

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 (Text with EEA relevance)

CHAPTER I

**SUBJECT MATTER, SCOPE AND DEFINITIONS**

*Article 1*

**Subject matter**

- 1 The aim of this Directive is to simplify the rules and procedures applicable to the intra-Community transfer of defence-related products in order to ensure the proper functioning of the internal market.
- 2 This Directive does not affect the discretion of Member States as regards policy on the export of defence-related products.
- 3 The application of this Directive is subject to Articles 30 and 296 of the Treaty.
- 4 This Directive does not affect the possibility for Member States to pursue and further develop intergovernmental cooperation, whilst complying with the provisions of this Directive.

*Article 2*

**Scope**

This Directive applies to defence-related products as set out in the Annex.

*Article 3*

**Definitions**

For the purposes of this Directive, the following definitions shall apply:

1. 'defence-related product' means any product listed in the Annex;
2. 'transfer' means any transmission or movement of a defence-related product from a supplier to a recipient in another Member State;
3. 'supplier' means the legal or natural person established within the Community who is legally responsible for a transfer;
4. 'recipient' means the legal or natural person established within the Community who is legally responsible for the receipt of a transfer;
5. '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;
6. 'export licence' means an authorisation to supply defence-related products to a legal or natural person in any third country;

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7. ‘passage through’ means the transport of defence-related products through one or more Member States other than the originating and receiving Member States.

## CHAPTER II

### TRANSFER LICENCES

#### Article 4

#### General provisions

1 The transfer of defence-related products between Member States shall be subject to prior authorisation. No further authorisation by other Member States shall be required for passage through Member States or for entrance onto the territory of the Member State where the recipient of defence-related products is located, without prejudice to the application of provisions necessary on grounds of public security or public policy such as, *inter alia*, the safety of transport.

2 Notwithstanding paragraph 1, Member States may exempt transfers of defence-related products from the obligation of prior authorisation set out in that paragraph where:

- a the supplier or the recipient is a governmental body or part of the armed forces;
- b supplies are made by the European Union, NATO, IAEA or other intergovernmental organisations for the performance of their tasks;
- c the transfer is necessary for the implementation of a cooperative armament programme between Member States;
- d the transfer is linked to humanitarian aid in the case of disaster or as a donation in an emergency; or
- e the transfer is necessary for or after repair, maintenance, exhibition or demonstration.

[<sup>F13</sup> The Commission is empowered to adopt delegated acts in accordance with Article 13a, at the request of a Member State or on its own initiative, amending paragraph 2, in order to include cases where:

- a the transfer takes place under conditions which do not affect public policy or public security;
- b the obligation of prior authorisation has become incompatible with international commitments of the Member States subsequent to the adoption of this Directive;
- c it is necessary for intergovernmental cooperation, as referred to in Article 1(4).]

4 Member States shall ensure that suppliers wishing to transfer defence-related products from their territory may use general transfer licences or apply for global or individual transfer licences in accordance with Articles 5, 6 and 7.

5 Member States shall determine the type of transfer licence for defence-related products or categories of defence-related products concerned in accordance with the provisions of this Article and Articles 5, 6 and 7.

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.

7 Member States shall determine the terms and conditions of transfer licences for components on the basis of an assessment of the sensitivity of the transfer according, *inter alia*, to the following criteria:

- a the nature of the components in relation to the products in which they are to be incorporated and any end-use of the finished products which might give rise to concern;
- b the significance of the components in relation to the products in which they are to be incorporated.

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 in which it declares that the components subject to that transfer licence are integrated or are to be integrated into its own products and cannot at a later stage be transferred or exported as such, unless for the purposes of maintenance or repair.

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.

#### Textual Amendments

- F1** Substituted by [Regulation \(EU\) 2019/1243 of the European Parliament and of the Council of 20 June 2019 adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny to Articles 290 and 291 of the Treaty on the Functioning of the European Union \(Text with EEA relevance\)](#).

### Article 5

#### General transfer licences

1 Member States shall publish general transfer licences directly granting authorisation to suppliers established on their territory, which fulfil the terms and conditions attached to the general transfer licence, 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.

2 Without prejudice to Article 4(2), general transfer licences shall be published at least where:

- a the recipient is part of the armed forces of a Member State or a contracting authority in the field of defence, purchasing for the exclusive use by the armed forces of a Member State;
- b the recipient is an undertaking certified in accordance with Article 9;
- c the transfer is made for the purposes of demonstration, evaluation or exhibition;
- d the transfer is made for the purposes of maintenance and repair, if the recipient is the originating supplier of the defence-related products.

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.

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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.

#### *Article 6*

### **Global transfer licences**

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.

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.

A global transfer licence shall be granted for a period of three years, which may be renewed by the Member State.

#### *Article 7*

### **Individual transfer licences**

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:

- (a) the request for a transfer licence is limited to one transfer;
- (b) it is necessary for the protection of the essential security interests of the Member State or on grounds of public policy;
- (c) it is necessary for compliance with international obligations and commitments of Member States; or
- (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.

## CHAPTER III

### **INFORMATION, CERTIFICATION AND EXPORT AFTER TRANSFER**

#### *Article 8*

### **Information to be provided by suppliers**

1 Member States shall ensure that suppliers of defence-related products inform recipients of the terms and conditions of the transfer licence, including limitations, relating to the end-use or export of the defence-related products.

2 Member States shall ensure that suppliers inform, within a reasonable time, the competent authorities of the Member State from whose territory they wish to transfer defence-related products of their intention to use a general transfer licence for the first time. Member

States may determine the additional information that may be required regarding defence-related products transferred under a general transfer licence.

3 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 containing the following information:

- a a description of the defence-related product and its reference under the Annex;
- b the quantity and value of the defence-related product;
- c the dates of transfer;
- d the name and address of the supplier and of the recipient;
- e where known, the end-use and end-user of the defence-related product; and
- f proof that the information on an export limitation attached to a transfer licence has been transmitted to the recipient of the defence-related products.

4 Member States shall ensure that suppliers keep the records referred to in paragraph 3 for a period at least equal to that provided for in relevant national legislation relating to record-keeping requirements for economic operators in force in that Member State, and in any event for not less than three years from the end of the calendar year in which the transfer took place. They shall be provided at the request of the competent authorities of the Member State from whose territory the supplier transferred the defence-related products.

#### *Article 9*

#### **Certification**

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 in accordance with Article 5(2)(b).

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:

- a proven experience in defence activities, taking into account in particular the undertaking's record of compliance with export restrictions, any court decisions on this matter, any authorisation to produce or commercialise defence-related products and the employment of experienced management staff;
- b relevant industrial activity in defence-related products within the Community, in particular capacity for system/sub-system integration;
- c the appointment of a senior executive as the dedicated officer personally responsible for transfers and exports;
- d a written commitment of the undertaking, signed by the senior executive referred to in 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;
- 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

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of all products exported, transferred or received under a transfer licence from another Member State; and

- f a description, countersigned by the senior executive referred to in 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.

3 Certificates shall contain the following information:

- a the competent authority issuing the certificate;
- b the name and address of the recipient;
- c a statement of the conformity of the recipient with the criteria referred to in paragraph 2; and
- d the date of issue and period of validity of the certificate.

The period of validity of the certificate referred to in point (d) shall in any case not exceed five years.

4 Certificates may contain further conditions relating to the following:

- a the provision of information required for the verification of compliance with the criteria referred to in paragraph 2;
- b the suspension or revocation of the certificate.

5 Competent authorities shall monitor the compliance of the recipient with the criteria referred to in paragraph 2 at least every three years, and with any condition attached to the certificates referred to in paragraph 4.

6 Member States shall recognise any certificates issued in accordance with this Directive in another Member State.

7 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.

8 Member States shall publish and regularly update a list of certified recipients and inform the Commission, the European Parliament and the other Member States thereof.

The Commission shall make publicly available on its website a central register of recipients certified by Member States.

#### *Article 10*

#### **Export limitations**

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.

## CHAPTER IV

### CUSTOMS PROCEDURES AND ADMINISTRATIVE COOPERATION

#### *Article 11*

##### **Customs procedures**

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.

2 Without prejudice to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code<sup>(1)</sup>, 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:

- a relevant information was not taken into account when the export licence was granted; or
- b circumstances have materially changed since the grant of the export licence.

3 Member States may provide that customs formalities for the export of defence-related products can be completed only at certain customs offices.

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*.

#### *Article 12*

##### **Exchange of information**

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.

## CHAPTER V

### UPDATING OF THE LIST OF DEFENCE-RELATED PRODUCTS

#### *[<sup>F1</sup>Article 13*

##### **Amendment of the Annex**

The Commission is empowered to adopt delegated acts in accordance with Article 13a amending the list of defence-related products set out in the Annex, so that it strictly corresponds to the Common Military List of the European Union.

Where imperative grounds of urgency so require, the procedure provided for in Article 13b shall apply to delegated acts adopted pursuant to this Article.]

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#### Textual Amendments

- F1** Substituted by [Regulation \(EU\) 2019/1243 of the European Parliament and of the Council of 20 June 2019 adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny to Articles 290 and 291 of the Treaty on the Functioning of the European Union \(Text with EEA relevance\)](#).

### *f<sup>2</sup>* Article 13a

#### Exercise of the delegation

1 The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2 The power to adopt delegated acts referred to in Article 4(3) and Article 13 shall be conferred on the Commission for a period of five years from 26 July 2019. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3 The delegation of power referred to in Article 4(3) and Article 13 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4 Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making<sup>(2)</sup>.

5 As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6 A delegated act adopted pursuant to Article 4(3) and Article 13 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

#### Textual Amendments

- F2** Inserted by [Regulation \(EU\) 2019/1243 of the European Parliament and of the Council of 20 June 2019 adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny to Articles 290 and 291 of the Treaty on the Functioning of the European Union \(Text with EEA relevance\)](#).



### *Article 13b*

#### **Urgency procedure**

1 Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.

2 Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 13a(6). In such a case, the Commission shall repeal the act immediately following the notification of the decision to object by the European Parliament or by the Council.]

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#### **Textual Amendments**

- F2** Inserted by [Regulation \(EU\) 2019/1243 of the European Parliament and of the Council of 20 June 2019 adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny to Articles 290 and 291 of the Treaty on the Functioning of the European Union \(Text with EEA relevance\)](#).

### *<sup>F3</sup>Article 14*

#### **[<sup>F3</sup>Committee procedure]**

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#### **Textual Amendments**

- F3** Deleted by [Regulation \(EU\) 2019/1243 of the European Parliament and of the Council of 20 June 2019 adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny to Articles 290 and 291 of the Treaty on the Functioning of the European Union \(Text with EEA relevance\)](#).

## CHAPTER VI

### FINAL PROVISIONS

#### *Article 15*

#### **Safeguard measures**

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.

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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.

#### *Article 16*

#### **Penalties**

Member States shall lay down rules on penalties applicable to infringements of the provisions adopted in implementation of this Directive, in particular in the event of false or incomplete information required under Article 8(1) or Article 10 being provided as regards compliance with export limitations attached to a transfer licence. The Member States shall take all measures necessary to ensure that those rules are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

#### *Article 17*

#### **Review and reporting**

1 By 30 June 2012, the Commission shall report on the measures taken by the Member States with a view to the transposition of this Directive, and in particular Articles 9 to 12 and Article 15 thereof.

2 By 30 June 2016, the Commission shall review the implementation of this Directive and report thereon to the European Parliament and the Council. It shall evaluate in particular whether, and to what extent, the objectives of this Directive have been achieved, with regard, *inter alia*, to the functioning of the internal market. In its report, the Commission shall review the application of Articles 9 to 12 and Article 15 of this Directive, and shall evaluate the impact of this Directive on the development of a European defence equipment market and a European defence technological and industrial base, having regard, *inter alia*, to the situation of small and medium-sized enterprises. If necessary, the report shall be accompanied by a legislative proposal.

#### *Article 18*

#### **Transposition**

1 Member States shall adopt and publish, no later than 30 June 2011, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those measures.

They shall apply those measures from 30 June 2012.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2 Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 19*

**Entry into force**

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

*Article 20*

**Addressees**

This Directive is addressed to the Member States.

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- (1) OJ L 302, 19.10.1992, p. 1.  
(2) [<sup>F2</sup>OJ L 123, 12.5.2016, p. 1.]

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#### **Textual Amendments**

- F2** Inserted by Regulation (EU) 2019/1243 of the European Parliament and of the Council of 20 June 2019 adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny to Articles 290 and 291 of the Treaty on the Functioning of the European Union (Text with EEA relevance).