



Brussels, 19.12.2018
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COMMISSION RECOMMENDATION

of 19.12.2018

on aligning the scope of and conditions for general transfer licences for the purpose of exhibition as referred to in point (c) of Article 5(2) of Directive 2009/43/EC of the European Parliament and of the Council

(Text with EEA relevance)

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(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 Council¹ 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 forces² and for certified recipients³, the Commission has announced in the European Defence Action Plan⁴ and in the Report on evaluation of the Transfers Directive⁵ 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 discussions of an expert group set up under this Committee.

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) 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-EX. This means that the GTL-EX 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/CFSP⁶, as well as by international commitments in the area of export control.

HAS ADOPTED THIS RECOMMENDATION:

1. GENERAL TRANSFER LICENCES FOR EXHIBITION

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

1.1. Defence-related products eligible for transfer under the general transfer licence for the purpose of exhibition set out in point (c) of Article 5(2) of Directive 2009/43/EC

The following ML categories are a subset of the list of defence-related products, as laid down in the Annex to Directive 2009/43/EC. The general transfer licence for the purpose of exhibition (GTL-EX) 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-EX more ML categories with corresponding defence-related products.

List of ML categories to be covered as a minimum:

- ML 1. All goods are included, except:
 - Weapons specially designed for military use;
 - Barrels and breech blocks for weapons specially designed for military use.
- ML 2. Sub points c) and d). All goods are included.
- ML 3. The following goods are included:
 - Ammunition inert model.
- ML 4. All goods are included, except:

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

- Sub point 4.a) All goods are excluded, except inert models which are included;
- Sub point 4.b) Specially designed components for the purpose of launching, laying, decoying, jamming, disrupting which fall within sub point ML 4.a).
- ML 5. All goods are included, except:
 - Sub point 5.c) Countermeasure equipment for items specified by sub points 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 which fall within sub point ML 6.a);
 - Chassis and turrets which fall within sub point ML 6. a).
- ML 7. All goods are excluded, except:
 - 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 sub points ML7.a, ML7.b or ML7.d, and specially designed components therefor.
- ML 9. All goods are included, except:
 - Complete vessels of war (surface or underwater);
 - Complete hulls;
 - Items under sub point 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;
 - Fuselage for combat aircraft and combat helicopter;
 - Engines for combat aircraft.
- ML 11. All goods are included, except:
 - Sub point ML11.a)a. Electronic countermeasure and electronic counter-countermeasure equipment, including jamming and counter-jamming equipment;
 - Sub point ML11.a)b. Frequency agile tubes;
 - Sub point ML11.a)c. Electronic systems or equipment, designed either for surveillance and monitoring of the electro-magnetic spectrum for military intelligence or security purposes or for counteracting such surveillance and monitoring;

- Sub point ML11.a)d. Underwater countermeasures, including acoustic and magnetic jamming and decoy, equipment designed to introduce extraneous or erroneous signals into sonar receivers;
- Sub point ML11.a)e. Data processing security equipment, data security equipment and transmission and signalling line security equipment, using ciphering processes;
- Sub point ML11.a)f. Identification, authentication and keyloader equipment and key management, manufacturing and distribution equipment;
- Sub point ML11.a)i. Digital demodulators specially designed for signals intelligence;
- Sub point ML11.b) Global Navigation Satellite Systems (GNSS) jamming equipment and specially designed components therefor;
- Sub point ML11.c) "Spacecraft" specially designed or modified for military use, and "spacecraft" components specially designed for military use.
- ML 13. All goods are included.
- ML 14. All goods are included.
- ML 15. All goods are included.
- ML 16. All goods are included.
- ML 17. All goods are included, except:
 - Sub point ML17.f) Libraries specially designed or modified for military use with systems, equipment or components, specified by the EU Common military list;
 - Sub point ML17.g) Nuclear power generating equipment or propulsion equipment, including nuclear reactors, specially designed for military use and components therefor specially designed or modified for military use;
 - Sub point ML17.h) Equipment and material, coated or treated for signature suppression, specially designed for military use, other than those specified elsewhere in the EU Common Military list;
 - Sub point ML17.i) Simulators specially designed for military nuclear reactor.
- ML 18. All goods are included.
- ML 21. All goods are included, except:
 - Sub point ML21.a) Software specially designed or modified for any of the following:
 - Development, production, operation or maintenance of equipment specified by the EU Common Military List;
 - Development or production of materials specified by the EU Common Military List; or

- Development, production, operation or maintenance of software specified by the EU Common Military List.
- Software specially designed or modified for the use of unlisted items in this general transfer licence.
- ML 22. The following are included:
 - Only the necessary technology for the use of the goods allowed in the same general transfer license.

1.2. **Conditions to be incorporated into the general transfer licence for exhibition**

The following list 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 Area⁷

Transfer for exhibition:

Transfer of any defence-related product for the purpose of its exhibition in a Member State, which are not to be used in operational conditions and does not include demonstration or evaluation purposes.

Re-transfer: Member States are to choose one of the following options for re-transfer of the defence-related product after exhibition, as appropriate:

- (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 re-transfer of defence-related products after exhibition, with at least the same list of eligible defence-related products;
- (c) Incorporation of re-transfer into the general transfer licence for exhibition.

Duration: Originating Member States may specify a time-limit for the return of the defence-related product to be observed by the supplier towards the Competent Authority in the originating Member State. The Member States from which the defence-related product is re-transferred may also specify a time-limit for the re-transfer to be observed by the supplier, or its representative.

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.

⁷

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".

3. ADDRESSEES

This Recommendation is addressed to the Member States.

Done at Brussels, 19.12.2018

For the Commission

Elzbieta BIEŃKOWSKA

Member of the Commission

