

EDA CODE OF CONDUCT ON REACH DEFENCE EXEMPTIONS

INTRODUCTION

Article 42, paragraph 3, of the Treaty of the European Union (TEU) 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 1e tasks the European Defence Agency (EDA) to contribute to implementing any such measure.

The European Regulation (EC) 1907/2006 of 18 December 2006 on Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) has the following primary objectives:

- ensure the protection of human health and the environment from the risks that can be posed by chemicals;
- enhance the competitiveness and innovation of the EU industry, as key element for the economy of the EU;
- promote alternative methods for the assessment of hazards of substances;
- ensure the free circulation of substances on the internal market of the European Union.

Based on Article 2, paragraph 3 of the REACH Regulation, Member States may allow for exemptions in specific cases for certain substances, on their own, in a mixture or in an article, where necessary in the interests of defence.

The granting of the defence exemptions should be considered only after the following alternative methods have been examined:

- complying with the requirements of the REACH Regulation;
- substitution of hazardous Substance(s) with more benign alternatives.

Granting of defence exemptions is first and foremost a sovereign national responsibility, notwithstanding possible cooperation. A Member State can only provide a defence exemption to the extent of its own jurisdiction. A defence exemption granted by one Member State does not of itself have automatic validity elsewhere in the EU. 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 production and procurement in the Defence domain, along with impacting negatively on the circulation of substances across the EU markets.

Therefore, those EDA participating Member States and States having an Administrative Arrangement with the EDA opting to subscribe to this Code of Conduct (subscribing Member States (SMS)) agreed on the principles described below.

COMMON GOAL

The subscribing Member States fully support the objectives of REACH, whilst recognising that in some specific cases granting of exemptions in the interests of defence is needed to maintain the unrestrained 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 and traceability standards possible which should preferably mirror those imposed by REACH itself.

The subscribing Member States will aim at a harmonisation of national defence exemptions procedures and requirements in the area of REACH at the European level which will eventually include reciprocal acknowledgement of national defence exemption decisions.

COMMON UNDERSTANDING

To achieve the common goal described above the subscribing Member States will:

- when granting exemptions from obligations deriving from REACH in the interests of defence, do so on the basis of a national procedure that provides, as far as possible, for the highest safety and traceability standards, mirroring those imposed by REACH;
- 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 subscribing Member States' exemption decisions;
- make publicly available information on national procedures for granting defence exemptions;
- grant their national exemption decisions on the basis of the Framework for Applying for a Defence Exemption from a Requirement of REACH, annexed to this Code of Conduct, in order to provide for an appropriate level of harmonisation allowing and facilitating reciprocal acknowledgement.

COMMON FURTHER IMPLEMENTATION

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

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

ANNEX : Framework for Applying for a Defence Exemption from a Requirement of REACH