

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 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.

3 At the request of a Member State or on its own initiative, the Commission may amend 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; or
- c it is necessary for intergovernmental cooperation, as referred to in Article 1(4).

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14(2).

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.

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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.

#### *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.

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.