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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	28 September 2023
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	C(2023) 6149 final
Subject:	COMMISSION DELEGATED DIRECTIVE (EU) .../... of 27.9.2023 amending Directive 2009/43/EC of the European Parliament and of the Council as regards the updating of the list of defence-related products in line with the updated Common Military List of the European Union of 20 February 2023

Delegations will find attached document C(2023) 6149 final.

Encl.: C(2023) 6149 final



EUROPEAN
COMMISSION

Brussels, 27.9.2023
C(2023) 6149 final

COMMISSION DELEGATED DIRECTIVE (EU) .../...

of 27.9.2023

amending Directive 2009/43/EC of the European Parliament and of the Council as regards the updating of the list of defence-related products in line with the updated Common Military List of the European Union of 20 February 2023

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying the terms and conditions of transfers of defence-related products within the Community¹ empowers the Commission to adopt delegated acts amending the list of defence-related products set out in the Annex. Pursuant to Article 13 of Directive 2009/43/EC, the Annex must strictly correspond to the Common Military List of the European Union.

The Common Military List of the European Union was last updated by the Council on 20 February 2023². To date, the Annex has not been aligned with the latest amendment of the Common Military List. It is necessary to do so through the adoption of a delegated act.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

Pursuant to Article 13a(4) of Directive 2009/43/EC, before adopting a delegated act amending the Annex to Directive 2009/43/EC, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

Consultations were carried out with the Members of the expert group on EU Transfers of Defence-related Products. Comments received from the experts from the Member States have been duly taken into account in the drafting of the Commission Delegated Directive.

The Directive does not foresee a feedback mechanism on the basis of the Better Regulation rules due to the purely technical nature of the Annex' alignment with the Common Military List, in which the Commission cannot exercise any discretion.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Directive 2009/43/EC has been amended by Regulation (EU) 2019/1243 of the European Parliament and of the Council of 20 June 2019 adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny to Articles 290 and 291 of the Treaty on the Functioning of the European Union³. The exercise of the delegation has been laid down in the new Article 13a of Directive 2009/43/EC.

Article 1 of the Delegated Directive provides that the Annex to Directive 2009/43/EC is replaced by the Annex to the Delegated Directive, whose content is identical to the Common Military List as last updated by the Council.

Article 2 lays down the deadlines by which Member States are required to adopt, publish and apply the necessary transposition measures and requires them to communicate to the Commission the text of those provisions as well as the text of the main provisions of national law which they adopt in the field covered by the Delegated Directive.

¹ OJ L 146, 10.6.2009, p. 1.

² OJ C 72, 28.2.2023, p. 2-37.

³ OJ L 198, 25.7.2019, p. 241.

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying the terms and conditions of transfers of defence-related products within the Community¹, and in particular Article 13 thereof,

Whereas:

- (1) Directive 2009/43/EC applies to defence-related products as set out in the Annex thereto. That Annex is to strictly correspond to the Common Military List of the European Union.
- (2) The Common Military List of the European Union was adopted by the Council on 19 March 2007 and has been updated several times. On 20 February 2023, the Council adopted an updated Common Military List of the European Union². It is therefore necessary to update the list of defence-related products set out in the Annex to Directive 2009/43/EC.
- (3) Directive 2009/43/EC should therefore be amended accordingly.
- (4) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents³, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The Annex to Directive 2009/43/EC is replaced by the text set out in the Annex to this Directive.

¹ OJ L 146, 10.6.2009, p. 1.

² Common Military List of the European Union adopted by the Council on 20 February 2023 (equipment covered by Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment) (updating and replacing the Common Military List of the European Union adopted by the Council on 21 February 2022) (CFSP) (OJ C 72, 28.2.2023, p. 2-37).

³ OJ C 369, 17.12.2011, p. 14.

Article 2

1. Member States shall adopt and publish, by [OP: please insert date of last day of the 3rd month following publication in the OJ] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from [OP: please insert the date = 5 working days following the date provided for in the first subparagraph].

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 27.9.2023

For the Commission
The President
Ursula VON DER LEYEN