

EDA CODE OF CONDUCT ON DEFENCE EXEMPTIONS FROM THE EU REGULATION ON CLASSIFICATION, LABELLING AND PACKAGING OF SUBSTANCES AND MIXTURES (CLP)

INTRODUCTION

Article 42, paragraph 3 of the Treaty of the European Union (TEU)¹ calls upon the Member States to improve their military capabilities to include any measure needed to strengthen the industrial and technological base of the defence sector and Article 45, paragraph 1(e) tasks the European Defence Agency (EDA) to contribute to identifying and implementing any such measure.

To implement the mentioned provisions of the Treaty, Article 5, paragraph 3(e) of the Council Decision (CFSP) 2015/1835 of 12 October 2015,² defining the statute, seat and operational rules of EDA, states that the Agency, subject to the authority of the Council, shall contribute to identifying and, if necessary, implementing any useful measure for (among others) strengthening the industrial and technological base of the defence sector, in particular by:

- developing relevant policies and strategies in consultation with the Commission and, as appropriate, industry;
- pursuing, in consultation with the Commission, EU-wide development and harmonisation of relevant procedures, within the tasks of the Agency.

Regulation (EC) 1272/2008 of 16 December 2008 on Classification, Labelling and Packaging of substances and mixtures (CLP)³ has the following primary objectives:

- ensure a high level of protection of human health and the environment from the hazards that can be posed by chemicals, by among others:
 - determining whether a substance or mixture displays properties that lead to a classification as hazardous;
 - ensuring that the hazards presented by chemicals are clearly communicated in the EU through classification, labelling and packaging of chemicals;
- ensure the free movement of chemical substances, mixtures and certain specific articles on the internal market of the European Union.

Based on Article 1, paragraph 4 of the CLP Regulation, Member States may allow for exemptions in specific cases for certain substances or mixtures, where necessary in the interests of defence.

While the CLP Regulation is fully applicable in all EU Member States, and across all sectors including the defence sector, the granting of defence exemptions under Article 1(4) of the CLP Regulation, resides at Member States' level. CLP defence exemptions granted by an individual subscribing Member States (sMS) shall be valid to the extent of its own jurisdiction. This does not preclude the possibility for two or more sMS, in the frame of possible cooperation, if they wish so, to jointly grant CLP defence exemptions on issues of common interest, or to decide that CLP defence exemptions granted by one

1 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012M%2FTEXT>

2 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015D1835>

3 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32008R1272>

of them will be valid also in the jurisdictions of the rest of cooperating SMS. This considers the fact that in Article 1(4) of the CLP Regulation it is not explicitly stated that the granting of a defence exemption is territorially limited to a Member State.

However, entirely divergent national approaches thereto are likely to have a negative impact on the European Defence Industrial and Technological Base (EDTIB), as potentially creating an uneven field across procurement in the Defence domain, along with impacting negatively on the circulation of substances, mixtures or certain specific articles across the EU market.

Therefore, to prevent a negative impact on the EDTIB and ensure an even playing field in the different Member States, those EDA participating Member States and States having an Administrative Arrangement (AA) with the EDA opting to subscribe to this Code of Conduct (sMS)) agreed as follows.

COMMON GOAL

The sMS fully support the objectives of the CLP Regulation. At the same time, the sMS recognise that, in some specific cases granting of CLP exemptions in the interests of defence is needed, as a last resort, in order to maintain the necessary operability and inter-operability of Armed Forces operating in sMS territory and to sustain a capability-driven, competent and competitive EDTIB. Granting such exemptions also bears the responsibility to provide for the highest safety criteria and measures possible, taking into account those criteria and measures imposed by CLP itself.

The sMS will aim at an harmonisation of national CLP defence exemption procedures at the European level, which may eventually include reciprocal acknowledgement of national defence exemption decisions.

COMMON UNDERSTANDING

To achieve the common goal described above, the sMS will:

- consider granting exemptions from certain obligations deriving from CLP, in the interests of defence, only after compliance with such CLP obligations has been examined;⁴
- take each other's defence interests into consideration when deciding on defence exemptions;
- on a voluntary basis and in accordance with national law, establish suitable measures and procedures to recognise other sMS' exemption decisions;
- strive towards national procedures for CLP defence exemptions, facilitating defence cooperation to the extent possible;
- make publicly available information on national procedures for granting defence exemptions;
- in order to provide for an appropriate level of harmonisation allowing and facilitating reciprocal acknowledgement, where possible and necessary, grant their national exemption decisions on the basis of common minimum technical-level requirements, once defined and commonly agreed by sMS.

⁴ The CLP obligations that defence exemptions may be granted for will be identified in more detail at the next stage, under the common minimum technical-level requirements to be developed and agreed (refer to Footnote 5).

WAY AHEAD

sMS understand that further efforts are needed to build a well-functioning, effective and harmonised system of CLP defence exemptions. To that end, sMS undertake to work together to ensure the adaptation, coherent application, and further improvement of this Code of Conduct.

The EDA, in close consultation with sMS, will monitor the implementation of the Code of Conduct and assess ways for its further improvement. In this process, input from industry, through sMS, will also be sought and will be taken into account.

At next stage, following adoption to the CoC by pMS and subscription to it by sMS, common minimum technical-level requirements will be developed by EDA with support of sMS, and will be submitted to the EDA Steering Board for adoption, before initiating further implementation. sMS may include any additional requirements as required to meet national procedures.⁵

⁵ Such common minimum technical-level requirements will aim to standardise as far as reasonably practicable national CLP defence exemption procedures and provide an agreed set of minimum standards in order to guarantee a safety standard equivalent to the CLP requirements and facilitate reciprocal acknowledgment of CLP defence exemptions when needed.