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**COMMISSION STAFF WORKING DOCUMENT**

**Evaluation of the Transfers Directive**

*Accompanying the document*

**Report from the Commission to the European Parliament and the Council on the evaluation of Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community**

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## LIST OF ABBREVIATIONS

ASD	AeroSpace and Defence Industries Association of Europe
CA	Competent Authority
CML	Common Military List
DG	Directorate General
EC	European Commission
ECC	Export Controls Committee of ASD
EDA	European Defence Agency
EDTIB	European Defence Technological and Industrial Base
EEA	European Economic Area
EEAS	European External Action Service
EEN	Enterprise Europe Network
EQ	Evaluation Question
EU	European Union
GloTL	Global Transfer Licence
GTL	General Transfer Licence
IA	Impact Assessment
ITL	Individual Transfer Licence
LoI	Letter of Intent countries (France, Germany, Italy, Spain, Sweden and the UK)

MS	Member State(s)
NDIA	National defence industry association
SPIPRI	Stockholm International Peace Research Institute
SIR	Specific information requirements
SME	Small and medium-sized enterprise
TD	Transfers Directive

## 1. INTRODUCTION

Pursuant to Article 17 of the Transfers Directive 2009/43/EC<sup>1</sup> (the Directive), the Commission is required to report to the European Parliament and the Council on the review of the implementation of the Directive. If necessary, the report shall be accompanied by a legislative proposal.

To this end, the Commission has carried out an evaluation of the Directive with the aim of establishing whether, and to what extent, the objectives of the Directive have been achieved, with regard, *inter alia*, to the functioning of the internal market. Specifically, the evaluation sought to assess the application of the areas of the Directive dealing with certification (Article 9), export limitations (Article 10), customs procedures (Article 11), exchange of information (Article 12) and safeguard measures (Article 15). Furthermore, it aimed at the assessment of the impact of the Directive on the development of a European defence equipment market and a European defence technological and industrial base (EDTIB), having regard, *inter alia*, to the situation of small and medium-sized enterprises (SMEs).

In line with the above requirement, DG Internal Market, Industry, Entrepreneurship and SMEs (DG GROW) contracted in January 2015 an external study to support the evaluation of the Directive covering the period 2012 (entry into force of the Directive) until 2015<sup>2</sup>.

This evaluation has been undertaken just three years after the transposition deadline (and fewer years from actual application in some countries). Therefore it may be too soon to see the full impact of the Directive in relation to its wider aims. The ex-ante Impact Assessment<sup>3</sup> accompanying the proposal for the Transfer Directive cautioned that changes to government procurement practices and the reorganisation of industrial supply chains would not take place immediately and that evaluation of broader impacts and indirect benefits of the Directive should only take place at least six years after first application. The Impact Assessment was indicating that in the midterm, the Commission should assess the functioning of the new EU simplified regime, with special attention on administrative costs. For this reason, the evaluation has been mainly focused on the assessment of its progress towards the achievement of the objectives, i.e. how far the Member States and industry are in

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<sup>1</sup> Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community, OJ L 146, 10.6.2009, p. 1.

<sup>2</sup> Final report available at: [http://ec.europa.eu/growth/sectors/defence/defence-firearms-directives\\_en](http://ec.europa.eu/growth/sectors/defence/defence-firearms-directives_en)

<sup>3</sup> SEC (2007) 1593. Impact assessment accompanying the proposal for a Directive of the European Parliament and of the Council on simplifying terms and conditions of transfers of defence-related products within the Community.

implementing and making use of the provisions of the Directive and whether we are on track with meeting the objectives the Directive sets.

The findings of this evaluation have been used for the purpose of the report to the European Parliament and the Council on the implementation of the Directive.

## 2. BACKGROUND TO THE INITIATIVE

### 2.1 BASELINE AND RATIONALE FOR THE TRANSFERS DIRECTIVE

The Impact Assessment set out the **rationale and objectives** by explaining the issues, barriers and problems that existed at the time in relation to the functioning of transfers within the European defence market.

Before the entry into force of the Directive, all Member States (MS) implemented their own legislation to regulate the import, export and transit of defence products. Ex ante licensing schemes were at the heart of these control regimes. Despite similarities in the means employed, national rules differed significantly in terms of scope, authorities, procedures and timing. Furthermore, existing schemes typically did not differentiate between transfers to another MS and exports to third countries.

Prior to the introduction of the Directive, national licensing schemes imposed a significant administrative burden on companies, and required long lead times – up to several months. The corresponding administrative burden and indirect impact have been estimated respectively at €433m/year and €2.73bn/year. The patchwork of licensing requirements – and the corresponding administrative burden – appeared to be out of proportion with actual control needs, given that license applications for intra-EU transfers were almost never rejected (11,500 licences are issued annually, but no request has been denied since 2003). For these reasons, there was a growing consensus amongst industry and governmental stakeholders that these obstacles to intra-EU transfers impeded the creation of European Defence and Technological Industrial Base (EDTIB) and undermined security of supply between MS.

At the industrial level, the need to conform to disparate national licensing regimes did continue to hamper the optimisation of supply chains. To avoid time-consuming, uncertain and costly procedures, companies tended to prefer national suppliers. This impeded the specialisation of European defence industries and the creation of economies of scale. For example, pan-European companies could not enjoy the full benefits of cross-border integration, as long as **data transfers between a company based in one MS with its subsidiary in another were subject to complex and lengthy prior approval schemes**. In addition, even if a transfer license were granted, an EU tendering governmental authority could not assume that export licences would be issued if it wanted to procure defence equipment from a supplier

established in another MS, incentivising the sourcing of sensitive military equipment to a national producer, rather than to its (possibly more advantageous) European competitors.

The aforementioned restrictions to the free movement of defence-related products cannot be abolished in general. Article 36 and Article 346 of the Treaty on the Functioning of the European Union (TFEU) both provide grounds for the justification of the restriction of free movement of goods. However, in line with the long-held position of the Commission, restrictions can only be applied on a case-by-case basis, as the market for defence-related products is not generally exempted from the application of internal market rules.

## 2.2 OBJECTIVES OF THE INITIATIVE

On the basis of the needs and problems described in section 2.1, the **main aim** of the Directive was to simplify the rules and procedures applicable to the intra-EU transfers of defence-related products, in order to ensure the proper functioning of the internal market.

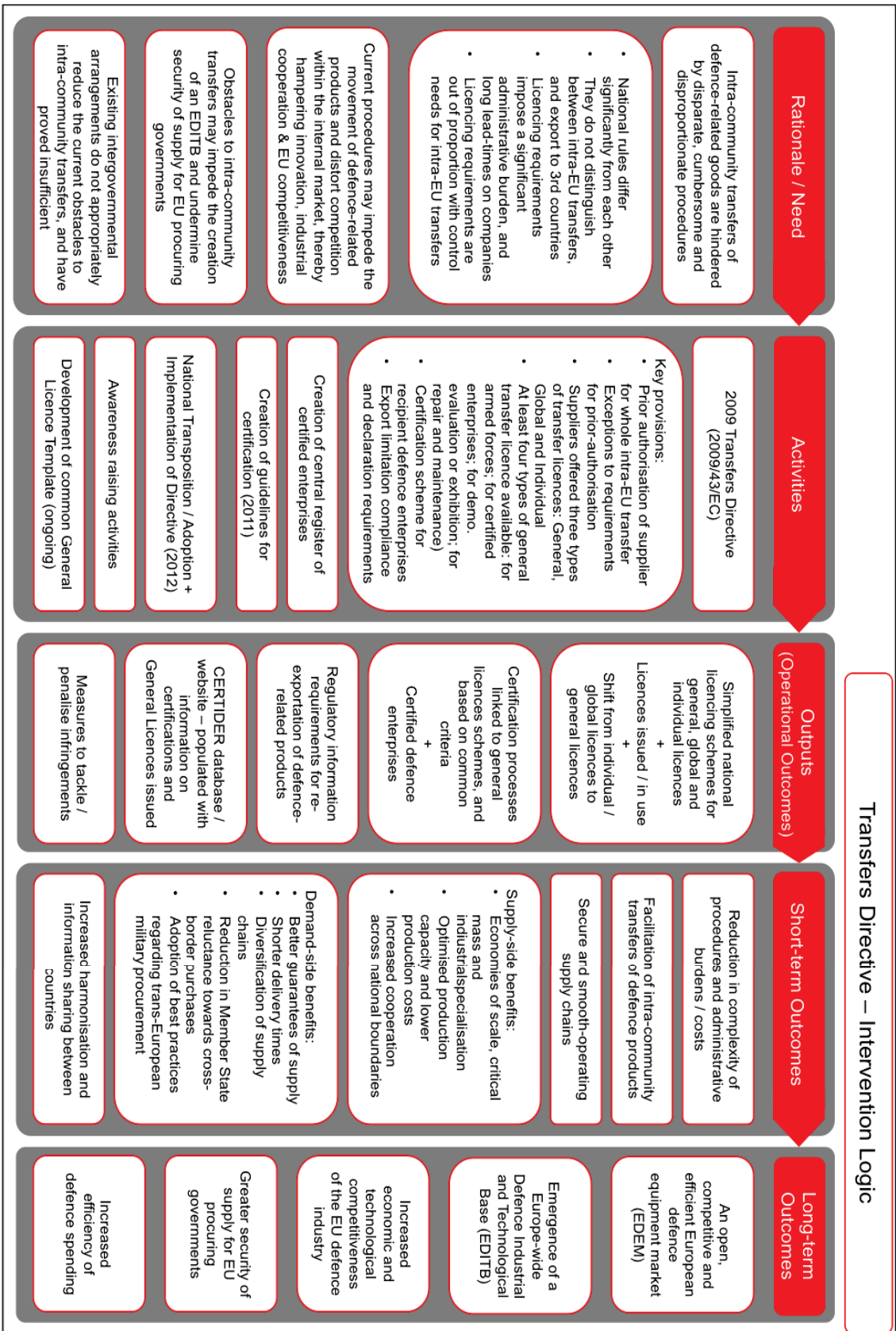
As described in the Impact Assessment, the general objective of the Directive was to establish an open and competitive European Defence Equipment Market (EDEM) in the EU. The specific objective was the facilitation of intra-community transfers of defence-related products to reduce the complexity - and the related administrative burden - associated with the existing web of diverging national licensing schemes.

The general objectives, combined with other details in the Impact Assessment and Directive on its rationale and intentions, were used to develop an **intervention logic for the Directive**, presented in Figure 1. This shows the logical sequence and causal relationships between: the Directive's rationale; the activities undertaken; and the results (outputs) and changes (outcomes and ultimately impacts) that it was intended would be realised as a result. These achievements should in turn contribute towards addressing the initial needs identified, which were the original basis for the Directive. More information on the processes provided by the Directive is described in section 2.3.

Key operational objectives include simplified national licensing schemes combined with a shift from individual and global licences to open (general) types of licences, for which individual applications are no longer required. Further, one of the general licences is directly linked with a certification process.



Figure 1: Intervention logic of the Transfers Directive



Pre-existing licence procedures were considered to impose big administrative burdens, and were both time consuming and resource intensive for the authorities and economic operators involved. The Directive sought to reduce these costs: by reducing the number of licence applications / approvals required (replacing Individual Transfer Licences with (fewer) Global/General Transfer Licences); by removing the need for additional import or transit licences; and more generally by simplifying (and making more transparent) the processes involved in transfer licencing.

## 2.3 MAIN PROVISIONS OF THE DIRECTIVE

### 2.3.1 *Material scope*

The material scope of the Directive is specified by the list of defence-related products set out in its Annex, which has to strictly correspond to the EU's Common Military List adopted by the Council (cf. Article 13 of the Directive). The Annex is updated on an annual basis by means of Commission's Directive amending the Directive [2009/43/EC](#).

### 2.3.2 *Exemptions*

In accordance with [Article 4 of the Directive](#), the movement of defence-related products between EU Member States is subject to prior authorisation in the supplier country, with only one licence necessary for the whole intra-EU-transfer (i.e. with no further authorisation required for passage through or entrance to another MS). However, Member States **may exempt transfers from the obligation of prior-authorisation**<sup>4</sup>.

In addition, at the request of a MS or on its own initiative, the Commission may amend the list of possible exemptions as detailed in the Directive to include additional cases.<sup>5</sup>

### 2.3.3 *Transfer Licences*

There are three types of **intra-EU Transfer Licences** established by the Directive:

- General Transfer Licence (GTL) **are** so called open licences, rely on *ex-post* verification and cover a pre-determined range of products to specified recipients or for specific purpose. No prior request is needed. However, suppliers must inform the

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<sup>4</sup> Where any of the five following scenarios apply: a) The supplier or recipient is a government body, or part of the armed forces; b) Supplies are made by the EU, NATO, IAEA or other intergovernmental organisation for the performance of their tasks; c) The transfer is necessary for the implementation of a cooperative armament programme between MS; d) The transfer is linked to humanitarian aid in the case of disaster, or as a donation in an emergency; e) The transfer is necessary for or after repair, maintenance, exhibition or demonstration.

<sup>5</sup> This possibility has not been used so far.

Competent Authorities of their Member States about their intention to use a GTL for the first time.

- Global Transfer Licence (GloTL) rely on *ex-ante* verification and allow for several shipments of a category of products under the same licence to one or more recipients in other Member States over a specified time;
- Individual Transfer Licence (ITL) for one transfer of a specified quantity of products to one recipient in another Member State.

The Directive requires that at least four new **types of General Transfer Licence** shall be published: (i) for armed forces; (ii) for certified defence enterprises; (iii) for demonstration, evaluation or exhibition purposes; and (iv) for repair or maintenance. The second type of GTL for certified defence enterprises can only be used if the *recipient* of defence-related products is certified (see more below in section 2.3.4).

#### *2.3.4 Certification*

Article 9 of the Directive sets out the procedure and common criteria for the **certification** of defence enterprises as recipients of defence-related products through a GTL for certified enterprises (see above). These procedures and criteria were subsequently further defined through the Recommendation 2011/24/EU.<sup>6</sup> Member States are also required to publish and update a **list of certified enterprises**, and inform the Commission, Parliament and Member States thereof. This is done by means of the CERTIDER database<sup>7</sup>.

#### *2.3.5 Export after transfer (re-export)*

Article 10 of the Directive requires that when transfer recipients of defence-related products apply for an export licence, they declare to their Competent Authorities any **export limitations** set by the original transfer licence, and that they have complied with them (including, where necessary, obtaining consent from the originating MS). In line with Article 11 of the Directive, exporters must furnish **customs** offices with any necessary export licence.

### **3. EVALUATION QUESTIONS**

The overarching objective of the evaluation was to assess effectiveness, efficiency, consistency and coherence, relevance as well as EU added value of the Directive. More

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<sup>6</sup> Commission Recommendation of 11 January 2011 on the certification of defence undertakings under Article 9 of Directive 2009/43/EC of the European Parliament and of the Council simplifying terms and conditions of transfers of defence-related products within the Community, OJ L 11, 15.1.2011, p. 62.

<sup>7</sup> <http://ec.europa.eu/growth/tools-databases/certider/>

specifically, the evaluation was to address both quantitative and qualitative aspects, and to provide answers to a series of **evaluation questions** (listed in chapter 6 under each of the criteria) relating to each of these key evaluation criteria.

## 4. METHODOLOGY

### 4.1 METHODOLOGY APPLIED IN THE EVALUATION

The findings and conclusions of the evaluation are based on a programme of research and analysis, which included desk research and literature review, analysis of statistical data on the defence sector, consultation with Competent Authorities (CA) (survey and interview), a pan-EU survey of defence companies and a programme of stakeholder workshops in eight countries, complemented by a programme of desk research, case studies and interviews with a range of representatives including governments, industry associations, companies (including SMEs) and EU institutions. More information on consultation activities can be found in the synopsis report (see Annex 3). There was no open public consultation undertaken as part of the evaluation due to the highly technical nature of the Directive. The relevant stakeholders were identified and consulted. Further consultation of a wider public beyond the identified stakeholders would likely not have provided any more substantial information.

The evaluation covered all EU Member States and other EEA countries (Iceland and Norway<sup>8</sup>) and focused on the period since the Directive's application in June 2012 until 2015.

Impact on the industry has been measured with regard to both large enterprises and SMEs. In most cases, there is no distinction in answers from the two stakeholder groups. For this reason, whenever reference is made to the industry, both types of companies are covered.

Particular attention has been given to certification through case studies. Specifically, they explored the extent to which there is variation in the certification systems employed in different countries, including by looking at a selection of four Member States in particular (France, Germany, Sweden and the UK). **The usefulness of the EC guidance and recommendations the extent to which countries have aligned with or deviated from them have also been considered.**

A more detailed overview of the methodology and data collection activities used to conduct the evaluation, including a summary of the stakeholders consultation, are available in the Annexes 2 and 3.

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<sup>8</sup> The EEA Joint Committee Decision No 111/2013 of 14 June 2013 (OJ L 318, 28.22.2013, p. 12), which incorporated Directive 2009/43/EC into the EEA Agreement included an explicit adaptation text: "This Directive shall not apply to Liechtenstein".

## 4.2 LIMITATIONS – ROBUSTNESS OF THE FINDINGS

Due to the late transposition of the Directive and the lack of data, the analysis is mainly limited to the impact on operational objectives and to the barriers to an effective application rather than on benefits and impacts on general objectives. Furthermore, qualitative assessment has been used as much as possible to supplement scarce quantitative data.

It is too early to observe the impacts the Directive might have had on the behaviour of market actors and on the market as not enough time has passed since the transposition of the Directive (30 June 2012). Indeed, the Impact Assessment suggested that a period of at least six years after the full application of the Directive would be required to see first impacts. It also indicated that on the mid-term, the Commission should assess the functioning of the new EU simplified regime, with special attention on administrative costs.

This limitation is exacerbated by the fact that some countries have not yet or only recently fully implemented the provisions of the Directive. For example, there are at least two MS that do not yet offer any GTLs and a further at least four that do not offer all four basic types of GTLs. This has implications for the progress that the Directive can be expected to have made towards the objectives. It also means that experience with the application of the Directive – and therefore available data and views on its uptake, benefits, cost and impact – is often quite limited.

Furthermore, it has appeared that, in case of many countries, relevant data was not made available for the evaluation. Why this was the case is uncertain, but one reason could be that the lack of a reporting obligation for MS. Also the response to the online targeted survey to the industry was unexpectedly very low. To compensate for the limited success of the industry survey, additional data was collected through interviews with defence companies, industry associations and other stakeholders, and through an additional series of workshops across Europe.

In order to remedy the above limitations with collecting necessary data, it was decided to hold a series of smaller national events across Europe, covering eight Member States. These workshops provided valuable insights and allowed to gather additional input to the evaluation and to receive feedback and validation on preliminary findings. These workshops provided valuable insights and information and were considered a successful consultation strategy.

Another shortcoming of the evaluation concerns the attribution of any changes to the Directive. The defence business is characterised by cycles and shifts. These do not necessarily occur with regularity and if they do, then there are usually a number of reasons for any change rather than a single cause. For instance, the reason for changes in the number of granted transfer licenses can be attributed to procurement contracts or shifts in national transfer policy, without necessarily any link to the Directive. Consequently, one should be very cautious about attributing any shift to this legislation.

Notwithstanding those limitations, the evaluation is based on a review of best available quantitative and qualitative evidence of causality between actions and effected changes. It made extensive use of stakeholders' and experts' view as well as case studies on the functioning of the different provisions of the Directives.

## 5. IMPLEMENTATION AND STATE OF PLAY

### 5.1 TRANSPOSITION AND IMPLEMENTATION OF THE DIRECTIVE

#### *5.1.1 Transposition and implementation*

The Transfers Directive was originally to be **transposed**<sup>9</sup> by Member States by 30 June 2011 and applied from 30 June 2012. However, timely transposition proved difficult in a number of countries. The level of transposition by 30 June 2012 indicated a good integration into national law of the key features of the Directive, namely a simplified licencing system coherent across the EU, a Common Military List replacing previous different ammunition lists established at national level, and certification of defence companies resulting in increased mutual trust and common recognition of defence companies' reliability. By now, all Member States have transposed the Directive.

The full **implementation** of its provisions and requirements (e.g. general transfer licenses) across Europe has also taken longer than anticipated and it seems that they are still not fully implemented in at least two MS. This has implications for the expected progress towards the identified objectives. It also means that experience with the application of the Directive – and therefore available data and views on its uptake, benefits, cost and impact - is often quite limited.

#### *5.1.2 Take up of the possibility of exemptions*

The Directive allows Member States to **exempt transfers** from the obligation of prior authorisation (i.e. from the necessity to obtain an Individual, Global or General Transfer Licence) in five defined areas<sup>10</sup>. In addition - at the request of a Member State, or on its own initiative - the Commission may amend this list of possible exemptions to include additional cases (although we are not aware of such cases being identified or requested to date).

The supportive study<sup>11</sup> explored the **extent of transposition** of the various exemption options by examining the text of national legislation in different countries. **Error! Reference source**

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<sup>9</sup> <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52012DC0359>

<sup>10</sup> [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2009.146.01.0001.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2009.146.01.0001.01.ENG)

<sup>11</sup> See footnote 2

**not found.** summarizes the findings. For each country, and each possible exemption, it indicates whether the option has been ‘fully’, ‘partially’ or ‘not at all’ taken up within the national legislation. By ‘partially’ we mean that the scope of a national exemption falls short of that originally suggested by the Directive (more on this below).

The results suggest that the extent to which possible exemptions have been taken up by different countries varies, with Member States making use of anywhere between 0 (e.g. Poland) and all 5 (e.g. Slovenia) of the possible options. Other countries fall somewhere in between. For the 24 countries covered by this exercise, 17 have fully/partially taken up the first exemption, 13 have fully/partially taken up the second, 6 have transposed the third, 12 the fourth, and 10 the fifth.

**Table 1: Extent to which countries have transposed possible exemptions from prior-authorisation**

Country	1. Supplier / recipient is governmental body / armed forces	2. Supplies by intergovernmental org. for the performance of their tasks	3. Implementation of a cooperative armament programme	4. Humanitarian aid / donation in an emergency	5. For or after repair, maintenance, exhibition or demonstration
AT	No	No	No	Yes	Part
BE (B/F)	Yes	Yes	No	Yes	No
BE (W)	No	Yes	Yes	No	Yes
BG	Part	No	No	Yes	No
CZ	Yes	Yes	No	Yes	No
DE	Part	No	No	No	No
EE	Yes	Yes	No	Yes	Part
ES	Yes	No	No	No	No
FI	Yes	Part	No	No	No
FR	No	No	Yes	No	Yes
HU	Part	Part	No	Yes	Part
HZ	Part	No	No	Part	No
IE	No	No	No	No	No
IT	Part	Part	No	No	No
LT	Part	Yes	Yes	Yes	No
NL	Part	Part	No	No	Part
NO	Part	Part	No	Part	Part
PL	No	No	No	No	No
PT	No	No	No	No	No
RO	Part	No	No	No	No
SE	Yes	Yes	Yes	Yes	Yes
SI	Yes	Yes	Yes	Yes	Yes
SK	Yes	Yes	Yes	Yes	Yes
UK	No	No	No	No	No
No exemption	7	11	18	12	14
Full	8	8	6	10	5

Exemption					
Partial exemption	9	5	0	2	5

Source: Replies from CA to questionnaire

Not only are there differences in the *number* of exemption options taken up by different countries, there are also differences in the *scope* of each type of exemption across Europe. Considering disparity in the implementation of exemptions across MSs, there is also less transparency and predictability for industry. This hampers the use of this provision.

### 5.1.3 Implementation of General Transfer Licences

The Directive requires that at least four new **types of General Transfer Licence** shall be published for use in each country (as well as any others deemed appropriate). Competent Authorities were asked how many types of GTL were offered in their country and more specifically whether this includes each of the four ‘main’ GTLs (i.e. those specifically requested by the Directive).

The table below presents the individual responses. This suggests that there are at least 3 countries that do not currently offer any GTLs (Bulgaria, Iceland, Ireland), and a further 4 countries that do not offer all four ‘basic’ types of GTLs requested by the Directive (France, Italy, Romania and Slovenia). It is likely that there are several more in this position, but the necessary information was not available.

At the same time, there are at least 10 countries that now offer other GTLs beyond those specified in the Directive, for example for the implementation of a cooperative armament programme between Member States, or for the return of defence products after demonstration or repair.

**Table 2: GTLs offered, by country**

	<b>GTLs offered</b>	<b>GTL for armed forces</b>	<b>GTL for certified enterprises</b>	<b>GTL for demo., evaluation or exhibition</b>	<b>GTL for maintenance and repair</b>
Austria	8	Y	Y	N	N
Belgium	7	Y	Y	Y	Y
Bulgaria	0	N	N	N	N
Croatia	4	Y	Y	Y	Y
Cyprus	3	<NA>	<NA>	<NA>	<NA>
Czech Rep.	4	Y	Y	Y	Y
Denmark	5	Y	Y	Y	Y
Estonia	4	Y	Y	Y	Y
Finland	5	Y	Y	Y	Y
France	8	Y	Y	Y	N
Germany	20	Y	Y	Y	Y
Greece	4	Y	Y	Y	Y



	GTLs offered	GTL for armed forces	GTL for certified enterprises	GTL for demo., evaluation or exhibition	GTL for maintenance and repair
Hungary	4 <sup>12</sup>	Y	Y	Y	Y
Iceland	0	N	N	N	N
Ireland	0	N	N	N	N
Italy	2 <sup>13</sup>	Y	Y	N	N
Latvia	4	Y	<NA>	<NA>	Y
Lithuania	4	Y	Y	Y	Y
Luxembourg	4	Y	Y	Y	Y
Malta	<NA>	<NA>	<NA>	<NA>	<NA>
Netherlands	7	Y	Y	Y	Y
Norway	4	Y	Y	Y	Y
Poland	4 <sup>14</sup>	Y	Y	Y	Y
Portugal	5	Y	Y	Y	Y
Romania	1	N	N	Y	N
Slovakia	4	Y	Y	Y	Y
Slovenia	1	Y	Y	N	N
Spain	5	Y	Y	Y	Y
Sweden	5	Y	Y	Y	Y
UK	26	Y	Y	Y	Y
<b>Y</b>		<b>24</b>	<b>23</b>	<b>22</b>	<b>21</b>
<b>N</b>		<b>4</b>	<b>4</b>	<b>5</b>	<b>7</b>

<NA> indicates that the relevant information was not provided by the CA and the study has been unable to confirm either way through its own desk-research. The fact that no GTLs can be found in publically available information for Malta would suggest that these are not currently offered. <Y> indicates Yes. <N> indicates No. Source: Replies from CA to questionnaire

Countries offer between 0 and 26 different GTLs (5 on average). There are a small number of countries for which certain information is missing.

Only seven countries that reported use of GTLs were able to provide both the number of notifications and the number of transactions in recent years. Across these seven countries, there have been 1,401 transactions during the 2012-14 period, through one or other of the four main GTLs, as shown in Table 3 below:

<sup>12</sup> Hungary has all four basic GTLs in place, although two of these (demonstration and maintenance) are integrated in one

<sup>13</sup> The two GTLs currently offered in Italy are not complete versions of those requested by the Directive. One is for armed forces as part of intergovernmental programmes, and the other is for certified enterprises as part of intergovernmental programmes. Two further GTLs for armed forces and certified enterprises will soon be released to provide complete coverage

<sup>14</sup> Poland has all four basic GTLs in place, although these are integrated in one licence

**Table 3: Notifications of first use for different GTLs and reported transactions**

Country	GTL	First use notifications (2012-14)		Transactions (2012-14)	
Denmark	Armed forces	3	7	188	376
	Demo, evaluation, exhibition	2		46	
	Repair or maintenance	2		142	
France	Armed forces	33	137	128	507
	Certified enterprises	24		299	
	Demo, evaluation, exhibition	80		80	
Latvia	Armed forces	2	6	2	21
	Repair or maintenance	4		19	
Lithuania	Armed forces	20	27	20	27
	Demo, evaluation, exhibition	4		4	
	Repair or maintenance	3		3	
Romania	Demo, evaluation, exhibition	1	1	3	3
Spain	Armed forces	2	7	0	125
	Certified enterprises	2		91	
	Repair or maintenance	3		34	
<b>Total (6 countries)</b>	Armed forces	<b>60</b>	<b>185</b>	<b>338</b>	<b>1,059</b>
	Certified enterprises	<b>26</b>		<b>390</b>	
	Demo, evaluation, exhibition	<b>87</b>		<b>133</b>	
	Repair or maintenance	<b>12</b>		<b>198</b>	
Poland	Armed forces	<NA>	71	56	342
	Certified enterprises	<NA>		5	
	Demo, evaluation, exhibition	<NA>		57	
	Repair or maintenance	<NA>		224	
Germany	Armed forces	<NA>	<NA>	5216	5,323
	Certified enterprises	<NA>		107	

<NA> indicates that the relevant information was not provided by the CA and the study has been unable to confirm either way through its own desk-research.

Source: Replies from CA to questionnaire

If we compare this to the number of notifications of first use of these GTLs during the same period, and in the same countries (256), then we can estimate that there have been 5-6 transactions per GTL (so far). While this is based on limited data and a limited time period, it does support the idea that GTLs are replacing the need for multiple Individual Licences. It is also worth noting that the number of transactions has grown substantially over time. This is not shown in the table above, but for the eight countries concerned (DE also provided transaction data, though not information on the number of notifications), the number of GTL transactions reported increased from 71 (2012) to 1,769 (2013), to 4,884 (2014)<sup>15</sup>. This increase in activity is not surprising, given the growing stock of licence ‘holders’.

<sup>15</sup> See supportive study, table 50 (footnote 2)

However, the uptake of new licencing options is considered to have been slower / lower than was expected. There is also considerable variation in levels of uptake and use in different countries. Despite year-on-year increases in the uptake and use of both Global and General Transfer Licences across Europe, the vast majority of transfers (~89%) between 2012 and 2014 were still being undertaken through Individual Licences (which the Directive hoped to largely replace).

## 6. ANSWERS TO THE EVALUATION QUESTIONS

### 6.1 EFFECTIVENESS: MEASURING THE EXTENT TO WHICH THE DIRECTIVE IS ACCOMPLISHING ITS OBJECTIVES

#### *Questions addressed:*

- To what extent is the Directive contributing to the creation of an efficiently operating Internal Market for defence-related products?
- To what extent is the Directive guaranteeing greater security of supply?
- What good practices in terms of cost-effective implementation in MS can be identified?
- To what extent has the Directive achieved its aim with regard to the competitiveness of the EU defence industry and the development of the EDTIB?
- What are the factors for an effective application of the Directive? If there are any barriers, what is causing them?

#### *6.1.1 The extent of implementation, uptake and use*

All countries have now transposed the Directive into national law, but the full implementation of its provisions and requirements across Europe has taken longer than anticipated. In addition, the *extent* of implementation is still variable across Europe and in some cases incomplete (e.g. with a number of countries not offering the four ‘basic’ types of GTLs).

As uncovered through workshops with industry, the key reasons for low uptake and use of GTLs include:

- There is a general lack of awareness, knowledge and understanding of GTLs across industry (how and when they can be used and to what benefit), despite efforts from several MSs Competent Authorities to promote GTLs nationally and from the Commission to centralise information on GTLs across MSs in the CERTIDER database.
- Not all GTLs have been fully introduced in all countries
- GTLs have too many exclusions and limitations placed upon them – making them more complex, and limiting their use / attractiveness
- GTLs are of no use if your products you intend to transfer are not in scope
- You cannot make use of the GTL for certified enterprise, if your recipient is not certified – or there are a lack of certified enterprises generally
- Individual licences bear less of a risk, especially for SMEs, as they are better understood and more familiar or established
- Certain countries have retained re-export requirements, which complicates and discourages re-export. There were concerns that such restrictions were becoming more widespread.

As regards the scope and conditions of GTLs, Member States are also free to exclude certain ‘sensitive products’ from the scope of specific licences. There is a lack of harmonisation among countries as a result, and consequently numerous differences in the scope of GTLs available. This lack of harmonisation was regularly highlighted by consulted stakeholders (in particular from industry) as an unnecessary additional complication. Other issues encountered through the Directive being interpreted differently in different countries include: differing restrictions on the scope of GTLs; different terms and conditions for Transfer Licences; the possibility to request end-use assurances / certificates being used by some countries; different levels of control over inbound transfers, and some requirements for import certificates; certain transit controls; and certification standards applied with different stringency.

In conclusion, the Directive provides a framework to create similarly structured national licencing systems. However, it is still left sufficiently open and flexible enough to interpretation to mean that there are still essentially 30 non-harmonised licencing systems across Europe.

#### *6.1.2 Implementation of Certification schemes*

Replies from Member States did not allow concluding on how many of the countries that yet have to introduce a fully operable scheme for the certification of defence enterprises. Ireland has yet to introduce a fully operable certification scheme and this was also the case in Italy until very recently<sup>16</sup>. In all, 14 Member States have not issued certificates for any companies.

While the procedures and criteria for certification were set out in the Directive, and further defined through Recommendation 2011/24/EU, Member States enjoy a certain freedom in the design of national rules and their implementation. Several stakeholders suggested that the application of the certification system varies across MS, with implications for the realisation of the Directive’s objectives.

All Member States have defined their national certification systems in line with the requirements of the Directive, and no official texts deviate from the Directive or are otherwise obviously non-compliant. However, there are small differences evident in the implementation of the certification process, which may be sufficient to place a brake on the overall system. Two points stand out: first of all, in 10 instances where we have looked at sample certificates, a split was found between five countries where the scope of the certificate was limited and therefore conditional and five where it was, as expected, universal. This is clearly not an insurmountable difference in approach, but it may well reduce users’ confidence in the label

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<sup>16</sup> The Italian authorities have recently informed that the certification option has now been fully implemented, with procedures for certification set out within legislation.

and would certainly mean certificates cannot be used automatically to provide bona fides in all transactions. The variable use of national and English language translations may also reduce the ease of use of certificates across borders.

Second, there are apparently substantial differences in the stringency and duration of the certification process in different countries, with the more protracted and onerous procedures being rather costly for the businesses being audited. Given the relatively small financial savings certification is likely to provide to any individual company, the apparent burden may be enough to dissuade many companies from applying for certification. The French case does however argue against this point of view, as it has one of the more demanding certification systems at the same time as having one of the greatest numbers of certified companies. The German case is similar, although the system here appears a little less demanding. It is perceived that this is due to either political or regulatory matters, stimulating companies to be certified despite demanding certification systems.

On balance, the principal difficulty would appear to be the cost-benefit ratio, which is inevitably weakened by the low levels of take up across trading partners. As with any network, the performance and cost-benefit ratio will be weaker in the emerging phase and should improve geometrically once it exceeds a critical level of users.

While the number of certified enterprises has increased each year, the total number across Europe (55) is still very low. Half of certified enterprises are located in just two countries. There are then 14 countries where no companies have been certified to date. Indeed, we are aware that there is no certification scheme in place in at least one of these countries. There is no evidence to support this is also true for other countries where there are no certified companies for the moment.

**Table 4: Number of certified enterprises by country**

	<b>Estimated number of certified enterprises</b>		<b>Estimated number of certified enterprises</b>
Germany	14	Cyprus	0
France	12	Czech Rep.	0
Belgium	4	Estonia	0
Denmark	4	Greece	0
Hungary	3	Iceland	0
Bulgaria	2	Ireland	0
Finland	2	Italy	0
Poland	2	Latvia	0
Netherlands	2	Lithuania	0
UK	2	Luxembourg	0
Austria	1	Malta	0
Portugal	1	Norway	0
Slovakia	1	Romania	0
Spain	1	Slovenia	0
Sweden	1		

	Estimated number of certified enterprises			Estimated number of certified enterprises
Croatia	1			
<b>Total</b>	<b>53</b>			

Source: Replies from CA to questionnaire

Reasons for low uptake of the certification option include: a lack of understanding of conditions and requirements; a perception that the certification procedure is too complex or demanding; and a lack of demand from GTL users for certified enterprises (and / or the limited scope of products covered by the associated GTLs). There appear to be insufficient incentives for many to certify.

The progress with the implementation and uptake of the certification scheme has been slower than expected at the point of the Directive's adaptation in 2009.

### *6.1.3 Enablers and barriers to effective application of the Directive*

There are a number of barriers resulting from the provisions of the Directive and from the way it has been transposed across Europe. They have been identified by Competent Authorities, representatives of industry and stakeholders alike, which is why the following presentation does not distinguish between the different sources of information.

**Barriers resulting from the provisions of the Directive** include:

- Shift of liability (from authorities to economic operators) means new licenses are perceived as bearing higher risk, especially by SMEs
- Personal liability for executives with regard to export/transfer controls

**Barriers resulting from the way the Directive has been transposed** across Europe:

- Incomplete transposition of the Directive across the EU, as at least two countries have still not fully implemented all provisions of the Directive
- Lack of harmonisation, as many requirements stipulated by the Directive are transposed in an un-harmonised manner, e.g. the scope of products falling under GTLs, the conditions of using a GTL, definitions of “end-user”
- Need for an end-user declaration for the use of a GTL for certified enterprises
- Conditions and limitations on re-exports put in place by some countries
- A lack of awareness, knowledge and understanding of the provisions among industry, as well as some Competent Authorities
- In some countries the transposition of the Directive came with an introduction of fees that had not been charged to industry before. Together with the changed internal procedures, the implementation of the Directive had increased rather than reduced the cost of compliance in these countries.
- Lack of a common EU system of electronic submission of applications and licensing and limited exchange of information between EU countries

- Finally, several respondents argued that the lack of harmonisation of (extra-EU) export policy has a knock-on effect on internal transfers.

As regards the impact on the development of the EDTIB, the limited time of application of the Directive has not allowed it to be visible<sup>17</sup>. Overall, more time is needed to see the benefits of the system.

Some Competent Authorities have stressed that the provisions of the Directive, no matter how imperfect they might be, do cater to the needs of companies and to an improvement of productivity by reducing administrative burden. The positive impacts on the EDTIB are mainly seen by smaller countries. Several respondents have also mentioned that an internal market for (less-sensitive) equipment has been facilitated, but that high-tech goods remain excluded from it.

Also the global perspective on competitiveness, in particular the developments in the transatlantic arena play a certain role. In comparison to the United States, many defence companies feel that the recent reforms of the US export control regulations have put US and European companies on an unequal footing, providing a regulatory advantage to US exporters.

There are a number of **factors that have supported the application** of the Directive:

- One of the fundamental factors that shape the effective application is the extent to which the transposition of the Directive changed the ex-ante export control regime. The smaller this change is perceived in a country, the more effective the application of the Directive is judged. In those countries where no major changes had to be made, industry and authorities then do not have to deal with issues such as a lack of awareness that would result from a change. Moreover, the uptake would generally be faster because there is more understanding and familiarity with the new system, which is similar to what they had before.
- Several MS used the transposition of the Directive as an opportunity to overhaul their arms export controls system more generally. A positive consequence of this was that the issues of export and transfer controls rose on the agenda of decision-makers in business and politics. In many companies export controls and compliance issues now enjoy an unprecedented attention at the chief executive level, which is said to have had a positive effect on the application of the Directive.
- Article 14 of the Directive provides for the creation of a committee to support the Commission with regard to the Directive. Regular meetings of the Transfer Directive-

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<sup>17</sup> For analysis see supportive study, chapter 4.2 (see footnote 2 for reference to supportive study)



Committee and its working groups is said to have brought CAs closer to each other and enabled networking, stronger cooperation, and the sharing of best practices.

- The early and regular informing of industry by Competent Authorities, government agencies or industry associations.
- Support through websites, handbooks or guidelines. In this context it was mentioned by industry, Competent Authorities and stakeholders alike that the certification guidelines provided by the Commission were helpful for implementation, but could still be clearer and more detailed
- A closely knit network of defence industry experts (e.g. organised through an industry association) discussing issues of export controls and compliance on a regular basis
- Promotion of the uptake by political actors, a fact that concerns in particular certification
- Existence of a well-oiled interface between government (esp. Competent Authorities) and industry.

While the barriers and enablers of the application of the Directive have played out differently across Europe, the application of the Directive has been considered by a majority of experts from Competent Authorities, industry and stakeholders as a **means to build mutual confidence and trust** among national authorities, as well as defence companies from different countries. It was stressed time and again that an effective application of the Directive is an ambitious goal, which requires ‘changing the habits of a life time’, with many actors being reluctant or at least not used to change. In analogy to other areas of intergovernmental cooperation such as the free movement of people in the Schengen area, an incremental approach allows for the necessary trust-building before taking a next step of closer cooperation.

#### *6.1.4 Examples of efficient application*

Several examples of good practice in efficient application have been found, including:

- Standard conditions being applied throughout different licences to the greatest extent possible, to simplify understanding and use.
- Licences avoid unnecessary jargon (UK licences have ‘plain English’ accreditation)
- Fully electronic licencing system, with easy access and clear guidance
- Proactive efforts to ‘sell’ the benefits and advantages to industry (e.g. regular events, informative website, handbooks, seminars, etc.)
- Efforts taken to minimise the number of actors involved in authorisation
- The UK highlighted its use of 20+ Open General Export Licenses (OGELs / GTLs), which cover a broader range of situations (and so have wider applicability), but also tend to each cover more discreet application areas (and therefore be clearer and simpler to understand and apply). GTLs can be extensive in its scope because of the range of situations that an individual type of licence is trying to cover.

To improve effectiveness, a number of Competent Authorities called for greater and better information exchange between countries, both in terms of best practice, experience sharing and alignment efforts, as well as more practical transparency of national implementation measures and conditions (e.g. through CERTIDER), faster solutions to bottlenecks and increased confidence.

Stakeholders more generally highlighted that General and Global Licences tend to have efficient procedures, while certification was often singled out for its inefficiency (because of the time and effort required compared to the limited benefits). Some also highlighted that greater use of web-based systems to apply for, issue and share licences might offer substantial additional efficiency savings.

#### *6.1.5 The extent of contribution from the Directive's provisions to the Directive's overarching objectives*

Most stakeholders (CA and industry) agree that the provisions of the Directive are in line with its overarching objectives, but that progress towards these has been very limited. To date, the Directive's main contributions have been towards its operational aims (e.g. facilitating intra-community transfers, reducing the complexity of procedures, or reducing administrative burdens) – and even here, progress has been slow, and often lower than expected.

Across Europe (where data is available), there were ~79,000 ITLs and ~1,700 GloTLs issued from 2012 until 2014. At the same time, we estimate that there were around 8,000 transactions through GTLs (based on an average of 5.7 transactions per GTL notification). While these figures are very approximate and based on incomplete data, they suggest that the vast majority of transfers (~89%) in the initial years of the Directive's application were still being undertaken through ITLs, while only a small proportion involved GloTLs (<5%) or GTLs (<10%).

#### *In relation with the extent to which the Directive is contributing to the creation of an efficiently operating internal market for defence-related products:*

The ambition of creating an efficiently operating internal market for defence products has only been achieved to a very limited extent. Member states *have* put into place new licensing systems, which offer faster, easier transfers, and which are conducive to a reduction of the complexity of administrative procedures.

Creating a more efficient internal market can be understood as one of the implied general objectives of the Directive. The creation of an efficiently operating internal market for defence-related products can be split into three components: it means to facilitate the intra-community transfer of defence-related products, to reduce the complexity of procedures and administrative burdens and to lower the reluctance of Member States towards cross-border purchases.

**In general** and with regard to all three aspects, it can be concluded that the objective has only been reached to very limited extent. Several reasons lead to this conclusion:<sup>18</sup>

- First, and as mentioned above, not even the operational objectives have been fully reached, which has negative consequences for the overarching aims of the Directive.
- Second, MS have put into place new licensing systems, which offer faster easier transfers. In that sense it is conducive to a reduction of the complexity of administrative procedures.
- Moreover, the fact that some companies pick up the new licenses that did not exist before is an indication that these licenses offer some advantages over the existing individual licenses.
- However, there is no evidence to support that Member States or companies are changing their decisions as to where they source from or where they supply to; or that it makes any big difference to their operations and trade within Europe.

Several **Competent Authorities** stressed that it is too early to judge the extent to which the Directive has contributed to a more efficient internal market. While most of them highlight that the complexity of administrative procedures has been reduced (the response varies according to the ex-ante export control regime in the country), they do not see a greater willingness of Member States to procure from other MS. However, CAs of smaller Member States find that the Directive has also contributed to this latter objective.

**Defence companies** do not see much of a change resulting from the adoption of the Directive with regard to the creation of a more efficient internal market. The great majority considers the effect to be small or non-existent, as the following table presenting the results from the industry survey (65 respondents) shows:

Table 5: Results from industry survey

	<b>Not at all</b>	<b>To a small extent</b>	<b>To a large extent</b>
To what extent has the TD achieved its objectives of establishing an open and competitive European Defence Equipment Market	48%	36%	16%

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<sup>18</sup> Again, it should be noted that only a small period of time has elapsed since the transposition of the Directive in most MS.

Some (larger) companies point out that other European markets (countries) could easily be accessed before – through Individual licenses – and that given the minimal cost of licensing within the overall cost of defence business, the effect of the Directive has been very small indeed. While expectations were rather high regarding the number of certified companies and the positive effects that would have, most interlocutors do not see that a more level playing field has evolved compared to the situation that existed before the Directive.

In some countries, where the Directive has not been fully implemented yet, defence companies pointed to the fact that the new rules for transfer licensing are not sufficiently transparent and that, therefore, companies might shift their suppliers to companies outside the EU. In the latter case export control rules apply, which have not changed compared to transfer control rules. To avoid risks and to be able to estimate process times, these companies may consider sourcing from firms outside the EU. In this case, while the transposition of the Directive might have contributed to an internal market, it has not done so in a manner that is conducive to other general objectives of the Directive.

A majority of **stakeholders** believes that this had been partially achieved. Among the comments were, that while there may have been some improvement, it depended on the size of company, and it had not reduced reluctance towards cross-border purchases. EU legislation allows Member States to apply primary and secondary legislation to protect their national industries and nations do use this approach (especially in a time of crisis). Most interlocutors mentioned that this market has been only realised to a limited extent or not at all, a statement that is supported by EU statistics on trade<sup>19</sup>.

*In relation to the extent to which the Directive guarantees greater security of supply:*

Security of supply (SoS) means the ability of a government or a company to source products, knowledge or services required at will and in a timely manner, including in periods of crises. Given that defence-related products are often crucial for a government to pursue its foreign and security policy (or for a company to meet its contractual obligations, which might, however impede on the foreign and security policies of governments) there is a risk that one government might disrupt the supply of such products to influence the policy considerations of another government (or to put a specific company in another country at a competitive disadvantage vis-à-vis domestic suppliers). In the eyes of many interlocutors, SoS remains an issue of foreign and security policy, and therefore sensitive, although nobody could actually point the team to any example of a declined supply within the European context. The

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<sup>19</sup> See supportive study, chapter 4 and footnote 2.

Directive is but one way to avoid such situations and to ensure security of supply among European countries.<sup>20</sup>

In **general**, the Directive has had a minor positive effect on the security of supply of defence-related products. It might contribute to greater security of supply by one of the following:

- i) It could increase transparency: by knowing the licensing system of other MS it could reassure procurers or buyers in other MS about the reliability of supplies.
- ii) In particular, the use of GTLs allows that transfers of certain products and services do not require an Individual or Global Licence anymore. This has advantages mainly for the suppliers of a certified defence enterprise but also for the certified company itself. Suppliers can use a GTL and need not apply for a specific license, thereby being able to reduce lead times, become more flexible and reduce administrative cost. Certified companies benefit too, albeit in a more limited way. They can reduce administrative cost by not having to provide information to their suppliers about the receipt and intended use of the supplied goods.

However, both the transparency and the GTL systems are not complete solutions for SoS and they have limitations in terms of their implementation so far: transparency is not complete, as the transposition has led to un-harmonised national legislation, while the GTLs have only had a limited uptake. Hence, the Directive's contribution through transparency and GTLs is limited.

Finally, it should be noted that security of supply is not considered to be a particularly important objective for those who have been consulted for the purpose of the study.

**Competent authorities** are split over the issue of whether the Directive has had any beneficial effects on SoS. Countries where the transposition of the Directive has not lead to major changes, do not see any positive consequences for SoS, whereas Member States for which the Directive brought a number of innovations (often smaller MS) *do* point to positive effects. They hold that specifically, the GloTL and GTL licenses promote the stability of supply of equipment.

As the table below shows, a clear majority of the 65 **defence companies** responding to the survey is of the opinion that the security of supply was hardly affected by the Directive.

Table 6: Results from industry survey

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<sup>20</sup> There are other means to build trust among European countries, such as the close cooperation of EU government in the framework of the Common Foreign and Security, cross-border mergers and acquisitions of defence firms, which increases interdependence.

	Not at all	To a small extent	To a large extent
To what extent has the TD achieved its objectives of achieving greater security of supply	43%	43%	14%

For most companies the issue of security of supply is closely linked to certification. Certification implies that suppliers of a certified company can use a GTL for certified companies and no permission is to be sought, once the requirements are met. However, there are limited incentives to get certified in the first place. In particular if certified companies consider the need for another license to re-export the good supplied under a GTL as an impediment to the security of supply, as companies cannot be sure that they will be able to export their final product. Given the limited number of certified companies this kind of impact of the Directive on the security of supply has been rather limited.

Among the **stakeholders** interviewed for the purpose of this study only a minority believed that the Directive had resulted in greater security of supply. It was noted that this was primarily a political issue. Some interlocutors argued that it was not actually addressed by the provisions in the Directive and that it had been added to the list of objectives late in the process as a ‘selling point’. In contrast, others identified it as the most important and politically salient issue, and that the provisions partially helped improve security of supply.

***In relation with the extent to which the Directive achieved its aim with regard to the competitiveness of the EU defence industry (incl. SME) and the development of the European Defence Technological and Industrial Base:***

The competitiveness of the European defence industry concerns its strength vis-à-vis the industry of other countries, notably the US. The Directive could contribute to increasing the competitiveness of industry by opening up the number of potential suppliers for a government or a company, thereby increasing competition, which might in turn drive prices down and increase innovation.

**Generally**, it is at this point too early to judge the extent to which the Directive achieved this aim. The Directive is considered as a first step in the right direction as it has provided instruments that are likely to open up the internal market and will, thereby, contribute to strengthening the competitiveness. However, the benefits of the Directive cannot be seen in reports about an increase of numbers of suppliers for MS and for prime contractors. It should

be noted that any possible impact of the Directive is further reduced by the fact that in most countries transfers are a minor –though not negligible - part of the overall defence<sup>21</sup>.

**Competent authorities** mainly look at the Directive within the wider framework of the Commission’s push towards a more robust European Defence Technological and Industrial Base and therefore consider it as “a pertinent and necessary step” to increase competitiveness. Some CAs also stress that the provisions of the Directive, no matter how imperfect they might be, do cater to the needs of companies and to an improvement of productivity by reducing administrative burden. The positive impacts on the EDTIB are mainly seen by smaller countries.

**Defence companies** – especially of larger countries – are hesitant to identify any link between the Directive and the competitiveness of the EDTIB. Based on the 65 responses on the industry survey (below) it can be concluded that the majority of companies do not believe that the Transfers Directive has achieved its objectives with regard to strengthening the competitiveness of the EDTIB.

Table 7: Results from industry survey

To what extent has the TD achieved its objectives of...	Not at all	To a small extent	To a large extent
Developing the European defence technological and industrial base	52%	39%	9%
Improving the international competitiveness of the European defence sector	45%	41%	14%

This result is well in line with the answers given to the team in the interviews and the discussions during the workshops. One reason is that supply chains are generally rather slow to change. For a prime contractor it takes good reason and time to change suppliers. The Directive is not considered a good enough reason alone to contemplate a change of suppliers.

Second, defence firms consider the issue of competitiveness in a global context, which is another reason why a majority of defence firms does not think the Directive has had an impact on the competitiveness of the EDTIB. The global perspective on competitiveness links the Directive to developments in the Transatlantic arena. In comparison to the United States, many defence companies feel that the recent reforms of the US export control regulations

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<sup>21</sup> See supportive study, chapter 4 and footnote 2.

have put US and European companies on an unequal footing, providing a regulatory advantage to US exporters.

Few **stakeholders** believe that the Directive has reached the aim of contributing to a more competitive EDTIB. Several respondents mentioned that an internal market for (less-sensitive) equipment has been facilitated, but that high-tech goods remain excluded from it. Therefore, positive effects on the competitiveness of the EDTIB are limited. Furthermore, other factors have a strong impact, such as the steady decrease in defence investment in the EU since the financial and economic crisis. Contrary to expectations, some stakeholders indicated that this contributed to renationalisation of supply chains, which would be counter to the Directive's original objectives towards de-fragmentation of markets.

## 6.2 EFFICIENCY: EVALUATING THE COST EFFECTIVENESS OF THE INITIATIVE

### *Questions addressed:*

- To what extent have regulatory costs been reduced through the implementation of the Directive?
- To what extent are costs proportionate to the benefits achieved, and what factors are influencing any particular discrepancies?
- Are costs and benefits of the Directive in line with initial expectations?
- How affordable are the costs borne by different stakeholders given the benefits received?
- If there are any significant differences in costs or benefits in MS, what is causing them?
- To what extent is administrative burden created by the implementation of the Directive's concepts and procedures considered proportionate?
- Which procedures are most/least efficient?

### **The background and rationale to regulatory cost reduction**

The **Impact Assessment** accompanying the proposal to the Directive set out that existing national licencing schemes imposed big administrative burdens on companies, and that the licence granting procedures were both time consuming and resource intensive for the authorities and economic operators involved. The cost of preparing, submitting and managing the 11,000+ annual licence requests for transfers was, it estimated, in the region of €250m per year for industry (based on an estimated cost of €20k per licence) and €182m per year for the authorities.

As such, **the Directive seeks** – as indicated by its objectives - to reduce the complexity of procedures and administrative burdens involved in the intra-community licencing system.



However, it does not actually directly address most of the factors that the Impact Assessment identifies as underlying the time consuming and resource intensive licence granting systems. For example, issues of overlapping competencies, inter-agency processes, licence fees, licencing requirements, and diversity in control lists, are not necessarily addressed by the provisions introduced – although they may be improved as an indirect consequence of reforms to the national licencing systems.

The Directive is however attempting to reduce the number of applications being made overall through the introduction of GTLs, which should replace the need for ITLs (and on a better than one-for-one basis) and therefore reduce the costs on both parties of application / issuance of licences. The Directive also seeks to remove the need for additional import licences for intra-community transfers, which should further reduce costs. Finally, and more generally, the Directive seeks to simplify (and make more transparent) the processes involved in the transfer licencing system, which should help to further reduce the regulatory costs on both sides.

The evaluation did not provide information on which provisions were considered more or less efficient.

#### *6.2.1 The extent to which costs have been reduced*

Those consulted through the evaluation did not have a very clear view (at least not yet) of the overall impact of the Directive on costs for the different parties involved. However, initial indications and anecdotal evidence from the Impact Assessment accompanying the proposal to the Directive suggest there should be a long-term reduction in administrative costs.

For **Competent Authorities** the initial application of the Directive (e.g. in changing information systems) often involved significant effort and cost<sup>22</sup> (depending on the extent of change necessary). However, there has been no suggestion from these organisations that these additional burdens were unaffordable or unreasonable. Also, in the longer term, as companies shift from ITLs to GloTLs and GTLs, the Directive is expected to lead to fewer licence applications and therefore reduced administrative burden.

The direct costs<sup>23</sup> of authorising different licences are also minimal for the Competent Authorities. An average of estimates from across the Competent Authorities suggests individual ITLs and GloTLs both require 7 days of effort and €7 in other costs for a CA to

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<sup>22</sup> None of the Competent Authorities felt able to put a ‘price’ on this set-up phase, but many clearly felt that the process had brought substantial costs over the last few years.

<sup>23</sup> Averages across responding Member States suggest that individual ITLs and GloTLs both require around 7 days of effort and €7 in other costs for the CA to authorise, while GTLs are substantially ‘cheaper’ (around 2 days and €4 on average).

issue, while GTLs are substantially ‘cheaper’ (2 days and €4 on average to authorise). As more businesses shift to using GTLs for transactions, one would expect the costs to authorities to decline further, and therefore become more affordable.

The Competent Authorities hope the significant initial set-up costs in implementing and applying the Directive will be offset in the longer term by a decrease in the day-to-day regulatory costs of operating the new licencing systems. There are already signs to support this conjecture, including: a shift from Individual to Global/General Licence use<sup>24</sup>; significantly lower cost<sup>25</sup> and effort in authorising these licences; and multiple transactions being undertaken through GTLs (replacing ITLs on a greater than one-for-one basis, as one GTL can cover an unlimited amount of transactions where an ITL only cover one). There will be longer-term costs for authorities in ex-post monitoring/control of GTL use (e.g. staff time, travel for inspections, etc.), which may be significant, but are not yet not fully understood or estimated.

For **industry**, the immediate and direct costs of the Directive are low. The fees charged for different licences are usually minimal, and in many case free (particularly for GTLs). Of the 26 countries providing data, 18 do not charge a fee for any of the three types of licences. Further 5 countries charge only for ITLs (€87 on average) and GloTLs (€94 on average), but not GTLs. Only three countries apply a registration charge for GTLs (€31 on average). There was no suggestion from industry that these fees and costs were unaffordable or disproportionate.

The longer-term implications for costs are less clear – but a number of those consulted suggested that the requirements on businesses (e.g. in terms of monitoring and reporting) would not be too different to what existed before the Directive. The Competent Authorities consulted also generally believed that the administrative effort required of businesses from new procedures is proportionate to the benefits in terms of less administration that they will bring. The authorities have taken on board the intentions of the Directive and sought to simplify, streamline and minimise requirements as much as possible, such that the administrative burden is not disproportionate. However, further improvements in the implementation of the provisions of the Directive could enhance the benefits and improve this balance further. There are increasing numbers of businesses registering for and using GTLs, suggesting that this route is (more) affordable, and also brings sufficient benefits for the costs involved. A majority of industry survey respondents for instance suggested that the benefits of GTL-use had outweighed any costs.

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<sup>24</sup> See section 5.1.3

<sup>25</sup> See footnote 27

Businesses have also seen upfront costs in familiarising themselves with and adapting to new systems and requirements. The direct financial cost of obtaining different types of licences is minimal, but industry has suggested that the staff effort involved in ‘obtaining’ a GTL is less than half that of ITLs (and the multiple-use nature of GTLs makes the relative cost of GTLs even lower). There will be longer term-costs to businesses of using new types of licence (e.g. ensuring eligibility of transactions, monitoring, reporting), but - as with CAs – none of those consulted were yet in a position to fully understand these longer-term implications for costs.

For certification, most businesses are not charged a fee, but the process can take several months and therefore bring substantial costs in terms of the time and effort (to all involved). The Impact Assessment estimated that the average cost of certification for a business might be €30k+. While there is not sufficient data to estimate the average costs of certification, the stakeholder interviews confirm the figure is realistic.

In relation to expected costs of the Directive, the Impact Assessment suggested the additional cost of certification would be up to €25m/year (based on up to 2,000 companies certifying), while the annual cost of information requirements for new licencing systems would be up to €2.5m. While the predicted ‘unit costs’ appear reasonable to the industry stakeholders consulted (referring to the average costs of certification for a company), the low overall take-up of certification (55 companies, rather than the 1,000 to 2,000 envisaged) means that the system-wide costs of certification have been substantially lower than expected (perhaps half a million Euros per annum). More reasonable estimations of uptake in the future would likely mean in the order of hundreds of certified companies, and at a cost closer to €5m per annum.

The Impact Assessment estimated the direct benefit of the Directive from newly introduced licencing schemes would be at minimum €217m (based on a halving of administrative cost). At this stage the full potential of the Directive still have to be materialised and hence a more reasonable short-term target might be in the 10 of millions of Euros based the current figure of certified companies as the current figure of certified companies do not imply a halving of administrative costs.

The use of Global and General Licences is increasing and over time it is reasonable to expect a more significantly reduce the number of ITL applications and further reduce costs.

Unfortunately there is no data available on the annual cost of information requirements relating to the new licencing systems, and none of those consulted (yet) felt able to provide such estimates.

Some examples of good practice in terms of cost-effective implementation in MS have been presented in section 5.1.2.

### ***6.2.2 The extent to which costs are affordable and proportionate, given benefits***

While the initial application of the Directive involved significant effort and cost, there is no suggestion from those involved that these additional demands were unaffordable or unreasonable.

CAs report that the direct costs to the authorities of authorising Individual Licences are minimal, and as more businesses shift to using GTLs, one would expect the costs to authorities to decline further, and become more affordable. A small number of authorities did however raise concerns about the affordability of dealing with certification, should there be a sudden increase in applications.

For industry (including SMEs), the immediate and direct additional administrative costs of the Directive are also low, and again there was no suggestion that these fees and costs are unaffordable or disproportionate. The increasing numbers of businesses registering for and using GTLs also suggests that this route is (more) affordable than previous options, and also brings sufficient benefits for the costs involved. The low levels of uptake of certification are unlikely to reflect issues of affordability, but rather of proportionality (benefits vs costs), with the perceived benefits often seen as (very) limited at this stage.

Some stakeholders were concerned by a possible shift of costs from authorities and governments to business, which would affect particularly SMEs. But there is insufficient understanding at present about what the true costs will be (e.g. relating to ex-post monitoring and reporting).

### **Differences in costs or benefits in MS**

The evaluation has been unable to collect sufficient data to be able to fully compare the costs or benefits between different countries. Even in terms of perceptions, there is an insufficient sample of responses to robustly compare country-by-country.

In any case, the differences in the size and structure of Member States would make such a comparison difficult or even misleading. Also, we can see that even *within* countries there is great variability in both these aspects. For instance, from industry replies there were clearly wide differences in their general view of the costs and benefits of the Directive, both to their company and within their country more generally. This view was also reflected in the impressions given by industry stakeholders during interviews, i.e. that the costs and benefits vary significantly case by case, both by company (depending on size, activity area and trade patterns) and by country (according to the size and defence industry structure, as well as the extent of change in the licencing system from pre- to post-Directive).

Having said this, there is some country-level data available on selected elements of the **costs** of the Directive. This provides indications as to the variability across Europe.

For example, CAs provided information on the **fees** they charge for both licence authorisation and certification. Many do not charge fees for either, but where they do:

- The fee charged per ITL varies between €13 and €355 per country
- The fee charged per GloTL also varies between €13 and €355
- The fee charged for registering/notifying to use GTLs varies between €5 and €75
- The fee charged for the certification process varies between €10 and €500

Some information on the cost (in terms of CA **effort** and other costs to the authority) of licence authorisation in different countries has also been obtained. This suggests:

- ITLs require between 0.5 and 30 person days of effort to issue, with other costs of €0 to €27 per licence
- GloTLs require 0.5 to 30 person days of effort, with other costs of €0 to €27 per licence
- GTLs require 0 to 7 days of effort, with other costs of €0 to €20 per licence

And similarly for industry, the **effort and additional cost** of obtaining licences varies company by company (within our sample it is not possible to discern the extent to which these differences reflect variation by Member State):

- ITLs require 0 to 5 person days of effort, with other costs of €0 to €500 per licence
- GloTLs require 0 to 3 person days of effort, with other costs of €0 to €1,000 per licence
- GTLs require 0 to 3 days of effort, with other costs of €0 to €1,00 per licence

Differences in **the benefits of the Directive** between countries are harder to assess because nobody has been able to put a value on these – and because the benefits will vary significantly company to company (e.g. because the range and value of products falling under GTLs could vary significantly, even though the costs might be similar), and not necessarily reflect a clear national differentiation.

One could look at GTL uptake to get a sense of the possible differences between countries in the overall scale of benefits from the Directive. For instance the number of GTL notifications varies between 0 (in at least 11 countries: BG, HR, CY, EE, HU, IS, IE, IT, LU, SK, SI) and 100+ (FR, NO, CZ, UK), indicating very significant differences in the overall benefits from the Directive in different countries. However, the size of the respective economies and defence sectors is clearly a factor here – and as a proportion of e.g. total transfers, the differences are often less stark.

### **The extent to which administrative burden is considered proportionate**

The Competent Authorities consulted generally believed that the administrative effort required of businesses from new procedures is proportionate to the benefits that they will

bring. There was no suggestion from industry that these fees and costs were unaffordable or disproportionate.

Most other **stakeholders** interviewed agreed that the administrative procedures are proportionate, or at least no less proportionate than under previous systems. This was not generally regarded as a big problem.

The main area where **costs are not felt to be proportionate** relates to **certification**, where there is currently a general perception of very limited potential benefits from pursuing this option. A lack of incentives is contributing to the low number of certified enterprises, and the associated limited uptake and use of General Licences for certified enterprises.

### 6.3 CONSISTENCY AND COHERENCE OF THE DIRECTIVE

#### *Questions addressed:*

- Is the scope of the Directive clear, or are there diverging interpretations within MS?
- To what extent have the definitions of key terms of the Transfers Directive been introduced in national transposition laws and measures?
- To what extent do MS apply diverging definitions, which might affect the Directive's objectives?
- To what extent is the legislative measure coherent and not overlapping with other pieces of legislation dealing with defence-related products or intra-community transfers of weapons?

#### *6.3.1 Internal coherence and consistency in implementation*

The material scope of the Transfers Directive is defined by the list of defence-related products, set out within its Annex. Article 13 of the Transfers Directive prescribes that the list has to strictly correspond to the Common Military List (CML) of the European Union,<sup>26</sup> updated by the Council on an annual basis. However, it takes a number of months to amend the Annex to reflect the amendments of the CML, and the updated list of defence-related products must be then transposed by Member States. National legislation and in particular the scope of products under control is therefore unlikely to reflect the current CML at any given point in time and may also differ from that of other MS. Stakeholders would like this 'update period' to be as short as possible, but recognise there may need to be some delay. Having

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<sup>26</sup> The EU CML serves as the material scope for the purpose of export control of defence-related products under Common Position 2008/944/CFSP.

multiple seemingly valid versions of the same CML at the same time create confusion and it's legally an unwanted situation.

The broad scope (what categories of products that are covered) of the Directive is clearly defined by the CML, and this is clearly understood. However, the CML itself has come in for criticism, as it is seen as quite complicated and unclear in places. Certain definitions are insufficiently clear and open to interpretation, or are out-dated. Terms like 'specially designed' lack a proper definition. This has the consequence that it is not always easy to judge whether a product would be part of a product category and thus controlled, or not and thus not subject licensing.

There is no information available as to what extent Member States have introduced the definitions of key terms of the Transfers Directive and whether they apply the definitions in a diverging manner. In general the Directive is nonetheless perceived as internally coherent.

### ***6.3.2 External coherence and consistency with other legislation***

Several (10) CAs could point to (potential) overlaps or inconsistencies between the Transfers Directive (and relevant national legislation transposing this) and other pieces of legislation dealing with defence-related products or intra-community transfers of weapons. Several also highlighted that it is important that incoherence is continually reconsidered as there are constantly evolutions in different legal frameworks, both within the EU and internationally.

The following legislation has been identified:

- The Firearms Directive: Council Directive 91/477/EEC43 on the control of the acquisition and possession of weapons (amended by Directive 2008/51/EC) & the Firearms regulation: 258/2012 – several countries mentioned that there are significant overlaps with the Directive, concerning ML 1 and 3 (for controlled firearms). According to the current EU legislation, some types of firearms (e.g. those for sport-shooting and hunting) can be classified as both civil and military firearms – depending on their end-use (civilian or for commercial sale). This can create confusion in the application of the two Directives, i.e. which Directive should be applied. In terms of management, some Member States have opted for always considering these arms as those mentioned by the CML, while others (as allowed by the regulations) consider them as covered by the Firearms Directive/regulation. One CA highlighted that their country is establishing a national General Licence for ML1 goods to cater for the overlap.
- The UN Arms Trade Treaty, 2013 - There are overlaps in terminology, in that the ATT uses 'transfers' more broadly to cover imports, exports, transit, trans-shipment and brokering, whereas the Directive 2009/43/EC consider transfers as intra-EU shipments of products only. There is also possible incoherence, in that the ATT calls on States to regulate transit and trans-shipment of arms through its territory (when the Transfers Directive asks States not to control EEA transfers).
- The Dual Use Regulation: Council Regulation N.428/200942 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items – One CA suggested there is an overlap with regard to the classification of products (whether

they are dual-use or military). This can create confusion in terms which legal basis to rely upon.

- The Procurement Directive: Council Directive 2009/81/EC on defence procurement – Once CA highlighted that both Directives address security of supply which could lead to a discussion on in which context (which directive / responsible ministry) SoS should be addressed. This has however no major impact on efficiency.
- Common Position 2008/944/CFSP44 defining common rules governing control of exports of military technology and equipment – One CA pointed to the fact that there are 8 criteria within the common position that could prevent granting of Transfer Licences

Several CAs highlighted that it is important that overlap and incoherence is continually reconsidered as there are constantly evolutions in different legal frameworks, both within the EU and internationally. The suggestion was that a vigilant posture must be adopted and clear responsibility set out, whether this is at the EU or Member State level.

Most authorities believe their own national export policies do not represent an obstacle to the application of the Directive. This is because the Directive is seen as relevant and important, because it is based around a CML that is internationally agreed / recognised, and because the provisions have been transposed to become part of national legislation and practice. However, there were a number of concerns raised about the policies and practices of *other* Member States, and of the lack of harmonisation in the transposition and implementation of the Directive across Europe more generally.

For the time being the points identified above are not considered to impact the effective and efficient application of the Directive to such a degree as to warrant further immediate actions.

#### 6.4 RELEVANCE: MEASURING THE CONTINUED NEED FOR THE INITIATIVE

##### *Questions addressed:*

- How well do the original objectives still correspond to the needs within the EU at present?

##### *6.4.1 Whether the original objectives still correspond to EU needs*

**Competent authorities** hold that the Directive still corresponds to the original needs it sought to address. First, it was only recently fully implemented (in fact some countries are still in the process of implementing all the provisions of the Directive) and has not been applied for long enough to effect the development strongly towards reaching all objectives. Moreover, further harmonisation of the requirements for GTLs, common approaches and restrictions on the use of GTLs, as well as simplification of the procedures are considered desirable by some CAs.

**Defence companies** stressed that the relevance of the Directive has not declined, but rather increased. On the one hand, many companies have only recently begun to use the new instruments and will incorporate General Licences over time. On the other, companies point to recent changes in the US system that may be putting European firms at a disadvantage.



The recent US Export Control Reform process included the definition of goods that are *not* ‘specially designed’ for military use, and which are therefore released from licencing requirements. These reforms are felt to have fostered the competitiveness of US exporters, and Europe has to catch up to ensure that its transfer and export control systems do not put European firms at a disadvantage.

Most **stakeholders** agree that the current needs within Europe are roughly the same as in 2009. Six years is a relatively short time, in particular in the defence trade. The external security environment is considered to have changed somewhat, mainly due to the changing role of Russia and situation in Ukraine. Within the EU, the economic crisis has had a negative impact on the defence industry in a number of countries. Overall, respondents were less concerned about addressing new needs; the main issue is making sure the original Directive is implemented.

In conclusion, the identified issues and risks are still valid today and the needs for the Directive are still there. The objectives have not been fully achieved at this point. However, there is recognition that these should be seen as long-term aims, for which the Directive provides a first step in the right direction.

Moving forward, stakeholders are not overly concerned with the Directive addressing new or different needs (new needs were not detected by stakeholders) – but rather, ensuring that it is implemented fully, and that further inroads can be made towards its original objectives through e.g. greater harmonisation of requirements.

## 6.5 EUROPEAN ADDED VALUE

### *Questions addressed:*

- To what extent has the Directive had an added value on the pre-existing situation (since 2007) and contributed to reaching the overarching and specific objectives, as opposed to national legislation?
- To what extent do the issues addressed by the Directive continue to require action at the EU level?

Prior to the Directive entering into force in 2009 each country had its own regime to control the transfer (export) and import of defence-related products. The alternative to the adoption of the Directive would have been the further development of these national approaches, or a multilateral agreement (e.g. within the EDA or among LOI countries).

The ex-ante Impact Assessment noted that a number of bi-/multi-lateral agreements and initiatives had already been developed, aimed at structuring and regulating the international trade in defence-related products. However, even the most prominent of these (the LoI and subsequent FFA signed by six main arms producing states) was felt to have been extremely slow, with solutions that were too complex, vague and insufficiently binding, and achieved

limited results. The Directive, building on existing approaches, but aiming at a more comprehensive set of objectives and including more countries than alternatives, has contributed more to the achievement of its operational objectives than would have been achieved otherwise.

**Competent authorities** have argued that EU-level action was needed in order to efficiently and effectively address the underlying issues in the area of transfers. In particular, EU level action is seen as very valuable for gaining the “necessary critical mass for these types of schemes”. In addition, the Directive has initiated networking and exchange between the Competent Authorities, whereby the intervention at European Commission level is important and appreciated. Importantly, the Directive provided a common conceptual framework, a template for the structure of licences across countries and essentially the same (underlying) product list (before the product lists were different).

**Defence companies** stress that the Directive has provided a common framework, albeit limited in scope, for national legislations on the control of transfers. Part of this framework includes a single concepts and a shared language. Thus, companies do now know what is meant with terms like “General Transfer License” or “Certificate” and know where to find the related documents. This has also improved the communication between defence firms and the authorities within and outside a country.

**Stakeholders** point to the fact that the process of drafting the Directive allowed for a systematic involvement of different types of stakeholder in the process. Moreover, some stakeholders commented that in theory the Directive has added value, but the provision could be more effective if transformed into EU regulation, which would be directly applicable.

The different ways in which the Directive has been transposed has not fully overcome the initial fragmentation of markets. However, the Directive has limited the extent of fragmentation between national systems, and has provided a framework on which further harmonisation can take place. The stakeholders consulted for the evaluation therefore feel that the European approach is more likely to contribute to achieving the objectives set by the Directive than any multilateral approach.

The provisions of the Directive are relevant to achieving its specific and overarching objectives – which still correspond to the needs within the EU at present. However, the *implementation* of the Directive has impeded on its effectiveness and therefore the impact it has had to date. Consequently, further EU level action is required to address the issues tackled by the Directive. No one has argued that the Directive has been the wrong approach in principle, suggesting that in order to achieve such objectives it is better to rely on an EU initiative than a multilateral approach.

## 7. CONCLUSIONS

Due to the very early stage of the Directive's implementation, this evaluation aims at assessing progress being made in the application of the Directive. It was not possible to see the full impact of the Directive in relation to its wider aims since this evaluation has been undertaken just 3 years after the transposition deadline (and fewer years from actual application in some countries).

**Effectiveness:** The Directive has made worthwhile, but limited, progress against its main objectives. The tools provided by the Directive are in place, but better implementation and uptake is needed.

**Efficiency:** While some cost reductions have been achieved, the potential for further reductions lie ahead, pending a better implementation and uptake of the Directive's provisions.

**Consistency and coherence:** Internally the Directive is considered adequately consistent and coherent. Externally there is potential for improvement.

**Relevance:** The original objectives of the Directive are still as valid in Europe today as when the Directive was first proposed.

**European Added Value:** An EU approach remains the most appropriate response and is more likely to contribute to achieving the objectives set by the Directive than any multilateral approach one might envisage. The potential benefits of the new system promises for strengthening the single market, and creating the incentives for European industry to improve its competitiveness globally.

The Directive is considered to have been a necessary first step towards improving the competitiveness of the European defence industry. The uptake of General Transfer Licenses shows the Directive has reduced administrative burdens, and provided instruments that are likely to open up the internal market and will, through this, contribute to strengthening competitiveness.

Stakeholders point to a number of different priorities, including: harmonisation across Europe of the type and number of exemptions, the conditions of the use of GTLs, and a list of less-sensitive products; and the fostering of increased use of GTLs through an increase in products covered, a reduction in administrative burdens/requirements, a removal of conditions on re-transfer and re-export; and an increase the number of certified enterprises. Actors would also like see faster updates of the CML, common definitions of key terms, increased communication and exchange, further outreach and information and English translations of GTLs.

The evaluation showed, based on input from stakeholders that the Directive has positively contributed to the functioning of the internal market, albeit so far in a limited way. The use of

the tools of the Directive, in particular the GTLs and the certification of undertakings across the EEA has not been as wide as expected. The Commission's initiatives to be undertaken in the area of intra-EU transfers of defence-related products are presented in the Report from the Commission to the European Parliament and the Council on the implementation of Directive 2009/43/EC.

## ANNEX 1 – PROCEDURAL INFORMATION

In January 2015, DG Internal Market, Industry, Entrepreneurship and SMEs (DG GROW) launched an evaluation of the Transfers Directive. The evaluation of the Directive forms part of the European Defence Action Plan, as identified in the Commission Work Programme 2016<sup>27</sup> (2016/GROW/006), DG GROW's Strategic Plan 2016-2020 and DG GROW's Management Plan 2016. The evaluation study was finalised in May 2016.

An inter-service Steering Group has been set up at the launch of the evaluation. The Secretariat-General, the Legal Service, DG GROW, DG HOME, DG TRADE and the European External Action Service (EEAS) participated in the work of the Steering Group. The Group met 4 times during the evaluation process.

The evaluation was carried out by an external consultant – Technopolis Group. The findings and conclusions are based on a programme of research and analysis, which included detailed consultation with Competent Authorities (CA), a pan-EU survey of defence companies and a programme of stakeholder workshops in eight countries, complemented by a programme of desk research, case studies and semi-structured interviews with a range of representatives. The consultant acknowledges that the report assesses all evaluation questions and objectives, however, most obtainable evidence pertains to implementation and uptake of the Directive and provisions (i.e. operational objectives) than its benefits and impacts (i.e. wider aims and objectives). This is due to insufficient time since transposition of the Directive to observe its impact and late or ongoing implementation of its provisions. Further shortcomings include lack of available and comparable data on benefits, costs and impact and the fact that the defence sector is characterised by irregular cycles and shifts. Other external factors also play a role, such as the difficulty to attribute changes to the legislation.

No infringement cases have been opened regarding non-conformity or bad application. Neither any official complaint has been registered.

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<sup>27</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Commission Work Programme 2016 *No time for business as usual*, adopted on 27 October 2015, COM(2015) 610 final.

## ANNEX 2. METHODS AND ANALYTICAL MODELS USED IN PREPARING THE EVALUATION

### 1. EVALUATION APPROACH

The evaluation combined of qualitative and quantitative **research methods**. Specifically, the following main methods were defined for data collection and analysis purposes. Each of these main methods is described in the remainder of this Annex.

- Desk research and document review
- Analysis of statistical data on the economic situation and development of the defence sector
- Written surveys and follow-up interviews with competent authorities
- Surveys and follow-up interviews with defence companies
- Stakeholder interviews
- Workshops with industries
- Issue-based case studies

A mixed-methods approach allows a degree of simple triangulation, whereby multiple data streams and cross-tabulations provide a greater degree of confidence in the correctness of the analysis, evaluation question by evaluation question. This is demonstrated in the table below, which presents a schematic overview as to the contribution of each of the principal methods to each of the six overarching evaluation questions.

**Table 8: Tabulation of evaluation questions and methods**

	Relevance	Effectiveness	Efficiency	EU Added Value	Coherence	Utility
Desk research and document review	***	**	**	**	*	
Analysis of statistical data	***	***	***	***	***	***
Surveys & interviews	**	**	**	***	**	***
Stakeholder interviews	***	*	**	***	***	**
Workshops with industry	**	*	*	**	**	***
Case studies	**	***	*	**	*	

## **2. PRINCIPAL EVALUATION METHODS**

### ***2.1 Desk research and document review***

Desk research provided the basis for the collection of primary data. It helped to set up the analytical framework, which then shaped the design of the data collection tools. In addition, desk research served as a tool for testing evaluation questions. In particular, the issues of relevance, coherence and alignment are partly addressed in this way. Desk research also fed into the preparation of case studies.

The availability of public information on the Directive, its transposition and implementation at national level was found to differ significantly across Europe, and there were several cases where the evaluation found little or no information readily available. However, subsequent engagement with Competent Authorities (discussed below) helped to successfully fill some information gaps.

### ***2.2 Analysis of statistical data on the defence sector***

Time-series data on the defence sector across Europe during the past ten years were collected and analysed. This analysis<sup>28</sup> outlines the size and shape of the European defence sector, as well as major trends in its structure and trade flows. It is intended to provide the national and European context for the evaluation and to the assessment of the evaluation questions.

The evaluation encountered a number of challenges in undertaking this analysis. Data on defence-related production and transactions at Member State (macro) and firm (micro) level is limited, except in very aggregated form. Also, classifications of defence-related products and distinctions between military and non-military products vary between sources. Similarly, timeframes, geographical coverage and units of measurement also differ. One other significant limitation was the narrow timeframe available. The Directive only entered into force in 2012, while most data sources only run to 2013 or 2014, making it difficult to observe trends (indeed, the Impact Assessment suggested six years would be needed before macroeconomic effects could be observed). Also, economic crises and market cycles will have an impact. Even as more data becomes available, it will be difficult to attribute causality.

### ***2.3 stakeholders consultation activities***

All stakeholders affected by the Directive were identified by the contractor. The several consultation activities designed by the external contractor included: consultation with Competent Authorities (CA) (survey and interview), a pan-EU survey of defence companies and a programme of stakeholder workshops in eight countries, complemented by a

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<sup>28</sup> See supportive study chapter 4 and footnote 2

programme of desk research, case studies and interviews with a range of representatives including governments, industry associations, companies (including SMEs) and EU institutions. More information on consultation activities can be found in the synopsis report (see Annex 3).

#### ***2.4 Case studies***

The evaluation included the preparation of four ‘issue-based’ case studies, which present and explore specific aspects of the implementation of the Directive that have been challenging or were otherwise deemed interesting for the evaluation. Four topics were selected with the Commission:

- The extent of variation in the **certification systems** employed in different countries
- The reporting requirements in place across Member States, and the extent to which countries have shifted towards a system of ex-post, rather than ex-ante **reporting** in relation to GTLs
- The extent to which issues exist with the free **transit** (passage-through) of defence-related products through EU countries during a licenced transfer.
- The incentives and **disincentives of certification**, and how the balance might be improved to encourage more companies to become certified

These were explored through desk research and the various consultation activities undertaken during the evaluation.



## **ANNEX 3. DETAILED SUMMARY OF ALL RELEVANT CONSULTATIONS AND THEIR RESULT**

### **1. SYNOPSIS REPORT OF STAKEHOLDER CONSULTATION**

#### *1.1 Context*

Directive 2009/43/EC on the intra-community transfer of defence-related products (Transfer Directive) requires that the Commission, by 30 June 2016, reviews the implementation of the Directive and reports to the EP and Council. In particular, the Commission is asked to evaluate whether and to what extent the Directive's objective have been achieved and how it impacted on the development of the European defence equipment market and the European defence technological and industrial base.

The Directive introduces a harmonised new licencing system for transfers of defence-related product with the objective of simplifying administrative procedures linked to authorising transfers of those products between Member States. The Directive applies to Member State export control competent authorities and the defence industry. The underlying objective is to ensure security of supply between MS armed forces and to strengthen industrial collaboration. The Directive obliges MS to apply the directive from 30 June 2012.

The roadmap for the evaluation did not receive any feedback. As for the evaluation of the Directive, the Commission initiated a supporting study to collect and analyse data<sup>29</sup>. This study contains all underlying information for the Staff Working Document with more detailed data. The strategy for this study consisted of an initial desk research with document analysis to provide a framework for the evaluation, market analysis of the European Defence and Technological Industrial Base, survey to identified key stakeholders based on evaluation questions and information obtained through desk research and market analysis, follow-up interviews to the surveys and other stakeholders. On this basis the study undertook an analysis and presented its conclusions for the Commission to consider.

The technical nature of the Directive means that there are only a limited number of stakeholders (MS Competent Authorities and defence companies) able to assess and provide feedback on the implementation and impact of the provisions of the Directive. Government officials concerned with export control, individual experts employed by export compliance divisions in defence companies and defence industry associations are the main stakeholders identified that the consultation strategy developed in the context of this evaluation targeted.

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<sup>29</sup> Final report available at: [http://ec.europa.eu/growth/sectors/defence/defence-firearms-directives\\_en](http://ec.europa.eu/growth/sectors/defence/defence-firearms-directives_en)

Competent Authorities (CAs) were key stakeholders, and central to the evaluation's ability to address many of the evaluation questions. Moreover, they were expected to hold much of the information itemised in the specific information requests. For this reason, the evaluation chose a comprehensive approach to gathering input from this group.

The defence industry was another key stakeholder for the study, and was consulted initially through an online survey (seeking views, feedback and information of relevance to most evaluation questions), and then also through follow-up interviews (to explore particular issues in more depth and detail). Both aspects were targeted at *all* defence companies (including SMEs) across Europe that transfer and / or receive defence-related products. This included GTL users/non-users and certified/non-certified enterprises. There was no open public consultation undertaken as part of the evaluation due to the highly technical nature of the Directive. The relevant stakeholders were identified and consulted. Further consultation of a wider public beyond the identified stakeholders would likely not have provided any more substantial information.

## ***1.2 Stakeholder group consultations and results***

The contractor conducted two major surveys: One involving authorities from MS either concerned with export control/licencing or MS actors using transfer licences (armed forces), undertaken from July – December 2015; a second survey was addressed to industry as users/beneficiaries of the simplified licencing system, undertaken from July – October 2015.

### **Survey of competent authorities (Member States)**

Member state export control competent authorities are a key group of stakeholders for this evaluation, and central to the ability of the study to properly address many of the evaluation questions.

The competent authorities are likely to be best placed to provide feedback and insight for the Member State overall, for a large proportion of the evaluation questions. The questionnaire focuses on factual quantitative and qualitative information, much of which relates to the specific information requested in the task specifications.

**Result:** 29 complete surveys (Malta failed to reply and Lichtenstein was out of scope). This signifies a very good response rate, capturing in a detailed manner all MS stakeholders. The main outcome of this activity was to provide answers to the relevant evaluations questions from the Competent Authorities, representing MSs, including statistics and additional information concerning uptake and use of exemptions, ITLs, GloTLs and GTLs and data on

the certification procedure in each MS. Quantitative and qualitative results are too comprehensive for a short summary, so for further information refer to summary note on this activity in the supportive study<sup>30</sup>.

### **Survey of the defence industry**

The second survey conducted for the purpose of the study addressed industry, and was in particular directed at two target groups: i) certified enterprises that use the new General Transfer Licences and ii) defence companies, that transfer defence-related products but do not use the new licences. Out of the 1200 firms operating in the core defence industry in Europe<sup>31</sup>, more than 400 companies were contacted directly and invited to participate in the online survey/questionnaire. Additionally, 42 national organisations representing defence industry in 30 EEA countries (EU 28 + Iceland and Norway) were contacted and helped distribute the questionnaire to its members. A reminder was sent one month after the initial request and again two weeks before closing the questionnaire to the companies contacted and the 42 defence organisations. The reminder was also sent through European Defence Agency<sup>32</sup> and the European Enterprise Network.

The survey was followed up by interview with 32 selected companies.

**Result:** 65 replies were received. The target was 115 replies from companies. However, several of the 65 replies came from national defence industry associations. Most companies preferred their industry association to reply on their behalf, since the nature of the questions were sensitive. As such, the 65 replies represent more than the target of 115 company replies. Any further attempt to gain information via questionnaires is not expected to produce any new information.

The main outcome of this activity was to provide answers to the relevant evaluations questions from the European Defence and Technological Industrial Base, including statistics and additional information concerning uptake and use of exemptions, ITLs, GloTLs and GTLs and their views on the certification procedure in each MS. Quantitative and qualitative

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<sup>30</sup> See Appendix G of supportive study, refer to footnote 34 for reference to supportive study

<sup>31</sup> SBS data of 2012

<sup>32</sup> EDA have an extensive network within the European defence industry and they kindly made their point of contacts within industry available to the consultants in order to promote the questionnaire.

results are too comprehensive for a short summary, so for further information refer to the summary note on this activity in the supportive study<sup>33</sup>.

### **Interviews with MS competent authorities**

The questionnaire to MS competent authorities was followed by a formal interview. The interview served to complete any outstanding information or additional questions the evaluator had.

In sum the project team expected to conduct 31 interviews – telephone or face-to-face – with competent authorities (i.e. one for each country in scope for the evaluation). **Result:** 25 interviews completed. Almost all were available for interviews. Every effort was made to have all MS competent authorities interviewed. The result was considered more than satisfactorily.

The main outcome of this activity was to complement any missing information from the survey, ask clarifying questions and allow for other types of information to be passed which was not captured by the survey. As this activity sought to complement the survey, the results are captured in the summary note on the survey activity, see footnote 35. **Interviews with industry and other stakeholders**

As a follow-up to the survey to industry, interviews with the three target groups of industry were conducted:

1. Certified companies,
2. Companies using a GTL for (some of) their transfers and
3. Companies not using a GTL for their transfers.

All in all it was expected to conduct 40 interviews, out of which 20 with general defence companies, i.e. companies that transfer defence-related products, but do not make use of a GTL for this purpose and 20 with certified companies (10) and holders of GTL (10).

Interviewers run through the questionnaire and followed-up on any missing information and expanded upon the answers that were given in the survey and explored in more depth particular aspects of their response.

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<sup>33</sup> See Appendix I of supportive study, refer to footnote 34 for reference to supportive study.

**Result:** 32 interviews with companies, 18 with defence industry association, 4 with European officials, 7 with national procurement officials and 11 with academia, think tanks, consultants etc. **Total: 72**

With a sum of 32 interviewed companies out of a target of 40, this is considered sufficient. Further interviews were not deemed necessary. As this activity sought to complement the survey, the results are captured in the summary note on the survey activity, see footnote 38.

### **Workshops with industry**

The original task specifications suggested that the evaluation should include a one-day seminar with representatives of MS and industry, which would be used to discuss on-going work and preliminary findings. However, during early discussions with key stakeholders, it became clear that a series of smaller national events would likely be a more effective and efficient use of the available budget. It was therefore proposed that instead of a single large seminar, there would be a series of one-day workshops across Europe.

**Eight workshops** across Europe were arranged during the second half of October and early December 2015. These were held in the LOI countries<sup>34</sup> – France, Germany, Italy, Spain, Sweden, the UK – as well as in the Netherlands and the Czech Republic. These countries were chosen as together they account for a significant proportion (some 85%) of the European defence technology and industrial base, as well as offering perspectives from larger and smaller countries, and from Eastern, Western, Northern and Southern Europe.

**Attendees** included representatives from the relevant national industry association, but mainly consisted of representatives from industry (member and non-member companies). Nearly 70 individuals attended and contributed to the events, representing a range of different sizes and types of business, across different parts of the defence sector and defence supply chain, and with differing levels of import/export activity and experience. The participants included the most important export companies and allowed for a thorough and in-depth discussion of numerous issues.

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<sup>34</sup> “The six main arms manufacturing Member States (UK, FR, DE, ES, SE, IT) have committed in an international treaty the ‘Letter of Intent’ (LoI) and its resulting Framework Agreement to facilitating defence industrial cooperation and restructuring. The LoI follow-up is carried out by six subcommittees respectively in charge of the six main tasks identified in the treaty: security of supply, export controls, security of information, research and technology, management of technical information and harmonisation of military requirements” (SEC(2007) 1593).

**Result:** The workshops were considered a success. Together they managed to deepen the understanding and shed more light on issues raised by industry. This gave however a more qualitative rather than quantitative type of information, as opposed to data from questionnaires and interviews. With this success, the evaluators and the Steering Board<sup>35</sup> accompanying the evaluation considered the industry properly consulted. Further initiatives were not considered to provide any significant new information.

Quantitative and qualitative results are too comprehensive for a short summary, so for further information refer to summary note on this activity in the supportive study<sup>36</sup>.

### **Discussion of preliminary results with MS**

A report on preliminary results received 18 December 2015 was discussed with MS representatives in the Committee, established by Directive 2009/43/EC, on 22 January 2006. The Committee members and MS Permanent Representations received the report well in advance of the meeting and were able to express their comments directly and later in writing. As such, any mistakes or misinterpretations were resolved prior to the draft final report and preliminary results have been properly consulted with a key stakeholder. The final report of the evaluation study was equally discussed with the Committee to have their reactions before the Commission drafted the final report to Parliament and Council.

### ***1.3 Summary of stakeholder consultations***

Presently, the study has consulted all identified stakeholders affected by the Directive. They have had several opportunities to provide feedback to the Commission.

The results so far indicate that the tools the Directive provides for are in place in most Member States. The use of these tools by industry is unfortunately still low, partly due to divergent Member State practises and partly since changing the behaviour in defence export control takes a long time.

Furthermore, based on findings in the stakeholder consultations and the market analysis in the supporting study, the Directive has had little or no observable impact in terms of benefits from the perspective of the general wider public. This is attributed to the following reasons:

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<sup>35</sup> Members of the Steering Board: Secretariat General, DG HOME, EEAS, DG TRADE, DG GROW/01 and GROW/G3

<sup>36</sup> See Appendix J of supportive study, refer to footnote 34 for reference to supportive study

- Not enough time has passed since the transposition. The initial impact assessment<sup>37</sup> suggested that evaluation of broader macroeconomic impacts should take place no sooner than six years after the full implementation of the Directive to see first impacts.
- Some countries have not yet or only recently fully implemented the provisions of the Directive.
- For many countries there is lack of relevant data that would allow assessing the impact of the Directive. Why the data has not been provided is not known.
- The defence industry is characterised by cycles and shifts not related to the Directive given the long life cycle of defence equipment. Consequently, several stakeholders in the stakeholder consultations, in particular with CAs, caution about attributing any shift to the new legislation.

#### *1.4 How these results feed into the evaluation*

The rate and the quality of replies are deemed to be of good quality by the Steering Board accompanying the study, which means valid conclusions may be drawn based on the data available. As such this is sufficient to allow the Commission to draw informed conclusions on the basis of the results for the way forward. Based on the conclusions drawn in the evaluation report, the Commission will outline a series of actions it propose to undertake in the future. Finally, these conclusions and action are outlined in the final report on the evaluation to Parliament and Council.

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<sup>37</sup> SEC(2007)1593, p.48

#### **ANNEX 4. RESULT / IMPACT INDICATORS**

The study was required to define a series of result / impact indicators that would support the objectives of the evaluation and help address the evaluation questions. At the kick-off meeting the Commission stressed the importance of selecting the right RACER indicators - Relevant, Accepted, Credible, Easy (i.e. data availability) and Robust - and highlighted that these should go beyond simple indicators, to provide insight on the Directive's implications.

The following tables present the series of indicators defined at the start of the study, along with the potential sources of data and information that would be sought to measure these. The indicators are derived from the aims and objectives of the Directive (as set out in the intervention logic), while the potential data sources relate to the tools employed by the study.

Indicators have been defined in relation to three stages of the Directive's application:

- Transposition and implementation – i.e. the extent to which the Directive and its provisions have been (fully) implemented by (all) Member States
- Uptake and use - i.e. the extent to which the system / mechanisms introduced by the directive have been taken-up and used by industry and other bodies
- Benefits and impacts – i.e. the extent to which the system and mechanisms introduced by the Directive have made a positive contribution in relation to the aims and objectives of the Directive (from a reduction in administrative costs, to the creation of a competitive European defence equipment market)

In designing these indicators, it was already possible to foresee that the evaluation would face a number of issues in collecting and assessing information to support their use (particularly when it comes to indicators on benefits and impacts), not least because:

- The necessary data might not be readily available, or comparable, across the EU
- Most indicators relate to 'change', and so would require comparable data for more than one period – which again might not be readily available
- Delays in the implementation of the directive, and indications of a limited initial uptake of the mechanisms and processes it introduced, might mean that the Directive has so-far had minimal visible impact in relation to wider / longer-term goals (e.g. relating to industry structure, competitiveness)
- Related to this, some of the trends evident (e.g. overall market / sector / trade indicators) are likely to be the result of various influences, some potentially much more powerful than the directive (e.g. waves of mergers / acquisitions, the state of the global economy, changes in defence spending) – making attribution specifically to the Directive difficult

Taking account of these issues, the evaluation tried to strike an appropriate balance between number and quality of indicators, and the realistic ability to measure these, now or in the near future, based on data that might be available.



**Table 9: Indicators relating to the benefits / impacts of the Directive**

Aims and objectives	Indicator	Source
Long-term Outcomes		
<b>A competitive European defence equipment market (EDEM)</b>	<ul style="list-style-type: none"> <li>Reduction in EU defence equipment market concentration (HHI index)</li> <li>Increase in MS / EU share of global defence equipment market</li> <li>Increase in volume / value of defence equipment exports (to third countries)</li> </ul>	Market data
<b>Emergence of a European Defence Technological and Industrial Base (EDTIB)</b>	<ul style="list-style-type: none"> <li>Increase in the number / value / activity of EU defence-related manufacturers</li> <li>Increase in EU innovation activity amongst its EDTIB</li> </ul>	Market data
Short-term Outcomes		
<b>Facilitation of intra-community transfers of defence-related products</b>	<ul style="list-style-type: none"> <li>Increase in the number, volume and / or value of intra-community transfers (absolute, and as a proportion of total trade) - by different types of licences</li> <li>Reduction in administrative costs / burdens (effort and financial) – to both industry and Competent Authorities</li> </ul>	CA questionnaire + market data
<b>Reduction in complexity of procedures and administrative burdens</b>	<ul style="list-style-type: none"> <li>Proportion of GTL users who believe that the benefits of using GTLs outweigh the costs</li> <li>Proportion of certified enterprises who believe the benefits of certification outweigh the costs</li> </ul>	CA questionnaire + industry questionnaire
<b>Greater security of supply</b>	<ul style="list-style-type: none"> <li>Increase in volume / value of cross-border purchases by Member State Governments (absolute, and as a proportion of total purchases)</li> </ul>	Market data

**Table 10: Indicators relating to the uptake and use of the Directive**

Aims and objectives	Indicator	Source
Operational outcomes		
<b>A shift from Individual / Global Licences to General Licences</b>	<ul style="list-style-type: none"> <li>Increase in GTLs in use (by type)</li> <li>Reduction in GloTL / ITL issued</li> <li>Dispersion of GTL use across EU</li> </ul>	CA questionnaire
<b>Certified defence enterprises linked to General Licence schemes</b>	<ul style="list-style-type: none"> <li>Number of applications for certificates</li> <li>Number of certifications awarded</li> <li>Dispersion of certified defence enterprises across EU</li> </ul>	CA questionnaire

**Table 11: Indicators relating to transposition and implementation of the Directive**

Aims and objectives	Indicator	Source
Outputs		
<b>Simplified national licencing schemes for General, Global and Individual Licences</b>	<ul style="list-style-type: none"> <li>Extent to which licence schemes are in place (each type of GTL, GloTL and ITL) across each MS</li> </ul>	CA questionnaire + desk research
<b>A certification process linked to General Licence schemes, and based on common criteria</b>	<ul style="list-style-type: none"> <li>Extent to which certification processes are in place across each MS</li> <li>Number of cases where certificates are not recognised by other MS</li> </ul>	CA questionnaire + desk research
<b>Regulatory information requirements for re-exportation of defence-related products</b>	<ul style="list-style-type: none"> <li>Extent to which regulatory information requirements are in place across each MS</li> </ul>	CA questionnaire + desk research
<b>Measures to tackle / penalise infringements</b>	<ul style="list-style-type: none"> <li>Extent to which infringement measures are in place</li> <li>Number of enforcement actions</li> </ul>	CA questionnaire + desk research
<b>Transposition / adoption of Directive</b>	<ul style="list-style-type: none"> <li>The extent to which the Directive and its provisions have been transposed / adopted by all Member States</li> <li>Extent to which exclusions from the Directive are used</li> </ul>	CA consultation + Desk review (leg. comparison)