

The “Transfer Directive”: perceptions in European countries and recommendations

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Introduction

On 5 December 2007, the European Commission submitted the so-called “*defence package*”, including a Communication “*A strategy for a stronger and more competitive European defence industry*”¹ and two directive proposals. The first directive deals with *the coordination of procedures for the award of certain public works contracts, public supply contracts and public service contracts in the fields of defence and security*². The second one relates to *simplifying terms and conditions of transfers of defence-related products within the Community*³. This FRS study will focus on the latter directive, voted by the European Parliament on 16 December 2008 and approved by the Council on 23 April 2009.

The directive follows the April 2006 launch of a consultation procedure of the parties involved. There had never been any specific EC measure in force about military goods transfer control; Member States had always been opposed to a “communitization” in this field. Consequently, intergovernmental initiatives appeared through the setting up of ad hoc structures such as *Letter of Intent (LoI)*, or through the signature of non restrictive political agreements (in ESDP framework) such as the *Code of Conduct on arms export* in June 1998 (becoming a Common Position at the end of 2008) which led to the adoption by the Council, in June 2000, of a common list of equipment covered by the code (stemming from national and international lists). From then on, a common regulation (the only one about the control of transfers or exports for defence related goods) covered the intra-community trade and export of dual-use goods.

The new directive was proposed on the basis of article 114 of the TFEU⁴. This article provides for the adoption of measures harmonizing national legislations in order to improve the common market organization. The directive choice is not peculiar. In general, the Commission prefers the use of directives instead of regulations, as the Member States are bound to the results they have to reach, even if they keep the ability to choose the way to reach them (transposition measures). The European Commission justifies the choice of the directive by the nature of the domain. The licence granting regime simplification indeed falls to the Member States. The European Commission motivates its directive proposal by putting emphasis on the consequences it could have on the competitiveness of European defence industries, structural costs, delays and administrative fees that come with the coexistence of 27 national licensing schemes. The objective is to replace current national regimes often dealing transfer within EU in the same way as export to third countries, by a more coherent transfer licensing system featuring global and general licences. Member States have until June 2011 to adapt their national legislations accordingly, with entry into force before end of June 2012. Therefore, in some cases, national discussions on how to conduct this process are at the beginning and orientations not defined yet.

¹ COM(2007) 764 final, Brussels, 05.12.2007.

² COM(2007) 766 final, Brussels, 05.12.2007.

³ 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*, Official Journal of the EU, L146, Vol 52, 10 June 2009.

⁴ *Treaty on the Functioning of the European Union* (with the entry into force of the Lisbon Treaty). Former legal basis was art.95 of the EC Treaty.

In this context, this study aims at assessing the ongoing national discussions about the adaptation of the technical and administrative control tools within a sample of EU Member States, five members of the LoI (Germany, Italy, Spain, Sweden and United Kingdom), as well as Greece and Finland. The French case has not been studied here but could be the object of a separate ad hoc study.

Following this purpose, we will rely on an analysis of the current control practices (in Appendix). The main characteristics of the control systems in the States under consideration are presented under comparative and synoptic charts. Several practical recommendations for the transposition will be suggested on the basis of this national positions analysis.

1. The new Directive 2009/43/EC on intra-EU transfers of defence-related products

1.1. Key points of change

Transfer Licences: general, global, individual (articles 3-4-5-6-7)

ICT Directive covers only transfers of defence-related products within Member States (MS), and consequently is not valid for exports to third countries. The directive states that “(16) Any transfer of defence-related products within the Community should be subject to prior authorisation through general, global or individual transfer licences granted or published by the Member State from whose territory the supplier wishes to transfer defence-related products. Member States should be able to exempt transfers of defence-related products from the obligation of prior authorisation in specific cases listed in this Directive”. The Directive would apply to the list of defence-related products set out in the annex. It corresponds to those listed in the Common Military List of the European Union including sub-systems, components, spare parts, technology transfer, maintenance and repair.

This Directive does not affect the discretion of Member States in regards to policy on the export of defence-related products. It aims to facilitate movement of defence goods within the EU while recognising that such transfers must remain subject to national controls. The application of this Directive is still subject to Articles 36 and 346 of the TFEU⁵.

The Directive encourages Member States to use General and Global Transfer Licences for intra-Community transfers of defence-related products, and minimises the use of Individual Licences. General Transfer Licences shall be issued in each Member States for the following cases: deliveries to Armed Forces of a Member State or a contracting authority in the field of defence, Certified Companies in Member State, for the purposes of demonstration, evaluation or exhibition, for the purposes of maintenance and repair (if the recipient is the originating supplier of the defence-related products), in the context of an intergovernmental cooperation programme. Global Transfer Licences shall be issued to individual suppliers for defined goods and defined equipment.

Member States may even exempt certain intra-Community transfers from the obligation of prior authorisation (see above).

Individual licensing remains possible, but should be reserved for exceptional circumstances (Transfer Licence limited to one transfer, protection of the essential security interests of the Member State, compliance with international obligations and commitments of Member States, doubt whether a certified company would respect any conditions attached to its General Licence).

The Directive requires for Member States to introduce those common licensing tools in their national legislations.

⁵ Former legal basis: art. 30 and art.296 of the EC Treaty.

Article 3 - Definitions	
Transfer	<i>'transfer' means any transmission or movement of a defence-related product from a supplier to a recipient in another Member State</i>
Transfer licence	<i>'transfer licence' means an authorisation by a national authority of a Member State for suppliers to transfer defence-related products to a recipient in another Member State</i>
Export licence	<i>'export licence' means an authorisation to supply defence-related products to a legal or natural person in any third country</i>
Article 4 - General provisions	
Exemptions	<i>Member States may exempt transfers of defence-related products from the obligation of prior authorisation set out in that paragraph where:</i> <i>(a) the supplier or the recipient is a governmental body or part of the armed forces;</i> <i>(b) supplies are made by the European Union, NATO, IAEA or other intergovernmental organisations for the performance of their tasks;</i> <i>(c) the transfer is necessary for the implementation of a cooperative armament programme between Member States;</i> <i>(d) the transfer is linked to humanitarian aid in the case of disaster or as a donation in an emergency; or</i> <i>(e) the transfer is necessary for or after repair, maintenance, exhibition or demonstration.</i>
Limitations	<i>(6.) Member States shall determine all the terms and conditions of transfer licences, including any limitations on the export of defence-related products to legal or natural persons in third countries, having regard, inter alia, to the risk for the preservation of human rights, peace, security and stability created by the transfer. Member States may, whilst complying with Community law, avail themselves of the possibility to request end-use assurances, including end-user certificates.</i>
End-user certificates	<i>(8.) Except where they consider that the transfer of components is sensitive, Member States shall refrain from imposing any export limitations for components where the recipient provides a declaration of use [...]</i>
Components	<i>(9.) Member States may withdraw, suspend or limit the use of transfer licences they have issued at any time for reasons of protection of their essential security interests, on grounds of public policy or public security, or as a result of non-compliance with the terms and conditions attached to the transfer licence.</i>
Withdraw, suspend or limit the use of transfer licences	
Article 5 - General transfer licences	
Definition	<i>1. Member States shall publish general transfer licences directly granting authorisation to suppliers established on their territory, [...], to perform transfers of defence-related products, to be specified in the general transfer licence, to a category or categories of recipients located in another Member State.</i>
Recipient • To the armed forces of a Member States or a contracting authority in the field of defence	<i>2. General transfer licences shall be published at least where:</i> <i>(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;</i> <i>(b) the recipient is an undertaking certified in accordance with</i>

<ul style="list-style-type: none"> • A certified company • For demonstration, evaluation or exhibition • For maintenance and repair of previously supplied items • Intergovernmental cooperation programme 	<p><i>Article 9;</i> <i>(c) the transfer is made for the purposes of demonstration, evaluation or exhibition;</i> <i>(d) the transfer is made for the purposes of maintenance and repair, if the recipient is the originating supplier of the defence-related products.</i></p> <p><i>3. Member States participating in an intergovernmental cooperation programme concerning the development, production and use of one or more defence-related products may publish a general transfer licence for such transfers to other Member States which participate in that programme as are necessary for the execution of that programme.</i></p>
Conditions for registration	<i>4. Without prejudice to the other provisions of this Directive, Member States may lay down the conditions for registration prior to first use of a general transfer licence.</i>
Article 6 - Global transfer licences	
Definition	<i>1. Member States shall decide to grant global transfer licences to an individual supplier, at its request, authorising transfers of defence-related products to recipients in one or more other Member States.</i>
Products covered category of recipients	<i>2. Member States shall determine in each global transfer licence the defence-related products or categories of products covered by the global transfer licence and the authorised recipients or category of recipients.</i>
For a period of three years	<i>A global transfer licence shall be granted for a period of three years, which may be renewed by the Member State.</i>
Article 7 - Individual transfer licences	
Definition	<i>Member States shall decide to grant individual transfer licences to an individual supplier at its request authorising one transfer of a specified quantity of specified defence-related products to be transmitted in one or several shipments to one recipient where:</i>
<ul style="list-style-type: none"> • transfer licence is limited to one transfer • protection of the essential security interests • compliance with international obligations • supplier will not be able to comply 	<p><i>(a) the request for a transfer licence is limited to one transfer;</i> <i>(b) it is necessary for the protection of the essential security interests of the Member State or on grounds of public policy;</i> <i>(c) it is necessary for compliance with international obligations and commitments of Member States; or</i> <i>(d) a 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.</i></p>

Voluntary certification

If the Directive proposes a framework of General and Global Licences, it also introduces a number of confidence building measures for the protection of national security. At the heart of these confidence building measures is a certification system for companies (as « recipient undertakings »), ensuring that companies importing items from another Member State under a General Licence have set up provisions to abide by any re-export limitations that may apply to those items. The scheme will allow certified companies to receive from their suppliers in other Member States some or all of the parts and components they need under a General Licence. Supplier companies (often small or medium) will then be able to answer demands

from certified companies without having to factor in the delays to obtain individual approval from their licensing authorities.

Certificates are granted and managed by Member States. Applicants for certification have to fulfil a number of criteria (notably: proven experience in defence activities, capacity for system/sub-system integration, appointment of a senior executive as the dedicated officer personally responsible for transfers and exports, capacity to observe potential export limitations). Certificates may be valid for a maximum of five years, and the national authorities must monitor the recipient's compliance with the above criteria at least every three years. Certificates issued by one Member State shall be recognised throughout EU. Member States must publish a national list of certified recipients. The Commission will publish a central register of certified recipients on its website.

Article 9 - Certification	
Competent authorities	<i>1. Member States shall designate competent authorities to carry out the certification of recipients established on their territory of defence-related products under transfer licences published by other Member States</i>
Criteria <ul style="list-style-type: none"> • proven experience in defence activities • relevant industrial activity, in particular capacity for system/sub-system integration • a senior executive as the dedicated officer personally responsible • a written commitment of the undertaking related to the end-use • provide detailed information in response to requests and inquiries concerning the end-users or end-use of all products exported transferred or received • a description of the internal compliance programme or transfer and export management system implemented in the undertaking 	<p><i>2. The certification 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. Reliability shall be assessed according to the following criteria:</i></p> <p><i>(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;</i></p> <p><i>(b) relevant industrial activity in defence-related products within the Community, in particular capacity for system/sub-system integration;</i></p> <p><i>(c) the appointment of a senior executive as the dedicated officer personally responsible for transfers and exports;</i></p> <p><i>(d) a written commitment of the undertaking, signed by the senior executive referred to in point (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 component or product received;</i></p> <p><i>(e) a written commitment of the undertaking, signed by the senior executive referred to in point (c), to provide to the competent authorities, with due diligence, detailed information in response to requests and inquiries concerning the end-users or end-use of all products exported, transferred or received under a transfer licence from another Member State; and</i></p> <p><i>(f) a description, countersigned by the senior executive referred to in point (c), of the internal compliance programme or transfer and export management system implemented in the undertaking. This 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.</i></p>

<p>Certificate informations</p> <p>Period of validity: not exceed five years</p> <p>Further conditions</p>	<p>3. <i>Certificates shall contain the following information:</i></p> <p>(a) <i>the competent authority issuing the certificate;</i></p> <p>(b) <i>the name and address of the recipient;</i></p> <p>(c) <i>a statement of the conformity of the recipient with the criteria referred to in paragraph 2; and</i></p> <p>(d) <i>the date of issue and period of validity of the certificate.</i></p> <p><i>The period of validity of the certificate referred to in point (d) shall in any case not exceed five years.</i></p> <p>4. <i>Certificates may contain further conditions relating to the following:</i></p> <p>(a) <i>the provision of information required for the verification of compliance with the criteria referred to in paragraph 2;</i></p> <p>(b) <i>the suspension or revocation of the certificate.</i></p>
<p>Monitoring of the compliance of the recipient at least every three years</p> <p>Mutual Recognition of Certification</p> <p>Certificate Revocation</p>	<p>5. <i>Competent authorities shall monitor the compliance of the recipient with the criteria referred to in paragraph 2 at least every three years, [...]</i></p> <p>6. <i>Member States shall recognise any certificates issued in accordance with this Directive in another Member State.</i></p> <p>7. <i>If a competent authority finds that the holder of a certificate established on the territory of its Member State no longer satisfies the criteria referred to in paragraph 2 or any of the conditions referred to in paragraph 4, it shall take appropriate measures. Such measures may include revoking the certificate. The competent authority shall inform the Commission and the other Member States of its decision.</i></p>

Individual ex-ante control to general ex-post control: guarantees for the protection of national security

As stated in the Directive, in order to compensate for the progressive replacement of individual *ex-ante* control by general *ex-post* control of the defence-related products originated in the Member State, conditions for mutual confidence and trust should be created by including guarantees which ensure that defence-related products are not exported in violation of export limitations to third countries⁶.

Member States shall ensure that the recipients of defence-related products applying for an export licence declare to their competent authorities that they have complied with the terms of export limitations attached to them (article 10).

Moreover, at external borders, Member States, when completing defence-related products export formalities at the customs office responsible for handling the export declaration, shall ensure that the exporter furnishes proof that any necessary export licence has been obtained (article 11). Acting in liaison with the Commission, Member States shall also take all appropriate measures to establish direct information cooperation and exchange between their national competent authorities (article 12).

⁶ Paragraph (29).

When a licensing Member State believes there is a serious risk that a recipient certified in another Member State will not comply with a condition attached to a General Transfer Licence, it shall inform the other Member States and request a verification of the situation. Where the doubts persist, the licensing Member State may provisionally suspend the effect of its General Transfer Licence and shall inform the other Member States and the Commission of the reasons for that safeguard measure (article 15).

The Directive introduces a safeguard clause (article 4.9) whereby Member States may withdraw, suspend or limit the use of Transfer Licences they have issued at any time for reasons of essential security interests protection. This can be done on grounds of public policy or public security, or as a result of non-compliance with the terms and conditions attached to the Transfer Licence.

Article 10 - Export limitations	
	<i>Member States shall ensure that recipients of defence-related products, when applying for an export licence, declare to their competent authorities, in cases where such products received under a transfer licence from another Member State have export limitations attached to them, that they have complied with the terms of those limitations, including, as the case may be, by having obtained the required consent from the originating Member State.</i>
Article 11 - Customs procedures	
	<p><i>1. Member States shall ensure that, when completing the formalities for the export of defence-related products at the customs office responsible for handling the export declaration, the exporter furnishes proof that any necessary export licence has been obtained.</i></p> <p><i>2. Without prejudice to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code(1) OJ L 302, 19.10.1992, p. 1., a Member State may also, for a period not exceeding 30 working days, suspend the process of export from its territory of defence-related products received from another Member State under a transfer licence and incorporated in another defence-related product or, if necessary, prevent by other means such products from leaving the Community from its territory, where it considers that:</i></p> <p><i>(a) relevant information was not taken into account when the export licence was granted; or</i></p> <p><i>(b) circumstances have materially changed since the grant of the export licence.</i></p> <p><i>3. Member States may provide that customs formalities for the export of defence-related products can be completed only at certain customs offices.</i></p> <p><i>4. Member States availing themselves of the option set out in paragraph 3 shall inform the Commission of the relevant customs offices. The Commission shall publish that information in the C series of the Official Journal of the European Union.</i></p>
Article 12 - Exchange of information	
Direct cooperation and exchange of information	<i>Acting in liaison with the Commission, Member States shall take all appropriate measures to establish direct cooperation and exchange of information between their national competent authorities.</i>
Article 15 - Safeguard measures	

	<p><i>1. Where a licensing Member State considers that there is a serious risk that a recipient certified in accordance with Article 9 in another Member State will not comply with a condition attached to a general transfer licence, or where a licensing Member State considers that public policy, public security or its essential security interests could be affected, it shall inform that other Member State and request verification of the situation.</i></p> <p><i>2. Where the doubts referred to in paragraph 1 persist, the licensing Member State may provisionally suspend the effect of its general transfer licence with regard to such recipients. It shall inform the other Member States and the Commission of the reasons for that safeguard measure. The Member State which adopted that measure may decide to lift it where it considers that it is no longer justified.</i></p>
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1.2. Timetable

The Directive was published in the EU Official Journal on 10 June 2009.

24 months from that date, Member States must have adopted and published laws, regulations and administrative procedures necessary to comply with the Directive.

36 months from that date, Member States must apply the measures they have introduced to comply with the Directive (24 months for transposition into national laws *plus* 12 months of mutual assessment before full application).

Member States will have to transpose the Directive by 30 June 2011 at the latest. Full application is expected on 30 June 2012. Article 17 of the Directive requires that the Commission shall report on the measures taken by the Member States with a view toward the transposition of the text, and in particular Articles 9 to 12 and article 15.

2. Current legislative situation and general perception on the transposition process in United Kingdom, Germany, Italy, Spain, Greece, Sweden and Finland

2.1. United Kingdom

*OGEL and OIEL: the UK's open licensing regime*⁷

The General Licence, one of the common tools introduced in the Directive, already exists in the British export control system.

The UK Open General Export Licences (OGEL) allow the export or trade of specified controlled goods by any company, to a specific destination, removing the need for exporters to apply for an Individual Licence, provided that shipment and destinations are eligible and certain conditions are met. Between 2004 and 2008, 36 OGEL were delivered, among which 18 are now revoked. Most of them lasted for about one year.

Furthermore, Open Individual Export Licences (OIELs) are concessionary licences that are specific to an individual exporter; they cover multiple shipments of specified items to specified destinations and/or, in some cases, specified consignees. OIEL are generally valid for a period of five years, with the exception of dealer-to-dealer OIEL which are valid for three years. It should be noted that the refusal of an application for an OIEL, an amendment to exclude particular destinations and/or items or the revocation of an OIEL does not prevent a company from applying for Standard Individual Export Licences (SIELs) covering some or all of the items concerned to specified consignees in the relevant destinations.

In this overall context, a representative of the Export Control Organization unit (ECO) underlines that the ICT Directive is consistent with the UK's open licensing regime and prepares the way for wider use of Open General Licences in Europe. The Directive envisages that Member States will publish at least 4 General Licences⁸. The representative of ECO unit considers that the “UK already has general licences covering these areas. But we will need to amend our current licences, removing those aspects to be covered by licences issued under the Directive”⁹. The Directive will not have an impact on the ability for the UK to use OGELs, and requires minimal changes to existing regimes.

In the Business, Innovation and Skills Department (BIS, formerly BERR in the Department of Trade and Industry, DTI), BIS's Export Control Organization (ECO, 88 staff, £4M budget) is the licensing authority for strategic exports in the UK; it sets out the regulatory framework under which licence applications are considered.

⁷ See Appendix 1.A.

⁸ Art. 5.2 of the Directive, see above.

⁹ Spencer Chilvers, *Recent Developments in EU and National Controls – a UK Perspective*, ISP, Export Control Seminar, 2009.

Certification and ECO Code of Practice: a decentralized control system

Most OGELs require the exporter or trader to register with the ECO before they make use of them, and registered companies are subject to compliance visits from the ECO to ensure that all the conditions are being met.

ECO's Compliance teams are responsible for visiting companies to check and audit their compliance with the terms of their Open Individual Licences and whichever Open General Licence they are using. There are various reasons for a Compliance visit to take place, principally:

- ✓ legal or statutory obligations as a result of the Export Control Act and associated Orders
- ✓ assurance that exporters have appropriate systems and procedures in place
- ✓ building relationships with exporters including receiving feedback and specific experiences
- ✓ providing and increasing industry awareness and education
- ✓ ensuring that companies have not exported goods or technology without an appropriate licence and that they have met all the licence's terms and conditions.

Moreover, relating to the certified company scheme, *“most, if not all UK companies wishing to obtain certification will already be using general and/or global licences. They will be familiar with ECOs Compliance Code of Practice and will have introduced a compliance programme or similar procedures, to help them abide by the terms and conditions of the licences they use. The criteria for certification in the Directive are not dissimilar from those in the Code of Practice. Certification in the UK will be handled by the Unit undertaking compliance with global and general licences”*¹⁰.

The Code offers guidelines for dealing with export controls, setting a standard based on existing best practice within companies. The emphasis is put on practical and relevant measures, which should ease licensing procedures, benefit the customer and help companies to proceed with confidence in a changing world. The Code of Practice is not legally binding. Companies should continue to seek their own legal advice on the application of the legislation¹¹.

Elements of the code of practice	
Commitment to compliance	<i>Each company should make a firm commitment to comply with UK export controls. A statement, carrying the authority of the UK chairman, chief executive or other senior figure, gives a clear indication of the compliance policy of the business.</i>
Identifying responsible personnel	<i>Each business should nominate the person(s) responsible for export control issues. The objective is to ensure a clear definition of responsibilities and a management chain, however simple or complex the structure of the business.</i>
Information and training	<i>Each business should establish clear procedures for acquiring, keeping and disseminating information on export controls.</i>

¹⁰ Spencer Chilvers, *op.cit.*

¹¹ *Export Control Organisation Compliance Code of Practice*, BIS/ECO 2009.

	<i>Training needs of staff at all levels in relation to export controls should be assessed and satisfied.</i>
Company compliance procedures	<i>Businesses should draw up and operate compliance procedures that are effective for the business concerned and reflect as far as possible the best practices illustrated in this code. The Code draws together guidelines for internal procedures, based on existing best practice, within companies. It highlights the issues that need to be addressed by means of a checklist. The stages detailed are: establishing which of the business's products or activities require a licence and what type of licence would best suit, taking into account customers and destinations; end-use control considerations; vetting customers; mechanics of licence application; exporting and freight; keeping records.</i>
Awareness of suspicious enquiries/orders	<i>Businesses should develop awareness among their employees to help in identifying suspicious orders. Where there is doubt about the bonafides of an order, the business should consult BIS/ECO.</i>
Record keeping	<i>Business activities covered by export control legislation should, as required by their licences, maintain records of all controlled activities for at least the minimum period required by law.</i>
Internal audits	<i>Businesses should establish a programme of regular internal audit of the system for export control compliance.</i>
Integration with quality management practices	<i>Businesses should ensure that all procedures and practices for dealing with export control regulations are fully integrated with any quality management systems that may apply to them.</i>

ECO runs seminars and workshops at regional locations as well as in London, working with industry, via joint events and company visits. In 2008, 38 seminars and workshops were held¹². There are three joint government/industry groups that deal specifically with export control issues:

- ✓ strategic level: *Export Control Advisory Committee (ECAC)*
- ✓ government formed group: *ECAC Working Groups* – joint representation; joint working on key industry concerns
- ✓ industry group: *Export Group for Aerospace and Defence (EGAD) Sub-Groups* – day to day performance issues and special projects

Moreover, in September 2007, BIS/ECO has launched *SPIRE*, the Export Control Organisation's fully electronic system for processing licence applications (<https://www.spire.bis.gov.uk>). *SPIRE* replaces all the methods to apply for any of the ECO processed licences. And *Goods Checker* (<http://www.ecochecker.co.uk/goodschecker/>), a web-based search tool to help exporters to decide if their goods, software or technology are controlled by UK or EU strategic export control legislation.

The Debates are echoing main concerns

Answering a question from the Select Committee on Foreign Affairs on 17 January 2008 relating to the implications of the Directive for the UK strategic export control system, and to the possibility to get a win-win situation, the then Secretary of State for Defence, Des

¹² Spencer Chilvers, *Awareness Raising with Industry: The UK Experience*, Export Control Organisation.

Browne, stressed “our view is that this area of work addresses an objective that we have which is that our licensing practices in our view were ahead of most other Member States and we are trying to get them to bring their licensing practices to where we believe ours are. That manifestly would be in our interests.[...] we did not agree with the early proposals. We argued for a set of proposals which were much more akin to the scheme that we have in this country. Those proposals have broadly been accepted, which we are pleased about. They are reflected in the current document [...] Insofar as the actual documentation, it shows that we have been persuasive in our arguments; we have won a lot of the arguments and we are pleased about that”¹³. Meanwhile, the European Scrutiny Committee has expressed concerns about the loss of national discretion occasioned by the Directive and the extension of external community competence which may be derived from it: “It seems to us that there is considerable risk that the UK would find itself no longer able to rely on Article 296 TEC¹⁴ to justify the making of bilateral agreements with third countries (including NATO members) in relation to the licensing of exports of military equipment and supplies”¹⁵.

However, to answer a parliamentary question from 2 October 2008, the Minister for Defence Procurement stated “The proposed terms of the transfer directive are consistent with the way in which the UK export licensing system currently operates”¹⁶. More recently, in April 2009¹⁷, Bill Rammell, Minister of State at the Foreign and Commonwealth Office has pointed out that the implementation of the harmonised licensing regime proposed by the Directive is not a problem for the UK at present: “I think it has been a very positive outcome. There were concerns, and certainly the European Scrutiny Committee flagged this up to us and we took on board those concerns about potential loss for national discretion, the extension of Community competence and potential for limitations of inter-governmental co-operation through the negotiations that took place particularly in December [...] The Directive certainly permits us to operate the regime very close to the current one because, for example, we have long moved towards a simplified licensing system within our operations, so I do not think we have anything to fear from this. We need to ensure—and the Commission will take a role in that—that that is the way it is applied across the European Union”¹⁸.

Formal and informal consultations are presently organized within the export licensing community and with representatives from industry. The official representative of ECO unit underlines that the UK will be working with EU partners, particularly in order to develop a common approach to the administration of the certification process sharing tips and experiences, taking into account the views and concerns of industry¹⁹.

¹³ Select Committee on Foreign Affairs.

¹⁴ Article 346 of the *Treaty on the Functioning of the European Union* (Lisbon Treaty).

¹⁵ European Scrutiny Committee, *Thirteenth Report of Session 2007-08*, HC 16-xi

¹⁶ HC Deb 28 October 2008.

¹⁷ Committee on Arms Export Controls: Wednesday 22 April 2009, Bill Rammell MP, Minister of State at the Foreign and Commonwealth Office. In House of Commons Business and Enterprise, Defence, Foreign Affairs and International Development Committees, *Scrutiny of Arms Export Controls (2009): UK Strategic Export Controls Annual Report 2007*, Quarterly Reports for 2008, licensing policy and review of export control legislation First Joint Report of Session 2008–09, House of Commons, 20 July 2009.

¹⁸ Committee on Arms Export Controls: Wednesday 22 April 2009, Bill Rammell MP, Minister of State at the Foreign and Commonwealth Office.

¹⁹ Spencer Chilvers, *op.cit.*.

2.2. Germany

Germany already has General and Global Licences

For Germany, the Directive 2009/43/EC seems to be welcomed and its transposition should not raise too many difficulties. General and Global Licences already exist in the German export control regulations²⁰, only the certification process is new, although German companies are already rated in some way to be entitled to Global Licences.

Laws and Regulations about Weapons and Export

War weapons are mentioned in German Basic Law (GG-Art.26), then subject to the War Weapons Control Act (KWKG) and its three ordinances. Export (and transfer) limitations are set through Foreign Trade and Payments Act (AWG) and its frequently updated ordinance (AWV, 86th modification published end of August 2009 to comply with Council Regulation EC/428/2009 about dual-use items). Decisions about export of war weapons or other military equipment are made according to Political Principles adopted by the Government on 19 January 1990 (compliance with KWKG, AWG, European Code of Conduct, the principles of Organisation for Security and Co-operation in Europe (OSCE); consideration paid to Human Rights or internal repression in the end-use country and views of European Union, Council of Europe, United Nations, OSCE...).

The transposition of the Directive in German regulations could impact the AWG by introducing the certification of companies, and the KWKG by allowing free transit through the Community once a transfer has been licensed (or exempted).

Authority mainly with Economic Affairs

For matters of export and transfer of military or dual-use goods, the ministry in charge is mainly BMWi (Federal Ministry of Economics and Technology), which grants the authorisations to produce, trade or export military goods subject to the War Weapons Act (KWKG). The focal point for foreign trade is its subordinate agency BAFA (Federal Office of Economics and Export Control), which grants the authorisations according to the Foreign Trade and Payment Act (AWG). Other ministries may be involved in some cases; sensitive decisions may be taken to the Federal Security Council (Chancellor plus Foreign, Finances, Interior, Justice, Defence, Economics and Cooperation Ministers).

11 General Export Licences, hence Transfer Licences

German regulations presently do not formally separate transfer from export, but many dispositions are different for “sensitive” or “insensitive” countries.

As in November 2009, there were 11 national General Export Licences (AGG), plus the European one (EU 001 from Regulation 428). They concern graphite products (AGG 9), computer and associated equipment (AGG 10), certain dual-use goods under a certain value (AGG 12), certain dual-use goods in some cases (AGG 13), telecommunication and information security (AGG 16), stealth garments and equipment (AGG 18), all-terrain

²⁰ See Appendix 1.B.

vehicles (AGG 19), brokering (AGG 20), protective equipment (AGG 21), explosive material (AGG 22) and re-export after maintenance (AGG 23). Some of these General Export Licences extend EU 001 to all countries except those under embargo or similar measures. These AGGs may be kept unchanged.

According to the Directive (Art.5), a new AGG must be published to authorize temporary transfers (exhibition, maintenance...), and this could be easy (a few weeks or a few months). The associated list of goods could be extended to some military goods (relevant to KWKG). Extension to transfers involving cross-border movement of people is also possible (Regulation 428/2009 does not apply in this case).

Licence Exemptions have to be revised

The Directive (Art.4.2) stipulates that Transfer may be exempted in (only) 5 cases; present German regulations (AWV Art.19, 21) allow other cases; these could be introduced in the Directive as stated in Art.4.3; more probably, these extra exemptions would be repealed from AWV and if needed covered by a General Licence, in the same way as AGG 13 for dual-use goods (the Regulation 428 has not set such exemptions); this is not needed before mid 2011. Transfer after maintenance in Germany is presently exempted (AWV Art.19); to comply with the Directive (Art.5.2.d), AGG 23 could be extended to other goods (till mid 2011).

A new AGG should be published for transfers to armed forces (Directive Art.5.2.a); according to Political Principles, the list of goods concerned could be quite large, almost everything but war weapons and tank engines; but views have not yet converged, neither in the EU, nor among LoI-countries; Germany will wait until this has been discussed (before mid 2011).

Certification process

Companies producing or dealing with war weapons must, according to KWKG, already be authorized by BMWi. The certification, new as defined by the Directive, could be introduced in AWG (before mid 2011).

Germany will issue a General Licence (AGG) allowing its companies to transfer certain items to companies established in and certified by other Member States. The scope of this AGG will depend on the way the other Member States implement their certification process, hence, on its reliability. The Commission is discussing with the Member States the contents of this process, and Germany will wait for the results before issuing this new AGG.

Coordination with other countries

Germany, as a major defence industry country in Europe and a member of LoI, is also willing to harmonize the transposition of the Directive as much as possible, taking care of the industry's wish to ease the burden associated with most transfers within EU, as well as avoiding any misuse of the process. The Commission is presently coordinating the way the countries will transpose the directive and implement the certification process of their companies. Germany also takes part to meetings in the frame of LoI countries to reach common understanding of the items to be included in the General Licences that have to be published before mid 2011.

Dialogue with industry

The dialogue with companies has a less formal nature than with the Commission, but Germany is keen not to put a heavier last on its industry than the partners do. Discussion takes place with industry associations on these matters.

To sum up, the implementation should not raise too much concern for Germany:

- Introduction of the certification in the Foreign Trade and Payment Act (AWG),
- Suppression from War Weapons Act (KWKG) of the authorization for entry in and transit through Germany for goods whose transfer has been authorised by another Member State.

These legislative changes will take some time to be adopted.

Otherwise, most of the modifications can be introduced by the publication of new (or adapted) General Licences (AGG). Before that, agreement with (most significant) EU Partners must be obtained, mainly on:

- the contents of certification through EU and on the scope of goods allowed for transfer to certified companies,
- the scope of goods allowed for transfer to armed forces.

2.3. Italy

The transfer directive: the right moment to reform the export legislation

In general terms, the Directive 2009/43/EC is very welcomed in Italy²¹ and is considered a good opportunity to modernize the current legislation regulating the export control (Law 85/1990)²². Law 85/1990 was issued twenty years ago, and does not reflect at all the current situation of this sector: it is considered old and totally inadequate²³. The process for the complete re-writing of the export legislation has continued for several months and involves an inter-ministerial committee within the Presidency of the Council. There is optimism with regard to the quick and positive result of the law rewriting process, since it finds a favourable political climate in the Parliament for approval (compared to the past term).

²¹ Informal interview with Italian senior officers from the MoD.

²² See Appendix 1.C.

²³ For example, it considers only import-export operations but not transits within the EU and therefore it does not foresee special authorizations for transfers within the EU, and the same happens for transfers between the main company and its subsidiaries, since at the time it was premature to imagine the importance of transnational companies. Moreover, the Law covers in the same way classic arms exports and exports occurring within a cooperation program, which in 2007 represented about 40% of defence expenditure, creating useless controls by the Ministries involved and the banks. Finally, the complete revision on the law will allow the adoption of international commitments not yet adopted at a national level: EU Code of Conduct on arms export, 1998 (legally binding since the adoption of the Common Position 2008/944/CFSP); Council Common Position on arms brokering, 2003; the modification of article 16 of the LoI introducing a licence for components; the Directive 2009/43/EC itself.

Despite this positive feeling, the Italian administration is cautious and considers that a correct and necessary governmental export operations control must be kept at a national level: there is a certain sense of prudence, especially at the beginning of the implementation of the Directive.

A Copernican revolution for the Italian administration

In general terms, the Directive will have an enormous impact on the Italian system - especially on the procedural and organizational level - regarding those transfers to be performed among EU countries. For other countries (NATO or other “trusted countries” - like Australia, Canada, New Zealand, etc.) the Directive will not apply but the trend in the near future will be to extend the approach to them as well. The directive is felt as a “Copernican revolution”: the Directive’s general approach is much more different compared to the logic behind Law 185/1990: from a control “ex ante” of exports implemented through controls “on the paper” conducted by national authorities, to a control “ex post” implemented by the companies themselves which actively participate to the monitoring of their internal system. This point is slightly felt as a point of concern in the companies already studying the best way to implement such a system.

Caution and attention to foreign transposition processes

The Directive introduces new tools in the Italian legislative and administrative system. The General Transfer Licence is a new tool since the current Italian system does not foresee a similar licence, unlike other EU countries such as the United Kingdom. Indeed, Italy only issues authorizations following the Individual Licence model, with regard to defence related products, whatever the country of destination. Moreover, although foreseen by the Framework Agreement (LoI), no Global Project Licence (GPL) has ever been introduced in Italy. Therefore, in order to introduce such a new system, the general perception is that Italy could follow very much the Directive, regarding all the elements that are provided in it: for instance, the General Licence will presumably only cover the four mandatory cases foreseen by the directive (art. 5.2). Since General Licences are already used in other European countries, namely in UK, and since this country has actively participated during the negotiation process to guarantee the harmonization with - or at least to avoid an involution of - its system, it is likely that the English model will be looked at very closely by the other countries, including Italy.

It is likely that at the beginning the list of items attached to the General Licence will be rather simple and short and will not contain classified material. Such a list will probably be progressively enlarged in the future, especially if a good level of coordination and sharing of criteria among countries is achieved.

Regarding the terms and conditions to be respected by the supplier wishing to use a General Licence, they might consist in categories of limits such as constraints for re-exporting those items, conditions on the end use or about the end user, etc. In particular, about the end user, basic principles²⁴ on which Law 185/1990 is based will certainly be kept unchanged in the

²⁴ Principles contained in art. 1 of Law 185/1990 are the following: Export operations must be in line with Italian foreign, security and defence policy; they must respect the constitution and assure good relations with other countries. Exports can be performed only by companies being part of the National Registry of Companies (Registro Nazionale delle Imprese) and only towards other governments or companies previously authorized by

new law, one of them concerns namely the authorization to export only to other countries and their administrations or to companies only if authorized by governmental authorities.

Presently, the Italian legislation foresees a National Register kept by the Ministry of Defence where companies wishing to design, produce, export or import defence-related products must register. The Directive does not foresee a national register for suppliers using General Licences, it only asks suppliers to inform authorities the first time they use it (art. 8.2). In order to keep a certain control, in line with existing control procedures, the Italian authorities will probably ask suppliers wishing to use a General Licence to register and to keep the competent authorities informed of their activities (how many times the licence has been used, etc.) through an annual report. Finally, the General Licence is not expected to be used that much, the Global Licence might be more used.

Regarding the certification, it is another new element and it is too early to predict its characteristics and the authority that will be in charge of it. Considerations were expressed on the fact that such an authority should have several competences (in techniques, customs...) and should also be able (itself or a branch of it) to monitor and audit the respect of the certification.

Competent authorities: an element of continuity?

Regarding the competent authorities that shall be in charge of issuing all the licences in Italy, it is too early to identify which it will be. Nevertheless, the general perception is that the Ministry of Foreign Affairs will continue to play an important role in the process, just as it does now, since the national armaments export policy is considered to have a very important impact on foreign relations, more than on economic, financial or technical dimension of the country.

Coordination with national industry: an informal dialogue

In the Directive, responsibilities are entrusted to private companies; therefore formal consultations are open with the AIAD, the Italian association representing aerospace and defence companies. A model of transposition has not yet been prepared and presented to AIAD: at this stage, consultations are oriented towards the understanding of companies' demands, sensibilities and concerns regarding the new role they are called to play. Obviously, big companies (namely Finmeccanica) have an important say in this process, but importance is also paid to SMEs.

The importance of harmonizing the transposition process in the LoI frame

As far as the dialogue with other countries is concerned, there is an intention to harmonize the different transposition processes as much as possible through informal meetings with the Commission, which keeps a role of driver. In agreement with the Commission, previous and

the government. Operations are forbidden when in contrast with the Constitution, with international commitments to which Italy is bound and with security interests of Italy. They are forbidden also when there are not adequate guarantees about the final destination of the products. Export operations are also forbidden towards countries where an armed conflict is ongoing, towards which there is an embargo (declared by the EU or the UN), where serious violations of human rights occur, and towards countries that receive humanitarian and cooperation aid from Italy and where defence spending exceeds their defence exigencies.

informal contacts among LoI members are foreseen, in order to propose coordinated initiatives to those countries that do not have a strong tradition in exporting sensitive material and defence-related products. Italy will participate actively, although it does not have an existing model to propose, according to the current legislation.

2.4. Spain

Optimism towards a completely new transfer system

In general terms the Directive is welcomed by the Spanish administration since the perception is that the Spanish industrial base will benefit a lot from it. It is estimated that 20 to 30 undertakings (which is a consistent number considering the small and fragmented Spanish industrial base in the defence sector) will have the necessary certification to use General Licences, making exports procedures lighter and diminishing costs and time. The whole process will lead to a more productive and flexible export system.

At the same time, the implementation of the Directive raises some concern since its general approach is very different from the approach of the current export control system²⁵. In particular, from an “ex ante” control system, administrations and undertakings will have to adopt an “ex post” control system. The philosophy behind it and some specific elements (namely the General Licence) are totally new in the Spanish system for exporting defence-related products. For dual use products some similar experiences exist, but it excludes the difficulties linked to sensitive materials and technologies.

A new legislative tool already under discussion: caution...

None of the existing licences foreseen by the Spanish Law (RD 2061/2008, art. 23, 24, 25 and 26) have similar characteristics to the General Licence foreseen by the Directive. This licence will have to be created *ex nihilo* and will be regulated by a new legislative tool, which will be a Royal Decree (already at the draft stage) updating the one in force. In the opposite, Global and Individual Licences already exist in the current system so they will be easily adapted to the new exigencies. No particular difficulties are foreseen at the legislative level.

Regarding the cases in which the General Licence could be applied, there will probably not be other cases in addition to the four foreseen by the Directive. Regarding the terms and conditions for the supplier to use a General Licence, the draft of the Royal Decree foresees the minimum requirements set by the Directive, besides asking for the undertaking to be registered in the current national register (which will continue to be a requirement before exporting/importing defence-related products). However, it is not excluded that the final version of the Royal Decree will ask for more conditions, especially in terms of quality and standards (also at international level, like those foreseen by the International Organization for Standardization).

²⁵ See Appendix 1.D.

... and bravery

With regard to the list of products that has to be attached to the General Licence, Spain could adopt an “exclusion list”, which means a list that will exclude certain categories of products from the list attached to the Directive. This is the approach already used in the LoI/Framework Agreement. Such an approach could indicate the possibility for the administrations to determine a long list of products subject to General Licences, with exclusions, rather than having a short list of admitted products. This approach reflects a strong will in opening the defence market to the EU more than other countries, which would rather, especially at the beginning, limit the list of products associated to a General Licence.

Despite the existence of a certification mechanism for Spanish companies working in the defence sector which is managed by the Ministry of Defence, the certification system foreseen in the Directive will likely be the most difficult element to implement in the Spanish case. Not from the legislative point of view, but rather from the practical one: human resources within the Ministry of Industry, Tourism and Trade will need to be trained to this purpose, in order to manage the certification and also to conduct inspections. Regarding specific procedures, it is too early to know them; but some considerations can be made with regard to the administrations that will likely be involved.

The competent authority: an element of continuity

The authority in charge of issuing licences and certifications will certainly be the General Secretariat for External Trade within the Ministry of Industry, Tourism and Trade, which is already the main administration involved in the current export control system. However, a larger involvement of the Defence Ministry will be likely foreseen, since this administration has already some experience in the certification process: as said before, a certification system is already foreseen for undertakings that wish to produce defence-related products in Spain.

The General Secretariat for External Trade could likely be the authority in charge of deciding on the reliability of national enterprises requiring a certification, after receiving advice by the JIMDDU (Inter-Ministerial regulatory Board on Foreign Trade in Defence and Dual Use Items). The Ministry of Defence and the requesting company itself should provide information about the proven experience of the company in defence activities. Other information (like the appointment of a senior executive responsible for transfers and commitments of the undertaking and other information requested by the regulation) should be proved through certifications and written commitments provided by the industry.

Finally, with regard to penalties, the current law (Organic Law 12/1995, 12 December: introduction for the first time of the crime linked to the smuggle of defence-related and dual use products) will be also modified to integrate the Directive: the new text is expected to enlarge the cases where penalties are applied, particularly in cases such as arms brokering.

Coordination with the new national defence industry association

Despite the new role that companies are supposed to play in the implementation of the Directive, no formal dialogue has been set up in 2009 with Spanish industry. This is also due to the fact that in these months the association of defence industries (AFARMADE) has

disband and a new association is being created. The new association, however, will not involve all the companies of the defence sector, but only those working in the aeronautic and space sector. Indeed, they are the ones mainly involved in governmental and industrial cooperation programs. It is then expected that companies in the aeronautic and space sector will be the main users of General Licences, therefore a dialogue will be opened in 2010 with the new association.

Harmonization and consideration of foreign transposition systems

The Spanish administration is willing to harmonize as much as possible terms, conditions, list of products, etc. among countries during the working sessions organized by the EC to this end.

Due to the similarities of the Spanish export system with the Swedish one, it is likely that Spanish authorities will look at the Swedish model when defining the new elements of the legislation (especially with regard to General Licences), rather than to other countries with similar experiences, like the UK.

2.5. Greece

Preliminary considerations

In Greece, there is an ongoing debate about the General Transfer Licence, not as in other EU countries. The issue has received publicity in the Greek press in the end of August, and it is believed that the Directive may lead to greater integration of the defence market among the members of the European Union.

Any difficulties, which are expected with the implementation of the Directive, will probably be dealt with by special working groups set up by the Ministry of Foreign Affairs. It is too early in the process for relevant officials to be able to specify the kind of difficulties that may arise²⁶.

The competent authorities²⁷ which will likely co-operate on the Directive are the Ministry of Foreign Affairs, the Ministry of Public Order, the Ministry of Defence and the Ministry of Economy and Finance. At the Ministry of Defence, the Directive was distributed to relevant services on 1 September 2009. These have not yet responded with their inputs and suggestions.

New legislative tools and old administrative processes

The licence for the transfer of weaponry that Greece presently uses is a one-type licence which refers to individual applicants, the procedure is the same for all applicants and it should be followed every time an application is made (the duration of the licence is 3 months with an extension possible for an extra 6 months). Currently, there are no special licences that could

²⁶ Informal interview with Foreign Affairs/Defence Officers.

²⁷ See Appendix 1.G.

be transformed into a General Transfer Licence or a Global Transfer Licence. They will have to be created with an ad hoc process.

The competent authority in charge of issuing the General Transfer Licence will likely be the Directory of Imports-Exports Regimes and Trade Defence Instruments of the Ministry of Economy and Finance of the Hellenic Republic.

The procedures will likely be similar to the ones currently in operation: after an application is submitted, it is checked and processed by the Directory of Imports-Exports Regimes and Trade Defence Instruments of the Ministry of Economy and Finance, as well as by the Ministries of Foreign Affairs and Defence, whose assent is necessary. The final decision is made by the Directory of Imports-Exports Regimes and Trade Defence Instruments of the Ministry of Economy and Finance, which can reject the application even if the other two approve it.

The General Transfer Licence will not be used for cases other than the four foreseen by the directive (art. 5.2 and 5.3).

As to the registration of suppliers, Greece will maintain a national register of suppliers using General Transfer Licence.

The restrictions for re-exporting defence-related products should remain as present: for example, a country wishing to re-export weapons has to ask for the permission of the country from which they were imported (Greece in this case).

The terms and conditions that the supplier should fulfil to use the General Transfer Licence should be similar to the current ones. All exporters should obtain an export registration number and a special identity card. In order to get them, a number of aspects will be taken into account:

- the exporters' credit situation, their solvency, whether they are involved in a bankruptcy procedure, etc.
- the exporters' management will be checked regarding any criminal record, whether they have been condemned or accused of economic offences, organised crime, money laundering and other offences.

The Ministry of Defence will likely determine the "categories of recipients". The coordination with other countries in order to have a common (or as similar as possible) list of recipients or categories of recipients, avoiding distortions on the level playing field, will be subject to political agreement within the EU.

The products/materials that will be part of the list attached to a General Transfer Licence might be the ones listed in the annex to the directive. From discussions with officers, it seems that there is currently no intention to create a shorter list for Greece. Moreover, there may be consultations/debates with other countries regarding the creation of a common list of defence-related products.

The Directory of Imports-Exports Regimes and Trade Defence Instruments of the Ministry of Economy and Finance is the competent authority to release certifications. The aforementioned Directory, in co-operation with the Ministry of Public Order, will likely be the competent

authority assessing the criteria to be fulfilled by the recipient wishing to have a certification. Officers think that it would be wise to assess criteria with strictness and sternness, since the Directive aims at consolidating transfers of weapons and equipment in the European Union. It is not yet known whether further conditions have been arranged.

In case of infringements, the current state of penalties is regulated by the already established national law 2168/93 (on the Regulation of issues regarding weapons, ammunition, explosive materials, explosive mechanisms and other related matters), and especially articles 1 and 3 regarding weapons export.

By the end of 2009 no formal dialogue was set up between public agencies and private industry about the effects that the directive will have on the national defence industry and the defence market, nor a dialogue was set up yet between Greece and other countries to follow a common/similar path of transposition.

2.6. Sweden

Swedish export control of military equipment – balancing between ministerial powers and empowered authorities

For defence, security and foreign policy reasons, Sweden has decided, to a certain extent, to permit military equipment exports. The Swedish rules consist of the Military Equipment Act (1992:1300)²⁸, with the appurtenant Ordinance (1992:1303), and the Swedish government's guidelines on military equipment exports, which have been approved by the Riksdag. For the implementation, an independent authority, the Swedish Inspectorate of Strategic Products (ISP)²⁹, considers applications for export licences in accordance with these rules³⁰.

²⁸ See Appendix 1.E. The Act covers weapons, ammunition and other materiel designed for military use, which constitute military equipment according to regulations issued by the Government. Export controls of dual-use products and technical assistance in connection with these products are provided for in the Act (2000:1064) concerning Control of Dual-Use Products and of Technical Assistance. The Act contains supplementary provisions to the Council Regulation (EC) No. 1334/2000 setting up a Community regime for dual-use items and technology exports control.

²⁹ In 2008, a bill was presented that was indirectly linked to the Enquiry's report (Gov. Bill 2007/08:166). This concerned the financing of the ISP. The bill that was presented has been approved by the Riksdag (Committee Report 2008/09:UU4, Parliamentary Communication 2008/09:19). Since 1 February 1996, decisions on export cases are made primarily by the Swedish Inspectorate of Strategic Products (ISP), except those deemed to be of importance in terms of principal or otherwise particularly important, which are to be referred to the government for ruling.

³⁰ In connection with the Swedish Inspectorate for Strategic Products (ISP) establishment in 1996, the agency took over responsibility for the major part of the matters previously decided upon by the Government or by the minister responsible for reporting such matters following preparation by the Inspectorate-General of Military Equipment (KMI) and subsequently the department within the Ministry for Foreign Affairs that was responsible for strategic export controls. The ISP is the central administrative authority for matters and supervision under the Military Equipment Act (1992:1300) and the Dual-use Products and Technical Assistance Act (2000:1064), unless, in the latter instance, another authority takes charge of this task. The Swedish Radiation Safety Authority is responsible for corresponding issues relating in particular to sensitive nuclear products. The Swedish Defence Research Agency (FOI) assists the ISP with specialist technical expertise, the Swedish Security Service and the Swedish Defence Radio Centre, inter alia, assist the ISP with information. In addition, ISP is the competent national authority responsible for performing the tasks provided for in the Act (1994:118) concerning Inspections in accordance with the United Nations Convention on the Prohibition of Chemical Weapons and the

Licences to export issued by ISP must be approved by the Export Control Council (ECC, *Exportkontrollrådet*). ECC is manned by parliamentary proportions from the parties in the Riksdag (11 members). It is chaired by the Director General of ISP, who has the casting vote in case of evenness. Before deciding on a specific licence application, the ECC receives a defence policy standpoint from the MoD, and a foreign policy standpoint from the Ministry of Foreign Affairs.

Swedish authorities have, through the constitutional system in Sweden, an unusually high degree of autonomy. Authorities like ISP therefore cannot be governed or ordered by the ministry of Foreign Affairs. ISP has a delegated authority from the government.

In Sweden, the responsibility of export control for military equipment lies with the Ministry of Foreign Affairs³¹. Note that the Ministry of Foreign Affairs also has the responsibility over promoting export of military equipment through its affiliate Ministry of Foreign Trade. The fact that export control and promotion resides with the same legal entity has been criticised. In a Government Bill of September 2009, a new authority is suggested: *Exportstödsmyndigheten* (“Export Promotion Authority”, preliminary name) that would have the responsibility for promoting export of military equipment³².

Implementation of the ICT Directive – accommodating to established routines and a sceptic political debate

In the Swedish parliamentary system, a legislative change follows a specific sequence. The legislative proposal must be delivered from the government (Regeringen) to the Parliament (Riksdagen). In many cases, the government will appoint a Committee or a specially commissioned Investigator. This Committee or Investigator will, through a Government decision, be given a task to investigate a specific issue during a given period of time. The Committee or Investigator works in autonomy from the Government under the guidelines and limitations of the government decision, issued as a specific Committee Directive or Investigator Directive. The Committee or Investigator thereafter will report to the Government on a given date. The suggestions will be transmitted to a specified, quite wide group of concerned parties. In the case of export control this will concern certain ministries, defence-related authorities, defence companies, political parties and a few more. These organisations will normally have three months to issue a reply to the Ministry that owns the question. The Ministry will thereafter issue a government bill, which must take the above organisations’ replies into consideration. The government bill will be presented to the Parliament, which thereafter will decide whether to approve or disapprove the government bill and the legislative change that would follow.

adherent ordinance. From 1 January 2008, new directives apply for ISP: Ordinance (2007:1219) with instructions for the Inspectorate regarding strategic products. Most of the changes are adjustments arising from the new Government Agencies Ordinance (2007:515) that applies for central government agencies effective from 1st January 2008.

³¹ At the Ministry of Foreign Affairs, the issue of export control resides with the unit UD-NIS (Nedrustning och Icke-Spridning: Ministry of Foreign Affairs-Disarmament and Non Proliferation).

³² Note that the legal responsibilities will reside with Ministry of Foreign Affairs, but that the ongoing administration and implementation is the responsibility of ISP (control) and Exportstödsmyndigheten (promotion).

In the case of the ICT Directive, an Investigator was appointed on 22 June 2009. He was given until 31 December 2009 to present his suggestion. According to ISP in October 2009, his task will be prolonged until the end of May 2010. It is likely that the Parliament will receive a government bill in early fall 2010.

However, there is a government election in Sweden in September 2010. The question of export control is a sensitive issue for some parties, and the government may wish to postpone the question until after the election. For some political parties (esp. the Left and the Green Party), several of their political officials are sceptic to promote defence materiel export, and they would prefer Sweden not to export defence materiel at all. The export control issue could rise to becoming a pawn in the game for creating coalitions after the election in September 2010.

There was an appointed Committee (KRUT) before the previous elections in 2006, and the Committee's suggestions did not reach the government bill status, due to political cautiousness before the elections. The present Investigator will inherit questions from KRUT. To sum up, there are several questions regarding the implementation of the ICT Directive that cannot be answered right now; there are questions that will be addressed by the Investigator, and the Ministry of Foreign Affairs and ISP do not wish to forego or steer the Investigator, this is strictly restricted by the constitutional system. The investigator will however cooperate with ISP in investigating the issue.

Many of the following discussions about the Swedish implementation are thus views or expectations expressed by the Ministry of Foreign Affairs or ISP, but these are not in any way legally binding. They express what they foresee as central issues and how Sweden may act.

How will the implementation of the directive harmonize with Swedish regulations and routines?

The questions that are expressed as the most critical and that will require the most work in Sweden are: 1. the introduction of three different licences, and 2. the system for certification.

In Sweden there is a special issue on the third party concerns vis-à-vis the US. This is due to the high degree of defence technology transfer between the US and Sweden. The Ministry of Foreign Affairs has ongoing informal discussion with SOF (the defence-industrial interest organization). Sweden and the U.S. bilaterally signed defence technology agreements: DTSI (Defence Trade and Security Initiative) in 2001 and DoP (Declaration of Principles) in 2003.

Several respondents have expressed that there is a concern regarding the weak export control systems in two of the EU Member States. All Member States are supposed to trust the assurances of other Member States, but a sensitivity will remain vis-à-vis these two Member States.

EU Common Military List - The Military Equipment Act

The manufacture and exportation of military equipment are governed by the *Military Equipment Act* (1992:1300) and the corresponding Ordinance (1992:1303). Both of these statutory instruments entered into force on 1 January 1993, replacing the Control of the Manufacture of Military Equipment etc. Act (1983:1034), the Prohibition of Exports of

Military Equipment etc. Act (1988:558) and the corresponding ordinances. The present Act is essentially based on the previous legislation and previous practice. However, it applies a broader definition of military equipment and simplifies, clarifies and updates the provisions, relating to the control of manufacturing and cooperation on military equipment with foreign partners.

Sweden does not apply to the EU Common Military list. Sweden has its own list: *The Military Equipment Act*. It stipulates that manufacturing military equipment requires a licence. A licence is also required for all types of defence industry cooperation with foreign partners. The term “*cooperation with foreign partner*” covers both export sales and other arrangements for supplying military equipment (for instance transfer of ownership or brokering). It also includes the grant or transfer of manufacturing rights, agreements with a party in another country on the development of military equipment or production methods for such equipment together with or on behalf of that party, and agreements on joint manufacture of military equipment. Lastly, with certain exceptions, a licence is required for the provision of military-oriented training.

The Act divides military equipment into two categories: *Military Equipment for Combat Purposes* (MEC) and *Other Military Equipment* (OME). The *Military Equipment Ordinance* contains provisions specifying the types of equipment that are assigned to each of the two categories. The MEC category consists of destructive equipment, including sights, and firing control equipment. The OME category consists of military equipment parts and components for combat purposes and equipment that is not directly destructive in a combat situation.

Some political parties do not want to set Swedish export control under EU rules; they fear that this will make Sweden’s defence export less regulated and too generous.¹ The Left Party and the Green Party oppose the idea to switch to the EU CML. 2. An adoption of EU CML would mean that Sweden would have to also regulate “technical services” which now do not fall under the *Military Equipment Act*.

General Transfer Licence and Certification

Most work will arise when adjusting to a. three licences and b. certification. The biggest political hurdle is probably adopting the EU CML. The Investigator will probably suggest an adoption of the EU CML.

Currently, Sweden does not have General Licences, it has Individual or Global Licences, exceptions, and finally specific cases. ISP will likely be the competent authority in charge of releasing General Transfer Licences. Sweden will hold a register over suppliers and recipients. There are a number of issues that will be analysed by the Investigator, who will offer suggestions for legislation regarding types of licence; nature of General Transfer Licences, procedures for General Transfer Licences, terms, conditions, categories, scope etc.

Decisions to export may be restricted due to specific foreign policy considerations. The main restrictions to re-export defence-related products that likely will be inserted in the GeTL are two: states engaged in war or in internal conflict. There may possibly also be a “democracy” requisite (i.e. no export to dictatorships).

ISP will most likely be the certifying body for certifications, as well as the monitoring body. The overarching criteria will be decided by Ministry of Foreign Affairs together with ISP, approved by the Parliament. Further conditions are to be suggested by the Investigator. Sweden wants to have assurances that a certified company actually complies with the standards; and is sceptic to General Licence for nations.

Dialogue going on between administrations and industries, and dialogue with other countries

There is an ongoing series of seminars organized by industry concerning the defence package that Ministries and concerned authorities attend. There is also continuous dialogue between industry and concerned authorities. There are also discussions within the LoI.

To sum up, the implementation of the ICT Directive will require legislative changes and revisions of practices. The main issues can be summarized as follows:

- ✓ The separation between Military Equipment for Combat Purposes (MEC) and Other Military Equipment (OME) will be abandoned.
- ✓ The division between Sensitive and Non-sensitive components will lead to a relaxation of present legislation. There is now no such division.
- ✓ The introduction of General Licences
- ✓ The switch to the EU CML
- ✓ Certification
- ✓ The inclusion of Technical services into the regulated areas
- ✓ End user certificates will be an important Swedish issue.
- ✓ ISP believes that Sweden will have to introduce more than four types of General Licences.
- ✓ Re-export requires licence from ISP, it cannot be regulated through company-company contracts.
- ✓ *Sanctions*: According to several respondents, the sanctions for violating export control must become stricter and more severe.

2.7. Finland

Finnish defence and security traditions

Finland has had a special relation being squeezed in between the Soviet Union/Russia and Europe/NATO. It has created a strong and enduring Finnish defence policy. This tradition has weakened with EU membership and discussions about NATO. The present President is highly sceptic to NATO membership.

This has laid a strong Finnish emphasis on homeland defence and on self-sufficiency in army materiel (esp. ammunition and armoured vehicles). Accordingly the Finnish defence industry is most developed in armoured vehicles, arms and ammunition. The explosives industry has been pooled with Sweden and France in Eurengo, and the ammunition industry is pooled with Sweden and Norway in Nexplo, now owned in Norway.

Finnish defence export and export control – a close reflection of the specific Finnish defence posture

Finland exported defence goods in 2008 for a value of about €16 million. Finland issued 335 licences, and around 80 exports actually occurred. There was a sharp increase in licences from 2007 to 2008: 50 to 335.

The MoD is the licensing authority³³; it has two desk officers that work with defence export issues. The Ministry for Foreign Affairs is in charge of foreign and security policy, which guides and steers. There is no special policy towards Russia, but very few licences are issued towards Russia.

Finland does not have much defence material export, and it mainly concerns armoured vehicles from Patria (the vehicle AMV, and the turrets AMOS and Nemo). There is not much push for export in Finland. However, the government is planning to increase its support for defence export, primarily because they state that the production lines are not busy enough, and the Finnish orders cannot keep them busy. The largest recipients of defence export were in 2007 (in falling order): Poland, Lithuania, Norway, USA and the Czech Republic.

The ICT directive will require substantial revision of the legislation

There are at present no General Transfer Licences. Finland now only has Individual Licences, not global ones. The MoD will continue to be in charge of them. Legislation will be revised as a whole, because of the directive and other questions that have been identified previously. Finland has supported the ICT directive from the very beginning, perhaps strongest of all EU members. The reason is simply expressed as “the EDEM is not working properly”. The discussion about the ICT Directive did not cause any political debate. The only real issue was the re-export clause; esp. re-export outside Europe.

A working group between administration and industry has been established. Administration consults industry and also makes informal contacts. Finland has a continuous dialogue with other EU Member States about the ICT Directive. There are formal procedures through COARM. Informal dialogue exists with government colleagues in other member states.

The hardest difficulties to face in order to apply the directive, according to the MoD, will likely be: certification; internal compliance programmes (new issue for Finland); and General Transfer Licences. The MoD also highlights that many member states share similar concerns; e.g. which will fall under which licences and certification criteria and that it is troublesome with weak export control in two of the member states.

In Finland the responsibilities for promotion and control will likely be:

- Promoter of defence export: MoD
- Control of export control: MFA together with MoD, MoD having the final word.
- Legislation concerning export control: MoD
- The Defence Command has the authority to audit the defence industry, especially in their role as suppliers to the Finnish Armed Forces.

33 See Appendix 1.F.

General Transfer Licence

Finland will probably exempt certain technology areas from the General Licences, referring to Art. 296. Finland now only has Individual Licences. It is difficult to tell at present what the outcome will be. Procedures, country lists, restrictions, frequency of application, registers etc. are to be decided. There will be coordination and dialogue with other nations in the EU.

Finland will likely start with a careful practice of the new licensing system - see what others will do and follow an evolving practice. Most Finnish defence exporters are selling components or subsystems. In general, no re-export licence procedure is needed, this will fall under the responsibilities of the larger customer, which integrates the Finnish product into its higher-order system.

The re-export outside the EU will be an important watershed. Certain critical technologies might be specified. Defence export to or from the US should be handled under consideration of Art. 346.

Certification

The MoD will probably be the competent authority to release certifications and also to assess criteria for certifications. Procedures are to be decided.

3. Conclusions and Recommendations

In general terms, the directive is a legislative tool that allows countries to apply it in different ways. This fact creates the biggest difficulties for companies, especially transnational companies, since they can be subject to different criteria, terms and conditions according to the country they operate from or they operate with. Indirectly, those differences could create better conditions for transfers in certain countries, having negative effects on market conditions and in particular on competitiveness. The directive aims at simplifying national licensing procedures and therefore facilitating cross border commercial exchanges within the EU. To reach these objectives, to reduce the risk of failure and/or implementation *a minima*, the new instrument must be implemented in a harmonized way. The expected benefit depends on the field of application and on the percentage of exceptions. It has to be considered by the EU Member States as an opportunity to modernize and to harmonize their current strategic export control legislation and administration.

In the same days as the Directive, the Regulation (EC) No 428/2009 “*setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items*” (see Appendix) was published, recasting and replacing the Regulation 1334/2000, already modified several times. Their nature is not the same: a regulation is applicable, a directive needs transposition; in this case however, the Regulation needs also some transposition in each Member State, in order to set up or adapt national licensing for export, transfer, or brokering of dual-use items, including national General and Global Licences. They apply to different items, but both military goods and dual-use items are in some way “defence-related” items. Moreover, the national authorities in charge of implementing, licensing and controlling these activities are in most of the Member States the same and use similar rules and processes. The similarities in the processes and the rules imposed by the Regulation and the Directive should drive the Member States to reduce the complexity of their national legislation as well as the discrepancies between them.

Among the simplifications induced by the Directive, the abolition of the authorisations needed in some countries for “passage through” or “entry” is noticeable.

The process of harmonization and implementation is right at its beginning. Following points should be considered and discussed among Member States before setting up their new national regulations.

➤ Balance Exemption – General Licence

Due to the type of legal process to adapt or modify them, many Member States will probably rather publish General Transfer Licences than edict many (new) exemptions. The burden for the supplier is not that much heavier for the use of a General Licence than for an exemption. Where the consignee of the transfer is a company, it has to be certified for General Licence, not for an exemption.

The scopes set by the Directive for exemptions and General Licences are different, but not decisive: “*the Member States may exempt transfers...*” but not wider as stated in Art. 4.2 (the process (Art. 4.3) to extent the scope could be lengthy); they must “*publish General Licences...at least...*” (Art. 5.2). For the cases in Art. 5.2, there must be exemption or General Licence, but all of the cases in Art. 4.2 and even wider may be covered by a General Licence. The scope for a General Licence is not limited by

the Directive (in comparison, Regulation 428 forbids a General Licence for Transfers of dual-use items from the list in Annex IV part 2).

➤ **General Licences for certified companies**

General Licences can be quite a positive change for the EU Armed forces (meaning better circulation of the most needed defence equipment), and mostly for certified companies and their suppliers (less bureaucracy, easier inter and intra-company transfers, speed up company's daily business administration, optimisation of supply chains).

General Licences are established by a national law or an administrative act. Member States may (and most of them will) require prior registration for companies intending to make use of a General Licence. General Transfer Licences shall be published at least in four cases, but the Directive mentions "*Member States should be able to publish further general transfer licences to cover cases where the risk for the preservation of human rights, peace, security and stability is very low*".

Since General Licences are already used in other European countries, namely in the UK, and since this country has actively participated during the negotiation process to guarantee a harmonization with - or at least to avoid an involution of - its system, it is likely that this model will be looked at very closely by other countries, like Italy, a country in which this licence has to be created *ex nihilo* and will be set up by a new legislative tool.

Main issues and concerns:

- ✓ Member States remain free to set the terms and conditions of General Licences and to specify the categories of eligible defence-related products and the categories of recipients located in other Member States. The list of products and the list of recipients contained in a General Licence can then vary according to the country. The differences among countries can have a negative impact on the level playing field and distort competition within the EU market.
- ✓ A company receiving the same component from more than one country will have to register the components with their origin, in order to know exactly from which country (and therefore at which conditions on the licence) that component has been transferred, and in order to comply with these conditions if a new transfer (or export) of the product is necessary.

In order to ensure European defence industry to gain competitive advantage, options could be:

- ✓ an harmonization among countries (*via* consultations among EU Member States) on the list of products to be contained in a General Licence (ML sensitive products are different in each EU Member States ...).

e.g.: it is likely that Spain will adopt an "exclusion list", meaning a list that, starting from the general list attached to the directive itself, will exclude certain categories of products. This is the approach already used in the LoI/Framework Agreement. Such an approach could indicate the possibility for the administrations to determine a long list of products

subject to General Licences, with some exclusions, rather than having a short list of admitted products.

- ✓ A list of companies with certification should be published in accessible registers (regularly updated), and also General Licences with all the obligations they include (put in place a mechanism/interface to enable management of the various lists).

➤ Certification Process

Member States are responsible for certifying companies within their territory: they have a degree of “freedom” in deciding according to which criteria the certification can be obtained. This fact entails:

- ✓ For transnational companies: the risk to be subject to different criteria of certification, according to the country (or not to have the certification).
- ✓ On the level playing field: certain countries (for instance those that have less experience in transferring defence-related products) could be more flexible and less restrictive in issuing certifications than other countries (like LoI countries), with a negative impact on the market conditions. There is a strong risk of discrepancies in the way to apply for certification and in the delay to get it, leading to a patchwork situation.

Considering the compliance with export restrictions and in order to build mutual trust, harmonising the criteria for the certification of a company is a crucial point. Certification process needs a high level of predictability, visibility and transparency. It has to be equally rigorous. Converging implementation in all the member states requires:

- ✓ Exchange of experience and best practices among EU Member States: prerequisite conditions in order to deepen respective experiences, evaluate the better solutions and define common high standard criteria.
- ✓ Regular technical and compliance training of the relevant staff of the future certification authorities (workshops and seminars at national and EU level). Best practices in the LoI Countries (which are expected to be the strictest in considering the criteria) to be shared with all EU Member States (appropriate human resources, organizational models and redeployment of resources, monitoring the recipient’s compliance, audit, etc).
- ✓ EU organization supporting Certified Companies (best practices for an effective internal compliance program):
 - Information should be available to industry via common guidelines or “code of practices” (e.g. UK ECO Compliance Code of practices - not legally binding).
 - Technical and compliance training of the relevant staff (workshops and seminars at national and EU level).
 - Exchange of best practices among European defence industry, in particular reporting of their transfers, tracking of re-export limitations, etc.

- ✓ EU web-based tools with available and accurate information: provide applicable regulations, rules in each EU Member States, administrative action, guidance concerning licence application forms, code of practices, up-to-date national lists of certified companies (recipients), and industry feedbacks.

To this end, due to the experience of some countries (notably LoI, e.g. UK Model of decentralized control), and the inexperience of some others, LoI countries could propose a model, and in certain cases a set of best practices to follow. Some countries, like Italy, have already expressed their interest in following a model, which could be the United Kingdom, or the Sweden model in the Spanish case. In practice, certification process, by introducing a wholly new approach, needs extensive cooperation between licensing authorities.

➤ **Safeguard clauses: *ex-post* control mechanism**

It is up to the certified recipient company to abide by and to alert its government to any export restrictions associated with the original Transfer Licence. The Directive mentions “*Member States shall ensure and regularly check that suppliers keep detailed and complete records of their transfers, in accordance with the legislation in force in that Member State, and shall determine the reporting requirements attached to the use of a general, global or individual transfer licence. Such records shall include commercial documents [...]*”.

This clause implies:

- ✓ *de facto* to set up an *ex-post* control: requirements of information *a posteriori* (reporting about transfers received and any relevant restrictions) and effective control policies. It is a control targeting certain companies, non periodic, non systematic and based on preliminary risks analysis.
- ✓ The need for exchange of experiences and best practices varies among EU Member States. Some of them have already set up such an *ex-post* control system. Adopt best practices as common. Consultation and technical assistance among EU Member States.

➤ **Close cooperation and coordination with others EU Member States**

There is an intention to harmonize as much as possible the different transposition processes through informal meetings with the Commission, which keeps a driver role. In December 2009 a meeting will take place among the 26 countries and the Commission to coordinate the steps initiated so far, especially with regard to those issues that can be dealt with differently and that could create difficulties or even distortions in the European defence market (certifications, limits and conditions to the licences, lists of items, etc.). Along 2010 a series of working sessions and meetings under the auspices of the EC will constitute various and precious forums of discussion to ensure mutual help and assistance among EU Member States.

Previous and informal contacts among LoI members are foreseen, in order to propose coordinated initiatives to those countries that do not have a strong tradition in

exporting sensitive material and defence-related products. For instance, non LoI countries, like Finland and Romania, will likely start with a careful practice of the new licensing system, see what others do, and follow an evolving practice. LoI countries will also have a role with regard to those issues that have been already considered under the Framework Agreement, such as the component or sub-systems Transfer Licence, which is foreseen in the LoI/Framework Agreement (art. 16)³⁴, but which as such concerns only the six countries. The Commission has included this issue in the Directive, therefore consultations and coordination among those countries that have already implemented Art. 16 of the LoI and the others³⁵ are very much appreciated. Besides, the Directive preserves the existing agreement among the six partner nations asking them to grant national manufacturers global authorizations for any transfers needed to implement a cooperative armament programme.

In order to create and consolidate a dynamic of cooperation and mutual assistance, a high level group should be set up, gathering representatives of EU Member States, a representative of EDA and chaired by a representative of the European Commission. Specialized sub-groups (with representatives from the defence industry according to the subject), would be in charge of providing guidance and promoting harmonization and best practices, regarding the following main issues:

- ✓ evolution of the national legal basis and administrative action
- ✓ intergovernmental harmonization of the scope and of the conditions of Global and General Licences (lists of products, lists of recipients)
- ✓ definition of common high standard criteria for company certification
- ✓ publication of common guidelines (compliance code of practices) for certified companies
- ✓ EU database and web based tools displaying information regarding regulations, lists of products, lists of Certified Companies, code of practices, General Licences and export restrictions
- ✓ Organization of technical and compliance training of the relevant staff of the future certification authorities (workshops and seminars at national and EU level)
- ✓ Considering the inclusion of other reliable countries

³⁴ Art.16 states that the Parties commit themselves to apply simplified licensing procedures for transfers of components or sub-systems produced under sub-contractual relations between industries located in the territories of the Parties (supply of fabricating parts), even if these transfers are outside of the framework of intergovernmental or approved industrial co-operation programs. The Parties shall minimize the use of governmentally issued End-User Certificates (EUC) and international import requirements on transfers, in favour of “Company Certificates of Use”. See “Implementing Arrangement on Transfer and Export Procedures” signed by LoI members in 2004.

³⁵ Art.12 Transfers between the Parties in the context of a co-operative Armament Programme; Art.13 Exports to a non-Party in the context of a co-operative Armament Programme; Art.14. Transfers and Exports relating to industry programme. See LoI Framework Agreement (FA): Part 3, Transfer and Export Procedures.

Appendices

1. Current export control system (legislation and practices) in:

A. United Kingdom

B. Germany

C. Italy

D. Spain

E. Sweden

F. Finland

G. Greece

2. Regulation 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items

A. UNITED KINGDOM

PRINCIPLES AND LAWS	
Fundamental political principles	<p><i>“Promoting global security through strategic export controls, facilitating responsible exports”</i></p> <p><i>“Reduce the impact of conflict through enhanced UK and international efforts”</i></p> <p><i>“Make the world safer from global terrorism and weapons of mass destruction (WMD)”</i></p> <p><i>“Deliver free and fair markets, with greater competition, for business, consumers and employees.”</i></p>
Laws and bylaws	<p>-Export Control Act (2002) and resulting secondary legislation (known as “orders”):</p> <ul style="list-style-type: none"> • Export Control Order 2008 • Export of Radioactive Sources (control) Order 2006. <p>-The Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003, as amended.</p> <p>-The Trade in Goods (Control) Order 2003, as amended.</p> <p>-The Export Control (Security and Para-military Goods) Order 2008.</p> <p>-The Trade in Goods (Categories of Controlled Goods) Order 2008.</p> <p>-UK Strategic Export Control Lists: the consolidated UK Military and UK and EC Dual-Use Lists.</p> <p>- Military end use and WMD end use.</p>
EU clauses	<p>-Consolidated EU and National Arms Export Licence Criteria, since December 2008 an EU Common Position, sets out eight criteria (Assessment of Export Licence Application).</p> <p>-EU Dual-Use Regulation (also known as Council Regulation (EC) No 428/2009)</p> <p>-The 1998 EU Code of Conduct on Arms Exports, replaced by the Common Position 2008/944/CFSP "defining common rules governing control of exports of military technology and equipment", adopted by the Council on 8 December 2008.</p> <p>- EU Regulation on Torture (EC) No 1236/2005.</p>
OSCE documents	<p>-The principles governing arms transfers agreed by the forum for Security Cooperation of the OSCE.</p> <p>-Compliance to OSCE restrictions and embargoes.</p>
Participation in control regimes	<p>-Treaty on the non proliferation of nuclear weapons (NPT),</p> <p>-Biological and toxin weapons convention (BTWC),</p> <p>-Chemical weapons convention (CWC),</p> <p>-The Australia Group (AG),</p> <p>-Missile Technology control regime (MTCR),</p> <p>-The nuclear suppliers group (NSG),</p> <p>-The Wassenaar Arrangement (WA),</p> <p>-Zangger Committee,</p> <p>-Hague Code of Conduct against the proliferation of ballistic missiles (HCoC).</p> <p>-Arms Trade Treaty (ATT, legally binding, by resolution 61/89</p>

	<p>of 6 December 2006, entitled "Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms");</p> <p>-Convention on Cluster Munitions (CCM) joined on 3 December 2008;</p> <p>-UN Register of Conventional Arms (voluntary global reporting instrument).</p> <p>-The UN Register of Conventional Arms.</p>
Constraints driven by international commitments	Above mentioned international and European commitments implemented at national level.
Compliance to embargoes	Compliance with UN, EU and OCSE restrictions and embargoes. Trade in Controlled Goods Order 2004 (as amended), embargoed destinations are: Armenia, Azerbaijan, Bosnia and Herzegovina, Burma, Democratic Republic of the Congo, Iran, Libya, Sudan and Zimbabwe.
Dual use regulations	Dual-use items are listed under EC Regulation 1334/2000 or items caught by military and WMD end-use controls. Council Regulation 394/2006.
LISTS	
National lists of forbidden receivers	<p>The countries subject to embargoes or other restrictions are: Armenia, Azerbaijan, Burma, Burundi, China, Cote d'Ivoire, DRC, Iran, Iraq, Liberia, North Korea, Rwanda, Sierra Leone, Somalia, Sudan, Tanzania, Uganda, Uzbekistan and Zimbabwe (= UN, EU, OSCE and other restrictions on the export of items).</p> <p>In addition, it is UK policy to take into account the moratorium on the import, export and manufacture of light weapons when considering relevant licence applications to export small arms and light weapons to ECOWAS Member States, which are: Benin, Burkina Faso, Cape Verde, Cote d'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.</p>
Lists of receiving States with simplified procedures	The UK's main Government-to-Government supply agreement is with the Kingdom of Saudi Arabia, there is also such an agreement in place with Kuwait.
Lists of defence-related goods	<p>The following check-list outlines the broad categories of goods which are likely to be controlled:</p> <ul style="list-style-type: none"> • most items that have been specially designed or modified for military use and their components • dual-use items (those that can be used for civil or military purposes), which meet certain specified technical standards and some of their components associated technology and software • goods that might be used for torture • designated radioactive sources. <p>The UK Strategic Export Control List is a listing of all items for which a licence is required from the ECO. The Consolidated List is produced from seven lists which are found in various pieces of legislation. The UK Military List and the EU Dual-List form the bulk of the Consolidated List.</p>

Lists of dual use items	Dual-use list from the Council Regulation 394/2006. There are 9 categories: Nuclear materials, facilities and equipment (cat.0); Materials, Chemicals, "Micro-organisms" and "Toxins" (cat.1); Materials Processing (cat.2); Electronics (cat.3); Computers (cat.4); Telecommunications and "information security" (cat.5); Sensors and laser (cat.6); Navigation and avionics (cat.7); Marine (cat.8); Propulsion Systems, Space vehicles and related equipment (cat.9).
PLAYERS IN CONTROL OF DEFENCE RELATED GOODS OR DUAL USE ITEMS	
Licensing authority	<p>The export licensing community comprises five government departments: Business, Innovation and Skills (BIS, formerly BERR in the Department of Trade and Industry, DTI); the Foreign and Commonwealth Office (FCO); the Ministry of Defence (MoD); the Department for International Development (DFID); and Her Majesty's Revenue and Customs (HMRC).</p> <p>BIS's Export Control Organization (ECO) is the licensing authority for strategic exports in the UK; it sets out the regulatory framework under which licence applications are considered.</p> <p>There is also the FCO's Export Licensing Team (ELT, carries out an initial assessment of all applications), the FCO's International Organization Department (regularly involved for consultations) and the FCO Ministers (final recommendation).</p>
Other authorities requested for advice or entitled to ask information	<p>Partners Across Government is consulted as appropriate before a decision is reached.</p> <p>Human Rights, Democracy and Good Governance Group (licence applications to countries where UK has concerns about human rights issues are referred to this group).</p> <p>Parliamentary committees on Arms Export Controls (CAEC), scrutinize export licensing decisions and policy throughout 2008.</p>
Office in charge of enforcement and controlling	<p>HM Revenue and Customs (HMRC) in collaboration with the United Kingdom Border Agency (UKBA) enforce the UK's strategic export controls using a combination of multi-functional teams and specialist strategic export control teams.</p> <p>It is responsible for verifying licences at ports and airports, for imposing penalties and if necessary prosecuting exporters for breaches of export control legislation.</p>
Office issuing certification to undertakings	<p>ECO's Compliance Unit: ECO's Compliance teams are responsible for visiting companies to check and audit their compliance with the terms of their Open Individual Licences and whichever Open General Licence they are using. There are various reasons for a Compliance visit to take place, principally:</p> <ul style="list-style-type: none"> • legal or statutory obligations as a result of the Export

	<p>Control Act and associated Orders</p> <ul style="list-style-type: none"> • assurance that exporters have appropriate systems and procedures in place • building relationships with exporters including receiving feedback and specific experiences • providing and increasing industry awareness and education • ensuring that companies have not exported goods or technology without an appropriate licence and that they have met all the licence terms and conditions.
How long does the procedure take? Lead time aimed at?	<p>ECO is conscious that exporters require quick, clear licensing decisions to be commercially competitive. ECO works to the following clearly defined targets in processing licences:</p> <ul style="list-style-type: none"> • Process 70% of SIEL and SITCL applications in 20 working days • Process 95% of SIEL and SITCL applications in 60 working days.
IT involvement: information, licence request, licence issuing...	<p>ECO introduced the SPIRE system or Online Licensing (replacing the previous ELVIS, OLLIE and paper licence systems and forms).</p>
TYPES OF LICENCES, PROCEDURE AND PENALTIES	
EXPORT LICENCES (military equipment)	
SIEL = Standard Individual Export Licences	<p>This licence generally allows shipment of specific items to a specified consignee up to the quantity or value specified by the licence. Such licences are generally valid for two years where the export will be permanent. Where the export is temporary (for example, for the purposes of demonstration, trial or evaluation), the licence is generally valid for one year only and the items must be returned before the licence expires. A licence is not required for the majority of transshipments through the UK en route from one country to another, providing certain conditions are met.</p> <p>In 2008, 9760 were issued, 17 were revoked, 203 refused, 1458 withdrawn or stopped and there were No Licence Required (NLR) for 1291.</p>

<p>OIEL = Open Individual Export Licence</p>	<p>OIELs are concessionary licences that are specific to an individual exporter; they cover multiple shipments of specified items to specified destinations and/or, in some cases, specified consignees. OIEL are generally valid for a period of five years, with the exception of dealer-to-dealer OIEL which are valid for three years. It should be noted that the refusal of an application for an OIEL, an amendment to exclude particular destinations and/or items or the revocation of an OIEL does not prevent a company for applying from SIELs covering some or all of the items concerned to specified consignees in the relevant destinations. Clearly, however, the factors that led to the original decision would be taken into account in the decision on any such application.</p> <p>In 2008, 176 were issued and 181 withdrawn or stopped, none were revoked, refused or NLR. Those figures include dealer-to-dealer OIELs.</p> <ul style="list-style-type: none"> • Special OIELs: <ul style="list-style-type: none"> • Media OIELs Media OIELs authorize the export of protective clothing and equipment, mainly for the protection of aid agency workers and journalists, in areas of conflict. In addition to military helmets and body armour, the licence covers nuclear, biological and chemical protective items; non-military four-wheel-drive civilian vehicles with ballistic protection; and specially designed components for any of these items. The licence permits these items to be exported to all destinations on a temporary basis only, i.e. the items must be returned to the UK when no longer required. During this reporting period, one Media OIEL was issued. • Continental Shelf OIELs Continental Shelf OIELs authorize the export of controlled goods to the UK sector of the Continental Shelf for use only on, or in connection with, offshore installations and associated vessels. During the period of this report, none were issued.
<p>GPL = Global Project Licences</p>	<p>Global Project Licences (GPLs) were introduced by Framework Agreement (FA) partners, including the UK, to streamline the arrangements for licensing military goods and technologies between FA partners (France, Germany, Italy, Spain, Sweden and the UK = LOI States) where these transfers relate to their participation in specific collaborative defence projects. In relation to the collaborative projects, each partner state will, as appropriate, issue its own GPLs to</p>

	<p>permit transfers of specific goods and technology were these are required for that programme. The GPLs operate on a similar basis to the UK OIELs, and applications for GPLs are assessed against the Consolidated EU and National Arms Export Licensing Criteria in the UK, and against the EU Code of Conduct in other FA partner countries. One was issued in 2007.</p>
OGEL = Open General Export Licences	<p>They allow the export or trade of specified controlled goods by any company, to a specific destination, removing the need for exporters to apply for an individual licence, provided that shipment and destinations are eligible and certain conditions are met. Most OGELs require the exporter or trader to register with the ECO before they make use of them, and registered companies are subject to compliance visits from the ECO to ensure that all the conditions are being met. There are also a small number of OGTLs for which registration is not required. OGELs are subject to amendments from time to time.</p> <p>Between 2004 and 2008, 36 OGEL were delivered among which 18 are now revoked. Most of them lasted for about one year.</p>
TRADE CONTROL LICENCES	
SITCL = Standard Individual Trade Control Licence	<p>The SITCL is specific to a named trader and covers involvement in the trading of a set quantity of specific goods between a special overseas source and overseas destination country with a specific consignor, consignee and end-user. SITCLs will normally be valid for two years. Upon expiry, either by time or because the activity has taken place, the licence ceases to be valid and must be returned to the ECO. Should further similar activity need to take place, a further licence must be applied for. Trade controls only apply to goods on the UK Military List (set out in Schedule 1, Part 1 of the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003) and do not apply to software or technology.</p> <p>In 2008, 117 were issued, 8 refused, 53 withdrawn or stopped and there were No Trade Licence Required (NTRL) for 2. None were revoked.</p>
OITCL = Open Individual Trade Control Licence	<p>This licence is specific to a named trader and covers involvement in the trading of specific goods between specific overseas sources and overseas destination countries and/or specified consignor(s), consignee(s) and end-user(s). OITCLs are generally valid for two years. Trade controls only apply to goods on the UK Military List and do not apply to software or technology. It should be noted that the refusal for an application for an OITCL, an amendment to exclude particular destinations and/or items or the revocation of an OITCL does not prevent a company from applying for SITCLs</p>

	<p>covering some or all of the items concerned to specified consignees in the relevant destinations. Clearly, however, the factors that led to the original decision would be taken into account in the decision of such an application.</p> <p>In 2008, 24 were issued, none revoked, 1 refused, 18 withdrawn or stopped and there was NLR for one.</p>
OGTCL = Open General Trade Control Licence	It allows the trading of specific items between specific destinations by any trader.
TRANSSHIPMENT LICENCES	
OGTL = Open General Transshipment Licence & SITL = Standard Individual Transshipment Licence	<p>Most transshipments can be made under one of the OGTL in force, provided in all cases that the relevant conditions are met. Where this is not the case, an SITL is required. (There are no Open Individual Transshipment Licences).</p> <p>In 2008, 6 SITLs were issued, none revoked or refused, one NLR and 9 withdrawn or stopped.</p>
SPECIAL LICENCES	
Transfer of Technology and Technical Assistance Licence	<p>These licences are issued for the transfer of technology and provision of technical assistance under Articles 8, 9 and 10 of the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2002.</p> <p>During this reporting period, one OIEL was issued, two were refused, none were revoked, and none were rated as NLR. No SIELs were issued, refused or revoked but one was rated as NLR.</p>
PROCEDURES AND PENALTIES	
End use warranties?	<p>-All OIEL applications require a Consignee Undertaking, which must be obtained in advance from the end-user. The undertaking should confirm the nature of the goods ordered by the consignee and what they will be used for. Consignees are also asked to confirm that the goods won't be used for purposes associated with WMDs. The OIEL Consignee Undertaking should be completed by the organization or company to whom the goods are being sent.</p> <p>-An End User Undertaking (EUU) is required in accordance with SIEL conditions. In general, an application for an SIEL licence for temporary export will not need an EUU. Every other SIEL application needs to be accompanied by some documentation from the end-user country; in almost all cases this will be an EUU. In certain circumstances, we may be willing to accept one of the following two alternatives:</p> <ul style="list-style-type: none"> • If the foreign buyer is a government body, then a purchase order or a copy of relevant pages from contracts may be accepted in lieu of an EUU • If the foreign importer can supply an International Import Certificate, this may be accepted in lieu of an EUU.
Licence exemptions	It is not really an exemption but no licence is needed for export inside the EU (still needed for export outside the EU) for goods that are the less sensitive items on the UK Dual-Use List.

Licence denial or revocation	Refusals and revocations: there were 211 such decisions in SIELs and SITCLs in 2008. Within the information relating to each destination, refusals and revocations for both Military and Dual Use goods are grouped by reference to the Rating (control entry) and, where applicable, the Consolidated EU and National Arms Export Licensing Criteria which justified their refusal. Some licences were refused principally because of the application of national controls or policy commitments.
Appeal Procedure	An appeal is featured based upon the date of the appeal, not the date of the original licence application. The government has a target of processing 60% of appeals within 20 working days from the receipt of all relevant information from the appellant and 95% in 60 working days. Only in those cases where refusal is clearly justified is a final decision taken to refuse. Appeals are considered at an independent and more senior level than the original licence application. Every effort is made to deal with all appeals as expeditiously as possible. However, the time taken can be lengthy due to the need to examine afresh all relevant information.
Penalties	The RCPO (Revenue and Customs Prosecution Office), independent prosecuting authority. The cases that RCPO prosecutes are investigated by HMRC or SOCA (the Serious Organized Crime Agency). The investigations can result in criminal proceedings; these cases await trial in the Crown Court. During the last five years, the penalties were: between 18 months imprisonment (suspended) up to four years, plus fines and/or bans (from being company director for example). The penalties can be only fines, up to 10.000£. (Those penalties are the one given after HMRC Prosecutions for strategic export offences). The penalties can rise up to 10 years imprisonment for the most serious cases.
STATISTICS	
Report to Parliament?	Since 1999, the Government has to supply an annual report on the strategic export control to the Parliament (The <i>Annual Report on Strategic Export Controls</i>). The work of ECO is also subject to Parliamentary scrutiny from the Committees on Arms Export Controls.
Licences issued per year	In 2008, 9760 SIELs were issued, 6 SITLs, 176 OIELs, 117 SITCLs and 24 OITCLs.
Licences denied	Number of licences revoked or refused in 2008: 220 SIELs, 8 SITCLs and 1 OITCL. No SITL or OIEL.
Reasons of denial	Criteria from the Consolidated EU and National Arms Export Licensing Criteria were not respected.
Appeal?	44 appeals heard in 2008 against the original decision to refuse an application for an SIEL and one against the decision to refuse an SITCL.

Decision changed on appeal?	The appeals against the original decisions on 35 applications were refused; the appeals against the original decisions on 8 applications were upheld.
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B. GERMANY

PRINCIPLES AND LAWS	
Fundamental political principles	<p>Political Principles were adopted by the Government on 19.01.1990 for the Export of War Weapons and Other Military Equipment.</p> <p>The government's decisions about the export of war weapons (list KWKG) and other military equipment (list AWG, AL part IA) follow KWKG, AWG, EU Code of Conduct, the OSCE Principles; Human rights or internal repression in end-use country are to be considered, and views of European Union, the Council of Europe, the United Nations (UN), the OSCE and other international bodies, as well as reports issued by international human rights organizations are taken into account.</p> <p>For NATO or EU countries, export is generally authorized, with few exceptions. The same applies for Australia, Japan, New-Zealand and Switzerland. For most other countries, the position is more restrictive: Germany does not want to build up defence industry capabilities only for export, and the answer is usually NO for exports of weapons (KWKG), YES for other equipment (AWG). End-use assurance is always required.</p>
Laws and bylaws	GG (Basic Law) Art. 26, KWKG (War Weapons Control Act) + 3 ordinances, AWG (Foreign Trade and Payment Act) + AWV (Ordinance)
EU clauses	EC Regulation 428/2009 (replacement from 27.08.2009 of EC 1334/2000) for Dual-Use items and technologies (Wassenaar, Australia Group, MTCR, NSG, Chemical Warfare), EC Regulation 1236 (anti-torture) are in force. Embargoes (UN, OSCE, EU) also. CAUTION! Lists may have national add-ons!
OSCE documents	Embargoes through EU Regulations.
Participation in control regimes	Wassenaar, Australia Group, MTCR, NSG, Chemical Warfare
Compliance to embargos	Compliance with EU Regulations about embargoes.
Dual use regulations	Through AWV (last change on 24.08.2009)
LISTS	
National lists of forbidden receivers	List of the countries under embargo (different types) 8.10.2009: Armenia, Azerbaijan, Belarus, Burma/Myanmar, China, Congo (Democratic Republic), Côte d'Ivoire, Haiti (no longer embargo, but restrictions), Iran, Iraq, Democratic People's Republic of Korea (North), Lebanon, Liberia, Libya, Moldova, Sierra Leone, Somalia, Sudan, Uzbekistan, Zimbabwe + Persons (Al Qaeda).
Lists of receiving States with simplified procedures	According to the Political Principles, Yes unless good reason for EU, NATO, and NATO-like countries (AUS, JAP, NZ, CH). ICT within EU are not Exports. Same procedure as Exports for armaments, simplification for Dual-Use if EU final

	destination.
Lists of defence related goods	AL (AusfuhrListe AWV, Export List): Part I, Section A = military goods (+soft+techno) with both Dual-Use & AWV restrictions, similar to EU Code of Conduct Military List. Part I, Section B = void at present Part I, Section C = EU Dual-Use List + a few national add-ons (a dozen) Part II = Goods from vegetable origin KWL (List of War Weapons): Part I = Nuclear, Bacteriological or Chemical goods Part II = others (1 Missiles, 2 Aircraft & Helicopters, 3 War Vessels, 4 Combat vehicles, 5 Guns, 6 Antitank, mine dispersers, 7 Torpedoes, mines, bombs, 8 Other ammunition, 9 Main parts, 10 Dispenser, 11 Laser weapons
Lists of dual use items	List EC 428/2009 (Annex I, II, IV) + AL (Ausfuhrliste AWG/AWV)
PLAYERS IN CONTROL OF DEFENCE RELATED GOODS OR DUAL USE ITEMS	
Licensing authority	The main player is BAFA, Federal Office of Economics and Export Control, superior federal authority subordinated to the Federal Ministry of Economics and Technology (BMWi), Licensing authority for AWG, Dual-use. Licensing authority for KWKG is BMWi/VB3.
Other authorities requested for advice or entitled to ask information	Other Ministries can be involved: Finances, Foreign, even Transport in some cases. Sensitive cases are submitted to Federal Government (Federal Security Council=Chancellor, Foreign, Finance, Interior, Justice, Defence, Economics, Cooperation). Advance Inquiries are submitted to Federal Foreign Office (AA) of War Weapons.
Office in charge of enforcement and controlling	BAFA, Federal Office of Economics and Export Control, superior federal authority subordinated to the Federal Ministry of Economics and Technology (BMWi), and Customs.
Office issuing certification to undertakings	No certification up to now
How long does the procedure take? Lead time aimed at?	2 weeks for non-sensitive cases, 1 month for export to "third" countries, more for sensitive cases (consultation with other ministries).
IT involvement: information, licence request, licence issuing...	Export licence can be applied for through ELAN (IT system), and status also.
TYPES OF LICENCES, PROCEDURE AND PENALTIES	
Individual Licences (Military equipment)	The basic type of the export/transfer licence is the individual licence . It permits the shipment of one or several items to one consignee, based on one order. A " maximum amount licence ", being a special type of individual licence, may be issued. This authorization permits the shipment to one consignee up to the authorized

	“maximum amount” (expected annual sales) on the basis of several orders, e.g. in connection with a general contract.
Global Licences (Military equipment)	Global licence (granted to reliable exporters, SAG Sammelausfuhrgenehmigung)
General Licences (Military equipment)	<p>An individual licence cannot be issued if a general licence was already granted for a given export.</p> <p>The General Licences of BAFA are published in the Federal Gazette and available online.</p> <p>The exporter/transferor need not apply for the utilization, but must register as the user. This also applies to the Community General Export Authorisation EU001 published as Annex II to EC-REG 428 and which was provided with additional collateral clauses by BAFA, published in the Federal Gazette.</p> <p>Each General Licence is only valid for the specific items and countries (as laid down in nos. 4 or 5 of the general licences).</p> <p>General Licences or dual-use items may also be used if the items are not located on the German economic territory but in another EU Member State.</p> <p>The use of all General Export Licences (except General Licence No 18) has to be notified to BAFA prior to the first export/transfer or afterwards within a period of 30 days.</p>
Other Licences (Military equipment)	<p>Collective Export Licences, if a high number of export licences were granted in the previous year, it is possible that certain reliable exporters may be granted a collective export licence instead of applying for several individual licences. This licence permits the export of a group of items to several consignees.</p> <p>Complementary Licence (KoGe) for goods subject to both KWKG and AWG (war weapons); for KWKG, an authorization through BMWi is necessary; the case having been considered before, BAFA gives almost automatically a Complementary Licence for export or transfer.</p> <p>Advance Inquiry (Voranfrage) allows an exporter to ask whether an export project would be authorized (these cases are not counted as denials).</p>
Types of licence for the export of Dual Use items	Individual Licence (basic type, AG), Global Licence (reliable exporters SAG), General Licence (EU001 + 11 German AGG). Always with End-Use Certificate (not for temporary exports or below a certain value).
Peculiarities for transit, brokering, intangible transfers or exports?	<p>Transit, brokering, intangible are covered (Brokering Licence).</p> <p>Authorization for trafficking and brokering only for armaments (AL part I A) and very sensitive Dual-Use (Annex IV of EC 428/2009). The licensing requirement only applies to trafficking and brokering related to goods that are located in a third country, i.e. in a non-EU member state, and are to be exported to another third country.</p>
End use warranties?	Always with End-Use Certificate (not for temporary exports

	or below a certain value).
Licence exemptions	Exemptions for shooting arms, munitions and other products of small value.
Licence denial or revocation, appeal procedure	Licence may be denied or revoked. No appeal procedure (other than new application or justice) seems to be foreseen.
Penalties	25 000 or 500 000€ penalty, up to 5 years in jail
STATISTICS	
Report to Parliament?	Yes, last one December 2008 for year 2007, also in English (January 2009)
Licences issued per year	15 823 individual licences in 2007, (2006: 13 610) for 3,668G€ (2006: 4,189G€), of which 35% EU, 31% other NATO or NATO-like countries, 34% others (10,3% for developing countries, Pakistan and India mainly). 100 collective licences (2006: 165) worth 5,1G€ (2006:3,5) only for NATO or NATO-like countries, valid 2 years for cooperative programs 11 licences for trading and brokering (1,34M€)
Licences denied	72 licence denial in 2007 (value 7,9M€), without application withdrawal, or inquiry before application.
Reasons of denial	Destination denied 2007: Algeria (2, criterion2/3/4, ML5), Andorra (4, criterion7, ML1, ML3, ML18), Azerbaijan (1, criterion1a, ML15), Belize (1, criterion7, ML1), Brazil (2, criterion1c/7, ML1, ML5), Chile (1, criterion2/3/4, ML6), China (8, criterion1a/4, ML9, ML11, ML13, ML15, ML18), Colombia (1, criterion3/7, ML1, ML22), Hong Kong (1, criterion7, ML1), Taiwan (6, criterion1b/4, ML5, ML6, ML7, ML9, ML21), Croatia (1, criterion7, ML1), Cyprus (North), Egypt (8, criterion1c/3/4/7, ML1, ML18), Ethiopia (2, criterion3/4, ML10, ML11), Georgia (4, criterion2/3/4, ML6, ML10), India (4, criterion2/4/7, ML1, ML18, ML22), Indonesia (1, criterion2, ML15), Iran (1, criterion2/7, ML3), Iraq, Israel (4, criterion2/3/4, ML1, ML10), Jordan (1, criterion7, ML3), Kazakhstan (1, criterion7, ML1), Kenya (1, criterion2/3/7, ML18), Macedonia (2, criterion7, ML1), Malaysia (1, criterion7, ML1), Namibia (1, criterion7, ML1), Nepal (1, criterion2/3, ML18), Nigeria (2, criterion2/3/7, ML16, ML18), Oman, Pakistan (3, criterion1/2/4/7/8, ML7, ML10, ML15), Panama (1, criterion7, ML1), Philippines (2, criterion2/3/7, ML1, ML18), Romania, Russia (5, criterion2/3/7, ML1, ML3, ML6, ML15), San Marino, Serbia (1, criterion7, ML13), Sri Lanka (8, criterion2/3/4, ML1, ML3, ML5, ML7, ML11, ML17), Sudan (1, criterion1, ML6), Suriname (1, criterion7, ML1), South Africa (1, criterion7, ML3), Syria (2, criterion2/4, ML1, ML15), Tanzania (1, criterion7, ML1), Thailand, Tunisia (3, criterion2, ML1, ML3), Uganda (1, criterion2/3/8, ML10), Ukraine (6, criterion7, ML1, ML3, ML6), Venezuela (4, criterion4/5, ML2, ML3, ML5, ML11), Vietnam (4, criterion2/3/7, ML1, ML15, ML18), Yemen (1, criterion3/7, ML1), Zambia (1, criterion7, ML3), Zimbabwe (1, criterion1, ML1).

C. ITALY

PRINCIPLES AND LAWS	
Fundamental political principles	(See Art. 1 Law 185/1990) Export operations must be in line with Italian foreign, security and defence policy; they must respect the constitution and assure good relations with other countries. Exports can be performed only by companies being part of the National Registry of Companies (Registro Nazionale delle Imprese) and only towards other governments or companies previously authorized by the government. Operations are forbidden when in contrast with the Constitution, with international commitments to which Italy is bound and with security interests of Italy. They are forbidden also when there are not adequate guarantees about the final destination of the products. Export operations are also forbidden towards countries where an armed conflict is ongoing, towards which there is an embargo (declared by the EU or the UN), where serious violations of human rights occur, and towards countries that receive humanitarian and cooperation aids from Italy and where defence spending exceed their defence exigencies. A last political principle concerns the need to assure transparency to the export activities through a report presented each year by the Government to the Parliament (Art. 5).
Laws and bylaws	Law n. 185, 9 July 1990 and law of implementation: D.P.C.M. n. 93 of 14 January 2005. Updating Law (to implement Framework Program): n. 148, 17 June 2003.
EU clauses	Council Regulation CE 1334/2000 setting up a Community regime for the control of exports of dual use items and technologies. (European Code of Conduct and European Council Common Position 2008/944/CFSP, Art 16 of the Lol/FA (2008) regarding the Component Licence and European Council Common Position on arms brokering, 23 June 2003, are not implemented yet: currently the national legislation - namely Law 185/1990- is under revision to include them)
OSCE documents	OSCE embargoes are considered according to Art. 1 c 6 letter c of Law 185/1990 (see annex B to the report 2008 by the Prime Minister)
Participation in control regimes	Wassenaar Agreement arrangement
Compliance to embargos	Compliance with EU, OSCE and UN restrictions and embargoes (art. 1 c 6 letter c of Law 185/1990), countries listed in Annex B to the report on armaments export activities in 2008 by the Prime Minister.
Dual use regulations	Decree Law 96, 9 April 2003 implementing Council regulation CE 1334/2000 and following updates (in particular Council regulation 428/2009)

LISTS	
National lists of forbidden receivers	Annex B to the report on armament export activities in 2008 by the Prime Minister contains a miscellaneous list forbidding exports to countries clearly implicated in supporting terrorism and direct or indirect supply to Osama Bin Laden, Al-Qaeda, Taliban, etc. - It contains also a detailed List of countries: Burma/Myanmar; China; Cote d'Ivoire; Democratic People's Republic of North Korea; Democratic Republic of Congo, Iran; Iraq; Lebanon; Liberia; Sierra Leone; Somalia; Sudan; Uzbekistan; Zimbabwe. Moreover, in issuing authorizations, competent authorities take into account the situation in certain countries concerning the respect of human rights according the EU, OSCE and UN considerations (list of countries concerned: Annex C of the report). Finally, the Italian law forbids the export to countries that exceed in their defence expenses considering their defence needs (Art. 1).
Lists of receiving States with simplified procedures	Law 185/1990 does not foresee simplified procedures according to specific countries. The only procedural advantage is the fact that the EU and NATO countries benefit of a "silence procedure" of only 30 days (instead of 60) for receiving the authorization to contractual negotiations. Normally, for GLP the Presidency of the Council of Ministries can authorize exports with Lol countries without asking the authorization of starting contractual negotiations if it is a Governmental cooperation program (and not simply an industrial cooperation program, for which such authorization is requested before issuing a GLP). However, no GLP was ever issued.
Lists of defence related goods	Law n. 185/1990 includes a list of categories of defence related goods (Art. 2.2). Annex A to the Report by the Prime Minister on armaments export in 2008 points the Wassenaar agreement categories to which those categories correspond. The list of defence related products that are included in those categories is issued and updated by Ministerial decree of the Ministry of defence, together with the Ministry of Foreign Affairs, of Interior, of Economy and Finance, and of economic development. It includes also spare parts and components, drawings, schemes and any information necessary for the manufacturing, use and maintenance of the product. It is available as Annex 1 to the relation of the Minister of defence attached to the relation of the Prime Minister to the Parliament (2008).
Lists of dual use items	See Art. 1.c Decree Law 96, 9 April 2003: Annex I, II and IV of the Council regulation EC 1334/2000, in their updated versions: they are immediately applied to the national legislation.

PLAYERS IN CONTROL OF DEFENCE RELATED GOODS OR DUAL USE ITEMS	
Licensing authority	Ministry of Foreign Affairs: UAMA (Unità per le Autorizzazioni dei Materiali d'Armament, Office for the authorization of armament materials). UAMA issues authorizations to start contractual negotiations with non NATO or non EU countries (for NATO and EU countries authorizations to start negotiations are issued by the Ministry of Defence). During this phase limitations and conditions can be put. The UAMA issues also temporary and permanent authorizations to export. For Dual Use products: Ministero delle Attività Produttive, ufficio per l'internazionalizzazione (Ministry of Economy, internationalization office)
Other authorities requested for advice or entitled to ask information	An interministerial committee within the Ministry of Foreign Affairs (Comitato interdirezionale) advises the UAMA during a direction and orientation phase (before 1993 this function was held by an office called CISD and until 1999 by an office called CIPE). Moreover, within the Presidency of the Council of Ministers the UCPMA (Ufficio di Coordinamento della produzione di materiali di armamento, Military Production Coordination Office, which is an inter-ministerial office) is created to inform and support the Minister of Foreign Affairs within the general export policy framework also in consideration of new international commitments.
Office in charge of enforcement and controlling	Ministry of Foreign Affairs - UAMA (controlling documentation on arrival to destination) - Ministry of Economy and Finance (controlling documentation on banking) and Customs office (controlling import and export activities).
Office issuing certification to undertakings	Ministry of Defence manages a National Register where companies working in the sector of design, production, import, export and maintenance of armaments must be registered.
How long does the procedure take? Lead time aimed at?	The overall procedure takes up to 120 days: 60 for the authorization to contractual negotiations and 60 to issue the authorization. Silence procedure for contractual negotiations within 30 days (for EU and NATO countries) or within 60 days (for the others).
IT involvement: information, licence request, licence issuing...	Generally speaking, there is good IT level within each office but not connecting different offices.
TYPES OF LICENCES, PROCEDURE AND PENALTIES	
Individual authorization (Military equipment)	For defence related goods: the Ministry of Foreign Affairs issues only individual authorizations to all countries for all products. For non-EU and non NATO countries the Ministry of Foreign Affairs authorizes the start of contractual negotiations in a shorter period of time. For EU and NATO countries, contractual negotiations are authorized by the Ministry of Defence.

Global Licence Project (Military equipment)	Being part of the LoI/FA, Italy could issue Global Licence Projects but so far no GLP has been issued yet.
Types of licence for the export (to EU Member State) of Dual Use items	See Art. 3 and following of Decree Law 96/2003. For dual use items different kind of licences are foreseen respecting the EU dual use regulation 428/2009: Community general export authorizations; National General Export Authorizations; Global Authorizations; individual Licences.
Peculiarities for transit, brokering, intangible transfers or exports?	Intangible products and transits are covered by the law that regulates the export of defence products. Arms brokering European legislation have not been implemented yet at the national level. However, there is a request to start negotiations the amount of compensation for brokering activities must be reported.
End use warranties?	The company requesting an authorization to start negotiations has to also attach a certificate on the final use of the product. Such a certificate is issued by the governmental authorities of the country of destination. An import certificate is simply requested if the country of destination participates, as Italy, to control regimes of military products. 180 days maximum after the export activity, companies are requested to present to the Ministry of Foreign Affairs custom documentations from the destination country.
Licence exemptions	Temporary exports in the framework of national programmes and equipment to national armed or police forces; exports from states to states in the framework of military assistance agreements; transfers of defence products among NATO countries; sport and hunting weapons and their munitions, reproduction of ancient arms and shooting arms (if not automatic) and their munitions (for these last categories, the Ministry of Interior is in charge of a certain control).
Licence denial or revocation, appeal procedure	In the report by the Prime minister on export activities in 2008 no mention is made to denials of authorizations: this is due to the fact that normally procedures are blocked at an earlier stage (authorizations to conduct contractual negotiations). No appeal procedures were activated and registered in the past years, although the Law 185/1990 foresees this possibility (appeals procedures to be addressed to the CISD, replaced in 1993 by the CIPE, whose functions are covered since 1999 by the Ministry of Foreign Affairs)
Penalties	Suspension of any new authorization to companies inquired for exporting without licence; 2-6 years of imprisonment for false statements; 3-12 years for unauthorized exports; up to 5 years for not respecting of conditions of shipment in the authorized export; up to 4 years for unauthorized negotiations.
STATISTICS	
Report to Parliament?	The Prime Minister reports to the Parliament each year before the 31st of March on the authorizations issued until

	the 31st of December of the year before.
Other reports?	Each year the Minister of Foreign Affairs, Economy and Finance, Interior and Economic development report on their activities foreseen by Law to the Prime Minister, who attaches those relations to his relation to the Parliament. Each year the owners of Global Project Licences report to the Ministry of Foreign Affairs about their activities under such a licence.
Licences issued per year	1.880 authorizations for export of defence related products have been issued in 2008 (1.391 in 2007), including final (1.489, for a monetary value of about 3.046 million Euro) and temporary (321) authorizations as well as extension of the time for authorization issued the years before (70). Also in 2008 no Global Project Licence has been issued. Authorizations for intergovernmental programs are not included in this figure: those licences were issued for a value of 2.690 million Euro. No authorization for transits was requested in 2008.
Reasons of denial	Authorizations for contractual negotiations are normally denied when regarding a country towards which an embargo is performed.

D. SPAIN

PRINCIPLES AND LAWS	
Fundamental political principles	Control - Transparency - Strict application of international commitments - Support international activities
Laws and bylaws	Main Laws: Law 53/2007, 29 January 2008, and Royal Decree 2061/2008, 12 December. Other Laws of reference: Organic Law 3/1992, 30 April and Organic Law 12/1995, 12 December (introduction for the first time of the crime linked to the smuggle of defence related and dual use products). Royal Decree 824/1993, 28 May (approving the regulation of such exports), replaced then by Royal Decree 491/1998, 27 March, replaced later by Royal Decree 1782/2004, 30 July, annulled by the Royal Decree 2061/2008 (in force). Moreover, Arms regulation (Reglamento de Armas) approved by Royal Decree 137/1993, 29 January; and Explosive Regulation (Reglamento de explosivos) approved by Royal Decree 230/1998, 16 February. With regard to "other materials" (hunting and sport firearms and their parts and munitions, not used for military purposes): export not regulated until 2008: Law 53/2007 is adopted in agreement with international commitments (UN GA resolution 55/255) and considered in the RD 2061/2008.
EU clauses	Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technologies and equipments. And Council Common Position 2003/468/CFSP, 23 June on the control of arms brokering. Moreover, concerning dual use products and technologies: Council Regulation (EC) 1334/2000, 22 of June, updated and modified by Council Regulations (EC) 2432/2001, 20 November and 1167/2008, 24 October.
OSCE documents	OSCE document on Small Arms and Light Weapons, 24 of October 2000.
Participation in control regimes	Wassenaar Agreement, Zangger Committee, MTCR, Nuclear suppliers' Group and Australia Group.
Constraints driven by international commitments	UNGA Resolution 55/255, 8 June 2001 on illicit manufacturing and trafficking in firearms, their parts components and munitions. And also: Programme of Action to Prevent, Combat, and Eradicate the Illicit Trade in Small Arms and Light Weapons, in all its Aspects, UN, 9-20 July 2001. Concerning WMDs: UN Resolution 1540 (2004), of 24 of April. Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (13 of January 1993). Convention On The Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, on 10 April 1972. The Convention on the Physical Protection of Nuclear Material, on 3 March 1980. Framework Agreement for the authorizations to apply

	to materials being part of cooperation programs. Convention on Cluster Munitions (May 2008).
Compliance to embargos	Embargoes decided by the EU against Iran and North Korea (Regulations CE 423/2007, 441/2007 and 618/2007 and Council Common Positions 2007/246/CFSP for Iran; Council Common Position 2006/795/CFSP and Regulation 329/2007, updated by Regulation 117/2008 for DPRK) and embargoes decided at UN level.
Dual use regulations	Dual use products and technologies: Regulation EC 1334/2000 modified by regulations 2432/2001 and 1167/2008 and accompanied by the Council Common Action 2000/401/CFSP.
LISTS	
National lists of forbidden receivers	Embargoes decided by the EU against Iran and North Korea (see cell above line 10)
Lists of receiving States with simplified procedures	EU countries and countries included in the list of Annex II of the Regulation (EC) 1183/2007 can issue a "Certificado Internacional de Importación" (import international certificate). Permitted destinations decided in the frame of the Lol/FA GLP will benefit of an individual transfer licence. Moreover, see cell in line 32.
Lists of defence related goods	Annex I of the Regulation approved by Rreal Decreto 2061/2008 for defence materials (including Military List of the Wassenaar Agreement, Common Military List of the EU Code of Conduct, MTCR categories I and II); and Annex II for "other materials".
Lists of dual use items	List of 10 categories contained in Annex I and Art. 4 (catch all clause) of the EC regulation 1334/2004 modified by subsequent regulations
PLAYERS IN CONTROL OF DEFENCE RELATED GOODS OR DUAL USE ITEMS	
Licensing authority	Secretaría General de Comercio Exterior (secretariat-general for foreign trade) - Subdirección General de Comercio Exterior de Material de Defensa y Doble Uso (under secretariat for the foreign trade of defence and dual use material) within the Ministry of Industry Tourism and Trade.
Other authorities requested for advice or entitled to ask information	Junta Interministerial Reguladora del Comercio Exterior de Material de Defensa y de doble uso (JIMDDU) (Inter-Ministerial regulatory Board on Foreign Trade in Defence and Dual Use Items), within the Ministry of Industry Tourism and Trade. It is tasked to inform (in a binding way) the competent authorities about authorizations to be issued, previous agreements, suspensions and revocations, and on inscription to the register of new operators. To this end the JIMDDU can ask all the necessary information to any administration. The JIMDDU can also suggest modification to the legislation concerned. Its composition was recently modified: according to RD 2061/2008 art 17 the Ministries involved are: Foreign Affairs and Cooperation, Defence, Economy and Finance, Industry Tourism and Trade, Interior.

Office in charge of enforcement and controlling	Controls and inspections can be performed by the competent authority issuing the authorization and by the Departamento de Aduanas e Impuestos Especiales de la Agencia Estatal de Administraciòn Tributaria del Ministerio de Economia y Hacienda (customs authority). Authorized undertakings must keep relevant documentation for 4 years after the expiring date of the authorization and inform the competent authorities about complete or partial reports related to the operations performed every 6 months.
Office issuing certification to undertakings	Subdirecciòn General de Comercio Exterior de Material y Defensa y de Doble Uso (in charge of the processing of the authorization and with secretary functions to the JIMDDU)
How long does the procedure take? Lead time aimed at?	By law (art 7 RD 2061/2008) the procedure must not take more than 6 months. In 2008 for defence material: if a preliminary report from the JIMDDU is needed: in about 60% of the cases, up to 30 days; more than 30 days for about 40% of the cases. If no preliminary report is needed, in about 60% of the cases up to 5 days, more than 5 days in 40% of the cases. For dual use products and technologies: if preliminary report is needed, up to 30 days in 62% of the cases, more than 30 in the rest of the cases. If no report is needed, up to 5 days in about 64% of the cases, more than 5 in the rest of the cases. For other materials: preliminary report from the JIMDDU is needed, up to 30 days in 75% of the cases, more than 30 days in the rest of the cases.
IT involvement: information, licence request, licence issuing...	There exists a register for operators of external trade of defence related materials and dual use products. Only operators registered can ask for an authorization to export. Moreover, forms to be filled in to request authorizations are foreseen by the RD 2061/2008.
TYPES OF LICENCES, PROCEDURE AND PENALTIES	
Individual licence transfer (Military and dual use equipment, other materials)	<i>Licencias Individuales de Transferencia de material de defensa, de otro material y de productos y tecnologías de doble uso</i> : art. 23 RD 2061/2008. 1 supplier requests the licence. 1 or more expeditions of the products and technologies included in the licence until a maximum quantity specified; to 1 determined receiver in a determined country; 1 year of validity (or more on request). For definitive and temporal exports of defence materials of cooperation programs, from LoI/FA countries to third countries included in the List of Allowed Countries (lista de países permitidos); and for other materials as intended in art 3 UNGA resolution 55/255 and included in annex II and II.2 of the RD 2061/2008.
Global Licence Transfer (Military and dual use equipment, other materials)	<i>Licencias Globales de Transferencia de material de defensa, de otro material y de productos y tecnologías de doble uso</i> : Art 24. 1 supplier requests the licence; unlimited number of export operations of the material defined in the licence up

	to a maximum money value; to one or more than one receivers in one or more than one specified country; 3 years of validity (or more on request). For operations between supplier and recipient having a relation holding-subsiary company; between two subsidiaries of the same companies; between a producer and an exclusive distributor. Also for operations within a contractual framework implying a regular commercial relationship between supplier and end user.
Global Project Licence (Military equipment)	<i>Licencias Globales de Proyecto de Transferencia de materiales de defensa</i> : Art. 25. 1 supplier requests the licence; unlimited number of operations for the export of materials identified in the licence up to a maximum value of money; to 1 or more than 1 receivers in 1 or more specified countries, 5 years of validity (or more on request). For operations respecting one of the following conditions: stemming from a cooperative program in the framework of the Lol/FA; stemming from a non-governmental program to which participates one or more than one European transnational companies established in Spain (having an authorization from the MoD about the program); in the first phase of an industrial cooperation; for temporal operations regarding reparations, tests, approvals of materials having since the beginning a global project licence. However, an individual licence will be required for countries in the list of "allowed countries".
General authorization for transferring dual use products and technologies	<i>Autorizaci3n General de Transferencia de productos y tecnologias de doble uso</i> : Art. 26. 1 supplier requests the licence; for dual use products and technologies determined in the EC regulation 1334/2000; towards authorized destinations.
Peculiarities for transit, brokering, intangible transfers or exports?	Authorization for brokering activities is issued by the Secretary of Foreign Trade advised and informed by the JIMDDU. The operator provides extensive information (Art. 27). For brokering activities a specific authorization is needed ("Autorizaci3n de corretaje"). Secretaria del Comercio Exterior (foreign trade office) collects information about arms brokering and communicates it to other EU members and to third countries, according to the Common Position 2003/468/CFSP. About transits: the Administraci3n General del Estado (State general administration office) can proceed to immediate retention of defence material, other materials and dual use products and technologies transiting through the Spanish territory, including aerial and maritime space, in those cases foreseen by law (art 8 Law 25/2007). To this end the Foreign Affairs Ministry communicates the authorized transits to the JIMDDU.
End use warranties?	With the exception of those cases decided by the JIMDDU (Art. 18), suppliers requiring an authorization to export must

	attach to such requests a control document on the end use of the product ("certificado internacional de importación; "certificado de último destino"; or "declaración de último destino") issued by the competent authority of the importing country or by the end user (Art. 4 and 29 of the regulation approved by Royal Decree 2061/2008).
Licence exemptions	The transfer of defence materials, other materials, dual use products and technologies used by Spanish Armed Forces in the framework of military operations abroad or used by Armed Forces of other countries jointly with the Spanish Armed Forces in the frame of military actions on the Spanish territory do not need authorization. Moreover, the JIMDDU can exempt from its preliminary report and control documents, on a case by case basis certain operations according to the country of destination and the product or material concerned (see Art. 18.5 Regulation). Exemptions of preliminary report from the JIMDDU in 2008 concerned non-sensitive products to be exported to allied countries and countries that are members of international forum for arms control and non proliferation. Concretely: for cooperation programs (combat aircraft Eurofighter, military transport aircraft A400M, helicopter Tiger, tanks Leopard, missiles Iris and Meteor, electronic communication systems MIDS); fuel export to EU and NATO countries; non sensible products with a lower value to 1200euros to countries part of international forum for arms export control. The JIMDDU extended the exemption of previous agreements and export control documents for temporary exports of products for repairs, maintenance, exhibition and demonstrations. Export authorization of "other materials" from Spain to EU states is not necessary. Such export is regulated by section 6 of the regulation approved by Royal Decree 137/1993 and by title VII of the regulation approved by Royal Decree 230/1998.
Licence denial or revocation, appeal procedure	Authorization can be denied revoked or suspended in certain cases (art 7 RD 2061/2008). Such decisions must be accompanied by an administrative document inviting the concerned person to seek an audience. Decisions taken by the competent authorities can be appealed according to the Law on the juridical regime of the public administration (art 114 Law 30/1992).
Penalties	Suspension or revocation of an export authorization (Art. 8 Law 53/2007). Penalties and sanctions: According to Organic Law 12/1995 on the repression of smuggling, the unauthorized export of defence or dual use items can result in a prison sentence or a fine of three to four times the value of the goods involved in the transactions.
STATISTICS	
Report to Parliament?	The Government is requested by Law (regulation adopted by Real Decreto 2061/2008) to submit detailed statistics about exports of defence materials, other materials and dual use

	products and technologies to the Parliament every 6 months. The Trade Minister will inform the defence commission of the Parliament once a year on such statistics and the defence commission will issue a report and will propose recommendations.
Other reports?	Publication of statistics in the Boletín económico de la Revista de información Comercial Española - Ministerio de Industria Turismo y Comercio and on the website of the Secretaría de Estado de Comercio
Licences issued per year	In 2008, with regard to defence materials: 717 licences. Including: 516 individual, 4 global, 9 global projects, 188 temporary. Moreover, in 2008: 192 extensions of the temporal limit for licences issued in previous years and 18 preliminary agreements. With regard to dual use products and technologies: 432 individual licences, 1 temporary, 29 extension of the temporal limit, 1 preliminary agreement. With regard to other materials: 329 individual licences, 6 global, 19 extensions.
Licences denied	With regard to defence products: 5 individual licences and 1 preliminary agreement were denied. With regard to dual use products: 8 individual licences, moreover, 6 individual licences are pending and 7 expired. With regard to other materials: 1 individual licence denied, while 6 are pending and 7 expired. Moreover, 12 individual licences expired due to the non presentation in due time of the control documents about the final use linked to the licence. Finally, 43 requests of individual licences and 2 requests of temporal licences are still pending.
Reasons of denial	3 operations were denied due to the application of the European code of conduct, in particular principle 7 and due to the unilateral moratorium on the production and export of cluster bombs (2008). The preliminary agreement was denied due to the application of the European Code of Conduct, principle 7.

E. SWEDEN

PRINCIPLES AND LAWS	
Fundamental political principles	<p>Sweden has a restrictive policy concerning the export of arms. The Military Equipment Act can be seen as a prohibitive legislation. The activities provided for under the Act are forbidden and an exemption has to be issued in each individual case.</p> <p>Not only are exports from Sweden controlled but all production of military equipment in Sweden, military training in Sweden, production under licence of Swedish equipment overseas, joint development of equipment with a party overseas, mediation in procurement of military equipment overseas are also subject to controls.</p> <p>Although marketing does not need a permit, companies are obliged to submit reports of their marketing activities to the Agency for Non-Proliferation and Export Controls (ISP). These reports are discussed at meetings between the company and ISP.</p> <p>The scrutiny of each individual case is based on the guidelines covering the export of military equipment. The guidelines not only contain a series of conditions that have to be fulfilled before export is permitted, but also describe situations where export should be permitted. In individual cases, the circumstances may be such that one section of the guidelines supports export while another presents arguments to the contrary. Nor are the individual criteria always easy to interpret. The ISP shall also take into account the EU Common position concerning export control. A special parliamentary advisory body dealing with export control matters has existed since 1985. The Export Control Council assists in the interpretation of the guidelines in individual cases. A written request for advanced notification may be submitted after a recommendation from ISP or on the initiative of the company concerned. Through an advanced notification the company will receive a written notification if it can expect to obtain an export licence. An advance notification can contain conditions, which have to be fulfilled for an export licence to be granted. It is important to note that an advanced notification is not a formal decision in legal terms. These notifications always carry reservations for the result of the final assessment which is conducted when an application for an export licence is submitted.</p>
Laws and bylaws	<p>Military Equipment Act (1992:1300) Military Equipment Ordinance (1992:1303) Guidelines for evaluating licence applications (Gov. bill 1991/92:174 p 41 ff)</p>
EU clauses	<p>-COUNCIL COMMON POSITION 2008/944/CFSP of 8 December 2008 defining common rules governing control of</p>

	<p>exports of military technology and equipment</p> <ul style="list-style-type: none"> -EU Dual-Use Regulation EEC 428/2009- EU Regulation on Torture (EC) No 1236/2005. <p>NOTE that Sweden has its own List of Military Equipment</p>
OSCE documents	<ul style="list-style-type: none"> -The principles governing arms transfers agreed by the forum for Security Cooperation of the OSCE. -Compliance to OSCE restrictions and embargoes.
Participation in control regimes	<ul style="list-style-type: none"> -The Australia Group (AG), -The nuclear suppliers group (NSG), -Missile Technology control regime (MTCR), -The Wassenaar Arrangement (WA), -Zangger Committee
Constraints driven by international commitments	Above mentioned international and European commitments implemented at national level.
Dual use regulations	Dual-use items are listed under EC Regulation 428/2009
LISTS	
National lists of forbidden receivers	Sweden does not, apart from countries that have e.g. UN arms embargoes, have a specific list of countries of concern, all applications are dealt with on a case by case basis.
Lists of receiving States with simplified procedures	Companies may apply for simplified procedures to certain countries and recipients.
Lists of defence related goods	<p>Sweden has a national list. The list is an annex to the military equipment ordinance.</p> <p>The List of Military Equipment is divided into two parts:</p> <ul style="list-style-type: none"> - Military equipment for combat; - Other Military Equipment.
Lists of dual use items	Dual-use list from the EC Regulation
PLAYERS IN CONTROL OF DEFENCE RELATED GOODS OR DUAL USE ITEMS	
Licensing authority	The Swedish Agency for Non-Proliferation and Export Controls (ISP). ISP may submit cases of principal significance or cases that are otherwise deemed important to the Government.
Other authorities requested for advice or entitled to ask information	ISP will consult with all authorities it deems necessary to do so with.
Office in charge of enforcement and controlling	ISP and when it comes to sanctions the Customs and Prosecution Office is involved.
Office issuing certification to undertakings	ISP
How long does the procedure take? Lead time aimed at?	Approximately 10 working days. However, more complicated licence applications will take longer.
People involved	At ISP around 20 people.
IT involvement: information, licence request, licence issuing...	Yes, Sweden has an electronic system, where companies may apply for a licence.

TYPES OF LICENCES, PROCEDURE AND PENALTIES	
Prerequisite	The companies must inform the ISP 4 weeks before they are to submit tender. Companies may apply for a shorter time limit in order to submit tender within 4 weeks. A licence is required for all export of Military Equipment.
Individual Licences (Military equipment)	(Permits) An individual licence refers to a single specific business transaction, with a specified amount or scope to one specified customer. Very few are revoked, ISP has an informal discussion with prospective applicants, who may be informed that the application is not likely to go through.
Global Licences (Military equipment)	(Permits) A global licence permits unlimited amount or value during a certain period of time to certain specified receiver. It will include specified conditions and registers, so that ISP can follow up and scrutinize the company's adherence to regulations and quality of export control. Companies are scrutinized so that ISP will assess their level of internal export control system, a sort of quality assessment. The responsibility is largely with the companies to adhere to the regulations under the permit they have been given. GPL = Global Project Licences Global Project Licences (GPLs) were introduced by Framework Agreement (FA) partners, including Sweden, to streamline the arrangements for licensing military goods and technologies between FA partners (France, Germany, Italy, Spain, Sweden and the UK = LOI States) where these transfers relate to their participation in specific collaborative defence projects. In relation to the collaborative projects, each partner state will, as appropriate, issue its own GPLs to permit transfers of specific goods and technology where these are required for that programme.
Types of licence for the export of Dual Use items	Individual Licence, General Licence, Global Licence Export control of dual-use products is in principle managed in two ways: based on the product or on the end use. A product-specific approach means working with lists of products considered to have an important military significance. For Swedish export control, this is based on the list in Annex 1 to the European Council Regulation (EC) 428/2009. This list includes all agreements that exist regarding control of products within the Wassenaar Arrangement (WA), the Missile Technology Control Regime (MTCR), the Nuclear Suppliers' Group (NSG), the Australia Group (AG) and the Chemical Weapons Convention (CWC). There are currently two types of general licences. The general licence that applies in accordance with the EU regulatory framework (included in Annex II of EC Regulation 428/2009) and a national Swedish general licence (included

	in the Board of Customs Code of Statutes TFS 2000:24 with appurtenant amendment TFS 2004:35).
Peculiarities for transit, brokering, intangible transfers or exports?	Activities involving the supply (including intermediation) of military equipment, inventions concerning military equipment and methods for the production of such equipment may not be conducted unless a permit is granted. This applies in Sweden and to Swedish authorities, Swedish companies and persons who are resident or permanently domiciled in Sweden when abroad.
End use warranties?	Is in principle required for all exports.
Licence exemptions	A private person may take small arms and ammunition out of the country for his personal use
Appeal Procedure	A company cannot appeal a decision from the ISP. Only in cases when ISP revokes an earlier decision a company may appeal such a decision to the administrative court.
Penalties	Imprisonment for up to two years.
STATISTICS	
Report to Parliament?	The Government issues a yearly report on “Strategic Export Controls – Military Equipment and Dual-Use Products”
Other reports?	ISP reports to Government each year.
Licences issued per year	2008, defence: TOTAL 685 EU 354 Non EU Europe 74 North America 71 Central America and the Caribbean 6 Central Asia 0 SE Asia 66 NE Asia 26 South Asia 25 Middle East 16 Africa 11 Oceania 29
Licences denied	Sweden issues few denials due the meetings ISP has with the companies, companies tend to not apply for a licence when they have received information that the application will probably be denied.

F. FINLAND

PRINCIPLES AND LAWS	
Fundamental political principles	<p>Export, transit and brokering of defence materiel are allowed only if the Council of State or the Ministry of Defence grant authorization.</p> <p>An export licence shall not be granted if it jeopardises Finland's security or is in contradiction with Finland's foreign policy.</p>
Laws and bylaws	<ul style="list-style-type: none"> ○ <i>Act on the export and Transit of Defence Materiel (242/1990)</i>: Export transit and brokering of defence materiel is allowed only if authorized by the Council of State or the Ministry of Defence. The Council of State licenses exports with certain foreign, security and political aspects or of high value. ○ <i>General Guidelines for the Export and Transit of Defence Materiel (1000/2002)</i>: Applications are processed in accordance with a product-based general assessment. The foreign and security policy aspects are: <ul style="list-style-type: none"> - Analysis of the situation prevailing in the recipient country, especially with regard to human rights, including attitudes of other states vis-à-vis the recipient country - Characteristics, intended use and military significance of the item to be exported - Significance of the item and the export for the material preparedness of Finnish national defence and for the development of the domestic defence industry ○ <i>Decree on the Export and Transit of Defence Materiel (108/1997)</i>: establishes the coverage of controls by defining the list of defence materiel. Classification of defence materiel into four item categories: <ul style="list-style-type: none"> - I. Lethal weapons and weapons systems - II. Military vehicles, warships and aircraft - III. Ballistic shields and protective equipment - IV. Ancillary equipment. ○ <i>Decision of the Ministry of Defence (192/1997)</i>: A detailed list of products. Implements the EU Common List of Military Equipment and the Wassenaar Munitions' List. Also controls Intangible Transfer of Technology (ITT).
EU clauses	<p>-Consolidated EU and National Arms Export Licence Criteria, since December 2008 an EU Common Position, sets out eight criteria (Assessment of Export Licence Application).</p>

	<ul style="list-style-type: none"> -EU Dual-Use Regulation (also known as Council Regulation (EC) No 428/2009) -European Council Regulation (EC) 1334/2000 adopted in June 2000. -The 1998 EU Code of Conduct on Arms Exports, replaced by the Common Position 2008/944/CFSP "defining common rules governing control of exports of military technology and equipment", adopted by the Council on 8 December 2008. - EU Regulation on Torture (EC) No 1236/2005.
OSCE documents	<ul style="list-style-type: none"> -The principles governing arms transfers agreed by the forum for Security Cooperation of the OSCE. -Compliance to OSCE restrictions and embargoes.
Participation in control regimes	<ul style="list-style-type: none"> -Treaty on the non proliferation of nuclear weapons (NPT), -Biological and toxin weapons convention (BTWC), -Chemical weapons convention (CWC), -The Australia Group (AG), -Missile Technology control regime (MTCR), -The nuclear suppliers group (NSG), -The Wassenaar Arrangement (WA), -Zangger Committee, -Hague Code of Conduct against the proliferation of ballistic missiles (HCoC). -Arms Trade Treaty (ATT, legally binding, by resolution 61/89 of 6 December 2006, entitled "Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms"); -Convention on Cluster Munitions (CCM) joined on 3 December 2008; -UN Register of Conventional Arms (voluntary global reporting instrument). -The UN Register of Conventional Arms.
Compliance to embargoes	Compliance with UN, EU and OCSE restrictions and embargoes. Trade in Controlled Goods Order 2004 (as amended), embargoed destinations are: Armenia, Azerbaijan, Bosnia and Herzegovina, Burma, Democratic Republic of the Congo, Iran, Libya, Sudan and Zimbabwe.
Dual use regulations	The Ministry of Foreign Affairs is in charge. Dual-use items are listed under EC Regulation 1334/2000 or items caught by military and WMD end-use controls. Council Regulation 394/2006.
LISTS	
National lists of forbidden receivers	Finland respects international embargoes in force in conjunction with its other international treaties and memberships.
Lists of receiving States with simplified procedures	EU and EEA-countries, Switzerland, non-European member states of the OECD (Australia, Japan, Canada, New Zealand and the USA)
Lists of defence related goods	Covered under other lists

Lists of dual use items	Dual-use list from the Council Regulation 394/2006. There are 9 categories: Nuclear materials, facilities and equipment (cat.0); Materials, Chemicals, "Micro-organisms" and "Toxins" (cat.1); Materials Processing (cat.2); Electronics (cat.3); Computers (cat.4); Telecommunications and "information security" (cat.5); Sensors and laser (cat.6); Navigation and avionics (cat.7); Marine (cat.8); Propulsion Systems, Space vehicles and related equipment (cat.9).
PLAYERS IN CONTROL OF DEFENCE RELATED GOODS OR DUAL USE ITEMS	
Licensing authority	MoD from Defence and Ministry of Foreign Affairs for Dual Use.
Other authorities requested for advice or entitled to ask information	<p>There is an Advisory Committee for the Export of Defence Materiel. It is chaired by the MoD. Ministry of Foreign Affairs is consulted. Security Police, Customs, Ministry of Interior, Defence Staff are represented in the committee.</p> <p>The Ministry of Foreign Affairs is responsible for foreign and security policy considerations.</p> <p>The committee gives its <i>opinion</i> to the licensing authority (MoD), which makes the final decision. The defence minister grants most licences.</p> <p>If the suggested export is seen as "involving significant financial value or foreign and security policy considerations", the government (all ministries) must approve. About ten such cases each year.</p>
Office in charge of enforcement and controlling	MoD: Materiel Unit
People involved	2 at MoD
TYPES OF LICENCES, PROCEDURE AND PENALTIES	
Individual licence (Military equipment)	<p>Only one type of licence.</p> <p>Applications are processed in accordance with a product-based general assessment. The foreign and security policy aspects are:</p> <ul style="list-style-type: none"> - Analysis of the situation prevailing in the recipient country, especially with regard to human rights, including attitudes of other states vis-à-vis the recipient country - Characteristics, intended use and military significance of the item to be exported - Significance of the item and the export for the material preparedness of Finnish national defence and for the development of the domestic defence industry

	<p>LICENSING PROCEDURES:</p> <p><i>A simplified procedure:</i> List of countries with no foreign or security policy restraint (Annex to the Guidelines)</p> <ol style="list-style-type: none"> 1. EU and EEA-countries, Switzerland, non-European member states of the OECD (Australia, Japan, Canada, New Zealand and the USA) 2. The item to be exported is intended for use in a peacekeeping operation or in crisis management mission implemented by the UN or OSCE. <p><i>The basic procedure:</i> (other countries of destination than those mentioned in the Annex to the Guidelines). Opinion of the Advisory Committee needed.</p> <p>Documents to be submitted:</p> <ol style="list-style-type: none"> 1. Official application (on the MoD web site) 2. Original End-User certificate (EUC) <ul style="list-style-type: none"> - Compulsory requirement, if complete products are exported - Includes a non re-exportation clause 3. Own production Declaration (OPD) <ul style="list-style-type: none"> - If components are exported - Re-export of the complete products on the basis of the export legislation of the country of destination 4. Import licence/dealer's licence if the importer is a private person or company 5. Other documents requested <p>Prior enquiry:</p> <p>The MoD advises, in response to a prior enquiry, on whether the intended export is acceptable on foreign and security policy grounds</p> <p>The prior enquiry is to be made before making commercial engagements</p>
Other Licences	<p>Transshipment Licence: the Act on Export and Transit of Defence Materiel (22/1990) establishes that a Licence is required for transit of defence materiel through Finnish territory. No difference is made for transit and transshipment. An inter-agency group chaired by the Ministry of Defence deals with license applications, except in cases of transit by EU countries, when simplified procedures are applied.</p>
Peculiarities for transit, brokering, intangible transfers or exports?	<p><i>Legislation on Arms Brokering</i></p> <p>Arms brokering controls came into force on the 1st of December 2002.</p> <p>Provisions on controlling arms brokering were inserted to the Act on the Export and Transit of Defence Materiel (242/1990, amendments 900/2002)</p> <p>Brokering licences are processed basically on the same basis as export licences: licence criteria, Competent Authorities, Sanctions.</p>

	An extraterritorial scope of application – a licensing requirement applies whenever the broker is a Finnish citizen, a Finnish legal entity or a Finnish resident. Applied even if a brokering transaction takes place outside Finnish Territory
End use warranties?	End-user certificate required in all cases, but for exports of components and subsystems an Own Production Declaration will be sufficient. As a post-licensing method of verification, a Customs clearance certificate has to be provided as well as quarterly reports. If major exports to third countries are concerned, assistance from the local Finnish mission may be asked for verifying information. Original End-User certificate (EUC) - Compulsory requirement, if complete products are exported - Includes a non re-exportation clause
Licence exemptions	None. No distinction, but a certain simplification of procedures in the case of exports to EU member states, EEA countries, Switzerland, USA, Canada, Japan, Australia, New Zealand and the four Visegrad countries.
Licensing for temporary exports	Same procedures apply as for definitive exports. Licence not needed in cases where the material is the property of the Defence Forces or of the Frontier Guard is temporarily removed from Finland (e.g. for repair purposes).
Licence denial or revocation	Licences can be revoked because of: <ul style="list-style-type: none"> (i) Entry into force of legally binding sanctions affecting the recipient country and such products as are covered by the Licence; (ii) Fundamental change in the situation of the recipient country, leading to a possibility of the material exported under the Licence being used in violation of human rights, in offensive armed action or for other comparable unacceptable purposes; (iii) When the exporter has been charged with an export crime or an export violation. considering revocation or withdrawal of a Licence, existing supply commitments will be taken into account, including commitments to supply services and spare parts related to past or present deliveries.
Penalties	Fines or imprisonment for a maximum of 4 years for export crime. Defence material that has been the object of such a crime is forfeited to the State, along with means of transport unless the quantity of material is very minor.
STATISTICS	
Report to Parliament?	Yearly report.
Licences issued per year	Commercial licences around 250 Temporary licences 350-400

G. GREECE

PRINCIPLES AND LAWS	
Fundamental political principles	Constitution
Laws and bylaws	Law 2168/93: regulation of issues regarding weapons, ammunitions, explosive materials, explosive mechanisms and other related matters. Law 3169/2003: bearing guns, use of firearms by police, police training thereon and other regulations. Law 3065/2002. Law 2873/2000: Tax reductions and simplification and other regulations. Decision 125695/E3 5695/2000 on dual use products, Minister of National Economy
EU clauses	Articles 61-78 EU regulation 2913/92, Community Customs Code. Articles 198-217 EU regulation 2454/93, provisions for the implementation of Council Regulation No 2913/92. EU Regulation 1334/2000, Community regime for the control of exports of dual-use items and technology.
OSCE documents	According to EU Regulation 1334/2000
Participation in control regimes	Wassenaar, Missile Technology Control Regime, Nuclear Suppliers Group, Australian Group, Chemical Weapons Convention
Compliance to embargoes	Arms embargo due to OSCE or EU decisions: Armenia Azerbaijan, Bosnia, Burma, China, Congo, Iraq, Libya, Rwanda, Sierra Leone, Somalia, Sudan, Zimbabwe
Dual use regulations	Decision 125695/E3 5695/2000 on dual use products, Minister of National Economy
LISTS	
National lists of forbidden receivers	Yes: See above concerning the embargoes
Lists of receiving States with simplified procedures	As per EU positions
Lists of defence related goods	Law 2168/93 as amended in 2000, 2002 and 2003 (see 4, above)
Lists of dual use items	As in EU Regulation 1334/2000
PLAYERS IN CONTROL OF DEFENCE RELATED GOODS OR DUAL USE ITEMS	
Licensing authority	Directorate for International Economic Flows, Ministry of National Economy
Other authorities requested for advice or entitled to ask information	Ministries of Defence, Foreign Affairs, Public Order, Arms exports to non-EU and non NATO member states require Cabinet approval.
Office in charge of enforcement and controlling	Customs
Office issuing certification to undertakings	Directorate for International Economic Flows, Ministry of National Economy
How long does the procedure take? Lead time aimed at?	Between one week and one month
TYPES OF LICENCES, PROCEDURE AND PENALTIES	
Individual licence	One type of licence, which refers to individual applicants,

(Military equipment)	<p>the procedure of its acquisition is the same for all applicants and it should be followed every time the application is done. Export licence, issued at time when cargo is ready for departure, licence duration is three months, but can be extended to 6 months.</p> <p>Same for transfer: a Transport Licence is issued at time when cargo is ready for departure, 3 months duration, can be extended to 6 months.</p> <p>Each weapons export transaction requires a new licence.</p>
Types of licence for the export of Dual Use items	Same. See above.
Peculiarities for transit, brokering, intangible transfers or exports?	Transit by land is supervised by Ministry of Public Order, by sea by Ministry of Shipping (which will merge in Oct. 2009 with the Ministry of National Economy)
End use warranties?	As per EU regulations and other international commitments. Re-export permission is required. Competent authority, which can be either in the Ministry of Defence or on the Ministry of Foreign Affairs, can investigate whichever source it wants.
Licence exemptions	Simplified procedures for arms sales among arms companies within the EU and two-year licences. No licence is needed for the export of one shotgun primarily for sports events and hunters.
Licence denial or revocation, appeal procedure	None mentioned in relevant legislation. Presumably through the judicial system.
Penalties	At least one year imprisonment (of the kind that can be replaced by a large fine) plus fine of up to 30,000 Euro
STATISTICS	
Report to Parliament?	None available
Other reports?	None available
Licences issued per year	Information unavailable
Licences denied	There has never been any case of a rejection so far.
Reasons of denial	The Directory of Imports-Exports Regimes and Trade Defence Instruments of the Ministry of Economy and Finance has the authority to keep the reasons for the rejection secret.
Appeal?	In case of rejected applications, there is no possibility of appeal

2. Regulation 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items

- **Regulation is applicable**

The Regulation 428/2009 has entered in force on 27.08.2009, is binding in its entirety and directly applicable in all Member States (Art.28).

- **Dual-Use Items**

“Dual-use items” means items, including software and technology, which can be used for both civil and military purposes, and includes all goods which can be used for both non-explosive uses and assisting in any way in the manufacture of nuclear weapons or other nuclear explosive devices. (Art.2.1)

List in **Annex I** implements internationally agreed dual-use controls including the **Wassenaar Arrangement**, the **Missile Technology Control Regime (MTCR)**, the **Nuclear Suppliers’ Group (NSG)**, the **Australia Group** and the **Chemical Weapons Convention (CWC)**. **Definition of Art.2.1 may be wider than list in Annex I.** (see Art.3.2)

- **Export, Transfer, Brokering and Transit**

The Regulation sets up a Community regime for the control of exports, transfer, brokering and transit of dual-use items. (Art.1)

‘**Export**’ means export procedure or re-export (not transit) according to Community Customs Code or transmission of software or technology by electronic media outside the European Community (Art.2.2).

‘**Transfer**’ is not specifically defined in the Regulation.

‘**Brokering services**’ means negotiation for the purchase, sale or supply of dual-use items from a third country to any other third country, or the selling or buying of dual-use items that are located in third countries for their transfer to another third country. Transportation, financial services, insurance, or general advertising are not included here (Art.2.5).

‘**Transit**’ means a transport of non-Community dual-use items entering and passing through the customs territory of the Community with a destination outside the Community (Art.2.7).

The Regulation does not apply to the supply of services or the transmission of technology if a cross-border movement of persons is involved (Art.7).

- **Export Authorisation**

Export of dual-use items listed in **Annex I** requires an authorisation. (Art.3.1)

Export to **all or certain destinations** of certain dual-use **items not listed** in Annex I **may require an authorisation:** (Art.3.2)

- ✓ if the **exporter has been informed** that the items in question are sensitive (Art.4.1);
- ✓ if the country of **destination** is subject to an **arms embargo** decided by the European Council or OSCE or Security Council of the United Nations, and the items may be intended for a military end-use (Art.4.2);

- ✓ if the **items may be intended** for use as parts or components of **military items** listed in the national military list that have been exported from without authorisation or in violation of an authorisation prescribed by national legislation (Art.4.3).

If an **exporter is aware** that dual-use items, not listed in Annex I, are intended for any of the uses above, he **must notify** the authorities, which will decide whether or not it is expedient to make the export concerned subject to authorisation (Art.4.4).

A **Member State may adopt** or maintain **national legislation** imposing an authorisation requirement on the export of dual-use **items not listed** in Annex I if the exporter has grounds for suspecting that those items may be sensitive (Art.4.5).

A Member State which requires an authorisation for the export of a dual-use **item not listed** in Annex I **shall inform** the other Member States and the Commission. The other Member States shall give all due consideration to this information and shall inform their customs administration and other relevant national authorities (Art.4.6).

- **Brokering Authorisation**

An **authorisation** is required for **brokering** services of dual-use items listed in **Annex I if the broker has been informed** that the items may be intended for any of the uses referred to in Article 4(1). If a **broker is aware** that the dual-use items listed in **Annex I** are intended for any of the uses referred to in Article 4(1), **he must notify** the competent authorities who will decide whether or not it is expedient to make such brokering services subject to authorisation. (Art.5.1)

- **Transit Authorisation**

The **transit of non-Community** dual-use items listed in **Annex I may be prohibited** if the items are or may be intended, in their entirety or in part, for uses referred to in Article 4(1). (Art.6.1)

A Member State **may extend** the application of paragraph 1 to **non-listed** dual-use items for uses referred to in Article 4(1) and to dual-use items for military end use and destinations referred to in Article 4(2). (Art.6.3)

- **Public Security or Human Rights**

A Member State **may prohibit or require an authorisation** for the export of dual-use **items not listed** in Annex I for reasons of **public security or human rights** considerations. (Art.8.1)

Such measures **must be notified** to the Commission, which **publishes** them.

- **Types of Authorisation**

Community General Export Authorisation

A Community General Export Authorisation for certain exports as set out in Annex II is established by this Regulation. (Art.9.1)

This **Community General Export Authorisation N°EU001** covers all Dual-Use Items listed in Annex I except those listed in Annex II Part 2 (this Part 2 mentions a dozen of items from Annex I plus all items of Annex IV) for all countries listed in Annex II Part 3 (Australia, Canada, Japan, New Zealand, Norway, Switzerland, United States of America).

For all other exports, the authorisation shall be granted by the competent authorities of the **Member State** where the exporter is established. This authorisation may be an individual, global or general authorisation. (Art.9.2)

All the **authorisations** shall be **valid throughout the Community**. (Art.9.2)

General Export Authorisation

National general export authorisations **exclude** from their scope items listed in **Annex II Part 2**.

All exporters, established or resident in the Member State issuing these authorizations may use these if they meet the requirements.

They shall not be used if the exporter has been informed... or is aware that the items may be intended for a sensitive use.

Member States **notify** the Commission immediately of any **national general export authorisations issued or modified**. The Commission **publishes** these notifications. (Art.9.4)

Global Export Authorisation

Member States maintain or introduce in their respective national legislation the possibility of granting a global export authorisation. (Art.9.5)

Individual Export Authorisation

Not further specified by the Regulation. Export authorisation that is neither general nor global.

National Authorities

Member States supply the Commission with a list of the authorities empowered to grant export authorisations for dual-use items or prohibit the transit of non-Community dual-use items.

The Commission publishes the list of these authorities. (Art.9.6)

Brokering Authorisation

Authorisations for brokering services are granted by the authorities of the Member State where the broker is resident or established. These authorisations shall be granted for a **set quantity of specific items** moving between two or more third countries. The location of the items in the originating third country, the end-user and its exact location must be clearly identified. The authorisations shall be valid throughout the Community. (Art.10)

Consultation of other Member States

If the dual-use items, which an individual export authorisation is applied for, to a destination not listed in Annex II or to any destination in case of items listed in Annex IV, are or will be located in other Member States, the authorities shall immediately consult the other Member States and provide the relevant information. The Member States consulted shall make any objections known within 10 working days. (Art.11.1)

If an export might prejudice its essential security interests, a Member State may request another Member State not to grant an export authorisation. They shall engage in consultations, to be terminated within 10 working days.

- **Authorisation Granting Criteria**

In deciding whether or not to grant an individual or global export authorisation or to grant an authorisation for brokering services, all relevant considerations shall be taken into account, including non-proliferation regimes and export control arrangements, sanctions imposed by the European Council or by OSCE or by Security Council of the United Nations, considerations of national foreign

and security policy (including Council Common Position 2008/944/CFSP of 8 December 2008), considerations about intended end use and the risk of diversion. (Art.12.1)

When assessing an application for a global export authorisation Member States shall take into consideration the **application by the exporter of adequate means and procedures to ensure compliance** with the provisions and objectives of this Regulation and with the terms and conditions of the authorisation. (Art.12.2)

Denial and Revocation

A Member State may **refuse** to grant an export (or brokering) **authorisation** and may annul, suspend, modify or revoke an already granted authorisation.

Where it refuses, annuls, suspends or revokes an authorisation, it shall **notify** the other Member States and the Commission. (Art.13.1)

It shall **review denials** of authorisations **within three years** and revoke them, amend them or renew them, and notify the results of the review to the other Member States and the Commission. Unrevoked denials remain valid. (Art.13.2)

It shall **notify** the Member States and the Commission of its decisions to **prohibit a transit** of dual-use items listed in Annex I (cf. Art.6) without delay. (Art.13.3)

- **Consider Others' Denials before Granting an Authorisation**

Before a Member State grants an **authorisation** for export or brokering services or transit, it shall **examine all valid denials** to ascertain whether an authorisation or a transit has been denied by another Member State for an essentially identical transaction to the same end user.

It shall first **consult** the Member State that issued such denial. If following such consultation it decides to grant an authorisation, it shall **notify** the other Member States and the Commission. (Art.13.5)

All notifications required under this Article will be made via secure electronic means including via a secure system that may be set up in accordance with Article 19(4). (Art.13.6)

Form of Authorisation

All individual and global export **authorisations** and authorisations for brokering services shall be **issued in writing or by electronic means** on forms containing at least all the elements and in the order set out in the models which appear in Annexes IIIa and IIIb. (Art.14)

- **Intra-Community Transfers**

An authorisation is needed for items in Annex IV. A national general authorisation is possible for items in Annex IV Part 1, not possible for Annex IV Part 2 (CWC: 2 items; NSG: almost all Category 0 and 14 other items). (Art.22.1)

A Member State may require an authorisation for other dual-use items than those in Annex IV, but must then advise other Member States and the Commission. (Art.22.2, 22.5)

- **Dual-Use Coordination Group**

A Dual-Use Coordination Group chaired by the Commission is set up.