

# DECISIONS

## COUNCIL DECISION (CFSP) 2021/38

of 15 January 2021

### **establishing a common approach on the elements of end-user certificates in the context of the export of small arms and light weapons and their ammunition**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 29 thereof,

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

- (1) In its conclusions of 16 September 2019 relating to the review of Council Common Position 2008/944/CFSP <sup>(1)</sup>, the Council commits to considering a decision on end-user certificates for the export of small arms and light weapons (SALW) and their ammunition.
- (2) Common Position 2008/944/CFSP states that export licences are to be granted only on the basis of reliable prior knowledge of end-use in the country of final destination. Common Position 2008/944/CFSP also states that this generally requires a thoroughly checked end-user certificate or appropriate documentation and/or some form of official authorisation issued by the country of final destination.
- (3) A common Union-wide approach to end-user control for SALW and their ammunition will diminish the risk of diversion, create a level playing field and increase clarity for the defence industry and its clients regarding relevant requirements.
- (4) The updated User's Guide to Council Common Position 2008/944/CFSP, endorsed by the Council on 16 September 2019, provides best practices in the area of end-user certificates.
- (5) In the EU Strategy against illicit firearms, small arms & light weapons and their ammunition, adopted on 19 November 2018, the Council commits to considering a decision on end-user certificates for SALW exports, taking account of the work of the Organization for Security and Cooperation in Europe in this regard.
- (6) Council Decision (CFSP) 2020/979 <sup>(2)</sup> supports the development of an internationally recognised system for the validation of arms and ammunition management that would allow independent validation or certification of compliance with open international standards on the safe and secure management of national SALW and ammunition stockpiles.

<sup>(1)</sup> 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).

<sup>(2)</sup> Council Decision (CFSP) 2020/979 of 7 July 2020 in support of the development of an internationally recognised system for the validation of arms and ammunition management according to open international standards (OJ L 218, 8.7.2020, p. 1).

- (7) In accordance with the second subparagraph of Article 21(3) of the Treaty on European Union, the Union is to ensure consistency between the different areas of its external action. In this respect, the Council takes note of, inter alia, its Regulation (EC) No 428/2009 <sup>(3)</sup> and Regulations (EU) No 258/2012 <sup>(4)</sup> and (EU) 2019/125 <sup>(5)</sup> of the European Parliament and of the Council.
- (8) The Council conclusions on an EU position on combatting the illicit trade in small arms and light weapons, in light of the Third Review Conference to review the implementation of the UN Programme of Action on SALW, adopted by the Council on 28 May 2018, call for the promotion of the application of end-user certificates in the context of the control of SALW exports.
- (9) In the United Nations (UN) Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, adopted on 20 July 2001, participating States commit to put in place and implement adequate laws, regulations and administrative procedures to ensure effective control over the export and transit of SALW, including the use of authenticated end-user certificates and effective legal and enforcement measures.
- (10) The Arms Trade Treaty, adopted by the UN General Assembly on 2 April 2013, states that the exporting State Party is to seek to prevent the diversion of the transfer of conventional arms by, where appropriate, examining parties involved in the export, requiring additional documentation, certificates, assurances, not authorising the export or other appropriate measures.
- (11) The UN 2030 Agenda for Sustainable Development affirms that combating the illicit trade in SALW is necessary for the achievement of many sustainable development goals, including those relating to peace, justice and strong institutions, poverty reduction, economic growth, health, gender equality and safe cities. Therefore, in Sustainable Development Goal 16.4 of that Agenda, all UN States have committed to significantly reducing illicit financial and arms flows.
- (12) In the UN Agenda for Disarmament entitled 'Securing our Common Future', presented on 24 May 2018, the UN Secretary-General called for the excessive accumulation of, and the illicit trade in, conventional arms to be addressed.
- (13) Unauthorised re-export remains a source of diversion of SALW and their ammunition into the illicit market.
- (14) End-user certificates are an important element in establishing effective end-user controls and minimising the risk of undesirable diversion of SALW and their ammunition. However, such certificates are not a substitute for a pre-ante full assessment of risk, made on a case-by-case basis when deciding whether or not to grant an export licence,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The purpose of this Decision is to help prevent the diversion of small arms and light weapons (SALW) and their ammunition to unintended end-users or end-uses, by agreeing on common elements for end-user certificates in the context of the implementation of the Union's common rules governing control of exports of military technology and equipment.

<sup>(3)</sup> Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (OJ L 134, 29.5.2009, p. 1).

<sup>(4)</sup> Regulation (EU) No 258/2012 of the European Parliament and of the Council of 14 March 2012 implementing Article 10 of the United Nations' Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against Transnational Organised Crime (UN Firearms Protocol), and establishing export authorisation, and import and transit measures for firearms, their parts and components and ammunition (OJ L 94, 30.3.2012, p. 1).

<sup>(5)</sup> Regulation (EU) 2019/125 of the European Parliament and of the Council of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (OJ L 30, 31.1.2019, p. 1).

*Article 2*

This Decision applies to permanent exports of SALW and their components, accessories and ammunition, as set out in the Annex.

*Article 3*

For the purposes of this Decision, the following definitions apply:

- (1) 'end-user' means the final consignee and owner of the exported goods known at the time of the export licence application, according to the contractual terms of the transaction;
- (2) 'export' means any departure of goods from the customs territory of the Union, including the departure of goods that require a customs declaration and the departure of goods after their storage in a free zone within the meaning of Regulation (EU) No 952/2013 of the European Parliament and of the Council <sup>(6)</sup>;
- (3) 'exporter' means any natural or legal person or partnership resident or established in the Union that submits an export licence application or on whose behalf such an application is submitted, namely the person or partnership that, at the time the application is accepted, holds the contract with the consignee in the relevant third country and has the necessary power to determine the sending of the goods out of the customs territory of the Union. If no such contract has been concluded or if the holder of that contract does not act on its own behalf, 'exporter' means the person, entity or body who has the necessary power to determine the sending of the goods out of the customs territory of the Union. Where the benefit of a right to dispose of the goods belongs to a person, entity or body resident or established outside the Union pursuant to that contract, 'exporter' means the contracting party resident or established in the Union.

*Article 4*

Authorisation by a Member State of the export of goods as referred to in Article 2 shall require a thoroughly checked end-user certificate or appropriate documentation, signed by the end-user prior to that authorisation.

*Article 5*

1. Member States shall require the following essential elements regarding identification to be included in the end-user certificate referred to in Article 4:

- (a) details of the exporter (including name, address, business name and, if available, company registration number);
- (b) details of the end-user (including name, address, business name and, if available, company registration number). In the case of export to a private company that resells the goods on a local market, that company will be regarded as the end-user for the purposes of this Decision. This shall not prevent Member States from evaluating licence applications that concern exports to resellers differently from licence applications concerning exports to end-users;
- (c) country of final destination;
- (d) description of the goods, including, if available, the contract number or order number;
- (e) if applicable, quantity or value of the goods intended for export;
- (f) signature, name and title of the end-user and, if deemed necessary by the Member State concerned, name of the competent government authority in the country of final destination;
- (g) if applicable, certification by the relevant government authorities, according to national practice (including the date, name, title and original signature of the authorising official);
- (h) the date of issue of the end-user certificate;

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<sup>(6)</sup> Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

- (i) if applicable, a unique identifying number or contract number relating to the end-user certificate;
- (j) indication of the intended end-use of the goods;
- (k) if appropriate, details of the relevant broker (including name, address, business name and, if available, company registration number).

2. Member States shall require the following essential commitments by the end-user with regard to the goods covered by the end-user certificate referred to in Article 4 to be included in that certificate, by means of its signature by the end-user:

- (a) that the goods will not be used for purposes other than the declared use; and
- (b) that any re-export of the goods:
  - (i) outside of the importing country, or transfer of custody of the goods within the importing country, is prohibited; or
  - (ii) is limited to a list of countries identified in the end-user certificate, or that any transfer of custody of the goods within the importing country is limited to a list or category of entities identified in the end-user certificate; or
  - (iii) outside of the importing country, or transfer of custody of the goods within the importing country, must be subject to prior written approval by the authorities of the exporting Member State. A Member State may decide to transfer the authority to provide such an approval to the competent authorities of the importing country.

#### *Article 6*

Member States may require the following optional elements to be included in the end-user certificate referred to in Article 4:

- (a) a commitment by the end-user to notify the exporting Member State in case of loss or theft of the goods covered by the end-user certificate;
- (b) a commitment by the end-user to confirm reception of the goods covered by the end-user certificate, including their exact quantity;
- (c) a commitment by the end-user to allow post-shipment on-site verification of the exported goods by representatives of the exporting Member State, including details of arrangements for the verification visits;
- (d) assurances by the end-user that demonstrate its capacity for safe and secure weapons and ammunition management, including its capacity for safe and secure management of the stockpiles where the goods will be stored;
- (e) a commitment by the end-user on decommissioning of surplus military equipment, including:
  - (i) a 'new for old' commitment to destroy the old goods that will be replaced by the imported goods; and/or
  - (ii) a 'destruction after decommissioning' commitment to destroy the imported goods after decommissioning.

#### *Article 7*

Member States shall hold records of the issued end-user certificates referred to in Article 4 in accordance with national law and practice.

#### *Article 8*

When deemed necessary, Member States shall verify the authenticity of the signature on the end-user certificate and, if relevant, the capacity of the signatory to make commitments on behalf of the end-user. In case of doubt regarding the authenticity of the end-user certificate, Member States may verify it by any means according to national practice. If the authenticity of the end-user certificate cannot be verified, the Member State shall not issue the licence.

*Article 9*

If a Member State identifies a fraud with, falsification of, or violation of an end-user certificate, it shall share this information with the other Member States via the COARM online system, taking into account relevant national considerations.

*Article 10*

Member States shall share samples of their end-user certificate formats, if available, with the other Member States via the COARM online system.

*Article 11*

This Decision shall enter into force on 31 December 2021.

Done at Brussels, 15 January 2021.

*For the Council*  
*The President*  
A.P. ZACARIAS

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## ANNEX

This Decision shall apply to the following categories of military equipment, insofar as these categories are included in categories ML1, ML2, ML3 and ML4 of the Common Military List of the European Union.

The following categories do not prejudice any future internationally agreed definition of small arms and light weapons (SALW) and may be subject to further clarification, and may be reviewed in the light of any future internationally-agreed definition of SALW.

Categories of military equipment to which this Decision applies:

- (a) small arms:
    - assault rifles,
    - semi-automatic rifles and carbines specially designed for military use,
    - revolvers and self-loading pistols specially designed for military use,
    - light machine guns,
    - sub-machine guns, including machine pistols;
  - (b) light weapons:
    - heavy machine guns,
    - cannons, howitzers and mortars of less than 100 mm calibre,
    - grenade launchers,
    - recoilless guns,
    - man- or crew-portable shoulder-fired rockets and other anti-tank and air defence systems that fire projectiles, including MANPADS;
  - (c) components, specially designed for equipment listed in points (a) and (b);
  - (d) accessories (such as night scopes, sound suppressors, etc.) specially designed for equipment listed in points (a) and (b);
  - (e) ammunition designed to be fired by equipment listed in points (a) and (b).
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