

To: Our Clients and Friends

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## New French Export/Import System for Military Items

As of June 30, 2012, two key modifications have been made to France's system of export controls on military and defence products, with several other changes taking effect on June 30, 2013.

Briefly, the **objective of the new export control regime**, prompted by a 2009 European directive, is to **better facilitate the transfer of military and defence products within the EU**. As such, the system now makes key distinctions between import and export *within the EU*, now known as "transfers," and import from and export to *non-EU nations*. The new system only covers military and defence materials, arms, ammunition and related items, and does not affect export regulations on dual-use goods. Moreover, the regulations regarding imports from non-EU countries are unchanged.

1. Under the new export control regime, a French company wishing to **receive military or defence products from another EU Member State** must apply for certification from the Ministry of Defence attesting its ability to fulfil certain conditions, notably its compliance with end use and re-export restrictions. The provisions concerning these certifications took effect on June 30, 2012.

The application and required supporting documents must be addressed to the Directorate General of Armament of the French Ministry of Defence (hereinafter "DG of Armament"). The certification, if granted, is valid for a maximum of three years, and renewable via the same process as the initial application. The list of those enterprises certified to receive intra-EU military and defence transfers will be published by the DG of Armament on the website of the European Commission, and therefore publicly available.

2. Unlike the prior export control regime, the new regime institutes a different procedure and require **exporters to obtain a different license for intra-EU exports**, referred to as "transfers," of military and defence items. The licensing system for intra-EU transfers took effect on June 30, 2012.

There are three types of transfer licenses:

**i. General Transfer Licences (GTLs)** (*licence générale de transfert*) are issued by Member States and apply to all defence suppliers within their territory who comply with certain conditions. With a GTL, suppliers can engage in multiple transfers to one or several different types of recipients, depending on the type of GTL.

As of today, there are six types of French GTLs, and suppliers wishing to undertake certain types of transfers,<sup>1</sup> e.g., transfers to the armed forces of another Member State or transfers to a certified enterprise in another Member State, must have at least a GTL. Additionally, certain forms of transfer are limited in duration. For instance, the maximum duration of a transfer for purposes of display and

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<sup>1</sup> The six types of GTLs are as follows : (1) to the armed forces or defence procurement agency of another Member State ; (2) to a certified enterprise in another Member State ; (3) for the purposes of display and demonstration at an international trade show in another Member State ; (4) to the armed forces or defence procurement agency of another Member State for purposes of demonstration or evaluation ; (5) to a certified enterprise in another Member State for purposes of demonstration or evaluation; and (6) to the police, customs agents, border patrol, or coast guard of another Member State for sole use by those forces.

demonstration at an international trade show is twelve months. Lastly, a company must apply for a GTL at least thirty business days prior to the commencement of the proposed transfers.

**ii. Global Licences** authorise transferors established in France to transfer specific defence-related products to one or several identified recipients situated in another Member State, without limits on the quantity or value of goods transferred. Global Licences are issued to transferors at their request, and assuming they meet certain conditions, generally regarding internal export control compliance programs.

**iii. Individual Licences** authorise transferors established in a Member State to complete a single transfer of specific defence-related products to a single recipient in one or more shipments. As of today, the Ministry of Defence has yet to issue guidelines on the issuance of individual licences.

3. As with the new transfer system, there are three different types of export licences that will be required **beginning June 30, 2013**: **General Export Licences (GELs)** (*licence générale d'exportation*); **Global Licences**; and **Individual Licences**. Further guidance for exporters seeking a General Export Licence, Global Licence, or Individual Licence is forthcoming from the relevant French ministries.

4. Moreover, it is important to note that, although the new system makes substantial changes in procedure, **several things remain unchanged**. First, the parameters defining the kinds of products and equipment under export control/transfer remain the same (defined by the Order of 17 June 2009). Similarly, the types of activities under export control are largely unchanged, notably: (a) diffusion of “sensitive” information; (b) acceptance of an order, signature of a contract; and (c) transfer or exportation of defence and military materials. Lastly, although the new system lifts the certificate of customs passage requirement, it maintains the obligation to keep records and reports of exports.

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