



STATUTORY INSTRUMENTS.

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EUROPEAN COMMUNITIES (INTRA-COMMUNITY TRANSFERS OF  
DEFENCE-RELATED PRODUCTS) REGULATIONS 2011

**(Prn. A11/1178)**

## EUROPEAN COMMUNITIES (INTRA-COMMUNITY TRANSFERS OF DEFENCE-RELATED PRODUCTS) REGULATIONS 2011

I, RICHARD BRUTON, Minister for Jobs, Enterprise and Innovation, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purposes of giving full effect to Directive 2009/43/EC<sup>1</sup>, hereby make the following regulations:

1. (1) These Regulations may be cited as the European Communities (Intra-Community Transfers of Defence Related Products) Regulations 2011.

(2) These Regulations come into operation on 30 June 2012.

2. (1) In these Regulations—

“Directive” means Directive 2009/43/EC<sup>1</sup> of the European Parliament and of the Council of 6 May 2009 simplifying the terms and conditions of transfers of defence-related products within the Community;

“Minister” means the Minister for Jobs, Enterprise and Innovation.

(2) A word or expression used in these Regulations and which is also used in the Directive has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Directive.

(3) In these Regulations, a reference to an Annex is a reference to an Annex to the Directive.

3. (1) The Minister is the competent authority in the State for the purposes of the Directive.

(2) These Regulations are subject to Articles 1(2) and 1(3) of the Directive.

4. (1) A person shall not transfer a defence-related product from the State to another Member State without a prior authorisation.

(2) Subject to paragraph (3), where, for the purposes of a transfer from the State to the Member State in which the recipient of the defence-related product concerned is located, it is necessary for that defence-related product to pass through another Member State, no further authorisation, other than the prior authorisation referred to in paragraph (1), shall be required for—

(a) the passage of that defence-related product through another Member State, and

<sup>1</sup>OJ No. L 146, 10.6.2009, p.1.

(b) entering into the Member State in which such recipient is located.

(3) Paragraph (2), in so far as it does not require an additional authorisation for the purposes of subparagraph (a) and (b) of that paragraph, is without prejudice to any other requirement or obligation relating to public security or public policy in the Member States concerned.

(4) For the purposes of paragraph (3), a requirement or obligation relating to public policy in the Member States concerned includes a requirement or obligation, if any, relating to public transport.

5. A supplier who proposes to transfer a defence-related product from the State may, for that purpose and having regard to the transfer and the defence-related product concerned—

(a) use a general transfer licence published by the Minister pursuant to these Regulations, or

(b) apply for—

(i) a global transfer licence, or

(ii) an individual transfer licence.

6. (1) The Minister shall, in accordance with and for the purpose of, these Regulations, determine the type of transfer licence for a defence-related product or category of defence-related product.

(2) In paragraph (1), the reference to transfer licence includes a general transfer licence, a global transfer licence or an individual transfer licence.

7. (1) The Minister shall determine all the terms and conditions of transfer licences, including any limitations on the export of a defence-related product to a person in a third country having regard to the risk for the preservation of human rights, peace, security and stability created by the transfer.

(2) In paragraph (1), the reference to transfer licence includes a general transfer licence, a global transfer licence or an individual transfer licence.

8. (1) The Minister shall determine the terms and conditions of a transfer licence for components on the basis of an assessment of the sensitivity of the transfer concerned and without prejudice to the generality of the foregoing such assessment of the sensitivity of the transfer, the assessment of the sensitivity of the transfer concerned shall be made on the basis of—

(a) the nature of the component in relation to the products in which they are to be incorporated and any end-use of the finished product which might give rise to concern, and

(b) the significance of the component in relation to the products in which they are to be incorporated.

(2) Subject to paragraph (3), for the purposes of the transfer of components, export limitations for components shall not be imposed where the recipient provides a declaration of use in which the recipient declares that the components that are the subject of the transfer licence concerned are integrated, or are to be integrated, into the recipient's own product and cannot at a later stage be transferred or exported as such unless for the purposes of maintenance or repair.

(3) Notwithstanding paragraph (2), where the Minister considers that the transfer of components is sensitive, paragraph (2) shall not apply to the transfer of components.

(4) In paragraph (1), the reference to transfer licence includes a general transfer licence, a global transfer licence or an individual transfer licence.

9. (1) The Minister may, at any time, withdraw, suspend or limit the use of a transfer licence issued pursuant to these Regulations for reasons of protection of essential security interests, on the grounds of public policy or public security, or as a consequence of non-compliance with the terms and conditions attached to the transfer licence concerned.

(2) In paragraph (1), the reference to transfer licence includes a general transfer licence, a global transfer licence or an individual transfer licence.

10. (1) The Minister shall publish one, or more than one, general transfer licence which shall authorise a supplier in the State who complies with the terms and conditions attached to the general transfer licence to perform the transfers of defence-related product, or category of defence-related product, specified in that licence, to a category of recipient located in another Member State.

(2) The Minister shall publish a general transfer licence where—

- (a) the recipient is part of the armed forces of a Member State or a contracting authority in the field of defence, purchasing for the exclusive use by the armed forces of a Member State;
- (b) the recipient is an undertaking certified in accordance with Regulation 15;
- (c) the transfer is made for the purposes of demonstration, evaluation or exhibition;
- (d) the transfer is made for the purposes of maintenance and repair, if the recipient is the originating supplier of the defence-related products.

11. (1) Where a supplier requests the Minister to grant, to that supplier, a global transfer licence to authorise a transfer of a defence-related product to recipients in one, or more than one, Member State the Minister shall, in accordance with these Regulations and the Directive, grant the global transfer licence.

(2) The Minister shall determine in each global transfer licence the defence-related products or categories of products and the authorised recipients or categories of recipients for which the licence is valid.

(3) A global transfer licence shall be for a period of 3 years, and may be renewed by the Minister.

12. The Minister shall, in accordance with these Regulations and the Directive, grant an individual transfer licence where a supplier requests the Minister to grant, to that supplier, an individual transfer licence to authorise one transfer of a specific quantity of specified defence-related products to be transmitted in one or several shipments to one recipient where—

- (a) the request for a transfer licence is limited to one transfer,
- (b) it is necessary for the protection of the essential security interests of the State or on grounds of public policy,
- (c) it is necessary for compliance with international obligations and commitments of Member States, or
- (d) the Minister, or another Member State has serious reason to believe that the supplier will not be able to comply with all the terms and conditions necessary to grant it a global transfer licence.

13. (1) A supplier of a defence-related product shall inform a recipient of the terms and conditions attaching to the transfer licence pursuant to which the transfer was made to the recipient, including limitations relating to the end-use or export of the defence-related product concerned.

(2) A supplier shall inform the Minister, in writing, of the intention of the supplier to use a general transfer licence for the first time not later than 30 days prior to the date of the first transfer by that supplier under the general transfer licence concerned.

14. (1) A supplier shall keep detailed and complete records of transfers made under licences issued pursuant to these Regulations.

(2) The Minister shall, from time to time, check that a supplier complies with paragraph (1).

(3) The Minister shall determine the reporting requirements attached to the use of a general transfer licence, a global transfer licence and an individual transfer licence.

(4) The records to which this Regulation applies shall include commercial documentation containing the following information—

- (a) a description of the defence-related product and its reference under the Annex,
- (b) the quantity and value of the defence-related product,

- (c) the dates of transfers,
- (d) the name and address of the supplier and the recipient,
- (e) where known, the end-use and end-user of the defence related product, and
- (f) proof that the information on an export limitation attached to a transfer licence has been transmitted to the recipient of the defence-related product.

(5) Suppliers shall keep the records referred to in paragraph (1) for a period of not less than 3 years from the end of the calendar year in which the transfer took place.

(6) A supplier shall provide the Minister with the records referred to in this Regulation when requested to do so.

15. (1) The Minister is the competent authority for the certification process provided for in Article 9 of the Directive.

(2) The Minister shall establish the reliability of the recipient undertaking, in particular as regards its capacity to observe export limitations of defence-related products received under a transfer licence from another Member State.

(3) The Minister shall assess such reliability of such recipient undertaking in accordance with the following criteria:

- (a) proven experience in defence activities, taking into account in particular the undertaking's record of compliance with export restrictions, any court decisions on this matter, any authorisation to produce or commercialise defence-related products and the employment of experienced management staff;
- (b) relevant industrial activity in defence-related products within the Community, in particular capacity for system or sub-system, or both, integration;
- (c) the appointment of a senior executive as the dedicated officer personally responsible for transfers and exports;
- (d) a written commitment of the undertaking, signed by the senior executive referred to in subparagraph (c), that the undertaking will take all necessary steps to observe and enforce all specific conditions related to the end-use and export of any specific product or component received;
- (e) a written commitment of the undertaking, signed by the senior executive referred to in subparagraph (c), to provide to the Minister, with due diligence, detailed information in response to requests and inquiries concerning the end-users or end-use of all products exported,

transferred or received under a transfer licence from another Member State; and

- (f) a description, countersigned by the senior executive referred to in subparagraph (c), of the internal compliance programme or transfer and export management system implemented in the undertaking and such description shall provide details of the organisational, human and technical resources allocated to the management of transfers and exports, the chain of responsibility within the undertaking, internal audit procedures, awareness-raising and staff training, physical and technical security arrangements, record keeping and traceability of transfers and exports.

(4) Certificates issued pursuant to these Regulations shall contain the following information—

- (a) the name of the Minister,
- (b) the name and address of the recipient,
- (c) a statement of the conformity of the recipient with the criteria referred to in paragraph (3), and
- (d) the date of issue and period of validity of the certificate which period of validity shall not, in any case, exceed 5 years.

(5) Certificates issued pursuant to these Regulations may contain conditions relating to—

- (a) the provision of information required for the verification of compliance with the criteria referred to in paragraph (3), and
- (b) the suspension or revocation of the certificate.

(6) The Minister shall monitor the compliance of a recipient to which this Regulation applies with the criteria referred to in paragraph (3) at least every 3 years and with any condition, referred to in paragraph (5), attached to the certificate concerned.

(7) For the purposes of these Regulations, the Minister shall recognise a certificate issued, pursuant to Article 9 of the Directive, in another Member State.

(8) If the Minister finds that the holder of a certificate established in the State no longer satisfies the criteria referred to in paragraph (3) or any of the conditions referred to in paragraph (5), the Minister shall take measures as the Minister considers appropriate which may include revoking the certificate and where the Minister revokes the certificate he or she shall inform the Commission and other Member States of his or her decision.

(9) The Minister shall, from time to time, publish a list of certified recipients, and inform the Commission, the European Parliament and other Member States of the list.

16. Where a recipient of a defence-related product received under a transfer licence from another Member State with export limitations attached to such product applies to the Minister for an export licence in respect of such product, the recipient shall declare to the Minister that the recipient has complied with the terms of those limitations including, as the case may be, a declaration that such recipient has obtained the required consent from the originating Member State.

17. When completing the formalities for the export of defence-related products from the State, an exporter shall furnish any necessary proof to the customs office handling the export declaration that any necessary licence has been obtained.

18. The Minister shall take appropriate measures to establish direct cooperation and exchange of information between the competent authorities for the Directive in other Member States.

19. (1) Where the Minister considers that there is a serious risk that a recipient certified in accordance with Article 9 of the Directive in another Member State will not comply with a condition attached to a general transfer licence, or the public policy, public security or essential security interests, of the State could be affected, the Minister shall inform the Member State concerned and request verification of the situation.

(2) Where the Minister is satisfied that the serious risk referred to in paragraph (1) persists, the Minister may provisionally suspend the effect of a general transfer licence issued in accordance with these Regulations with regard to a recipient referred to in paragraph (1).

(3) The Minister shall inform the other Member States and the Commission of the reason for a suspension under paragraph (2) and the suspension shall remain in force until the Minister considers it is no longer justified.

20. (1) A person who fails to comply with Regulation 4(1), 13(1), 13(2), 14(1), 14(5), 14(6), 16 or 17 is guilty of an offence under these Regulations is liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months or both, or

(b) on conviction on indictment, to a fine not exceeding €500,000 or imprisonment for a term not exceeding 3 years or both.

(2) A person who fails to comply with the terms and conditions of—

(a) a general transfer licence,

(b) a global transfer licence, or



(c) an individual transfer licence,

is guilty of an offence and is liable—

- (i) on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months or both, or
- (ii) on conviction on indictment, to a fine not exceeding €500,000 or imprisonment for a term not exceeding 3 years or both.

(3) A person who, for the purposes of compliance with Regulation 13(1), 15(3), 16 or 17 provides false or incomplete information is guilty of an offence and is liable—

- (a) on summary conviction, to a Class A fine or imprisonment for a term not exceeding 6 months or both, or
- (b) on conviction on indictment, to a fine not exceeding €500,000 or imprisonment for a term not exceeding 3 years or both.

(4) Where an offence is committed under these Regulations by a body corporate and is proved to have been so committed with the consent, connivance or approval of or to have been attributable to the neglect on the part of any person, being a director, manager, secretary or other officer of the body corporate or a person who was purporting to act in any such capacity, that person, as well as the body corporate, is guilty of an offence and is liable to be proceeded against and punished as if he or she was guilty of the first-mentioned offence.

(5) Proceedings for a summary offence under these Regulations may be brought and prosecuted by the Minister.



GIVEN under my Official Seal,  
30 June 2011.

RICHARD BRUTON,  
Minister for Jobs, Enterprise and Innovation.

## EXPLANATORY NOTE

*(This note is not part of the Instrument and does not purport to be a legal interpretation.)*

The purpose of these Regulations, which come into operation on 30 June 2012, is to give effect to 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.

The Directive provides that the transfer of defence-related products between Member States shall be subject to prior authorisation. It provides for three types of transfer licences to cover such transfers; general transfer licences, global transfer licences and individual transfer licences. Defence-related products are defined as any product listed in the Annex to the Directive which corresponds with the Common Military List of the European Union.

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