML1.d. does not control optical weapon sights without electronic image processing, with a magnification of 4 times or less, provided they are not specially designed or modified for military use.

ML2 **SMOOTH-BORE WEAPONS WITH A CALIBRE OF 20 MM OR MORE, OTHER WEAPONS OR ARMAMENT WITH A CALIBRE GREATER THAN 12,7 MM (CALIBRE 0,50 INCHES), PROJECTORS AND ACCESSORIES, AS FOLLOWS, AND SPECIALLY DESIGNED COMPONENTS THEREFOR:**

a. Guns, howitzers, cannon, mortars, anti-tank weapons, projectile launchers, military flame throwers, rifles, recoilless rifles, smooth-bore weapons and signature reduction devices therefor;

Note 1 ML2.a. includes injectors, metering devices, storage tanks and other specially designed components for use with liquid propelling charges for any of the equipment controlled by ML2.a.

Note 2 ML2.a. does not control the following:

1. Muskets, rifles and carbines manufactured earlier than 1938;

2. Reproductions of muskets, rifles and carbines the originals of which were manufactured earlier than 1890.

b. Military smoke, gas and pyrotechnic projectors or generators;

Note ML2.b. does not control signal pistols.

c. Weapons sights.

ML3 **AMMUNITION AND FUSE SETTING DEVICES, AS FOLLOWS, AND SPECIALLY DESIGNED THEREFOR:**

a. Ammunition for the weapons controlled by ML1, ML2 or ML12;

b. Fuse setting devices specially designed for ammunition controlled by ML3.a.

Note 1 Specially designed components include:

a. Metal or plastic fabrications such as primer anvils, bullet cups, cartridge links, rotating bands and munitions metal parts;

b. Safing and arming devices, fuses, sensors and initiation devices;

c. Power supplies with high one-time operational output;

d. Combustible cases for charges;

e. Submunitions including bomblets, minelets and terminally guided projectiles.

Note 2 ML3.a. does not control ammunition crimped without a projectile (blankstar) and dummy ammunition with a pierced powder chamber.

Note 3 ML3.a. does not control cartridges specially designed for any of the following purposes:

a. Signalling;

b. Bird scaring; or

c. Lighting of gas flares at oil wells.

ML4 BOMBS, TORPEDOES, ROCKETS, MISSILES, OTHER EXPLOSIVE DEVICES AND CHARGES AND RELATED EQUIPMENT AND ACCESSORIES, AS FOLLOWS, SPECIALLY DESIGNED FOR MILITARY USE, AND SPECIALLY DESIGNED COMPONENTS THEREFOR:

NB: For guidance and navigation equipment, see ML11, Note 7.

a. Bombs, torpedoes, grenades, smoke canisters, rockets, mines, missiles, depth charges, demolition-charges, demolition-devices and demolition-kits, 'pyrotechnic' devices, cartridges and simulators (i.e. equipment simulating the characteristics of any of these items);

Note ML4.a. includes:

1. Smoke grenades, fire bombs, incendiary bombs and explosive devices;

2. Missile rocket nozzles and re-entry vehicle nosetips.

b. Equipment specially designed for the handling, control, activation, powering with one-time operational output, launching, laying, sweeping, discharging, decoying, jamming, detonation or detection of items controlled by ML4.a.

Note ML4.b. includes:

1. Mobile gas liquefying equipment capable of producing 1 000 kg or more per day of gas in liquid form;

2. Buoyant electric conducting cable suitable for sweeping magnetic mines.

Technical Note

Hand-held devices, limited by design solely to the detection of metal objects and incapable of distinguishing between mines and other metal objects, are not considered to be specially designed for the detection of items controlled by ML4.a.

ML5 FIRE CONTROL, AND RELATED ALERTING AND WARNING EQUIPMENT, AND RELATED SYSTEMS, TEST AND ALIGNMENT AND COUNTERMEASURE EQUIPMENT, AS FOLLOWS, SPECIALLY DESIGNED FOR MILITARY USE, AND SPECIALLY DESIGNED COMPONENTS AND ACCESSORIES THEREFOR:

a. Weapon sights, bombing computers, gun laying equipment and weapon control systems;

b. Target acquisition, designation, range-finding, surveillance or tracking systems; detection, data fusion, recognition or identification equipment; and sensor integration equipment;

c. Countermeasure equipment for items controlled by ML5.a. or ML5.b.;

d. Field test or alignment equipment, specially designed for items controlled by ML5.a. or ML5.b.

ML6 GROUND VEHICLES AND COMPONENTS, AS FOLLOWS:

NB: For guidance and navigation equipment, see ML11, Note 7.

a. Ground vehicles and components therefor, specially designed or modified for military use;

Technical Note

For the purposes of ML6.a. the term ground vehicles includes trailers.

b. All-wheel drive vehicles capable of off-road use which have been manufactured or fitted with materials to provide ballistic protection to level III (NIJ 0108.01, September 1985, or comparable national standard) or better.

NB: See also ML13.a.

Note 1 ML6.a. includes:

a. Tanks and other military armed vehicles and military vehicles fitted with mountings for arms or equipment for mine laying or the launching of munitions controlled under ML4;

b. Armoured vehicles;

c. Amphibious and deep water fording vehicles;

d. Recovery vehicles and vehicles for towing or transporting ammunition or weapon systems and associated load handling equipment.

Note 2 Modification of a ground vehicle for military use controlled by ML6.a. entails a structural, electrical or mechanical change involving one or more specially designed military components. Such components include:

a. Pneumatic tyre casings of a kind specially designed to be bulletproof or to run when deflated;

b. Tyre inflation pressure control systems, operated from inside a moving vehicle;

c. Armoured protection of vital parts, (e.g. fuel tanks or vehicle cabs);

d. Special reinforcements or mountings for weapons;

e. Blackout lighting.

Note 3 ML6 does not control civil automobiles, or trucks designed or modified for transporting money or valuables, having armoured or ballistic protection.

ML7 CHEMICAL OR BIOLOGICAL TOXIC AGENTS, 'RIOT CONTROL AGENTS', RADIOACTIVE MATERIALS, RELATED EQUIPMENT, COMPONENTS AND MATERIALS AS FOLLOWS:

a. Biological agents and radioactive materials 'adapted for use in war' to produce casualties in humans or animals, degrade equipment or damage crops or the environment;

b. Chemical warfare (CW) agents including:

1. CW nerve agents:

a. O-Alkyl (equal to or less than C10, including cycloalkyl) alkyl (Methyl, Ethyl, n-Propyl or Isopropyl) — phosphonofluoridates, such as:

Sarin (GB):O-Isopropyl methylphosphonofluoridate (CAS 107-44-8); and

Soman (GD):O-Pinacolyl methylphosphonofluoridate (CAS 96-64-0);

b. O-Alkyl (equal to or less than C10, including cycloalkyl) N,N-dialkyl (Methyl, Ethyl, n-Propyl or Isopropyl) phosphoramidocyanidates, such as:

Tabun (GA):O-Ethyl N,N-dimethylphosphoramidocyanidate (CAS 77-81-6);

c. O-Alkyl (H or equal to or less than C10, including cycloalkyl) S-2-dialkyl (Methyl, Ethyl,n-Propyl or Isopropyl)-aminoethyl alkyl (Methyl, Ethyl, n-Propyl or Isopropyl) phospho-nothiolates and corresponding alkylated and protonated salts, such as:

VX: O-Ethyl S-2-diisopropylaminoethyl methyl phosphonothiolate (CAS 50782-69-9);

2. CW vesicant agents:

a. Sulphur mustards, such as:

1. 2-Chloroethylchloromethylsulphide (CAS 2625-76-5);

2. Bis(2-chloroethyl) sulphide (CAS 505-60-2);

3. Bis(2-chloroethylthio) methane (CAS 63869-13-6);

4. 1,2-bis (2-chloroethylthio) ethane (CAS 3563-36-8);

5. 1,3-bis (2-chloroethylthio) -n-propane (CAS 63905-10-2);

6. 1,4-bis (2-chloroethylthio) -n-butane (CAS 142868-93-7);

7. 1,5-bis (2-chloroethylthio) -n-pentane (CAS 142868-94-8);

8. Bis (2-chloroethylthiomethyl) ether (CAS 63918-90-1);

9. Bis (2-chloroethylthioethyl) ether (CAS 63918-89-8);

b. Lewisites, such as:

1. 2-chlorovinyldichloroarsine (CAS 541-25-3);

2. Tris (2-chlorovinyl) arsine (CAS 40334-70-1);

3. Bis (2-chlorovinyl) chloroarsine (CAS 40334-69-8);

c. Nitrogen mustards, such as:

1. HN1: bis (2-chloroethyl) ethylamine (CAS 538-07-8);

2. HN2: bis (2-chloroethyl) methylamine (CAS 51-75-2);

3. HN3: tris (2-chloroethyl) amine (CAS 555-77-1);

3. CW incapacitating agents, such as:

a. 3-Quinuclidinyl benzilate (BZ) (CAS 6581-06-2);

4. CW defoliants, such as:

a. Butyl 2-chloro-4-fluorophenoxyacetate (LNF);

b. 2,4,5-trichlorophenoxyacetic acid mixed with 2,4-dichlorophenoxyacetic acid (Agent Orange).

c. CW binary precursors and key precursors, as follows:

1. Alkyl (Methyl, Ethyl, n-Propyl or Isopropyl) Phosphonyl Difluorides, such as:

DF: Methyl Phosphonyldifluoride (CAS 676-99-3);

2. O-Alkyl (H or equal to or less than C10, including cycloalkyl) O-2-dialkyl (Methyl, Ethyl, n-Propyl or Isopropyl) aminoethyl alkyl (Methyl, Ethyl, n-Propyl or Isopropyl) phosphonites and corresponding alkylated and protonated salts, such as:

QL: O-Ethyl-2-di-isopropylaminoethyl methylphosphonite (CAS 57856-11-8);

3. Chlorosarin: O-Isopropyl methylphosphonochloridate (CAS 1445-76-7);

4. Chlorosoman: O-Pinacolyl methylphosphonochloridate (CAS 7040-57-5);

d. 'Riot control agents', active constituent chemicals and combinations thereof, including:

1. α-Bromobenzeneacetonitrile, (Bromobenzyl cyanide) (CA) (CAS 5798-79-8);

2. [(2-chlorophenyl) methylene] propanedinitrile, (o-Chlorobenzylidenemalononitrile (CS) (CAS 2698-41-1);

3. 2-Chloro-1-phenylethanone, Phenylacyl chloride (ω-chloroacetophenone) (CN) (CAS 532-27-4);

4. Dibenz-(b,f)-1,4-oxazephine, (CR) (CAS 257-07-8);

5. 10-Chloro-5,10-dihydrophenarsazine, (Phenarsazine chloride), (Adamsite), (DM) (CAS 578-94-9);

6. N-Nonanoylmorpholine, (MPA) (CAS 5299-64-9);

Note 1 ML7.d. does not control 'riot control agents' individually packaged for personal self-defence purposes;

Note 2 ML7.d. does not control active constituent chemicals and combinations thereof identified and packaged for food production or medical purposes.

e. Equipment specially designed or modified for military use, for the dissemination of any of the following and specially designed components therefor:

1. Materials or agents controlled by ML7.a., ML7.b. or ML7d.; or

2. CW made up of precursors controlled by ML7.c.

f. Protective and decontamination equipment, specially designed components therefor, and specially formulated chemical mixtures, as follows:

1. Equipment specially designed or modified for military use, for defence against materials controlled by ML7.a., ML7.b. or ML7.d. and specially designed components therefore.

2. Equipment specially designed or modified or modified for military use, for the decontamination of objects contaminated with materials controlled by ML7.a. or ML7.b. and specially designed components therefore.

3. Chemical mixtures specially developed/formulated for the decontamination of objects contaminated with materials controlled by ML7.a. or ML7.b.

Note ML7.f.1. includes:

a. Air conditioning units specially designed or modified for nuclear, biological or chemical filtration;

b. Protective clothing.

NB: For civil gas masks, protective and decontamination equipment see also entry 1A004 on the EU Dual-Use List.

g. Equipment specially designed or modified for military use, for the detection or identification of materials controlled by ML7.a. or ML7.b. or ML7.d. and specially designed components therefor;

Note ML7.g. does not control personal radiation monitoring dosimeters.

NB: See also entry 1A004 on the EU Dual-Use List.

h. 'Biopolymers' specially designed or processed for the detection or identification of CW agents controlled by ML7.b., and the cultures of specific cells used to produce them;

i. 'Biocatalysts' for the decontamination or degradation of CW agents, and biological systems therefor, as follows:

1. 'Biocatalysts' specially designed for the decontamination or degradation of CW agents controlled by ML7.b. resulting from directed laboratory selection or genetic manipulation of biological systems;

2. Biological systems, as follows: 'expression vectors', viruses or cultures of cells containing the genetic information specific to the production of 'biocatalysts' controlled by ML7.i.1.;

Note 1 ML7.b. and ML7.d. do not control:

a. Cyanogen chloride (CAS 506-77-4). See 1C450.a.5. on the EU Dual-Use List;

b. Hydrocyanic acid (CAS 74-90-8);

c. Chlorine (CAS 7782-50-5);

d. Carbonyl chloride (phosgene) (CAS 75-44-5). See 1C450.a.4. on the EU Dual-Use List;

e. Diphosgene (trichloromethyl-chloroformate) (CAS 503-38-8);

f. Deleted;

g. Xylyl bromide, ortho: (CAS 89-92-9), meta: (CAS 620-13-3), para: (CAS 104-81-4);
h. Benzyl bromide (CAS 100-39-0);

i. Benzyl iodide (CAS 620-05-3);

j. Bromo acetone (CAS 598-31-2);

k. Cyanogen bromide (CAS 506-68-3);

l. Bromo methylethylketone (CAS 816-40-0);

m. Chloro acetone (CAS 78-95-5);

n. Ethyl iodoacetate (CAS 623-48-3);

o. Iodo acetone (CAS 3019-04-3);

p. Chloropicrin (CAS 76-06-2). See 1C450.a.7. on the EU Dual-Use List.

Note 2 The cultures of cells and biological systems listed in ML7.h. and ML7.i.2. are exclusive and these sub items do not control cells or biological systems for civil purposes, such as agricultural, pharmaceutical, medical, veterinary, environmental, waste management, or in the food industry.

ML8 'ENERGETIC MATERIALS', AND RELATED SUBSTANCES, AS FOLLOWS:

NB: See also 1C011 on the EU Dual-Use List.

Technical Notes

1. substance being listed in the ML8 sub-items.

2. Any substance listed in the ML8 sub-items is controlled by this list, even when utilised in an application other than that indicated. (e.g. TAGN is predominantly used as an explosive but can also be used either as a fuel or an oxidizer.)

a. 'Explosives', as follows, and mixtures thereof:

1. ADNBF (aminodinitrobenzofuroxan or 7-amino-4,6-dinitrobenzofurazane-1-oxide) (CAS 97096-78-1);

2. BNCP (cis-bis (5-nitrotetrazolato) tetra amine-cobalt (III) perchlorate) (CAS 117412-28-9);

3. CL-14 (diamino dinitrobenzofuroxan or 5,7-diamino-4,6-dinitrobenzofurazane-1-oxide) (CAS 117907-74-1);

4. CL-20 (HNIW or Hexanitrohexaazaisowurtzitane) (CAS 135285-90-4); chlathrates of CL-20 (see also ML8.g.3. and g.4. for its 'precursors');

5. CP (2-(5-cyanotetrazolato) penta amine-cobalt (III) Perchlorate) (CAS 70247-32-4);

6. DADE (l,l-diamino-2,2-dinitroethylene, FOX7);

7. DATB (diaminotrinitrobenzene) (CAS 1630-08-6);

8. DDFP (1,4-dinitrodifurazanopiperazine);

9. DDPO (2,6-diamino-3,5-dinitropyrazine-l-oxide, PZO) (CAS 194486-77-6);

10. DIPAM (3,3'-diamino-2,2',4,4',6,6'-hexanitrobiphenyl or dipicramide) (CAS 17215-44-0);

11. DNGU (DINGU or dinitroglycoluril) (CAS 55510-04-8);

12. Furazans, as follows:

    a. DAAOF (diaminoazoxyfurazan);

    b. DAAzF (diaminoazofurazan) (CAS 78644-90-3);

13. HMX and derivatives (see also ML8.g.5. for its 'precursors'), as follows:

    a. HMX (Cyclotetramethylenetetranitramine, octahydro-l,3,5,7-tetranitro-l,3,5,7-tetrazine, l,3,5,7-tetranitro-l,3,5,7-tetraza-cyclooctane, octogen or octogene) (CAS 2691-41-0);

    b. difluoroaminated analogs of HMX;

    c. K-55 (2,4,6,8-tetranitro-2,4,6,8-tetraazabicyclo [3,3,0]-octanone-3, tetranitrosemiglycouril or keto-bicyclic HMX) (CAS 130256-72-3);

14. HNAD (hexanitroadamantane) (CAS 143850-71-9);

15. HNS (hexanitrostilbene) (CAS 20062-22-0);

16. Imidazoles, as follows:

    a. BNNII (Octahydro-2,5-bis(nitroimino)imidazo [4,5-d]imidazole);

    b. DNI (2,4-dinitroimidazole) (CAS 5213-49-0);

    c. FDIA (l-fluoro-2,4-dinitroimidazole);

    d. NTDNIA (N-(2-nitrotriazolo)-2,4-dinitroimidazole);

    e. PTIA (l-picryl-2,4,5-trinitroimidazole);

17. NTNMH (l-(2-nitrotriazolo)-2-dinitromethylene hydrazine);

18. NTO (ONTA or 3-nitro-l,2,4-triazol-5-one) (CAS 932-64-9);

19. Polynitrocubanes with more than four nitro groups;

20. PYX (2,6-Bis(picrylamino)-3,5-dinitropyridine) (CAS 38082-89-2);

21. RDX and derivatives, as follows:

    a. RDX (cyclotrimethylenetrinitramine, cyclonite, T4, hexahydro-l,3,5-trinitro-l,3,5-triazine, l,3,5-trinitro-l,3,5-triaza-cyclohexane, hexogen or hexogene) (CAS 121-82-4);

    b. Keto-RDX (K-6 or 2,4,6-trinitro-2,4,6-triazacyclohexanone) (CAS 115029-35-1);

22. TAGN (triaminoguanidinenitrate) (CAS 4000-16-2);

23. TATB (triaminotrinitrobenzene) (CAS 3058-38-6) (see also ML8.g.7 for its 'precursors');

24. TEDDZ (3,3,7,7-tetrabis(difluoroamine) octahydro-l,5-dinitro-l,5-diazocine);

25. Tetrazoles, as follows:

    a. NTAT (nitrotriazol aminotetrazole);

    b. NTNT (l-N-(2-nitrotriazolo)-4-nitrotetrazole);

26. Tetryl (trinitrophenylmethylnitramine) (CAS 479-45-8);

27. TNAD (l,4,5,8-tetranitro-l,4,5,8-tetraazadecalin) (CAS 135877-16-6) (see also ML8.g.6. for its 'precursors');

28. TNAZ (1,3,3-trinitroazetidine) (CAS 97645-24-4) (see also ML8.g.2. for its 'precursors');

29. TNGU (SORGUYL or tetranitroglycoluril) (CAS 55510-03-7);

30. TNP (l,4,5,8-tetranitro-pyridazino[4,5-d]pyridazine) (CAS 229176-04-9);

31. Triazines, as follows:

    a. DNAM (2-oxy-4,6-dinitroamino-s-triazine) (CAS 19899-80-0);

    b. NNHT (2-nitroimino-5-nitro-hexahydro-l,3,5-triazine) (CAS 130400-13-4);

32. Triazoles, as follows:

    a. 5-azido-2-nitrotriazole;

b. ADHTDN (4-amino-3,5-dihydrazino-l,2,4-triazole dinitramide) (CAS 1614-08-0);

c. ADNT (l-amino-3,5-dinitro-l,2,4-triazole);

d. BDNTA ([bis-dinitrotriazole]amine);

e. DBT (3,3'-dinitro-5,5-bi-l,2,4-triazole) (CAS 30003-46-4);

f. DNBT (dinitrobistriazole) (CAS 70890-46-9);

g. NTDNA (2-nitrotriazole 5-dinitramide) (CAS 75393-84-9);

h. NTDNT (1-N-(2-nitrotriazolo) 3,5-dinitrotriazole);

i. PDNT (1-picryl-3,5-dinitrotriazole);

j. TACOT (tetranitrobenzotriazolobenzotriazole) (CAS 25243-36-1);

33. Any explosive not listed elsewhere in ML8.a. with a detonation velocity exceeding 8 700 m/s at maximum density or a detonation pressure exceeding 34 GPa (340 kbar);

34. Other organic explosives not listed elsewhere in ML8.a. yielding detonation pressures of 25 GPa (250 kbar) or more that will remain stable at temperatures of 523 K (250 °C) or higher for periods of five minutes or longer.

b. 'Propellants', as follows:

1. Any United Nations (UN) Class 1.1 solid 'propellant' with a theoretical specific impulse (under standard conditions) of more than 250 seconds for non-metallised, or more than 270 seconds for aluminised compositions;

2. Any UN Class 1.3 solid 'propellant' with a theoretical specific impulse (under standard conditions) of more than 230 seconds for non-halogenised, 250 seconds for non-metallised compositions and 266 seconds for metallised compositions;

3. 'Propellants' having a force constant of more than 1 200 kJ/kg;

4. 'Propellants' that can sustain a steady-state linear burning rate of more than 38 mm/s under standard conditions (as measured in the form of an inhibited single strand) of 6,89 MPa (68,9 bar) pressure and 294 K (21 °C);

5. Elastomer modified cast double base (EMCDB) 'propellants' with extensibility at maximum stress of more than 5 % at 233 K (-40 °C);

6. Any 'propellant' containing substances listed in ML8.a.

c. ‘Pyrotechnics’, fuels and related substances, as follows, and mixtures thereof:

1. Aircraft fuels specially formulated for military purposes;

2. Alane (aluminum hydride) (CAS 7784-21-6);

3. Carboranes; decaborane (CAS 17702-41-9); pentaboranes (CAS 19624-22-7 and 18433-84-6) and their derivatives;

4. Hydrazine and derivatives, as follows (see also ML8.d.8. and d.9. for oxidising hydrazine derivatives):

a. Hydrazine (CAS 302-01-2) in concentrations of 70 % or more;

b. Monomethyl hydrazine (CAS 60-34-4);

c. Symmetrical dimethyl hydrazine (CAS 540-73-8);

d. Unsymmetrical dimethyl hydrazine (CAS 57-14-7);

5. Metal fuels in particle form whether spherical, atomised, spheroidal, flaked or ground, manufactured from material consisting of 99 % or more of any of the following:

a. Metals and mixtures thereof, as follows:

1. Beryllium (CAS 7440-41-7) in particle sizes of less than 60 μm;

2. Iron powder (CAS 7439-89-6) with particle size of 3 μm or less produced by reduction of iron oxide with hydrogen;

b. Mixtures, which contain any of the following:

1. Zirconium (CAS 7440-67-7), magnesium (CAS 7439-95-4) or alloys of these in particle sizes of less than 60 μm;

2. Boron (CAS 7440-42-8) or boron carbide (CAS 12069-32-8) fuels of 85 % purity or higher and particle sizes of less than 60 μm;

6. Military materials containing thickeners for hydrocarbon fuels specially formulated for use in flame-throwers or incendiary munitions, such as metal stearates or palmates (e.g. octal (CAS 637-12-7)) and M1, M2, and M3 thickeners;

7. Perchlorates, chlorates and chromates composited with powdered metal or other high energy fuel components;

8. Spherical aluminum powder (CAS 7429-90-5) with a particle size of 60 μm or less, manufactured from material with an aluminum content of 99 % or more;

9. Titanium subhydride (TiHn) of stoichiometry equivalent to n = 0,65 to 1,68.

Note 1 Aircraft fuels controlled by ML8.c.1. are finished products not their constituents.

Note 2 ML8.c.4.a. does not control hydrazine mixtures specially formulated for corrosion control.

Note 3 Explosives and fuels containing the metals or alloys listed in ML8.c.5. are controlled whether or not the metals or alloys are encapsulated in aluminum, magnesium, zirconium, or beryllium.

Note 4 ML8.c.5.b.2. does not control boron and boron carbide enriched with boron-10 (20 % or more of total boron-10 content).

d. Oxidizers, as follows, and mixtures thereof:

1. ADN (ammonium dinitramide or SR 12) (CAS 140456-78-6);

2. AP (ammonium perchlorate) (CAS 7790-98-9);

3. Compounds composed of fluorine and any of the following:

a. Other halogens;

b. Oxygen; or

c. Nitrogen;

Note 1 ML8.d.3 does not control chlorine trifluoride. See 1C238 on the EU Dual-Use List.

Note 2 ML8.d.3 does not control nitrogen trifluoride in its gaseous state.

4. DNAD (1,3-dinitro-1,3-diazetidine) (CAS 78246-06-7);

5. HAN (hydroxylammonium nitrate) (CAS 13465-08-2);

6. HAP (hydroxylammonium perchlorate) (CAS 15588-62-2);

7. HNF (hydrazinium nitroformate) (CAS 20773-28-8);

8. Hydrazine nitrate (CAS 37836-27-4);

9. Hydrazine perchlorate (CAS 27978-54-7);

10. Liquid oxidisers comprised of or containing inhibited red fuming nitric acid (IRFNA) (CAS 8007-58-7);

Note ML8.d.10 does not control non-inhibited fuming nitric acid.

e. Binders, plasticisers, monomers, polymers, as follows:

1. AMMO (azidomethylmethyloxetane and its polymers) (CAS 90683-29-7) (see also ML8.g.1. for its 'precursors');

2. BAMO (bisazidomethyloxetane and its polymers) (CAS 17607-20-4) (see also ML8.g.1. for its 'precursors');

3. BDNPA (bis (2,2-dinitropropyl)acetal) (CAS 5108-69-0);

4. BDNPF (bis (2,2-dinitropropyl)formal) (CAS 5917-61-3);

5. BTTN (butanetrioltrinitrate) (CAS 6659-60-5) (see also ML8.g.8. for its 'precursors');

6. Energetic monomers, plasticisers and polymers containing nitro, azido, nitrate, nitraza or difluoroamino groups specially formulated for military use;

7. FAMAO (3-difluoroaminomethyl-3-azidomethyl oxetane) and its polymers;

8. FEFO (bis-(2-fluoro-2,2-dinitroethyl) formal) (CAS 17003-79-1);

9. FPF-1 (poly-2,2,3,3,4,4-hexafluoropentane-1,5-diol formal) (CAS 376-90-9);

10. FPF-3 (poly-2,4,4,5,5,6,6-heptafluoro-2-tri-fluoromethyl-3-oxaheptane-1,7-diol formal);

11. GAP (glycidylazide polymer) (CAS 143178-24-9) and its derivatives;

12. HTPB (hydroxyl terminated polybutadiene) with a hydroxyl functionality equal to or greater than 2,2 and less than or equal to 2,4, a hydroxyl value of less than 0,77 meq/g, and a viscosity at 30 °C of less than 47 poise (CAS 69102-90-5);

13. Low (less than 10 000) molecular weight, alcohol functionalised, poly(epichlorohydrin); poly(epichlorohydrindiol) and triol;

14. NENAs (nitratoethylnitramine compounds) (CAS 17096-47-8, 85068-73-1, 82486-83-7, 82486-82-6 and 85954-06-9);

15. PGN (poly-GLYN, polyglycidylnitrate or poly(nitratomethyl oxirane) (CAS 27814-48-8);

16. Poly-NIMMO (poly nitratomethylmethyloxetane) or poly-NMMO (poly[3-Nitratomethyl-3-methyloxetane]) (CAS 84051-81-0) ;

17. Polynitroorthocarbonates ;

18. TVOPA (1,2,3-tris[1,2-bis(difluoroamino)ethoxy] propane or tris vinoxy propane adduct) (CAS 53159-39-0).

f. Additives, as follows:

1. Basic copper salicylate (CAS 62320-94-9);

2. BHEGA (bis-(2-hydroxyethyl) glycolamide) (CAS 17409-41-5);

3. BNO (butadienenitrileoxide) (CAS 9003-18-3);

4. Ferrocene derivatives, as follows:

a. Butacene (CAS 125856-62-4);

b. Catocene (2,2-bis-ethylferrocenyl propane) (CAS 37206-42-1);

c. Ferrocene carboxylic acids;

d. n-butyl-ferrocene (CAS 31904-29-7);

e. Other adducted polymer ferrocene derivatives;

5. Lead beta-resorcylate (CAS 20936-32-7);

6. Lead citrate (CAS 14450-60-3);

7. Lead-copper chelates of beta-resorcylate or salicylates (CAS 68411-07-4);

8. Lead maleate (CAS 19136-34-6);

9. Lead salicylate (CAS 15748-73-9);

10. Lead stannate (CAS 12036-31-6);

11. MAPO (tris-1-(2-methyl)aziridinyl phosphine oxide) (CAS 57-39-6); BOBBA 8 (bis(2-methyl aziridinyl) 2-(2-hydroxypropanoxy) propylamino phosphine oxide); and other MAPO derivatives;

12. Methyl BAPO (bis(2-methyl aziridinyl) methylamino phosphine oxide) (CAS 85068-72-0);

13. N-methyl-p-nitroaniline (CAS 100-15-2);

14. 3-Nitraza-1,5-pentane diisocyanate (CAS 7406-61-9);

15. Organo-metallic coupling agents, as follows:

a. Neopentyl[diallyl]oxy, tri[dioctyl]phosphato-titanate (CAS 103850-22-2); also known as titanium IV, 2,2[bis 2-propenolato-methyl, butanolato, tris (dioctyl) phosphato] (CAS 110438-25-0); or LICA 12 (CAS 103850-22-2);

b. Titanium IV, [(2-propenolato-1) methyl, n-propanolatomethyl] butanolato-1, tris[dioctyl] pyrophosphate or KR3538;

c. Titanium IV, [(2-propenolato-1)methyl, n-propanolatomethyl] butanolato-1, tris(dioctyl)- phosphate;

16. Polycyanodifluoroaminoethyleneoxide;

17. Polyfunctional aziridine amides with isophthalic, trimesic (BITA or butylene imine tri-mesamide), isocyanuric or trimethyladipic backbone structures and 2-methyl or 2-ethyl substitutions on the aziridine ring;

18. Propyleneimine (2-methylaziridine) (CAS 75-55-8);

19. Superfine iron oxide (Fe2O3) with a specific surface area more than 250 m2/g and an average particle size of 3,0 nm or less;

20. TEPAN (tetraethylenepentaamineacrylonitrile) (CAS 68412-45-3); cyanoethylated polyamines and their salts;

21. TEPANOL (tetraethylenepentaamineacrylonitrileglycidol) (CAS 68412-46-4); cyanoethylated polyamines adducted with glycidol and their salts;

22. TPB (triphenyl bismuth) (CAS 603-33-8).

g. 'Precursors', as follows:

NB: In ML8.g. the references are to controlled 'Energetic Materials' manufactured from these substances.

1. BCMO (bischloromethyloxetane) (CAS 142173-26-0) (see also ML8.e.1. and e.2.);

2. Dinitroazetidine-t-butyl salt (CAS 125735-38-8) (see also ML8.a.28.);

3. HBIW (hexabenzylhexaazaisowurtzitane) (CAS 124782-15-6) (see also ML8.a.4.);

4. TAIW (tetraacetyldibenzylhexaazaisowurtzitane) (see also ML8.a.4.);

5. TAT (1,3,5,7 tetraacetyl-1,3,5,7,-tetraaza cyclo-octane) (CAS 41378-98-7) (see also ML8.a.13.);

6. 1,4,5,8-tetraazadecalin (CAS 5409-42-7) (see also ML8.a.27.);

7. 1,3,5-trichlorobenzene (CAS 108-70-3) (see also ML8.a.23.);

8. 1,2,4-trihydroxybutane (1,2,4-butanetriol) (CAS 3068-00-6) (see also L8.e.5.).

Note 5 For charges and devices see ML4.

Note 6 ML8 does not control the following substances unless they are compounded or mixed with the 'energetic material' mentioned in ML8.a. or powdered metals in ML8.c.:

a. Ammonium picrate;

b. Black powder;

c. Hexanitrodiphenylamine;

d. Difluoroamine;

e. Nitrostarch;

f. Potassium nitrate;

g. Tetranitronaphthalene;

h. Trinitroanisol;

i. Trinitronaphthalene;

j. Trinitroxylene;

k. N-pyrrolidinone; 1-methyl-2-pyrrolidinone;

l. Dioctylmaleate;

m. Ethylhexylacrylate;

n. Triethylaluminium (TEA), trimethylaluminium (TMA), and other pyrophoric metal alkyls and aryls of lithium, sodium, magnesium, zinc or boron;

o. Nitrocelluose;

p. Nitroglycerin (or glyceroltrinitrate, trinitroglycerine) (NG);

q. 2,4,6-trinitrotoluene (TNT);

r. Ethylenediaminedinitrate (EDDN);

s. Pentaerythritoltetranitrate (PETN);

t. Lead azide, normal and basic lead styphnate, and primary explosives or priming compositions containing azides or azide complexes;

u. Triethyleneglycoldinitrate (TEGDN);

v. 2,4,6-trinitroresorcinol (styphnic acid);

w. Diethyldiphenyl urea; dimethylidiphenyl urea; methylethyldiphenyl urea [Centralites];

x. N,N-diphenylurea (unsymmetrical diphenylurea);

y. Methyl-N,N-diphenylurea (methyl unsymmetrical diphenylurea);

z. Ethyl-N,N-diphenylurea (ethyl unsymmetrical diphenylurea);

aa. 2-Nitrodiphenylamine (2-NDPA);

bb. 4-Nitrodiphenylamine (4-NDPA);

cc. 2,2-dinitropropanol;

dd. Nitroguanidine (see 1C011.d. on the EU Dual-Use List).

ML9 VESSELS OF WAR, SPECIAL NAVAL EQUIPMENT AND ACCESSORIES, AS FOLLOWS, AND COMPONENTS THEREFOR, SPECIALLY DESIGNED FOR MILITARY USE:

NB: For guidance and navigation equipment, see ML11, Note 7.

a. Combatant vessels and vessels (surface or underwater) specially designed or modified for offensive or defensive action, whether or not converted to non-military use, regardless of current state of repair or operating condition, and whether or not they contain weapon delivery systems or armour, and hulls or parts of hulls for such vessels;

b. Engines and propulsion systems, as follows:

1. Diesel engines specially designed for submarines with both of the following characteristics:

a. A power output of 1,12 MW (1 500 h.p.) or more; and

b. A rotary speed of 700 rpm or more;

2. Electric motors specially designed for submarines having all of the following characteristics:

a. A power output of more than 0,75 MW (1 000 h.p.);

b. Quick reversing;

c. Liquid cooled; and

d. Totally enclosed;

3. Non-magnetic diesel engines specially designed for military use with a power output of 37,3 kW (50 h.p.) or more and with a non-magnetic content in excess of 75 % of total mass;

4. Air Independent Propulsion systems specially designed for submarines;

Technical Note

'Air Independent Propulsion' allows a submerged submarine to operate its propulsion system, without access to atmospheric oxygen, for a longer time than the batteries would have otherwise allowed. This does not include nuclear power.

c. Underwater detection devices specially designed for military use and controls thereof;

d. Submarine and torpedo nets;

e. Not used;

f. Hull penetrators and connectors specially designed for military use that enable interaction with equipment external to a vessel;

Note ML9.f. includes connectors for vessels which are of the single-conductor, multi-conductor, coaxial or waveguide type, and hull penetrators for vessels, both of which are capable of remaining impervious to leakage from without and of retaining required characteristics at marine depths exceeding 100 m; and fibre-optic connectors and optical hull penetrators specially designed for 'laser' beam transmission regardless of depth. It does not include ordinary propulsive shaft and hydro-dynamic control-rod hull penetrators.

g. Silent bearings, with gas or magnetic suspension, active signature or vibration suppression controls, and equipment containing those bearings, specially designed for military use.

ML10 'AIRCRAFT', 'LIGHTER-THAN-AIR VEHICLES', UNMANNED AIRBORNE VEHICLES, AERO-ENGINES AND 'AIRCRAFT' EQUIPMENT, RELATED EQUIPMENT AND COMPONENTS, SPECIALLY DESIGNED OR MODIFIED FOR MILITARY USE, AS FOLLOWS:

NB: For guidance and navigation equipment, see ML11, Note 7.

a. Combat 'aircraft' and specially designed components therefor;

b. Other 'aircraft' and 'lighter-than-air vehicles' specially designed or modified for military use, including military reconnaissance, assault, military training, transporting and airdropping troops or military equipment, logistics support, and specially designed components therefor;

c. Unmanned airborne vehicles and related equipment, specially designed or modified for military use, as follows, and specially designed components therefor:

1. Unmanned airborne vehicles including remotely piloted air vehicles (RPVs), autonomous programmable vehicles and 'lighter-than-air vehicles';

2. Associated launchers and ground support equipment;

3. Related equipment for command and control;

d. Aero-engines specially designed or modified for military use, and specially designed components therefor;

e. Airborne equipment, including airborne refuelling equipment, specially designed for use with the 'aircraft' controlled by ML10.a. or ML10.b. or the aero-engines controlled by ML10.d., and specially designed components therefor;

f. Pressure refuellers, pressure refuelling equipment, equipment specially designed to facilitate operations in confined areas and ground equipment, developed specially for 'aircraft' controlled by ML10.a. or ML10.b., or for aero-engines controlled by ML10.d.;

g. Military crash helmets and protective masks and specially designed components therefor, pressurised breathing equipment and partial pressure suits for use in 'aircraft', anti-g suits, liquid oxygen converters used for 'aircraft' or missiles, and catapults and cartridge actuated devices for emergency escape of personnel from 'aircraft';

h. Parachutes and related equipment, used for combat personnel, cargo dropping or 'aircraft' deceleration, as follows, and specially designed components therefor:

1. Parachutes for:

a. Pinpoint dropping of rangers;

b. Dropping of paratroopers;

2. Cargo parachutes;

3. Paragliders, drag parachutes, drogue parachutes for stabilisation and attitude control of dropping bodies, (e.g. recovery capsules, ejection seats, bombs);

4. Drogue parachutes for use with ejection seat systems for deployment and inflation sequence regulation of emergency parachutes;

5. Recovery parachutes for guided missiles, drones or space vehicles;

6. Approach parachutes and landing deceleration parachutes;

7. Other military parachutes;

8. Equipment specially designed for high altitude parachutists (e.g. suits, special helmets, breathing systems, navigation equipment);

i. Automatic piloting systems for parachuted loads; equipment specially designed or modified for military use for controlled opening jumps at any height, including oxygen equipment.

Note 1 ML10.b. does not control 'aircraft' or variants of those 'aircraft' specially designed for military use which:

a. Are not configured for military use and are not fitted with equipment or attachments specially designed or modified for military use; and

b. Have been certified for civil use by the civil aviation authority in a Wassenaar Arrangement participating state.

Note 2 ML10.d. does not control:

a. Aero-engines designed or modified for military use which have been certified by civil aviation authorities in a Wassenaar Arrangement participating state for use in 'civil aircraft', or specially designed components therefor;

b. Reciprocating engines or specially designed components therefor, except those specially designed for unmanned airborne vehicles.

Note 3 The control in ML10.b. and ML10.d. on specially designed components and related equipment for non-military 'aircraft' or aero-engines modified for military use applies only to those military components and to military related equipment required for the modification to military use.

ML11 ELECTRONIC EQUIPMENT NOT CONTROLLED ELSEWHERE ON THE EU COMMON MILITARY LIST, AS FOLLOWS, AND SPECIALLY DESIGNED COMPONENTS THEREFOR:

a. Electronic equipment specially designed for military use;

Note ML11 includes:

1. Electronic countermeasure and electronic counter-countermeasure equipment (i.e. equipment designed to introduce extraneous or erroneous signals into radar or radio communication receivers or otherwise hinder the reception, operation or effectiveness of adversary electronic receivers including their countermeasure equipment), including jamming and counter-jamming equipment;

2. Frequency agile tubes;

3. Electronic systems or equipment designed either for surveillance and monitoring of the electromagnetic spectrum for military intelligence or security purposes or for counteracting such surveillance and monitoring;

4. Underwater countermeasures, including acoustic and magnetic jamming and decoy, equipment designed to introduce extraneous or erroneous signals into sonar receivers;

5. Data processing security equipment, data security equipment and transmission and signalling line security equipment, using ciphering processes;

6. Identification, authentification and keyloader equipment and key management, manufacturing and distribution equipment;

7. Guidance and navigation equipment;

8. Digital troposcatter-radio communications transmission equipment;

9. Digital demodulators specially designed for signals intelligence.

b. Global Navigation Satellite Systems (GNSS) jamming equipment.

ML12 HIGH VELOCITY KINETIC ENERGY WEAPON SYSTEMS AND RELATED EQUIPMENT, AS FOLLOWS, AND SPECIALLY DESIGNED COMPONENTS THEREFOR:

a. Kinetic energy weapon systems specially designed for destruction or effecting mission-abort of a target;

b. Specially designed test and evaluation facilities and test models, including diagnostic instrumentation and targets, for dynamic testing of kinetic energy projectiles and systems.

NB: For weapon systems using sub-calibre ammunition or employing solely chemical propulsion, and ammunition therefor, see ML1 to ML4.

Note 1 ML12 includes the following when specially designed for kinetic energy weapon systems:

a. Launch propulsion systems capable of accelerating masses larger than 0,1 g to velocities in excess of 1,6 km/s, in single or rapid fire modes;

b. Prime power generation, electric armour, energy storage, thermal management, conditioning, switching or fuel-handling equipment; and electrical interfaces between power supply, gun and other turret electric drive functions;

c. Target acquisition, tracking, fire control or damage assessment systems;

d. Homing seeker, guidance or divert propulsion (lateral acceleration) systems for projectiles.

Note 2 ML12 controls weapon systems using any of the following methods of propulsion:

a. Electromagnetic;

b. Electrothermal;

c. Plasma;

d. Light gas; or

e. Chemical (when used in combination with any of the above).

ML13 ARMOURED OR PROTECTIVE EQUIPMENT AND CONSTRUCTIONS AND COMPONENTS, AS FOLLOWS:

a. Armoured plate as follows:

1. Manufactured to comply with a military standard or specification; or

2. Suitable for military use;

b. Constructions of metallic or non-metallic materials or combinations thereof specially designed to provide ballistic protection for military systems, and specially designed components therefor;

c. Helmets manufactured according to military standards or specifications, or comparable national standards, and specially designed components therefor, i.e. helmet shell, liner and comfort pads;

d. Body armour and protective garments manufactured according to military standards or specifications, or equivalent, and specially designed components therefor.

Note 1 ML13.b. includes materials specially designed to form explosive reactive armour or to construct military shelters.

Note 2 ML13.c. does not control conventional steel helmets, neither modified or designed to accept, nor equipped with any type of accessory device.

Note 3 ML13.c. and d. do not control helmets, body armour or protective garments when accompanying their user for the user's own personal protection.

Note 4 The only helmets specially designed for bomb disposal personnel that are controlled by ML13. are those specially designed for military use.

NB 1: See also entry 1A005 on the EU Dual-Use List.

NB 2: For 'fibrous or filamentary materials' used in the manufacture of body armour and helmets, see entry 1C010 on the EU Dual-Use List.

ML14 SPECIALISED EQUIPMENT FOR MILITARY TRAINING OR FOR SIMULATING MILITARY SCENARIOS, SIMULATORS SPECIALLY DESIGNED FOR TRAINING IN THE USE OF ANY FIREARM OR WEAPON CONTROLLED BY ML1 OR ML2, AND SPECIALLY DESIGNED COMPONENTS AND ACCESSORIES THEREFOR.

Technical Note

The term 'specialised equipment for military training' includes military types of attack trainers, operational flight trainers, radar target trainers, radar target generators, gunnery training devices, anti-submarine warfare trainers, flight simulators (including human-rated centrifuges for pilot/astronaut training), radar trainers, instrument flight trainers, navigation trainers, missile launch trainers, target equipment, drone 'aircraft', armament trainers,

pilotless 'aircraft' trainers, mobile training units and training equipment for ground military operations.

Note 1 ML14 includes image generating and interactive environment systems for simulators when specially designed or modified for military use.

Note 2 ML14 does not control equipment specially designed for training in the use of hunting or sporting weapons.

ML15 IMAGING OR COUNTERMEASURE EQUIPMENT, AS FOLLOWS, SPECIALLY DESIGNED FOR MILITARY USE, AND SPECIALLY DESIGNED COMPONENTS AND ACCESSORIES THEREFOR:

a. Recorders and image processing equipment;

b. Cameras, photographic equipment and film processing equipment;

c. Image intensifier equipment;

d. Infrared or thermal imaging equipment;

e. Imaging radar sensor equipment;

f. Countermeasure or counter-countermeasure equipment for the equipment controlled by sub-items ML15.a. to ML15.e.

Note ML15.f. includes equipment designed to degrade the operation or effectiveness of military imaging systems or to minimize such degrading effects.

Note 1 The term 'specially designed components' includes the following when specially designed for military use:

a. Infrared image converter tubes;

b. Image intensifier tubes (other than first generation);

c. Microchannel plates;

d. Low-light-level television camera tubes;

e. Detector arrays (including electronic interconnection or readout systems);

f. Pyroelectric television camera tubes;

g. Cooling systems for imaging systems;

h. Electrically triggered shutters of the photochromic or electro-optical type having a shutter speed of less than 100 μs, except in the case of shutters which are an essential part of a high-speed camera;

i. Fibre optic image inverters;

j. Compound semiconductor photocathodes

Note 2 ML15 does not control 'first generation image intensifier tubes' or equipment specially designed to incorporate 'first generation image intensifier tubes'.

NB: For the status of weapons sights incorporating 'first generation image intensifier tubes' see entries ML1., ML2. and ML5.a.

NB: See also entries 6A002.a.2. and 6A002.b. on the EU Dual-Use List.

ML16 FORGINGS, CASTINGS AND OTHER UNFINISHED PRODUCTS THE USE OF WHICH IN A CONTROLLED PRODUCT IS IDENTIFIABLE BY MATERIAL COMPOSITION, GEOMETRY OR FUNCTION, AND WHICH ARE SPECIALLY DESIGNED FOR ANY PRODUCTS CONTROLLED BY ML1 TO ML4, ML6, ML9, ML10, ML12 OR ML19.

ML17 MISCELLANEOUS EQUIPMENT, MATERIALS AND LIBRARIES, AS FOLLOWS, AND SPECIALLY DESIGNED COMPONENTS THEREFOR:

a. Self-contained diving and underwater swimming apparatus, as follows:

1. Closed or semi-closed circuit (rebreathing) apparatus specially designed for military use (i.e. specially designed to be non-magnetic);

2. Specially designed components for use in the conversion of open-circuit apparatus to military use;

3. Articles designed exclusively for military use with self-contained diving and underwater swimming apparatus;

b. Construction equipment specially designed for military use;

c. Fittings, coatings and treatments for signature suppression, specially designed for military use;

d. Field engineer equipment specially designed for use in a combat zone;

e. 'Robots', 'robot' controllers and 'robot' 'end-effectors', having any of the following characteristics:

1. Specially designed for military use;

2. Incorporating means of protecting hydraulic lines against externally induced punctures caused by ballistic fragments (e.g. incorporating self-sealing lines) and designed to use hydraulic fluids with flash points higher than 839 K (566 °C); or

3. Specially designed or rated for operating in an electro magnetic pulse (EMP) environment;

f. Libraries (parametric technical databases) specially designed for military use with equipment controlled by the EU Common Military List;

g. Nuclear power generating equipment or propulsion equipment, including 'nuclear reactors', specially designed for military use and components therefor specially designed or modified for military use;

h. Equipment and material, coated or treated for signature suppression, specially designed for military use, other than those controlled elsewhere in the EU Common Military List;

i. Simulators specially designed for military 'nuclear reactors';

j. Mobile repair shops specially designed or modified to service military equipment;

k. Field generators specially designed or modified for military use;

l. Containers specially designed or modified for military use;

m. Ferries, other than those controlled elsewhere in the EU Common Military List, bridges and pontoons, specially designed for military use;

n. Test models specially designed for the 'development' of items controlled by ML4, ML6, ML9 or ML10;

o. Laser protection equipment (e.g. eye and sensor protection) specially designed for military use.

Technical Notes

1. For the purpose of ML17, the term 'library' (parametric technical database) means a collection of technical information of a military nature, reference to which may enhance the performance of military equipment or systems.

2. For the purpose of ML17, 'modified' means any structural, electrical, mechanical, or other change that provides a non-military item with military capabilities equivalent to an item which is specially designed for military use.

ML18 EQUIPMENT FOR THE PRODUCTION OF PRODUCTS CONTROLLED BY THE EU COMMON MILITARY LIST, AS FOLLOWS:

a. Specially designed or modified production equipment for the production of products controlled
by the EU Common Military List, and specially designed components therefor;

b. Specially designed environmental test facilities and specially designed equipment therefor, for the certification, qualification or testing of products controlled by the EU Common Military List.

Technical Note

For the purposes of ML18, the term 'production' includes design, examination, manufacture, testing and checking.

Note ML18.a. and ML18.b. include the following equipment:

a. Continuous nitrators;

b. Centrifugal testing apparatus or equipment having any of the following characteristics:

1. Driven by a motor or motors having a total rated horsepower of more than 298 kW (400 h.p.);

2. Capable of carrying a payload of 113 kg or more; or

3. Capable of exerting a centrifugal acceleration of 8 g or more on a payload of 91 kg or more;

c. Dehydration presses;

d. Screw extruders specially designed or modified for military explosive extrusion;

e. Cutting machines for the sizing of extruded propellants;

f. Sweetie barrels (tumblers) 1,85 m or more in diameter and having over 227 kg product capacity;

g. Continuous mixers for solid propellants;

h. Fluid energy mills for grinding or milling the ingredients of military explosives;

i. Equipment to achieve both sphericity and uniform particle size in metal powder listed in ML8.c.8.;

j. Convection current converters for the conversion of materials listed in ML8.c.3.

ML19 DIRECTED ENERGY WEAPON SYSTEMS (DEW), RELATED OR COUNTERMEASURE EQUIPMENT AND TEST MODELS, AS FOLLOWS, AND SPECIALLY DESIGNED COMPONENTS THEREFOR:

a. 'Laser' systems specially designed for destruction or effecting mission-abort of a target;

b. Particle beam systems capable of destruction or effecting mission-abort of a target;

c. High power radio-frequency (RF) systems capable of destruction or effecting mission-abort of a target;

d. Equipment specially designed for the detection or identification of, or defence against, systems controlled by ML19.a. to ML19.c.;

e. Physical test models for the systems, equipment and components controlled by this Item.

f. Continuous wave or pulsed 'laser' systems specially designed to cause permanent blindness to unenhanced vision, i.e. to the naked eye or to the eye with corrective eyesight devices.

Note 1 Directed energy weapon systems controlled by ML19 include systems whose capability is derived from the controlled application of:

a. 'Lasers' of sufficient continuous wave or pulsed power to effect destruction similar to the manner of conventional ammunition;

b. Particle accelerators which project a charged or neutral particle beam with destructive power;

c. High pulsed power or high average power radio frequency beam transmitters which produce fields sufficiently intense to disable electronic circuitry at a distant target.

Note 2 ML19 includes the following when specially designed for directed energy weapon systems:

a. Prime power generation, energy storage, switching, power conditioning or fuel-handling equipment;

b. Target acquisition or tracking systems;

c. Systems capable of assessing target damage, destruction or mission-abort;

d. Beam-handling, propagation or pointing equipment;

e. Equipment with rapid beam slew capability for rapid multiple target operations;

f. Adaptive optics and phase conjugators;

g. Current injectors for negative hydrogen ion beams;

h. 'Space qualified' accelerator components;

i. Negative ion beam funnelling equipment;

j. Equipment for controlling and slewing a high energy ion beam;

k. 'Space qualified' foils for neutralising negative hydrogen isotope beams.

ML20 CRYOGENIC AND 'SUPERCONDUCTIVE' EQUIPMENT, AS FOLLOWS, AND SPECIALLY DESIGNED COMPONENTS AND ACCESSORIES THEREFOR:

a. Equipment specially designed or configured to be installed in a vehicle for military ground,

marine, airborne or space applications, capable of operating while in motion and of producing
or maintaining temperatures below 103 K (-170 °C);

Note ML20.a. includes mobile systems incorporating or employing accessories or components manufactured from non-metallic or non electrical conductive materials, such as plastics or epoxy-impregnated materials.

b. 'Superconductive' electrical equipment (rotating machinery and transformers) specially designed or configured to be installed in a vehicle for military ground, marine, airborne or space applications, capable of operating while in motion.

Note ML20.b. does not control direct current hybrid homopolar generators that have single-pole normal metal armatures which rotate in a magnetic field produced by superconducting windings, provided those windings are the only superconducting component in the generator.

ML21 'SOFTWARE', AS FOLLOWS:

a. 'Software' specially designed or modified for the 'development', 'production' or 'use' of equipment or materials controlled by the EU Common Military List;

b. Specific 'software', as follows:

1. 'Software' specially designed for:

a. Modelling, simulation or evaluation of military weapon systems;

b. 'Development', monitoring, maintenance or updating of 'software' embedded in military weapon systems;

c. Modelling or simulating military operation scenarios;

d. Command, Communications, Control and Intelligence (C3I) or Command, Communications, Control, Computer and Intelligence (C4I) applications;

2. 'Software' for determining the effects of conventional, nuclear, chemical or biological warfare weapons.

3. 'Software', not controlled by ML21.a., b.1. or b.2., specially designed or modified to enable equipment not controlled by the EU Common Military List to perform the military functions of equipment controlled by the EU Common Military List.

ML22 'TECHNOLOGY' AS FOLLOWS:

a. 'Technology', other than specified in ML22.b., which is 'required' for the 'development',

'production' or 'use' of items controlled in the Common Military List of The European Union.

b. 'Technology' as follows:

1. 'Technology' 'required' for the design of, the assembly of components into, and the operation, maintenance and repair of complete production installations for items controlled in the Common Military List of The European Union, even if the components of such production installations are not controlled;

2. 'Technology' 'required' for the 'development' and 'production' of small arms even if used to produce reproductions of antique small arms;

3. 'Technology' 'required' for the 'development', 'production' or 'use' of toxicological agents, related equipment or components controlled by ML7.a. to ML7.g.;

4. 'Technology' 'required' for the 'development', 'production' or 'use' of 'biopolymers' or cultures of specific cells controlled by ML7.h.;

5. 'Technology' 'required' exclusively for the incorporation of 'biocatalysts', controlled by ML7.i.1., into military carrier substances or military material.

Note 1 'Technology' 'required' for the 'development', 'production' or 'use' of items controlled in the EU Common Military List remains under control even when applicable to any uncontrolled item.

Note 2 ML22 does not control 'technology' as follows:

a. Which is the minimum necessary for the installation, operation, maintenance (checking) and repair of those items which are not controlled or whose export has been authorised;

b. Which is 'in the public domain', 'basic scientific research' or the minimum necessary information for patent applications;

c. For magnetic induction for continuous propulsion of civil transport devices.

LEGISLATIVE FINANCIAL STATEMENT FOR PROPOSALS HAVING A BUDGETARY IMPACT EXCLUSIVELY LIMITED TO THE REVENUE SIDE

1. NAME OF THE PROPOSAL:

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

2. BUDGET LINES:

Chapter and Article: 02.0301

Amount budgeted for the year concerned: 0

3. FINANCIAL IMPACT

☐ Proposal has no financial implications

☐ Proposal has no financial impact on expenditure but has a financial impact on revenue – the effect is as follows:

(€ million to one decimal place)

Budget line	Revenue[13]	12 month period, starting dd/mm/yyyy	[Year n]
Article …	Impact on own resources		
Article …	Impact on own resources		

[13] Regarding traditional own resources (agricultural duties, sugar levies, customs duties) the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25 % of collection costs.

Situation following action					
	[n+1]	[n+2]	[n+3]	[n+4]	[n+5]
Article …					
Article …					

4. ANTI-FRAUD MEASURES

[…]

5. OTHER REMARKS

[…]

LEGISLATIVE FINANCIAL STATEMENT

1. NAME OF THE PROPOSAL:

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

2. ABM / ABB FRAMEWORK

Policy Area(s) concerned and associated Activity/Activities: ABB2 Internal market for goods & Sectoral policies

3. BUDGET LINES

3.1. Budget lines (operational lines and related technical and administrative assistance lines (ex- B.A lines)) including headings:

02.0301

3.2. Duration of the action and of the financial impact:

Continuous

3.3. Budgetary characteristics:

Budget line	Type of expenditure		New	EFTA contribution	Contributions from applicant countries	Heading in financial perspective
02.0301	Non-comp	Diff[14]	NO	YES	NO	1a

[14] Differentiated appropriations.

4. SUMMARY OF RESOURCES

4.1. Financial Resources

4.1.1. Summary of commitment appropriations (CA) and payment appropriations (PA)

EUR million (to 3 decimal places)

Expenditure type	Section no.		Year 2007	2008	2009	2010	2011	2012 and later	Total
Operational expenditure[15]									
Commitment Appropriations (CA)	8.1.	a			0,200				0,200
Payment Appropriations (PA)		b			0,140	0,060			0,200
Administrative expenditure within reference amount[16]									
Technical & administrative assistance (NDA)	8.2.4.	c							
TOTAL REFERENCE AMOUNT									
Commitment Appropriations		a+c			0,200				0,200
Payment Appropriations		b+c			0,140	0,060			0,200
Administrative expenditure not included in reference amount[17]									
Human resources and associated expenditure (NDA)	8.2.5.	d			0,234	0,117			0,351
Administrative costs, other than human resources and associated costs, not included in reference amount (NDA)	8.2.6.	e					0,070	0,115	0,185
Total indicative financial cost of intervention									

15 Expenditure that does not fall under Chapter xx 01 of the Title xx concerned.
16 Expenditure within article xx 01 04 of Title xx.
17 Expenditure within chapter xx 01 other than articles xx 01 04 or xx 01 05.

TOTAL CA including cost of Human Resources		a+c +d +e			0,434	0,117	0,070	0,115	0,736
TOTAL PA including cost of Human Resources		b+c +d +e			0,374	0,177	0,070	0,115	0,736

Co-financing details

If the proposal involves co-financing by Member States, or other bodies (please specify which), an estimate of the level of this co-financing should be indicated in the table below (additional lines may be added if different bodies are foreseen for the provision of the co-financing):

EUR million (to 3 decimal places)

Co-financing body		Year n	n + 1	n + 2	n + 3	n + 4	n + 5 and later	Total
……	f							
TOTAL CA including co-financing	a+c +d +e +f							

4.1.2. Compatibility with Financial Programming

■ Proposal is compatible with existing financial programming.

☐ Proposal will entail reprogramming of the relevant heading in the financial perspective.

☐ Proposal may require application of the provisions of the Inter-institutional Agreement[18] (i.e. flexibility instrument or revision of the financial perspective).

4.1.3. Financial impact on Revenue

■ Proposal has no financial implications on revenue

☐ Proposal has financial impact – the effect on revenue is as follows:

[18] See points 19 and 24 of the Interinstitutional agreement.

EUR million (to one decimal place)

		Prior to action [Year n-1]	Situation following action					
Budget line	Revenue		[Year n]	[n+1]	[n+2]	[n+3]	[n+4]	[n+5][19]
	a) Revenue in absolute terms							
	b) Change in revenue	Δ						

4.2. Human Resources FTE (including officials, temporary and external staff) – see detail under point 8.2.1.

Annual requirements	Year 2007	2008	2009	2010	2011	2012 and later
Total number of human resources		2	1			

5. CHARACTERISTICS AND OBJECTIVES

5.1. Need to be met in the short or long term

Transfers within the EU of defence products (including comprehensive military equipments as well as sub-systems, components, spare parts, technologies …) are subject to national licensing generally in the same way as exports of such products to third countries. The European defence market is consequently fragmented into 27 national licensing regimes which diverge widely in terms of procedure, scope and required delays, despite coordinating efforts between a limited number of Member States. Defence industries and EU governments do not have full predictability in their supply chains because of the uncertainty stemming from diverging licensing regimes. These divergences constitute a major impediment to industrial rationalisation, and a considerable obstacle to the emergence of a European Defence Equipment Market (EDEM) and the functioning of the Internal Market.

Following its commitments taken in the context of its 2003 Communication on an EU Defence Equipment Policy, and of the 2005 study "Intra-Community Transfers of Defence Products", the Commission wants to simplify and harmonise transfers of defence products within the EU. In terms of:

– simplification, the proposal requires Member States to establish systems of general and global licences for intra-EU transfers and to limit individual licensing to exceptional circumstances;

[19] Additional columns should be added if necessary i.e. if the duration of the action exceeds 6 years.

– harmonisation, the proposal requires Member States to establish systems of general licences for two types of transfers: transfers to EU governments; transfers of military components to EU certified companies.

This proposal should also be seen as supporting the opening up of defence markets: by simplifying the transfers of defence products to EU governments, it will foster security of supply and therefore reduce obstacles to cross-border procurement.

5.2. Value-added of Community involvement and coherence of the proposal with other financial instruments and possible synergy

This proposal belongs to a defence package consisting of one general communication and two legislative initiatives on defence procurement and on transfers of defence-related products respectively, which are mutually supportive and contribute to wider objectives of the EU.

Facilitating transfers will complement the proposal on defence procurement: opening up public markets presupposes a reasonable expectation from the buyer that ordered products will be delivered without undue administrative obstacles. Furthermore, although licences are hardly ever refused, the "theoretical" possibility that such refusal may take place is an incentive for Member States to prefer sourcing military equipment from a national producer rather than from its (possibly more advantageous) European competitors.

Common Foreign Security Policy (CFSP): Whilst having as primary objective the completion of Internal Market for defence products, the initiative will also contribute to achieving CFSP objectives, such as improving the security of supply of Member States armed forces, as well as industrial policy objectives, such as the promotion of a strong European Defence Technological and Industrial Base (EDTIB). In addition, improved industrial cooperation should generate economies of scale (and therefore lead to more “value for money” defence equipments), thus allowing Member States armed forces to maximise the effectiveness of their defence investments.

Lisbon agenda: the latter consideration links up to the Lisbon objectives such as strengthening the international competitiveness of European (defence) industries and secure employment in Europe.

LoI: the Letter of Intent cooperation agreed in 1998 by the six largest defence producing Member States aims inter alia at facilitating the movement of military equipment between participating members. However, no tangible results have yet been achieved in that context. The proposal is compatible and complementary to LoI current ongoing work. It will indeed provide the necessary common tools that could subsequently be further developed on an inter-governmental basis.

5.3. Objectives, expected results and related indicators of the proposal in the context of the ABM framework

The objective of this proposal is to reduce these obstacles to the circulation of defence-related products within the Internal Market, and to diminish the resulting distortions of competition, by simplifying the conditions and procedures of licensing through harmonisation at European level. Because of the specific features of the

defence market and the need to protect national security, it is not proposed to abolish licensing requirements but to replace them by a streamlined system of general or global licenses, and to provide guarantees as to the reliability of recipients' ability to prevent undesired exports. It will make an important contribution to:

☐ strengthening the European defence industry's competitiveness, by facilitating its specialisation and by favouring industrial cooperation throughout the EU;

☐ improving security of supply of European defence products (purchases and maintenance) for Member States.

5.4. Method of Implementation (indicative)

■ Centralised Management

- ■ directly by the Commission
- ☐ indirectly by delegation to:
  - ☐ executive Agencies
  - ☐ bodies set up by the Communities as referred to in art. 185 of the Financial Regulation
  - ☐ national public-sector bodies/bodies with public-service mission

☐ Shared or decentralised management

- ☐ with Member states
- ☐ with Third countries

☐ Joint management with international organisations (please specify)

Relevant comments:

6. MONITORING AND EVALUATION

6.1. Monitoring system

The proposal requires the creation of a Cooperation Group by the Commission in order to examine any question concerning the application of this directive which may be raised either by the chairman or by a representative of a Member State. Its mandate would cover in particular

a) evaluation of implementing measures in each Member State based on the Commission report

b) use of the safeguard clause

c) measures which should be taken by Member States to inform operators of their obligations under this directive;

d) guidance concerning licence forms;

6.2. Evaluation

6.2.1. Ex-ante evaluation

On the basis of information provided within 18 months of the entry into force by the Member States on the transposition measures taken to comply with this directive, the Commission will present a report on the application of this directive, and in particular Articles 9-12, 15 thereof, within 30 months of the date of entry into force of the directive.

Not later than 5 years after the date of transposition of this directive, the Commission will publish a report 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, attaching to its report, if necessary, suitable proposals for amendments

6.2.2. Measures taken following an intermediate/ex-post evaluation (lessons learned from similar experiences in the past)

Not applicable

6.2.3. Terms and frequency of future evaluation

As appropriate

7. ANTI-FRAUD MEASURES

If a licensing Member State has considers that there is a serious risk that any company certified in another receiving Member State will not respect any condition attached to a general transfer licence, it shall inform the other Member State and request its evaluation of the situation.

In case the doubts continue to persist, the Member State may provisionally suspend the effect of its general transfer licences with regard to such companies. It shall inform the other Member States and Commission of the reasons for the measure.

8. DETAILS OF RESOURCES

8.1. Objectives of the proposal in terms of their financial cost

Commitment appropriations in EUR million (to 3 decimal places)

(Headings of Objectives, actions and outputs should be provided)	Type of output	Av. cost	Year 2007		Year 2008		Year 2009		Year 2010		Year 2011		Year 2012 and later		TOTAL	
			No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost
OPERATIONAL OBJECTIVE No.1[20]																
Action 1 Evaluation of impact																
- Output 1	Service						1 report	0,200								
TOTAL COST							1	0,200								

[20] As described under Section 5.3.

8.2. Administrative Expenditure

8.2.1. Number and type of human resources

Types of post		Staff to be assigned to management of the action using existing and/or additional resources (number of posts/FTEs)					
		Year 2007	Year 2008	Year 2009	Year 2010	Year 2011	Year 2012
Officials or temporary staff[21] (XX 01 01)	A*/AD		1	1			
	B*, C*/AST		1 (B*)				
Staff financed[22] by art. XX 01 02							
Other staff[23] financed by art. XX 01 04/05							
TOTAL							

8.2.2. Description of tasks deriving from the action

Although the proposal's objective is to complete the Internal Market, it concerns a completely new sector of defence related products for which the Commission needs to develop appropriate technical expertise in order to participate fully in Council and Parliament work following the proposal. The additional staff is needed:

- to cooperate closely in Council work on the Common Military List to make a proposal for the update of the Annex;
- to produce a report on the measures taken by Member States to comply with the provisions of this directive;
- to produce a report 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;
- to animate the work of the Cooperation group;
- to organise permanent monitoring of the respect of procedures and methods of cooperation between Member States and use its powers if necessary.

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21 Cost of which is NOT covered by the reference amount.
22 Cost of which is NOT covered by the reference amount.
23 Cost of which is included within the reference amount.

8.2.3. Sources of human resources (statutory)

- ☐ Posts currently allocated to the management of the programme to be replaced or extended
- ☐ Posts pre-allocated within the APS/PDB exercise for year n
- ■ Posts to be requested in the next APS/PDB procedure
- ☐ Posts to be redeployed using existing resources within the managing service (internal redeployment)
- ☐ Posts required for year n although not foreseen in the APS/PDB exercise of the year in question

8.2.4. Other Administrative expenditure included in reference amount (XX 01 04/05 – Expenditure on administrative management)

EUR million (to 3 decimal places)

Budget line (number and heading)	Year n	Year n+1	Year n+2	Year n+3	Year n+4	Year n+5 and later	TOTAL
1 Technical and administrative assistance (including related staff costs)							
Executive agencies[24]							
Other technical and administrative assistance							
- intra muros							
- extra muros							
Total Technical and administrative assistance							

[24] Reference should be made to the specific legislative financial statement for the Executive Agency(ies) concerned.

8.2.5. Financial cost of human resources and associated costs not included in the reference amount

EUR million (to 3 decimal places)

Type of human resources	Year 2007	Year 2008	Year 2009	Year 2010	Year 2011	Year 2012 and later
Officials and temporary staff (XX 01 01)		0, 234	0,117			
Staff financed by Art XX 01 02 (auxiliary, END, contract staff, etc.) (specify budget line)						
Total cost of Human Resources and associated costs (NOT in reference amount)		0,234	0,117			

Calculation– Officials and Temporary agents

[…]

Calculation– Staff financed under art. XX 01 02

[…]

8.2.6. Other administrative expenditure not included in reference amount

EUR million (to 3 decimal places)

	Year 2007	Year 2008	Year 2009	Year 2010	Year 2011	Year 2012 and later	TOTAL
XX 01 02 11 01 – Missions							
XX 01 02 11 02 – Meetings & Conferences					0,035	0,115	

XX 01 02 11 03 – Committees[25]					0,035		
XX 01 02 11 04 – Studies & consultations							
XX 01 02 11 05 - Information systems							
2 Total Other Management Expenditure (XX 01 02 11)					0,07	0,115	
3 Other expenditure of an administrative nature (specify including reference to budget line)							
Total Administrative expenditure, other than human resources and associated costs (NOT included in reference amount)							

Calculation - Other administrative expenditure not included in reference amount […]

[25] Specify the type of committee and the group to which it belongs.