



Brussels, 19 March 2010

EDA STEERING BOARD DECISION NO. 2010/05

ON

REACH - NATIONAL DEFENCE EXEMPTIONS

THE EDA STEERING BOARD,

Recalling that 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 that Article 45, paragraph 1 e, TEU tasks the European Defence Agency (EDA) to contribute to implementing any such measure;

Recollecting that Regulation (EC) 1907/2006 of 18 December 2006 Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) allows, in its Article 2, paragraph 3, for national exemptions in specific cases for certain substances, where necessary in the interest of defence;

Recording that the granting of defence exemptions is first and foremost a sovereign national responsibility, but acknowledging the likely negative impact of entirely divergent, inconsistent and uncoordinated domestic approaches thereto on the European Defence Industrial and Technological Base (EDTIB);

Emphasising the importance of the objectives of REACH, whilst recognising that in some specific cases, inter alia those where pre-existing international arrangements and limitations are to be observed, the granting of exemptions in the interest of defence would still be needed to maintain the unrestrained operability of European Armed Forces;

Stressing that 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;

Taking into account that participating Member States' Ministries of Defence represent main stakeholders in this regard and hence are widely and often prominently engaged in national procedures for granting defence exemptions;

Recalling that harmonisation of national defence exemptions in the area of REACH at European level would require the appreciation of foreign defence exemption decisions, whilst acknowledging that mutual recognition of alien defence exemptions would serve best for legal certainty;

Sharing the common conviction that transparency about national procedures would be needed in order to facilitate the distribution of related information to the public and industry concerned;

Bearing in mind that REACH stretches beyond the community of participating Member States and so should harmonisation of national defence exemptions;

HAS DECIDED:

to endorse the following common understanding:

1. pMS, when and if granting exemptions from obligations deriving from REACH in the interest of defence, will 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.
2. The EDA shall be tasked to establish a centralised web-based portal for participating Member States to post, on a voluntary basis, their national procedures for granting exemptions including the applied safety and traceability standards.
3. On this basis (para. 2) pMS will endeavour to foresee, on a voluntary basis, in a stepwise approach, within their national laws and regulations, suitable measures and procedures to acknowledge - as nationally deemed appropriate - pMS' exemption decisions.

4. All third States that are to implement REACH should be invited to implement the principles of this common understanding as well. If they do, and if they wish to advertise their national procedures for granting exemptions as well as applied standards, they are encouraged to approach, in an informal way, the EDA to arrange the respective technical processes.

5. This Decision and its implementation, as well as the impact thereof on the functioning of the EDTIB, will be reviewed on an annual basis starting from the end of 2011, with a specific view to its improvement and adaptation to accommodate further developments and needs.
