

COMMISSION RECOMMENDATION (EU) 2018/2051**of 19 December 2018****on aligning the scope of and conditions for general transfer licences for the purposes of repair and maintenance as referred to in point (d) of Article 5(2) of Directive 2009/43/EC of the European Parliament and of the Council***(notified under document C(2018) 8610)***(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

- (1) Pursuant to Article 5 of Directive 2009/43/EC of the European Parliament and of the Council ⁽¹⁾ Member States are obliged to publish at least four general transfer licences.
- (2) General transfer licences are a key element of the simplified licensing system introduced by Directive 2009/43/EC.
- (3) Differences in the scope of general transfer licences published by Member States in terms of defence-related products covered and diverging conditions applied to transfers of these products could hamper the implementation of Directive 2009/43/EC and the achievement of its simplification objective. Aligning national approaches as to the scope of and conditions for transfers under the general transfer licences published by Member States are important to ensure the attractiveness and use of those licences.
- (4) The Council reiterated in its conclusions of 18 May 2015 the need for the implementation and application of *inter alia* Directive 2009/43/EC. Following the adoption of two previous recommendations on general transfer licences for armed forces ⁽²⁾ and for certified recipients ⁽³⁾, the Commission has announced in the European Defence Action Plan ⁽⁴⁾ and in the Report on evaluation of the Transfers Directive ⁽⁵⁾ its focus on the remaining two general transfer licences, covering transfers for the purposes of demonstration, evaluation, exhibition, repair and maintenance.
- (5) The initiative of this Recommendation has been strongly supported by the representatives of the Member States in the Committee established by Article 14 of Directive 2009/43/EC. The guidelines set out in the Recommendation reflect the result discussions of an expert group set up under this Committee.
- (6) This Recommendation applies to the list of defence-related products (corresponding to the Common Military List of the European Union), as laid down in the Annex to Directive 2009/43/EC. This Recommendation will be updated when necessary to reflect future updates of the list of defence-related products.
- (7) Based on the discussions with the Member States and taking into account the characteristics of the products (including exceptions), such as for instance their sensitivity, the defence-related products listed under point 1.1 of this Recommendation are a minimum and non-exhaustive list of products, for which Member States allow transfer under their GTL-RM. This means that the GTL-RM published by a Member State may also allow for the transfer of other defence-related products included in the Annex of Directive 2009/43/EC and not listed in this Recommendation.
- (8) In the context of the discussions on this Recommendation, the Member States have recalled that they are bound by commitments under European law, such as Council Common Position 2008/944/CFSP ⁽⁶⁾, as well as by international commitments in the area of export control. In this context, Member States have acknowledged the declaration 'Member States' Political Commitment on Security of Supply' ⁽⁷⁾.

⁽¹⁾ 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 (OJ L 146, 10.6.2009, p. 1).

⁽²⁾ OJ L 329, 3.12.2016, p. 101.

⁽³⁾ OJ L 329, 3.12.2016, p. 105.

⁽⁴⁾ COM(2016) 950 final.

⁽⁵⁾ COM(2016) 760 final.

⁽⁶⁾ Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment (OJ L 335, 13.12.2008, p. 99).

⁽⁷⁾ Adopted by the representatives of the Governments of European Defence Agency participating Member States meeting within the Council at its 3551st meeting held on 19 June 2017.

HAS ADOPTED THIS RECOMMENDATION:

1. GENERAL TRANSFER LICENCES FOR REPAIR AND MAINTENANCE

Member States are recommended to adapt their general transfer licences for repair and maintenance in accordance with the following elements.

1.1. Defence-related products eligible for transfer under the general transfer licence for the purposes of repair and maintenance set out in point (d) of Article 5(2) of Directive 2009/43/EC

The following ML categories are a sub set of the list of defence-related products, as laid down in the Annex to Directive 2009/43/EC. The general transfer licence for the purposes of repair and maintenance (GTL-RM) should, as a minimum, allow for the transfer of defence-related products specified in the ML categories hereunder. Member States may choose to include in their GTL-RM more ML categories with corresponding defence-related products.

List of ML categories to be covered as a minimum:

- ML 3. All goods are included, except:
 - Sub munitions which fall within convention on cluster munitions;
 - Terminally guided projectiles;
 - Ammunition, projectiles and propelling charges, specially designed for military use.
- ML 4. All goods are included, except:
 - Sub point 4.a) Bombs, torpedoes, rockets, missiles, other devices and charges and specially designed or modified for military use components;
 - Sub point 4.b) Specially designed components for the purpose of launching, laying, decoying, jamming, disrupting which fall within sub ML4.a).
- ML 5. All goods are included, except:
 - Sub point 5.b) Target acquisition, designation, range-finding, surveillance or tracking systems; detection, data fusion, recognition or identification equipment; and sensor integration equipment;
 - Sub point 5.c) Countermeasure equipment for items specified by ML5.a or ML5.b.

All goods should be delivered without ciphering component and without integrated database.
- ML 6. All goods are included, except:
 - Complete vehicles;
 - Chassis and turrets which fall within sub point ML6.a);
 - Equipment and equipment's components excluded in the other ML categories.
- ML 7. The following goods are included:
 - Sub point 7.f) Protective and decontamination equipment, specially designed or modified for military use, components and chemical mixtures;
 - Sub point 7.g) Equipment specially designed or modified for military use designed or modified for the detection or identification of materials specified by ML7.a, ML7.b or ML7.d, and specially designed components therefor.
- ML 8. All goods are included, except:
 - All substances with all of the following characteristics:
 - Detonating velocity equal or exceeding to 8 000m/s;
 - Density equal or up to 1,80g/cm³.
 - All explosives, as follow, and related mixtures:
 - Sub point 8.a.15) HNS (hexanitrostilbene) (CAS 20062-22-0);
 - Sub point 8.a.21) RDX and derivatives, as follows:
 - RDX (cyclotrimethylenetrinitramine, cyclonite, T4, hexahydro-1,3,5-trinitro-1,3,5-triazine, 1,3,5-trinitro-1,3,5-triazacyclohexane, hexogen or hexogene) (CAS 121-82-4);
 - Keto-RDX (K-6 or 2,4,6-trinitro-2,4,6-triazacyclohexanone) (CAS 115029-35-1);

- Sub point 8.a.23) TATB (triaminotrinitrobenzene) (CAS 3058-38-6).
- All substances that might be used directly or indirectly in production of sub munitions weapon which fall within Convention on Cluster Munitions, signed in Oslo on 3 December 2008, except towards Member States which ratified the Convention on Cluster Munitions.
- ML 9. All goods are included, except:
 - Complete vessels of war (surface or underwater) which fall within sub point ML9.a);
 - Complete hulls;
 - Items under ML9.c) Underwater detection devices, specially designed for military use, controls therefor and components therefor specially designed for military use.
- ML 10. All goods are included, except:
 - Complete aircraft, lighter-than-air vehicles, unmanned aerial vehicles which fall within sub point ML10.a) or ML10.c);
 - Fuselage for combat aircraft and combat helicopter;
 - Engines for combat aircraft;
 - Equipment and equipment's components excluded in the other ML categories.
- ML 11. the following goods are included:
 - Sub point ML11.a)g. Guidance and navigation equipment except items specially designed for or modified for missiles, rockets, space launchers and Unmanned Aerial Vehicles ('UAVs');
 - Sub point ML11.a)h. Digital troposcatter-radio communications transmission equipment;
 - Sub point ML11.a)j. Automated command and control systems.
- ML 13. All goods are included.
- ML 14. All goods are included.
- ML 15. All goods are included.
- ML 16. All goods are included, except:
 - Any items related to goods linked to ballistic technology and CBRN proliferation.
- ML 17. The following goods are included:
 - Sub point ML17.b) Construction equipment specially designed for military use;
 - Sub point ML17.d) Field engineer equipment specially designed for military use;
 - Sub point ML17.j) Mobile repair shops specially designed or modified to service military equipment;
 - Sub point ML17.k) Field generators specially designed or modified for military use;
 - Sub point ML17.l) Containers specially designed or modified for military use;
 - Sub point ML17.m) Ferries, other than those specified elsewhere in the EU Common Military list, bridges and pontoons, specially designed for military use;
 - Sub point ML17.o) Laser protection equipment specially designed for military use.
- ML 21. The following goods are included:
 - Sub point ML21.a) Software specially designed or modified for the use of goods listed in the GTL;
 - Sub point ML21.b)4. Software specially designed for military use or specially designed for Command, Communications, Control and Intelligence (C3I) or Command, Communications, Control, Computer and Intelligence (C4I) applications.
- ML 22. The following is included:
 - The necessary technology for the use of the goods allowed in the same general transfer licence.

1.2. Conditions to be incorporated into the general transfer licence for the purposes of repair and maintenance

The following list of conditions is not exhaustive. However, other conditions added by a Member State are not to contradict or undermine the conditions listed below.

- Geographic validity: European Economic Area ⁽¹⁾
- Transfer for repair: Transfer of a defence-related product for the purpose of its repair and not upgrade or improvement in terms of performance enhancement.
- Transfer for maintenance: Transfer of a defence-related product for the purpose of its maintenance and not upgrade or improvement in terms of performance enhancement.
- Return: Member States may require the existence of a previous authorisation for the original transfer of the item which is returned after repair. Member States are to choose one of the following options for return of the defence-related product after repair or maintenance:
- (a) Exemption from the obligation of prior authorisation in accordance with Article 4(2)(e) of Directive 2009/43/EC;
 - (b) Publication of a specific general transfer licence for return of defence-related products after repair or maintenance, with at least the same list of eligible defence-related products;
 - (c) Incorporation of return into the general transfer licence for repair and/or maintenance.
- Duration: Member States may specify a time limit for the return of the defence-related product.

2. FOLLOW UP

Member States are invited to give effect to this Recommendation by 1 July 2019 at the latest.

Member States are encouraged to inform the Commission of the measures taken to give effect to this Recommendation.

3. ADDRESSEES

This Recommendation is addressed to the Member States.

Done at Brussels, 19 December 2018.

For the Commission
Elżbieta BIENKOWSKA
Member of the Commission

⁽¹⁾ The EEA Joint Committee Decision No 111/2013 of 14 June 2013 amending Annex II (Technical regulations, standards, testing and certification) to the EEA Agreement (OJ L 318, 28.11.2013, p. 12), which incorporated Directive 2009/43/EC into the EEA Agreement included an explicit adaptation text: 'This Directive shall not apply to Liechtenstein.'