

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 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).

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*Status: EU Directives are published on this site to aid cross referencing from UK legislation. Since IP completion day (31 December 2020 11.00 p.m.) no amendments have been applied to this version.*

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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 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.