

EVALUATION AND FITNESS CHECK (FC) ROADMAP			
TITLE OF THE EVALUATION/FC	Evaluation of the Directive 2009/43/EC on the transfers of defence-related products within the Community ("the Transfers directive")		
LEAD DG RESPONSIBLE UNIT	DG GROW (DG for Internal Market, Industry, Entrepreneurship and SMEs) Unit I4 – Defence, Aeronautic, and Maritime Industries	DATE OF THIS ROADMAP	02/ 2016
TYPE OF EVALUATION	Evaluation, Ex-post Mixed	PLANNED START DATE	01 / 2015
		PLANNED COMPLETION DATE	06 / 2016
		PLANNING CALENDAR	http://ec.europa.eu/smart-regulation/evaluation/index_en.htm
This indicative roadmap is provided for information purposes only and is subject to change.			

A. Purpose
(A.1) Purpose
<p>The purpose of the evaluation is to assess whether and to what extent the objectives of the Directive have been achieved with the view to report to the European Parliament and the Council. The report should contain, as required by legal base, a review of the application of articles 9, 10, 11, 12 and 15; as well as an evaluation of the impact of the Directive on the development of a European defence equipment market and a European defence technological and industrial base (EDTIB). Based on the results of the evaluation, the Commission will assess whether or not a legislative proposal is needed in order to improve the performance of the Directive.</p> <p>The report on the implementation of the European Commission's Communication on Defence¹ makes reference to the need to deliver an evaluation report to the European Parliament and Council by June 2016. This is particularly important to further progress towards a more efficient internal market for defence and a key instrument for a strong and competitive European Defence Technological and Industrial Base (EDTIB). It is also important in view of the upcoming European Defence Action Plan.</p>
(A.2) Justification
<p>In line with Article 17 of the Transfers Directive (2009/43/EC), the Commission is obliged to review the implementation of the Directive and report to the European Council and the European Parliament by 30 June 2016. The evaluation will analyse whether the Directive has led to the desired simplification of rules and procedures to trade within the EU, and whether it has had an effect on the development of the European Defence equipment market and a European defence technological and industrial base (EDTIB).</p> <p>The Transfers Directive established a new harmonised licencing system for the transfer of defence-related products within the EU. The objective was to reduce administrative burden on both industry and Member States allowing the least sensitive products to be transferred more easily while allowing Member States to continue to control the transfer of the most sensitive products. The aim as to enhance competitiveness and confidence in security of supply of products provided by European companies in other Member States.</p> <p>The evaluation of this Directive will determine whether the Directive has been functioning as expected or not.</p>

¹ http://ec.europa.eu/growth/sectors/defence/files/communication-implementation-report_en.pdf

B. Content and subject of the evaluation

(B.1) Subject area

The Directive refers to defence-related products. The main aim of the Directive is to simplify the rules and procedures applicable to the intra-Community transfer of defence related products, while at the same time ensuring control of sensitive products, in order to ensure the proper functioning of the internal market.

The Transfers Directive, along with the Directive on Defence and Security Procurement (Directive 2009/81/EC) were two legislative pillars proposed by the Commission in the 2007 Defence Package (Communication on a strategy for a stronger and more competitive defence industry COM(2007)764 final), the purpose of both these proposals was to contribute to the progressive establishment of a European Defence Equipment Market, where suppliers established in one Member State can serve, without restrictions, all Member States. These proposals provided an essential framework for the establishment of a more competitive and stronger defence industry.

(B.2) Original objectives of the intervention

The objectives of the Directive are:

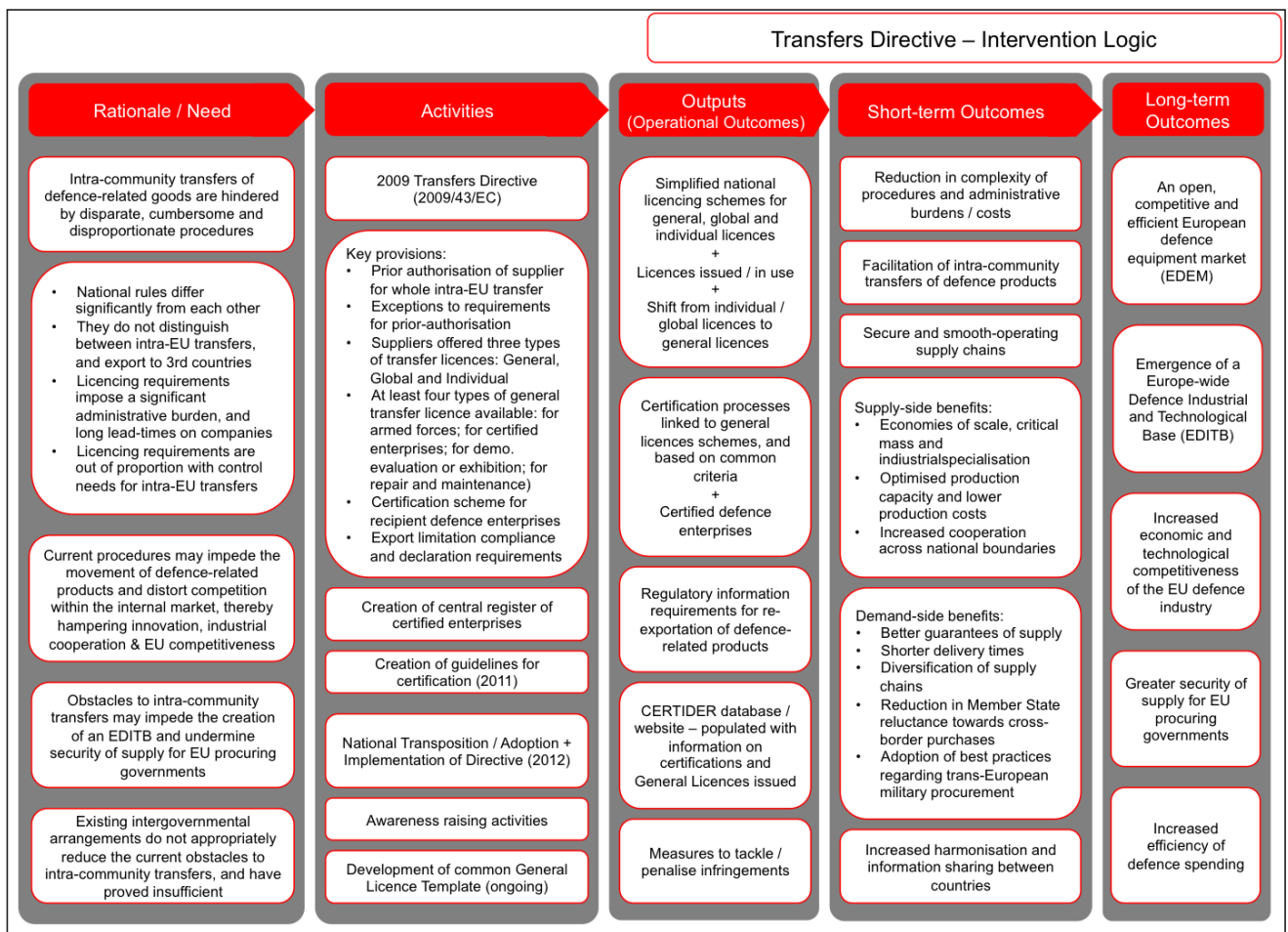
* **general objectives:** (i) establish an open and competitive European Defence Equipment market and (ii) increase the competitiveness of the EU defence industry

* **Specific objectives:** facilitate the intra-community transfer of defence-related products; reduce the complexity of procedures and administrative burdens; achieve greater security of supply; reduce Member States reluctance towards cross-border purchases

* **Operational objectives:** to simplify rules and procedures applicable to the intra-Community transfer of defence-related products, namely – provide a simplified national licencing scheme by introducing general, global licences in addition to individual licences; provide a certified process linked to the General Licences scheme and based on common criteria; provide regulatory information requirements for re-exportation of defence-related products.

(B.3) How the objectives were to be achieved

A draft intervention logic showing how the Directive was expected to work is summarized below:



C. Scope of the evaluation/FC

(C.1) Topics covered

The scope of the evaluation is an overall evaluation of the Transfers Directive. This is the first formal evaluation of the Directive since its adoption in 2009 and application as of 2012. It will cover all key provisions of the Directive, with a focus – in line with the legal requirement stipulated in Article (17) - on the application of Articles 9 (certification), 10 (export limitation), 11 (customs procedures), 12 (exchange of information) and 15 (safeguard measures).

It will cover all Member States and other EEA countries (Iceland, Norway) and focuses on the period June 2012 (since its application) to 2015.

(C.2) Issues to be examined

The evaluation shall address both quantitative and qualitative aspects and should provide answers to the following questions:

Relevance:

- To what extent do the objectives, scope, and mechanisms set up by the Directive correspond to the needs and risks initially identified in the Impact Assessment accompanying the Directive's proposal?
- To what extent did the provisions of the Directive contribute to achieving the overarching and specific objectives and impacts identified in the Impact Assessment accompanying the Directive's proposal²?
- How well do the original objectives still correspond to the needs within the EU at present?

Effectiveness:

- 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?
- To what extent has 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 - EDTIB (e.g. opening up and optimisation of national supply chains)?
- What are the factors for an effective application of the Directive? If there are any barriers, what is causing them?

Efficiency:

- To what extent are the regulatory costs proportionate to the benefits achieved? What factors are influencing any particular discrepancies? To what extent have regulatory costs been reduced through the implementation of the directive? Are the costs and benefits in line with the initial expectations?
- How affordable are the costs borne by different stakeholders (e.g. MS, industry including SME), given the benefits received?
- If there are any significant differences in costs or benefits in MS, what is causing them? What good practices in terms of cost/effective implementation in Ms can be identified?
- In particular to what extent is the administrative burden created by the implementation of the

² The overarching and specific objectives are set out in part 1 (b) of this document.

Directive's concepts and procedures considered proportionate? Which procedures are the most/least efficient?

European added value:

- To what extent has the Directive had an added value on the pre-existing situation and contributed to reach the overarching and specific objectives³, as opposed to national legislation?
- To what extent do the issues addressed by the Directive continue to require action at the EU level?

Consistency/Coherence:

- 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 (such as defence-related products) have been introduced in national transposition laws and measures? To what extent do MS apply diverging definitions which might affect the objectives of the Directive?
- To what extent is the legislative measure coherent and not overlapping with other pieces of legislation dealing with defence-related products or intra-community transfer of weapons (e.g. Council Regulation N.428/2009⁴, Council Directive 91/477/EEC⁵, Common Position 2008/944/CFSP⁶)?

(C.3) Other tasks

Not applicable

D. Evidence base

(D.1) Evidence from monitoring

Not applicable

(D.2) Previous evaluations and other reports

- Commission Staff Working Document, accompanying document to 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' – Impact Assessment, COM (2007) 765 final, SEC (2007)1594⁷;
- Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment⁸;
- Report from the Commission to the European Parliament and the Council on transposition of Directive

³ The overarching and specific objectives are set out in part 1 (b) of this document.

⁴ Council Regulation of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items.

⁵ Council Directive on control of the acquisition and possession of firearms as amended by Directive 2008/51/C).

⁶ Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment.

⁷ http://ec.europa.eu/smart-regulation/impact/ia_carried_out/docs/ia_2007/sec_2007_1593_en.pdf

⁸ <http://www.seesac.org/res/files/failovi/569.pdf>

2009/43/EC – COM(2012)359 final⁹;

- Commission Staff working document - Strategic export controls: ensuring security and competitiveness in a changing world - A report on the public consultation launched under the Green Paper COM(2011) 393¹⁰;
- Report from the Commission to the Council and the European Parliament on the implementation of Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items¹¹;
- Communication from the Commission to the Council and the European Parliament - The Review of export control policy: ensuring security and competitiveness in a changing world¹²;
- European Parliament Resolution of 21 November 2013 on the European Defence Technological and Industrial Base 2013/125(INI)¹³;
- Implementation Roadmap for Communication COM(2013)542: Towards a more competitive and efficient defence and security sector¹⁴;
- Final Report: study on the implementation of Directive 2009/43/EC - GRIP (Group for Research and Information on Peace and Security) and Annex, July 2014.

(D.3) Evidence from assessing the implementation and application of legislation (complaints, infringement procedures)

No infringements cases have been opened regarding non-conformity or bad application.

No official complaints have been registered. Nonetheless, even though it may be a bit too early to assess the impact of the Directive comprehensively, there are indications that the benefits offered by the Directive have not yet been fully exploited by Member States and defence companies.

(D.4) Consultation

Through the evaluation the following stakeholders were targeted specifically:

- **Competent authorities** in Member States and relevant EEA countries: consultation through responses to written survey and a follow-up interview;
- **The defence industry:** All defence companies across Europe that transfer and/or receive defence-related products are targeted. This includes GTL (General Transfer Licences) users and non-users, as well as certified and non-certified defence enterprises: Consultation was held through online survey and through follow-up interviews. Eight workshops throughout Europe were also held with industry across Europe.
- Other **Stakeholders:** This includes EU officials; representatives from the European Defence Agency and OCCAR (an international organisation that works on co-operative defence equipment programmes); representatives of defence procurement agencies; officials from national and international defence industry associations; other stakeholders e.g. think tanks, academics, consultants: Consultations were held through semi-

⁹ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012DC0359&from=EN>

¹⁰ http://trade.ec.europa.eu/doclib/docs/2013/february/tradoc_150459.pdf

¹¹ http://trade.ec.europa.eu/doclib/docs/2013/october/tradoc_151857.pdf

¹² http://trade.ec.europa.eu/doclib/docs/2014/april/tradoc_152446.pdf

¹³ <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2013-0514>

¹⁴ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0387&from=EN>

structured interviews

On the basis of the consultation activities performed and given the technical nature of the dossier, no open online public consultation will be held.

(D.5) Further evidence to be gathered

N/A

E. Other relevant information/ remarks

An external study is supporting this evaluation, which started before the entry into force of the Better Regulation Guidelines in April 2015 and will end by May 2016.