



European
Commission



THE DEFENCE
TRANSFERS DIRECTIVE

HANDBOOK FOR SMES

#EUDefenceIndustry



Manuscript completed in October 2021

1° edition

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Luxembourg: Publications Office of the European Union, 2021.

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PDF

ISBN 978-92-76-41988-4

doi:10.2889/59762

HV-08-21-301-EN-N

Print

ISBN 978-92-76-41989-1

DOI:10.2889/729411

HV-08-21-301-EN-C



#EUDefenceIndustry



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FOREWORD



A HANDBOOK, FOR WHOM AND WHY?

The European defence industry plays a considerable role in guaranteeing the security and defence of Europe. With a turnover of €108 billion in 2018, it is also a major provider of growth and jobs.

The approximately 2,500 small and medium-sized enterprises (SMEs) operating in the European defence sector are a critically important part of supply chains. SMEs active in the defence industry are key enablers of innovation and growth, able to conduct essential research, technology and innovation activities. A substantial part of the European Defence Technological and Industrial Base is made of SMEs.

However, the European defence industry is exposed to multiple challenges. One of them is the fragmentation of the European internal market for defence equipment. That fragmentation and divergent national approaches have caused many issues for the European defence industry in general, and for SMEs in particular.

In this context, [Directive 2009/43/EC](#) (the Defence Transfers Directive or the Transfers Directive) aims to simplify the rules for transfers of defence equipment between European countries¹ in order to ensure the proper functioning of the internal market and make procedures less burdensome for the industry, especially for SMEs.

1. In this guide, 'European country' means any country to which the Transfers Directive applies, that is all the Member States of the European Union, as well as Norway and Iceland (see section II.2 on the Transfers Directive's geographical scope).



The aim of this Handbook is to provide SMEs active in the defence sector with a simple presentation of the Transfers Directive and useful advice on how to make the most of it.



WHAT DOES THE HANDBOOK CONTAIN?



CHAPTER 1

briefly presents the objectives and main provisions of the Transfers Directive, and the benefits that it can bring to European SMEs in the defence sector.



CHAPTER 2

focuses on the Transfers Directive's licensing system, and provides detailed explanations about exemptions and the different types of licences (general, global and individual). It also provides a practical example and a systematic procedure to follow for safe and fast transfers of defence equipment.



CHAPTER 3

covers the advantages of the certification system introduced by the Transfers Directive, as well as practical tips on how to get a company certified. In addition, it provides recommendations on how a recipient of defence equipment can set up a successful and reliable internal compliance system.



CHAPTER 4

describes a list of online tools and resources related to transfers of defence-related products.



1. THE TRANSFERS DIRECTIVE, A PRESENTATION



1.1. THE EUROPEAN DEFENCE MARKET

Several aspects make the defence market unique and distinct from other commercial markets. These include a) the fact that end-customers for defence equipment are governments, b) the sensitive nature of the defence-related products, c) the specific national rules for handling classified information, and d) the rules on control of exports of military technology and equipment. That is why cross-border movements of defence equipment are subject to licensing requirements, even between European countries.

There were no common European licensing rules for movements of defence equipment between European countries until 2009. Before the adoption of the Transfers

Directive in 2009, the European defence industry had to deal with separate national regulations, with each European country having its own export control regime primarily designed to control risks related to exports of military equipment to non-EU countries. The process of granting or denying a licence for transfers between European countries and that for exports to other countries were essentially the same, meaning that European companies could not fully enjoy the benefits of the European Union's internal market. The Transfers Directive diminishes the obstacles to movements of defence equipment between European countries and is therefore essential for the creation of a functional European internal market for defence equipment.

1.2. MAIN POINTS OF THE TRANSFERS DIRECTIVE

The Transfers Directive applies to movements (transfers) of defence equipment between two European countries. It does not apply to exports of defence equipment from a European country to a country outside the European Union, Norway and Iceland.



The Transfers Directive simplifies rules and reduces administrative burden, while keeping a certain level of control on cross-border movements of defence-related products within Europe

It aims to facilitate and speed the movement of defence equipment across Europe, to strengthen security of supply and the European industry's competitiveness.



Geographical scope: the Transfers Directive applies to the 27 Member States of the European Union² and two other countries of the European Economic Area, Norway and Iceland³. Those 29 countries are referred to as 'European countries' in this Handbook⁴.

2 Austria, Belgium, Bulgaria, Croatia, Czechia, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden.

3 The European Economic Area (EEA) comprises the 27 Member States of the European Union, as well as Iceland, Norway, and Liechtenstein. It seeks to strengthen trade and economic relations between those. The Transfers Directive does not apply to Liechtenstein.

4 By virtue of the Protocol on Ireland/Northern Ireland concluded by the European Union and the United Kingdom, the Transfers Directive continues to apply also to and in the United Kingdom with respect to Northern Ireland.

The Transfers Directive's main provisions and tools benefit to suppliers and recipients of intra-EU transfers of defence related products:



A simplified **licensing system**, which includes licence exemptions, general and global transfer licences



A shift from **ex-ante** to **ex-post** controls by national authorities, for general transfer licences



A system of **certification for defence companies**, to ensure trust among national governments and compliance with export control rules



2. THE LICENSING SYSTEM

2.1. OVERVIEW OF EXEMPTIONS AND LICENCES

Under the Transfers Directive, an enterprise wanting to transfer defence equipment from one European country to another needs a prior authorisation -a licence- from the authorities of the European country from which the product is to be transferred. However, the Transfers Directive allows European countries to exempt certain types of transfers from the licensing obligation under specific conditions. Moreover, in addition to the traditional individual transfer licences, it introduces general transfer licences and global transfer licences.

THE LICENSING SYSTEM UNDER THE TRANSFERS DIRECTIVE



I. LICENCE EXEMPTIONS



II. GENERAL TRANSFER LICENCES



III. GLOBAL TRANSFER LICENCES



IV. INDIVIDUAL TRANSFER LICENCES

I. LICENCE EXEMPTIONS

National governments can exempt the following types of transfers from prior authorisation:

- if the supplier or the recipient is a governmental body or part of the armed forces,
- if the supplies are made by the European Union, the North Atlantic Treaty Organisation, the International Atomic Energy Agency or other intergovernmental organisations for the performance of their tasks,
- if the transfer is necessary for the implementation of a cooperative armament programme between European countries,
- if the transfer is linked to humanitarian aid in the case of disaster, or as a donation in an emergency,
- if the transfer is necessary for or after repair, maintenance, exhibition or demonstration.



Check relevant national government publications or ask the respective national authorities about existing exemptions.

II. GENERAL TRANSFER LICENCES

Where a European country considers that, under certain conditions, transfers of certain types of defence equipment to other European countries do not entail major risks, it can adopt and publish a general transfer licence to authorise such transfers.

A general transfer licence covers certain types of defence equipment. It allows all suppliers of such equipment that are established in the country to perform directly multiple transfers of such equipment to other European countries under certain conditions, without having to apply for a specific authorisation. The conditions laid down in a general transfer licence may relate not only to the types of products covered but also to the countries to which those products may be transferred under the licence, the purpose of the transfers (e.g. for maintenance, demonstration), or the recipients of the products (e.g. armed forces or contracting authorities).

For instance, the authorities of a given European country may publish a general licence allowing all entities established in that country to transfer various types of products (e.g. certain types of electronic equipment, certain sub-systems of military aircrafts or vessels) to any other European country for maintenance purposes, provided the products are sent back within six months and the competent authorities are informed of the transfer.

The Transfers Directive requires all European countries to publish general transfer licences covering at least the following four types of situations:

- the recipient is part of the armed forces of a European country or a contracting authority purchasing for the exclusive use by such armed forces,
- the recipient is a certified company (see chapter 3 of this handbook),
- the transfer is made for the purposes of demonstration, evaluation or exhibition,
- the transfer is made for the purposes of maintenance and repair, if the recipient is the originating supplier of the defence-related products.

National governments have the liberty to decide what types of products they include into each of those general licences and more generally what conditions they attach to them.



European countries are entitled to publish additional general transfer licences beyond the four types required by the Transfers Directive.

Prior to a transfer, we recommend that companies check:

- the websites of national competent authorities,
- CERTIDER, the register of the certified companies, published on the [European Commission website](#), which also contains information on general transfer licences published by European countries,
- Chapter 4 of this handbook.



A GENERAL TRANSFER LICENCE HAS THE FOLLOWING TERMS AND CONDITIONS.



Notification prior to the first use of the licence



Types of items allowed



Information on re-export conditions for recipients



Reporting requirements



National governments can add further requirements

GENERAL TRANSFER LICENCES PROVIDE FOR SIGNIFICANT SIMPLIFICATIONS:

- if a planned transfer meets all the conditions of a general transfer licence, the company can perform the transfer **without applying for a specific authorisation**,
- general transfer licences are available to all companies of a given European country provided that they meet the relevant conditions of the general transfer licence,
- after notification of their intention to use a general transfer licence for the first time, companies may carry out as many transfers as they need under the conditions laid down in that licence.

III. GLOBAL TRANSFER LICENCES

A global transfer licence allows a given supplier to perform multiple transfers to various European countries, for specific types of items and recipients, and for 3 years. Each global transfer licence defines a scope for:

- the categories of items covered by the licence,
- the authorised recipients or categories of recipients.

The national authorities are responsible for determining the conditions under which transfers may be authorised under a global rather than individual licence (for transfers that are not covered by general transfer licences).

What can SMEs use global transfer licences for?



Global transfer licences are particularly suitable in a contractual framework that entails a regular commercial flow of items between the supplier and the recipient.



A global transfer licence is valid for 3 years and may be renewed by the relevant national authority.

IV. INDIVIDUAL TRANSFER LICENCES

An individual transfer licence allows a single transfer of a specified quantity of specified products to a single European country in one or more shipments. It is used in all cases where licence exemptions, general transfer licences and global transfer licences cannot be used. Individual suppliers must request a licence from their competent authorities for each single transfer, specifying the quantity of products shipped and the number of shipments to the recipient. Individual transfer licences contain specific terms and conditions that the supplier must fulfil. National authorities may decide that transfers need to be subject to an individual (rather than general or global) licence under certain circumstances:



Request for a licence **limited to one transfer**



Necessary to protect **essential security interests or on grounds of public policy**



Necessary to ensure **compliance** with international obligations and commitments



Serious reasons 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



2.2. GENERAL TRANSFER LICENCES – A PRACTICAL EXAMPLE

The following practical example provides SMEs with an easy step-by-step procedure for transferring an item under a general transfer licence.

PRACTICAL EXAMPLE OF A PROCEDURE UNDER THE TRANSFERS DIRECTIVE

ITEM: Specially designed mechanical part of a missile

FROM: Estonia

TO: Ireland (end-use/user).The recipient may be:

- A.** part of the armed forces,
 - B.** a certified company,
 - C.** a non-certified recipient
(not part of the armed forces).
- **STEP 1:** Classify your item
 - **STEP 2:** Look for the right licence
 - **STEP 3:** Notify first
 - **STEP 4:** Transfer



STEP 1: CLASSIFY YOUR ITEM

Ask yourself: Is the item that I want to transfer subject to the Transfers Directive?

Check the **List of defence-related products**, which is the Annex to the Transfers Directive (as incorporated into your national legislation). In case of doubt, you can contact your national competent authority.



IMPORTANT ! That list is updated roughly every year

Be aware of tricky cases: even if the item that you want to transfer is only a small mechanical or electronic component, it could still be 'specially designed' or 'modified for military purposes' and therefore controlled under the Transfers Directive.

- Result: in this example, the item is CONTROLLED under Military List (ML) 4 of the Annex to the Transfers Directive.
- Remember that classification is a crucial step because it allows a check of whether the item to be transferred
 1. is subject to a licence exemption;
 2. benefits from general transfer licences/global transfer licences or requires an individual transfer licence.



STEP 2: LOOK FOR THE RIGHT LICENCE

After having classified the item, ask yourself: Has my country (in this example, Estonia) granted a licence exemption applicable to the items that I want to transfer and to the intended recipients?

If yes, you can proceed to the transfer.

If no, ask yourself:

Has my country (in this example, Estonia) granted general transfer licences applicable to the items that I want to transfer and to the intended recipients?

- A. Armed forces
 - B. A certified company
 - C. For the following purposes:
 - a) exhibition and demonstration
 - b) repair and maintenance
- Check the name and/or number of the relevant general transfer licences published by your country on the competent national authorities' website or on CERTIDER (See Chapter 4 of this handbook).
 - The relevant general transfer licences issued by Estonia (at the point in time when this guide was drawn up) are the following:
 - a) General transfer licence for armed forces: can be used for recipient A (armed forces);
 - b) General transfer licence for certified companies: can be used for recipient B (certified company);
 - c) For recipient C (not certified) an individual (or global) transfer licence is required.



STEP 3: NOTIFY FIRST

If you want to use a general transfer licence for the first time, **you must first notify the national competent authorities of your intention to do so.**



Notification prior to first use is part of the terms & conditions of the general transfer licences. Consult the national competent authority to check the procedure.

After notifying, your company is ready to transfer the items, no need to wait for a specific authorisation.



STEP 4: THE TRANSFER

After having notified the first use of a general transfer licence, you can proceed to the transfer.

Include the shipping documents with the relevant information for the recipient regarding the military list (ML) containing the item (in this case ML 4):

- which transfer licence, general or individual/global was used (name and number) or a copy of the licence,
- which re-export limitations to observe (if applicable).

2.3. GLOBAL TRANSFER LICENCES. THE TRANSFER PROCEDURE

Below is a step-by-step procedure for getting a global transfer licence and using it for the first time.



Each national authority defines the application requirements. Therefore, consult your national competent authorities on the appropriate procedures.



STEP 1: CLASSIFY YOUR ITEM

Ask yourself: is the item that I want to transfer subject to the Transfers Directive? This step is identical to the first step of the example described in Section 2.2.



STEP 2: LOOK FOR THE RIGHT LICENCE

After having classified the item, ask yourself: Has my country granted a licence exemption applicable to the items that I want to transfer and to the intended recipients?

If yes, you can proceed to the transfer.

If no, ask yourself: **Has my country granted a general transfer licence applicable to the items that I want to transfer and the intended recipients?**

- If the answer to is **yes**, consider using a general transfer licence instead of a global transfer licence. This way you do not have to apply for a specific authorisation, but simply notify the relevant authorities of the first use of the general transfer licence.
- If the answer is **no**, proceed with the next step, applying for a licence.



STEP 3: APPLY FOR A LICENCE

You have to apply for a global transfer licence from your national competent authorities.



Contact your national competent authorities to identify the application process in your country. With a global transfer licence, you can transfer items to one or more recipients listed in the licence, which also specifies the items or types of item covered.

Global transfer licences are valid for 3 years and can be renewed.



STEP 4: THE TRANSFER

After having obtained the global transfer licence, you can proceed to the transfer. Include the shipping documents with information for the recipient about:

- the military list (ML) containing the item in the Annex to the Transfers Directive,
- which global transfer licence was used (name and number) or a licence copy,
- which re-export limitations to observe (if applicable).





3. THE CERTIFICATION SYSTEM

3.1. WHAT IS CERTIFICATION AND HOW DOES IT WORK?

The certification system is directly linked to the use of general transfer licences for recipients that are certified companies.

Certification is the formal recognition of the reliability of a company as recipient of transferred defence items, provided by the national authorities of the European country where the company is established. Therefore, a certificate granted by the 'receiving country' is used for receiving defence-related products acquired under a general transfer licence granted by the 'originating country'.



WHY MUST A COMPANY PROVE ITS RELIABILITY THROUGH CERTIFICATION?

In accordance with the Transfers Directive, while an individual transfer licence requires specific documentation about the end-user/end-use, and the commitment of the recipient to observe re-export limitations, the national authorities can also exempt users of general transfer licences from these documentation requirements.


For these reasons, the eligible companies must have proved their **reliability**, and guarantee in particular, that they will observe all re-export limitations established under the relevant general transfer licence.

Certification is aimed at avoiding in particular that general transfer licences are misused for banned or denied re-exports.

A CERTIFICATE IS GRANTED TO A COMPANY BASED ON THE FOLLOWING CRITERIA AND ELEMENTS:

-  Proven experience of the company in defence activities, notably with record of compliance with re-export restrictions
-  Relevant industrial activity in defence equipment, in particular, capacity for system / sub-system integration
-  A senior executive appointed as dedicated officer personally responsible for transfers and exports
-  A written commitment of the company to observe and enforce all conditions related to end-use and exports of any product received
-  A written commitment of the company to provide to the competent authorities, upon request, detailed information concerning the end-users or end-use of all products exported, transferred or received under a transfer licence from another European country
-  A description of the internal compliance programme or transfer and export management system implemented in the company

 Each European country establishes the procedures governing certification.

 With the 2011 Recommendation on certification, the European Commission proposed minimum standards to harmonise the certification system across Europe, based on best practices. It contains a list of best practices on internal compliance programmes that you can consult.

WHY A RECOMMENDATION ON CERTIFICATION?

- it offers additional guidelines for the certification criteria, which helps evaluate whether your company is eligible for certification,
- the Annex includes a list of suggested questions/guidelines for a business to describe (and for the authorities to assess) internal compliance programmes.



3.2. WHY CERTIFY YOUR COMPANY?

Becoming a certified company can bring improvements to your business:



Able to receive fast and secure supplies under general transfer licences



Establish one's reputation as a reliable company as regards the handling of defence equipment



Having in place a system to ensure compliance with export control laws

3.3. THE CERTIFICATION PROCESS IN PRACTICE



STEP 1: IS YOUR COMPANY ELIGIBLE FOR CERTIFICATION?

- check the national authorities websites to assess whether your company meets the criteria and requirements (also in Chapter 4 of this handbook),
- if your company fulfils all the requirements, request the documentation to submit to your competent authorities.



STEP 2: HOW DOES YOUR COMPANY GET CERTIFIED?

- submit documentation,
- once the documents are submitted, the competent authorities will conduct a scrutiny of your company,
- your company may then be certified.



STEP 3: YOUR COMPANY IS CERTIFIED. WHAT HAPPENS NEXT?

Once certified, your company can **receive** defence equipment from other European suppliers under **the general transfer licences issued by other European countries for transfers to certified companies.**

- Your company is listed on CERTIDER,
- check the validity period of a certificate in your home country,
- the validity period of a certificate cannot exceed 5 years and is subject to a compliance review by the competent authorities after 3 years,
- see chapter 4 about CERTIDER and the updates of the certification system.



STEP 4: WHAT ARE THE OBLIGATIONS OF A CERTIFIED COMPANY?

- It must comply with transfers and export control laws and licences,
- in particular, it must comply with the export and re-transfer limitations set out in relevant general transfer licences,
- it must designate an export control officer as contact point at the national level, who is recognised by the national competent authorities.

This table refers to the different roles in the management of the export control organisation of a company.

A RELIABLE AND SUCCESSFUL EXPORT CONTROL ORGANISATION



The export control officer (a senior executive)

- is in charge of organising the company's export control system implementing the guidelines of the export policy,
- delegates the execution of export control to the head of the export control organisation and their team (a general rule).





The head of the export control

- is the contact person for the national competent authorities,
- works with a team of professionals in export control and with a competent engineering staff as a counterpart for control classifications of products,
- with his / her team, has to ensure compliance with export control laws,
- with his / her team, looks for the best possible licence package/solution to ensure a secure and uncomplicated transfer/export.
- can stop any transfer/export when proved unlawful and his / her decision can be overruled only by a senior executive (or the export control officer).



The export control guide

- describes the responsibilities and the export control procedures.





4. USEFUL TOOLS AND RESOURCES

4.1. CERTIDER WEBSITE

An official online database containing:

- the list of certified companies (and related certificates),
- general transfer licences,
- national legislation on certification and transfers of defence-related products,
- the list of products covered by the Transfers Directive,
- links to national competent authorities' websites,
- a search function.

4.2. EU LEGISLATION AND RELEVANT POLICY DOCUMENTS

- the Transfers Directive 2009/43/EC
- the European defence industrial policy
- Defence-related SMEs in the EU

4.3. THE NATIONAL COMPETENT AUTHORITIES' WEBSITES

The Transfers Directive's provisions have been incorporated into each European country's law.

SMEs need to rely on the competent authorities' recommendations and national requirements. The websites of national competent authorities need to include information about:

- the list of general transfer licences issued that they have issued,
- the products covered by each of the general transfer licences and the other conditions attached to them,
- the licence exemptions granted by national legislation,
- the notification procedure prior to the first use of general transfer licences or the steps to follow to apply for a global/individual transfer licence,
- the criteria and procedure for certification at national level.

The websites of the competent authorities for national certification procedures are listed below.

ANNEX

COMPETENT AUTHORITIES' WEBSITES FOR NATIONAL CERTIFICATION GUIDELINES

AUSTRIA

Inneregemeinschaftliche
Verbringung von Militärgütern

BELGIUM

BRUSSELS-CAP REG

39944 Moniteur belge_21062013_
belgisch staatsblad

FLEMISH REG

Certificaat van gecertificeerde
persoon

WALLON REG

Arrêté du Gouvernement wallon du
23 mai 2013

BULGARIA

- Процедура и документи за получаване на сертификат
- Defence-Related Products and Dual-Use Items and Technologies Export Control Act
- What is required for transfer of defence related products to the territory of Bulgaria?

CROATIA

The Trade Control of Military Goods and Non-Military Lethal Goods

CYPRUS

Έκδοση Αδειών Εισαγωγής /
Εξαγωγής

CZECHIA

Act No 38/1994 Sb, Certifikace of 30
June 2012 (In EN Certification)

DENMARK

- Certificering
- Order No. 691 of 27 June 2012 on certification

ESTONIA

Strategic Goods Act

FINLAND

- Exports, transfer, transit and brokerage of defence materiel
- Act on the export of defence materiel 282/2012, chapter 5
- Puolustustarvikkeiden vienti, siirto, kauttakuljetus ja välitys

FRANCE

- Arrêté relatif à la procédure de certification des entreprises souhaitant être destinataires de produits liés à la défense
- Certification

GERMANY

- Allgemeine Informationen
- Zertifizierungsverfahren
- Antrag
- Fragebogen

GREECE

ΝΟΜΟΣ ΥΠ' ΑΡΙΘ. 4028
Τροποποίηση διατάξεων του ν.
2168/1993

HUNGARY

Tanúsítás

ICELAND

- Act on Control of Services and Items that may have Strategic Significance
- Form 1: Application for authorisation for export of controlled items
- Form 2: End-use certificate

IRELAND

Art 15 End Use Certificate EUC
Military Products

ITALY

- Art 10-sexies Law 185/90
Regulation about the armament licencing and controls
- Law 185/90 Implementing rules about regulation on armament licencing and controls

LATVIA

- Par Vispārīgās sūtījuma licences spēkā stāšanās
- Law on Strategic goods - Strātēģiskas nozīmes preču aprites likums

LITHUANIA

- Lietuvos Respublikos strateginių prekių kontrolės įstatymo pakeitimo įstatymas
- Republic of Lithuania Law Amending the Law on the Control of Strategic Goods, 11 October 2011 No XI-1616
- Resolution on the approval of the licencing rules for export, import, transit, brokering and intra-EU transfer of strategic goods

LUXEMBOURG

Article 9 de la loi du 28 juin 2012

NETHERLANDS

Strategische goederen (vergunningen
voor in-, uit- en doorvoer)

NORWAY

Sertifisering

POLAND

The authority responsible for certification in Poland, Internal Security Agency

PORTUGAL

Law no. 37/2011, 22 June,
Articles no. 16 and 17, Section 3 –
Certification of defence enterprises

ROMANIA

Ordin pentru aprobarea Normelor metodologice de aplicare a Ordonanței de urgență a Guvernului nr. 158/1999 privind regimul de control al exporturilor, importurilor și altor operațiuni cu produse militare, capitolul III: Certificarea

SLOVAKIA

Zákon č. 392/2011 Z.z. o obchodovaní s výrobkami obranného priemyslu a o zmene a doplnení niektorých zákonov

SLOVENIA

Decree on authorisations for the production and trade in military weapons and equipment and on prior authorisation for the import, export, transit and transfer of defence equipment

SPAIN

Guía del Operador Material de Defensa: Empresas certificadas

SWEDEN

Certifiering som mottagare av krigsmateriel



Getting in touch with the EU

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https://ec.europa.eu/defence-industry-space/eu-defence-industry/eu-transfers-defence-related-products_en



CERTIDER website

<https://webgate.ec.europa.eu/certider/public/welcome>



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Publications Office
of the European Union

ISBN 978-92-76-41988-4