

Title: EU Directive 2009/43/EC (simplifying terms and conditions of transfers of defence-related products within the Community). IA No: BIS 0285 Lead department or agency: Department for Business Innovation and Skills Other departments or agencies: FCO, MOD and HMRC	Impact Assessment (IA)		
	Date: 05/07/2012		
	Stage: Final		
	Source of intervention: EU		
	Type of measure: Secondary legislation		
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Summary: Intervention and Options **RPC Opinion: GREEN**

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£0	£0	£0	No
			NA

What is the problem under consideration? Why is government intervention necessary?
 EU Directive 2009/43/EC aims to improve the efficiency and competitiveness of the European Defence Industry that the UK needs to transpose. UK therefore needs to amend existing secondary legislation by deadline of 30 June 2012 for those parts of the Directive that are either new, not consistent with current UK export licensing legislation or that are left to national discretion. In addition, the Government want to facilitate the export of historic military vehicles through the introduction of an exception to the relevant national control (this is not connected to Directive 2009/43/EC).

What are the policy objectives and the intended effects?
 The overall policy objective is to implement the provisions of Directive 2009/43/EC in the UK to ensure a streamlined and effective licensing regime across the EU for defence-related products. These measures are largely based on existing UK arrangements but benefits should accrue for UK defence companies through facilitated receipt of defence products as these measures are introduced in other Member States. In addition, the introduction of an exception to the national control on historic military vehicles (which is not connected to the Directive 2009/43/EC) to remove the licensing requirement for these specific vehicles subject to certain conditions being met.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)


The Government has only considered implementing the Directive by the minimal amount necessary.

 Option 1 - Transpose EU Directive 2009/43/EC through secondary legislation. This is the preferred option but making use where possible of parliamentary guidance and changes to administrative procedures to limit the provisions requiring regulation to be kept to the absolute minimum.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 06/2016

Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A		Non-traded: N/A

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister:  Date: 19 July 2012

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: £0.165m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	0	0
High	Optional	0	0
Best Estimate		0	0

Description and scale of key monetised costs by 'main affected groups'

There are no costs associated with the measures required to transpose EU Directive 2009/43/EC. There will be no changes made to the UK licensing system that will incur costs to industry.

Other key non-monetised costs by 'main affected groups'

None.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		
High	Optional		
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'

The introduction of an exemption to the licensing requirement on controls on historic military vehicles (not related to Directive 2009/43/EC) will benefit a small Group of enthusiasts (companies and private individuals) who exhibit such vehicles. See evidence base for more detail.

Other key non-monetised benefits by 'main affected groups'

The use of simplified licensing arrangements by other MS required under the Directive is expected to benefit UK defence companies because it should make it easier to receive goods from other MS, thus reducing delays and costs. However, the extent to which this will actually happen is not quantifiable so it is not possible to estimate the potential benefit or impact on future trends of intra-EU sourcing of defence-related equipment.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5%
See evidence base.		

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A	No	NA

Evidence Base (for summary sheets)

Problem under consideration;

1. The EU Commission published in December 2007 a 3 part Defence Package intended to improve the efficiency and competitiveness of the European defence industry. This package comprised a communication on the European Defence Industry (non-legislative measure) and two legislative proposals on Public Procurement Rules for the Defence and Security Sectors and a proposal for a Directive of the European Parliament and of the Council on simplifying terms and conditions of transfers of defence related-products within the Community. The focus of this Impact Assessment is on the third of these.
2. The Commission argued that the patchwork of licensing schemes in operation across the 27 Member States imposed a significant burden on companies in the defence sector. They argued this major impediment was out of step with the actual control needs as export licence applications for Intra-Community transfers were hardly ever refused. The impact on UK industry was they had to build in long lead in times for the receipt of foreign-defence products as a result of burdensome individual licensing arrangements operated widely across Member States.
3. In contrast, the UK has a well recognised and efficient system of export controls in place that includes the provision of long established simplified licensing options. The requirements set out in the Directive are modelled on the UK licensing system which means there are few practical implications for the UK (as opposed to other Member States) as the Directive allows the UK to operate a system very close to its current export licensing arrangements. Most importantly, the UK system of Open General Export Licences was preserved (a system of General Transfer licences based on this model was included among the simplified licensing measures that were agreed) with safeguard measures agreed that principally surround the introduction of a system of certified companies based on UK arrangements enshrined in our Code of Practice on Compliance that represent a light-touch to the regulation of those companies wishing to become certified.

Rationale for intervention;

4. The UK needs to amend existing secondary legislation on export controls to reflect those parts of EU Directive 2009/43/EC that are either new, or which are not consistent with current UK export licensing legislation, or that the Directive leaves to national discretion. This legislation needs to be applied from 30 June 2012. This is necessary on the grounds of the UK's wider policy commitment to Europe. As this deadline has now passed, the UK needs to act quickly to ensure implementing legislation is in place before the expiry of the 14 August deadline set in the Reasoned Opinion.

Policy objective;

5. The overall policy objective is to implement the Directive in the UK to ensure a streamlined and effective licensing regime across the EU.
6. The UK failed to transpose the EU Directive into UK law by the transposition deadline of 30 June 2011 or have these measures in place by the coming into force date of 30 June 2012. The UK will need to have implementing legislation agreed and in place by the 14 August deadline set in the Reasoned Opinion. In drafting this amendment to UK secondary legislation, careful consideration has been taken to regulate only where necessary and to ensure that additional burdens on business have been kept to the absolute minimum.

Options considered

7. The Government has only considered implementing the Directive by the minimal amount necessary. Transposing the Directive through secondary legislation was the preferred option but making use where possible of parliamentary guidance and changes to administrative procedures wherever possible to limit the provisions requiring regulation to be kept to the absolute minimum.

Costs and benefits of transposing the Directive through secondary legislation (including administrative burden);

8. There are two key areas of change:
- the introduction of simplified licensing procedures; and
 - a system of certified “trusted” companies.

Costs

9. The UK currently already has in place many of the requirements of the new directive. The UK has been in the lead in making available to UK exporters simplified licensing options over a number of years. These licensing arrangements are tried and tested and are underpinned by a system of compliance audits that have also been used as a model for the certification arrangements in the Directive. The impact of the two new requirements is therefore negligible.

10. A new certification scheme is required under the Directive. Paragraph 9 of the Schedule to the Order introduces provisions relating to the certification of recipients and sets out the basis on which applications for certification are to be determined. This will enable certified companies to receive defence products under one of the General Transfer Licences required to be introduced by Member States. While this certification scheme represents an entirely new concept for all Member States (including the UK), during the negotiation of the Directive the Commission and other Member States accepted the UK proposal to base this scheme on existing UK measures relating to our compliance regime. The UK measures for effective Internal Compliance Programmes has therefore been essentially copied into Article 9 of the Directive that effectively means no additional measures for UK companies wishing to apply for certification (that is also entirely voluntary and limited to companies with “proven experience in defence activities” and those with “relevant industrial activity in defence-related products.....and in particular capacity for system/sub-system integration”).

11. The use of the certification scheme is limited to the large defence system integrators found in Member States that import large quantities of components for use in building weapon platforms (tanks, aircraft etc). It is anticipated that this “trusted” sub-set of companies in the defence sector will want to consider carefully pursuing the advantages offered to them through becoming certified. This essentially will mean they can receive components more easily than under current arrangements. The components imported will not be subject to re-export restrictions that Member States currently place on their final use because of their certified status. For those who do apply to be certified, it is not anticipated that companies who already operate effective Internal Compliance Programmes would have any difficulty passing the certification test. These certification assessments will be carried out by the Compliance Unit within the Export Control Organisation using their existing resources as part of their routine auditing of company records. On that basis, there is not anticipated to be any new costs to companies associated with becoming certified beyond that already incurred in receiving compliance officers on their audits and the maintenance of effective procedures.

12. There are relatively few additional requirements on businesses resulting from these changes. These include:

- some new record keeping requirements;
- some new and amended criminal offences; and
- an extension of control on the provision of technical assistance.

13. Record keeping requirements are extended to persons acting under the authority of individual licences relating to the items listed in the Annex to the Directive (Paragraph 10 of the Schedule to the Order). Having consulted with industry representatives about this extension of record keeping requirements to persons acting under the authority of individual licences in relation to items listed in the Annex to the Directive, it has been concluded that there would be little or no new cost to companies imposed through this new requirement. This is based on the knowledge that companies already maintain their own records in support of export transactions carried out using individual export licensing for their own business records – despite our current regulation only requiring record keeping in relation to essentially Open General Export Licences – and that making this a legal requirement for the Directive licences would not therefore add any costs to existing business practice.

14. In respect of the extension of controls on the provision of technical assistance, the Government will not implement this measure through this particular piece of legislation. In our discussions with industry to date, it has not been possible for either Government or industry to quantify the impact that this will have, although we are agreed that it will be very small. The Government intends to renew discussions with industry on this point once the most of the Directive has been implemented and will submit a further Impact Assessment specifically covering this proposal when we are ready to do so. This leaves us in the meantime with a risk of infraction for an imperfect implementation of the Directive, but we judge that this risk is theoretical (and therefore very low probability), as opposed to the high probability of infraction proceedings if overall implementation of the Directive is delayed any longer.

15. There are a number of other changes which are largely of a technical legal nature and ensure consistency between the current national legislation and the Directive. These have no regulatory impact or costs for businesses. Details of these detailed technical changes are attached.

16. This list of technical changes also contains details of an additional licence condition that will be placed on licences that an exporter will need to comply with (see point 8.1 in the list). Industry representatives have informed us that the requirement of this condition is already standard practice and does not represent a new burden on them. This is therefore not considered to be a new cost. Furthermore, point 10 in the list, places a requirement on an exporter to answer one additional question on our export licence application form when applying for an export licence. This is judged to be a negligible burden as this simply requires a "yes", "no" or "not applicable" answer.

Benefits

17. There are two main benefits arising from the legislation:

- The exception in the current controls relating to goods in transit is extended to cover those goods in transit via a vehicle (Paragraph 5 of the Schedule to the Order).
- Paragraph 4 of the Schedule to the Order introduces an exception to the current control on historic military vehicles that allows the temporary export of these vehicles without the need for an export licence providing certain conditions can be satisfied. This change is not connected to the transposition of the EU Directive 2009/43/EC

18. Our assessment is that the benefits to arise from the extension to the current exception in UK controls relating to goods in transit to cover those goods in transit via a vehicle across the EU are not possible to measure as HMRC do not hold data on the current levels of such vehicle movements.

19. The introduction of an exception to the control for historic military vehicles (subject to certain conditions) will bring some minor benefits to the relatively small group of companies and private individuals who export such historic vehicles for commemorative events by removing the need to pay costs associated with meeting export control requirements. Although these vehicles are currently controlled and licensed through the use of an Open General Export Licence (simplified licence – no application required) where the costs and burdens for the exporter are already considered to be low, these costs will now be removed entirely. In consultation with industry, we estimate the cost of using similar Open General Export Licences at around £22 per export transaction. We also estimate that there are around 600 users registered to use the current licence. To estimate the benefit to industry from this change, we would require valid and robust evidence on both the number of events and the participation by companies and private individuals at these events that will vary from year to year as these factors will be the key driver for the number of export licences required to support these events. However, this information is only available at disproportionate cost and would involve contact with each registered exporter about known events and their planned attendance (even then an event might be subsequently cancelled or plans by individuals to exhibit altered). On the basis of single use by each exporter, we would estimate an overall benefit of £13,200K (i.e. £22 x £600 x 1) to this discreet export Community. Double use of the licence would bring a benefit of £26,400K. However, these estimates should be considered as illustrative only, as robust evidence on the number of events per year and attendance at each is not available at this time, and a more accurate assessment cannot be produced.

20. There are a number of non-quantifiable benefits that would be expected from the legislation:

- a Member States are required to remove import and transit controls (unless these can be justified under the terms of the Directive) – this will facilitate transfers to the UK from Member States. This is potentially a significant benefit to UK companies in the defence sector who can expect to receive their goods more quickly from companies in other Member States. Lower costs might be anticipated as well as the cost of licensing requirements will have been removed reducing the costs associated with shipping the goods.
- b The use of simplified licensing procedures (General and Global Transfer Licences) by Member States – movement away from individual licensing systems – should enable UK companies in the defence sector to receive defence products covered by the Directive more quickly. This should enhance their manufacturing process (reduce long lead in times) and boost their competitiveness while providing improved confidence in relation to security of supply. This is another potentially significant benefit.
- c The four General Transfer Licences that are required under the Directive must include all 27 Member States as permitted destinations. This will mean a minor licence relaxation for certain export scenarios from the UK where all countries are currently not covered. These arrangements will need to be extended to the European Economic Area countries (Iceland, Norway and Lichtenstein) if they choose to implement the Directive (they were not in a position to do so at entry into force of 30 June 2012).
- d The Directive requires Member States to reduce their use of re-export conditions that are commonly used in Member States (not however in the UK). The removal of such re-export constraints should enable UK companies more freedom in their export decisions and remove burdens relating to compliance with such obligations. This is another potentially significant benefit.

21. It is not possible to make to evaluate or quantify these wider benefits at this stage. For (a), (b) and (d), the method of implementation across all MS remains unclear. There is little definite information available to the UK about the extent of this implementation among MS. There is the potential, however, for significant benefits to UK industry arising from each of these measures but these will be dependent of the extent to which each MS embraces the spirit of the Directive to move towards freer movement of defence-products within Europe. The removal of transit and import controls (under (a)) has been highlighted by industry as significant step if implemented widely. The extent to which individual MS invoke their right to maintain controls for public security or public policy reasons will be central to the benefits that accrue. Similarly, on (b) the value of the General Transfer Licences that must be put in place will be entirely dependent on the scope of goods covered by the licences and the use of conditions on each. If, MS simply decide to place defence- products of the lowest order of sensitivity on these licences then the value will be far less than wider coverage including more sensitive items. However, this still represents a large step forward for UK industry who have traditionally have to build in long lead in times to receive goods under individual licensing arrangements. With regard to (d), the Directive requires re-export conditions to be reduced and placed only on those defence goods of the greatest sensitivity. It remains to be seen if MS reliance on re-export conditions will be reduced in view of the safeguards built into the Directive designed to facilitate this process. On (c), it is not anticipated that the extension of General Transfer coverage across all MS will provide any significant benefits to UK industry as those countries to be included do not have significant defence industries. The extension to the EEA countries will be dependent on the decisions of those countries on whether they wish to implement the Directive (they were not in a position to do so at entry into force of 30 June 2012).

Rationale and evidence that justify the level of analysis used in the IA (proportionality approach)

22. The level of analysis associated with the calculation of the benefits arising from this Regulation has not been extensive. As identified in (iv) above, the relaxation of control for historic vehicles will benefit a discreet group of private individuals and companies (around 600 in total). There is little sensitivity associated with this policy relaxation based on the nature of the goods and the destinations involved. There seems little justification to investigate further the anticipated benefits arising from the relaxation of the current controls beyond that identified. The cost and resource associated with researching the number of commemorative events that would have prompted a licence requirement will inevitably vary from year to year and not always be known far in advance. The participation of companies and individuals in such events will not always been known which makes the assessment of

benefits difficult. Readily available data was therefore used to make the necessary calculations. Benefits will run from year to year but as stated will not be consistent or predictable.

Risks and assumptions

23. The proposed amendment to secondary legislation contains little or very low levels of risk to the UK. The two elements that relate to a relaxation of the current controls are the goods in transit exemption that extends to vehicles (Directive requirement) and the relaxation of control for historic military vehicles (subject to conditions) and not relating to the transposition of the Directive. In relation to vehicle transit across Member States, HMRC (the enforcement authority for export controls) have confirmed that they are supportive of this extension to the current exemption which currently relates only to air and sea transits and transshipments of controlled goods. The relaxation of control on historic military vehicles is quite a discreet and relatively small area of export controls that relates to exports by companies and private individuals of old military equipment of very low risk where exports generally take place to allow participation in historic shows of such military equipment (e.g. the celebrations to mark the anniversary of D-Day). The conditions within the amendment mitigate the risk of these exports to very low levels.

Wider impacts

24. This legislation transposes EU Directive 2009/43/EC through amendments to existing secondary legislation on UK export controls. This is achieved through both amendments to current provisions and via the introduction of new provisions. This current legislation does not have any impact on those elements listed in the Specific Impact Tests and this amendment does not alter this position. This includes the Statutory Equality Duties Impact Test Guidance (including the requirements under the Equality Act 2010) where no impacts have been identified. With regard to our assessment that any enforcement costs will be "minimal", these new criminal offences have been cleared by the Ministry of Justice (via their Justice Impact test arrangements). We do not expect there to be any significant impact. Two of the three measures simply relate to the extension of existing offences while the new offence created is not judged to impose a significant new burden on exporters (record keeping for exports made under the authority of individual licences is area that is already common practice among companies for their own commercial requirements). Furthermore, all of these measures are most unlikely to lead to a significant burden on the courts service. Many offences will not reach that stage with potential breaches of the controls being resolved through corrective administrative actions taken by the exporter as a result of instruction by the Export Control Organisation (UK strategic licensing authority) or through voluntary disclosure to HMRC (the UK enforcement authority).

Summary and preferred option with description of implementation plan

25. EU Directive 2009/43/EC will introduce a streamlined licensing system across Member States on transfers of defence products from 30 June 2012. These licensing arrangements with supporting confidence building measures are largely based on UK arrangements and will incur no costs for UK business. As the UK has failed to put in place implementing legislation by this deadline, the UK will need to have this legislation in place by the 14 August deadline set by the Reasoned Opinion.

26. There is just one policy option considered. The decision to transpose the Directive through secondary legislation, making use of parliamentary guidance (where possible) and through administrative changes was the preferred option.

27. An amendment to the Export Control Order 2008 (secondary legislation) has been prepared and will need to be laid before Parliament once the impact assessment receives approval. An explanatory memorandum has been prepared. The extension of controls on the provision of technical assistance is subject of further detailed discussion with industry representatives on the scope of the new control. A separate impact assessment on technical assistance will be prepared to cover further secondary legislation that will be needed to amend the Export Control Order 2008 on technical assistance. As explained in paragraph 14, this will not be ready on the same timeline as the legislation outlined above as it requires further detailed consideration. As technical assistance is such a discreet part of the controls required under the Directive, this approach is judged to be appropriate based upon the need to

fully implement the wider elements of the overall Directive by the 14 August deadline set by the Reasoned Opinion. Administrative changes to the licensing system including amendments necessary to the scope of general licensing arrangements will be made quickly by the Export Control Organisation once the legislation is in place.

28. There is also a duty to review this legislation. All elements arising from the implementation of the Directive would need to be reviewed but the focus would be on identifying any difficulties that exporters are encountering with the legislation, associated administrative procedures and policy implementation. The Export Control Organisation (ECO) – the UK strategic licensing authority – regularly reviews its current export control legislation and policies through public consultation. The elements arising from this Directive would be included in that process. In the interim period, the ECO holds regular meetings with industry stakeholders. Any issues of concern on this regulation and policy can be raised in that forum. The Policy Unit of the ECO would monitor other relevant correspondence on simplified licensing arrangements linked to this Regulation and take appropriate action where these are raised independently of that process. However, the nature of the Regulation that is heavily based on UK arrangements means that few representations would be anticipated.