

RECOMMENDATIONS

COMMISSION RECOMMENDATION (EU) 2016/2123

of 30 November 2016

on the harmonisation of the scope of and conditions for general transfer licences for armed forces and contracting authorities as referred to in point (a) of Article 5(2) of Directive 2009/43/EC of the European Parliament and of the Council

(notified under document C(2016) 7711)

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. Harmonisation of 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 licenses.
- (4) Representatives of the Member States in the Committee established by Article 14 of Directive 2009/43/EC have suggested that harmonisation of the scope of and conditions for transfers under the general transfer licences published by Member States could be achieved by the adoption of a Recommendation by the Commission.
- (5) The guidelines set out in this Recommendation represent the result of negotiations with Member States concerning the harmonisation of the scope of and conditions for transfers under the general transfer licence for armed forces and contracting authorities as referred to in point (a) of Article 5(2) of Directive 2009/43/EC ('GTL-AF').
- (6) This Recommendation is considered as a basis for Member States' GTL-AF. 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-AF. This means that the GTL-AF published by a Member State may also allow for transfer of other defence-related products included in the Annex of Directive 2009/43/EC not listed in this Recommendation.
- (7) Member States recall that they are bound by commitments under European law, such as Council Common Position 2008/944/CFSP ⁽²⁾, as well as by international commitments in the area of export control.
- (8) This Recommendation applies 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 Common Military List of the European Union.

⁽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⁾ 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).

HAS ADOPTED THIS RECOMMENDATION:

1. GENERAL TRANSFER LICENCES FOR ARMED FORCES AND CONTRACTING AUTHORITIES AS REFERRED TO IN POINT (A) OF ARTICLE 5(2) OF DIRECTIVE 2009/43/EC
- 1.1. **Defence-related products eligible for transfer under the general transfer licence for armed forces and contracting authorities as referred to in point (a) of Article 5(2) of Directive 2009/43/EC**

The following ML categories with sub points are a subset of the list of defence-related products laid down in the Annex to Directive 2009/43/EC. The general transfer licence for armed forces and contracting authorities as referred to in point (a) of Article 5(2) of that Directive ('GTL-AF') shall, as a minimum, allow for the transfer of defence-related products specified through the ML categories hereunder. Member States may choose to include more ML categories with corresponding defence-related products in their GTL-AF.

List of ML categories to be covered as a minimum:

- ML 4. Sub points (a) and (b). All goods are included, except:
 - Mines
 - Cluster munitions, explosive bomblets and submunitions and their specially designed components
 - Rifle grenades and hand grenades
 - Torpedoes, torpedoes without warheads and torpedoes bodies
 - Bombs
 - Guided, unguided and other projectiles (ie. rockets, missiles, MANPADS, ...)
 - Infantry explosive devices, adhesive and hollow charges.
- Are also excluded for these weapons:
- War heads and explosives charges
 - Ignition charges
 - Target detection heads, guidance systems, homing devices
 - Individual rocket stages
 - Re-entry vehicles
 - Engines
 - Thrust vector control systems
 - Launchers and launching devices
 - Laying, decoying, jamming or disrupting systems
 - Specially designed components for MANPADS.
- ML 5. All goods are included, except:
 - Countermeasure products
 - Equipment and components excluded from other categories in the same general transfer licence.
 - ML 6. All goods are included, except:
 - Complete vehicles
 - Chassis and turrets
 - Equipment and components excluded from other categories in the same general transfer licence.
 - ML 7. Sub point (g).

- ML 9. All goods, except:
 - Complete vessels and submarines
 - Underwater detection devices and their specially designed components
 - Air Independent Propulsion systems for submarine and their specially designed components
 - Complete hulls
 - Countermeasures
 - Equipment and components excluded from other categories in the same general transfer license.
- ML 10. All goods, except:
 - Complete aircraft
 - Complete UAVs and components specially designed or modified for UAVs
 - Fuselage for combat aircraft and combat helicopter
 - Engines for combat aircraft
 - Equipment and components excluded from other categories in the same general transfer licence.
- ML 11. Sub point (a). Only the following goods:
 - Guidance and navigation equipment, except systems for MANPADS or as defined by MTCR I
 - Automated command and control systems.
- ML 13. Sub points (c) and (d).
- ML 14. All goods, except MANDPADS trainers.
- ML 15. Sub points (b), (c), (d) and (e).
- ML 16. All goods, except:
 - MANPADS related goods
 - Any items relating to goods the export of which is not allowed in the same general transfer licence
- ML 17. Sub points (a), (b), (d), (e), (j), (k), (l), (m), (n), (o) and (p). All goods, except:
 - Sub point (n): Test models are excluded if specially designed for the development of items specified by ML4, 6, 9 or 10 as well as components specially designed for these test models.
- ML 21. sub point (a) and (b). Only the following goods and only if authorised from other categories in the present general licence:
 - (a) 'Software' specially designed or modified for any of the following:
 1. Operation or maintenance of equipment laid down in the Annex to Directive 2009/43/EC;
 - (b) Specific 'software', other than the software specified by ML21.a., as follows:
 1. 'Software' specially designed for military use and specially designed for modelling, simulating or evaluating military weapon systems;
 4. 'Software' specially designed for military use and specially designed for Command, Communications, Control and Intelligence (C3I) or Command, Communications, Control, Computer and Intelligence (C4I) applications

- ML 22. Sub point (a). All technologies except those required for development and production and only if authorised from other categories in the same general transfer licence.

1.2. Conditions which shall be incorporated into the general transfer licence for armed forces

The following list of conditions is not exhaustive. However, other conditions added by a Member State in a GTL-AR shall not contradict or undermine the conditions listed below.

- Geographic validity: European Economic Area (EU 28 + Iceland and Norway ⁽¹⁾).
- Re-transfers within the EEA are allowed without *ex ante* controls; only *ex post* reporting could be required.
- The GTL-AF is intended for the end use of eligible recipients as referred to in point (a) of Article 5(2) of Directive 2009/43/EC. Subsequent sales not known at the time of transfer are considered new exports. For new exports, it is the responsibility of the competent authority of the receiving Member State to control exports or transfers initiated by a subsequent sale not known at the time of transfer.
- For the purpose of *ex-post* verification under the GTL-AF, Member States should ensure that suppliers report on the use of the GTL-AF in accordance with reporting minimum requirements as specified in Article 8(3) of Directive 2009/43/EC.

2. FOLLOW UP

Member States are invited to give effect to this Recommendation by 1 July 2017 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, 30 November 2016.

For the Commission
Elżbieta BIENKOWSKA
Member of the Commission

⁽¹⁾ The EEA Joint Committee Decision No 111/2013 of 14 June 2013 (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'.