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Committee on Foreign Affairs

2007/0279(COD)

12.9.2008

OPINION

of the Committee on Foreign Affairs

for the Committee on the Internal Market and Consumer Protection

on the proposal for a directive of the European Parliament and of the Council
on simplifying terms and conditions of transfers of defence-related products
within the Community
(COM(2007)0765 – C6-0468/2007 – 2007/0279(COD))

Rapporteur: Angelika Beer

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SHORT JUSTIFICATION

- 1) In general, the opinion strongly supports the simplification of the rules governing transfers of defence related products within the European Community as proposed by the Commission in the draft directive.
 - a) Implementation of this instrument will remove unnecessary administrative burden from the Members States authorities, and creates conditions for sharper focus at the more important cases of transfers rather than those given consent on a routine basis.
 - b) As a result of the implementation of this directive and the one on defence procurement, positive developments of the European defence equipment market and the European defence technological and industrial base are expected.
 - c) The inclusion of export limitations and safeguard measures in the Commission's proposal are most welcome, in particular with regard to the risks for preservation of human rights, peace, security and stability created by a possible export to a third country.

- 2) The Committee on Foreign Affairs does however emphasize the following concerns:
 - a) As in several EP resolutions of the European Parliament before, it is strongly recommended that the simplification the transfers of defence related products within the Community is pursued in parallel by a transformation of the European Union Code of Conduct on Arms Exports into a legally binding instrument. The Council is therefore reminded of the urgency to enact the afore-mentioned Code into an EU Common Position before this Directive enters into force.
 - b) There has to be a strict control that arms and arms related products do not end up in conflict areas in general.
 - c) In the course of ESDP missions it becomes unacceptable that there is a risk that these missions will be confronted and endangered by arms from the European union (e.g. in Chad)

- 3) Following concrete changes aimed at improving the final directive are being proposed:
 - a) The opinion emphasizes that re-export to third country must not take place in cases where the originating Member State does not give its consent to it. Such a denial to re-export by the originating Member State must under no circumstances be ignored by the recipients of transfers (Amendments to Article 10).
 - b) The Commission should not only be informed but also verify whether application by a Member State *mutatis mutandis* of Article 2, paragraph 2 (referring to defence related products other than those listed in the Annex to the directive) is in compliance with applicable Community legislation (Amendments to article 2).
 - c) The directive must be implemented in a harmonised way in order to provide for the transparency of the measures proposed in articles 5-7 of the draft directive (Amendments to article 4, paragraph 2).
 - d) The integration of components into a product does not automatically guarantee that such a component cannot be transferred as such in a later stage Therefore, the Member States should refrain from imposing any export limitations only if the recipient of

transfers declares that the sub-systems or components subject to a transfer licence are integrated into its own products in such a way that prevents them to be transferred or even exported to a third country at a later stage as such (Amendments to article 4, paragraph 6).

- e) The Member States should not only ensure but also regularly control whether the suppliers within their territory keep detailed records of transfers (Amendments to article 8, paragraph 3).
- f) It is highly advisable that suppliers do not avoid responsibility to inform the respective Member State about the known end-use destination. Clarification must be established on the question which authority will control whether the end-use and end-user are known (amendments to article 8, paragraph 3, point d).
- g) The duration of the certificate of recipients should not in any case exceed 3 years, rather than 5 years. This will provide for a better accountability of the certification processes (Amendments to article 9, paragraph 3).
- h) Security of sensitive information is a prerequisite of successful European defence equipment market in the service of the European Security and Defence Policy. Therefore the Commission must follow applicable Community legislation in this domain when publishing the list of certified recipients on a Web-site (Amendments to article 9, paragraph 8).
- i) Regular annual reporting of the Commission to the EP and the Council on the implementation of this directive is proposed. This will provide for a better accountability of the implementation process and will also follow the same timeline as the annual report of the Council on the implementation of the EU Code of Conduct on Arms Exports (Amendments to article 16, paragraph 2).
- j) In general, the opinion appeals to an open and transparent mechanism of arms transfers within the European Union.

AMENDMENTS

The Committee on Foreign Affairs calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive Article 2 – paragraph 3

Text proposed by the Commission

3. When a Member State makes use of the possibility set out in paragraph 2, it shall publish a list of those products and inform the Commission and the other Member

Amendment

3. When a Member State makes use of the possibility set out in paragraph 2, it shall publish a list of those products and inform the Commission and the other Member

States thereof

States thereof. ***The Commission shall verify whether use of the possibility set out in paragraph 2 by a Member State is in compliance with applicable Community legislation.***

Justification

The Commission should not only be informed but also control whether application of this directive (paragraph 2) mutatis mutandis to defence related products not included in the Annex by a Member State is in compliance with applicable Community legislation.

Amendment 2

Proposal for a directive

Article 4 – paragraph 4

Text proposed by the Commission

4. Member States shall determine the terms and conditions of transfer licences, in particular any limitations on the export of defence-related products to recipients in third countries, having regard to the risks for preservation of human rights, peace, security and stability created by the transfer. Member States may pursue and extend existing intergovernmental cooperation in order to achieve the objectives of this directive.

Amendment

4. Member States shall determine the terms and conditions of transfer licences, in particular any limitations on the export of defence-related products to recipients in third countries, having regard to the risks for preservation of human rights, peace, security and stability created by the transfer. ***Member States may avail themselves of the possibility of requesting end-user certificates.*** Member States may pursue and extend existing intergovernmental cooperation in order to achieve the objectives of this directive.

Justification

The use of end-user certificates serves to guarantee that recipients of defence related products are properly informed about applicable restrictions relating to the end-use, re-transfer or export of the products transferred, and that no such transfer can take place without the consent of the Member State having issued the certificate. Member States that so desire should be allowed to avail themselves of such certificates.

Amendment 3

Proposal for a directive

Article 4 – paragraph 6

Text proposed by the Commission

6. Except where Member States consider that the transfer of sub-systems or components is sensitive, Member States shall refrain from imposing any export limitations for such sub-systems or components if the recipient provides a declaration of use by which it declares that the sub-systems or components subject to that transfer licence are integrated into its own products ***and therefore cannot be at a later stage transferred or exported*** as such.

Amendment

6. Except where Member States consider that the transfer of sub-systems or components is sensitive, Member States shall refrain from imposing any export limitations for such sub-systems or components if the recipient provides a declaration of use by which it declares that the sub-systems or components subject to that transfer licence are integrated into its own products ***in such a way as to prevent them from being transferred or exported at a later stage*** as such.

Justification

The recipient must declare that the sub-systems or components subject to that transfer licence are integrated into its own products in such a way that prevents them to be transferred or even exported to a third country at a later stage as such.

Amendment 4

Proposal for a directive

Article 6 – paragraph 1

Text proposed by the Commission

1. Member States ***shall*** grant global transfer licences to an individual supplier on its request authorizing one or several transfers of one or several defence related products to one or several recipients in another Member State.

Amendment

1. Member States ***may*** grant global transfer licences to an individual supplier on its request authorizing one or several transfers of one or several defence related products to one or several recipients in another Member State.

Justification

The right of a Member State to deny a request for a transfer licence must be reserved.

Amendment 5

Proposal for a directive
Article 7 – introductory wording

Text proposed by the Commission

Member States **shall** grant individual transfer licences to an individual supplier on its request authorizing one transfer of defence related products to one recipient only in either the following cases:

Amendment

Member States **may** grant individual transfer licences to an individual supplier on its request authorizing one transfer of defence related products to one recipient only in either the following cases:

Justification

The right of a Member State to deny a request for a transfer licence must be reserved.

Amendment 6

Proposal for a directive
Article 8 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that suppliers of defence-related products inform recipients of the terms and conditions of the transfer licence relating to the export of the defence related products.

Amendment

1. Member States shall ensure that suppliers of defence-related products inform recipients of the terms and conditions of the transfer licence, **including limitations**, relating to the **end use, re-transfer or** export of the defence related products.

Justification

Recipients of defence-related products shall be informed of all applicable terms and conditions of the transfer licence, including those relating to the end use and re-transfer of the transferred products.

Amendment 7

Proposal for a directive
Article 8 – paragraph 3 – introductory wording

Text proposed by the Commission

3. Member States shall ensure that suppliers keep detailed records of their transfers, in accordance with the practice in

Amendment

3. Member States shall ensure **and regularly check** that suppliers keep detailed records of their transfers, in

force in the respective Member State. Such records shall include commercial documents containing the following information:

accordance with the practice in force in the respective Member State. Such records shall include commercial documents containing the following information:

Justification

The Member States should not only ensure but also regularly check whether the suppliers within Member States keep detailed records of their transfers.

Amendment 8

**Proposal for a directive
Article 8 – paragraph 3 – point e**

Text proposed by the Commission

(e) proof that the information on an export limitation attached to a transfer licence has been transmitted to **a** recipient of defence related products.

Amendment

(e) proof that the information on an export limitation attached to a transfer licence has been transmitted to **the** recipient of defence related products.

Amendment 9

**Proposal for a directive
Article 8 – paragraph 4**

Text proposed by the Commission

4. The records referred to in paragraph 3 shall be kept for at least **three** years from the end of the calendar year in which the transfer took place. They shall be provided on request of the competent authorities of the Member State in which the supplier is established

Amendment

4. The records referred to in paragraph 3 shall be kept for at least **five** years from the end of the calendar year in which the transfer took place. They shall be provided on request of the competent authorities of the Member State in which the supplier is established.

Justification

Access to suppliers' records by Member States' authorities is expanded from three to five years. This will provide for more transparency of the process, as well as more time for investigation of possible breaches of the transposed national law or regulation.

Amendment 10

Proposal for a directive

Article 9 – paragraph 3 – subparagraph 2

Text proposed by the Commission

For the purposes of point (d), the duration of the certificate shall in any case not exceed **5 years**.

Amendment

For the purposes of point (d), the duration of the certificate shall in any case not exceed **3 years**.

Justification

The duration of 3 years will provide for a better accountability of the certification processes.

Amendment 11

Proposal for a directive

Article 9 – paragraph 8 – subparagraph 2

Text proposed by the Commission

The Commission shall make publicly available this information on its Web-site.

Amendment

The Commission shall make publicly available this information on its Web-site, ***whilst taking into account the sensitivity of information and observing applicable legislation related to security of information.***

Justification

When making publicly available information on its Web-site, the Commission should bear in mind that information on certified recipients may be sensitive.

Amendment 12

Proposal for a directive

Article 10 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that recipients of defence-related products, when applying for an export licence, confirm to the competent authorities, in cases where such products received under a transfer licence from another Member State

Amendment

1. Member States shall ensure that recipients of defence-related products, when applying for an export licence, confirm to the competent authorities, in cases where such products received under a transfer licence from another Member State

have export limitations attached to them, that they have respected the terms of those limitations.

have export limitations attached to them, that they have respected the terms of those limitations. ***Member States shall also ensure that the competent authorities check such compliance.***

Amendment 13

Proposal for a directive Article 10 – paragraph 2

Text proposed by the Commission

2. Where consent from the originating Member State for the contemplated export is required but has not been obtained, Member States shall consult the originating Member State.

Amendment

2. Where consent from the originating Member State for the contemplated export is required but has not been obtained, Member States shall consult the originating Member State. ***The Commission and other Member States shall be informed about such consultations.***

Justification

The existence, content and result of consultations on the contemplated exports with requisite consent of the originating Member State must be communicated to the Commission and the Member States in order to provide for better transparency of the process.

Amendment 14

Proposal for a directive Article 15 – paragraph 1

Text proposed by the Commission

1. If a licensing Member State considers that there is a serious risk that any certified recipient in another receiving Member State will not respect any condition attached to a general transfer licence, it shall inform the other Member State and request evaluation of the situation.

Amendment

1. If a licensing Member State considers that there is a serious risk that any certified recipient in another receiving Member State will not respect any condition attached to a general transfer licence, it shall inform the other Member State and request evaluation of the situation. ***If a Member State other than a licensing Member State considers that conditions are not being respected, it shall inform the licensing Member State and the Commission.***

Amendment 15

Proposal for a directive Article 16 – paragraph 2

Text proposed by the Commission

2. The Commission shall, beginning not later than [**5 years** after the date of entry into force of this directive], submit **regularly a** report to the European Parliament and the Council on the implementation of the directive and its impact on developments of the European defence equipment market and the European defence technological and industrial base, accompanied by a legislative proposal, where appropriate.

Amendment

2. The Commission shall, beginning not later than [**48 months** after the date of entry into force of this directive], submit **an annual** report to the European Parliament and the Council on the implementation of the directive and its impact on developments of the European defence equipment market and the European defence technological and industrial base, **including implementation of Article 10**, accompanied by a legislative proposal, where appropriate.

Justification

Regular annual reporting to the EP and the Council will provide for better accountability of the implementation process. It will also follow the same timeline as the annual report of the Council on the implementation of the EU Code of Conduct on Arms Exports.

PROCEDURE

Title	Transfers of defence-related products		
References	COM(2007)0765 – C6-0468/2007 – 2007/0279(COD)		
Committee responsible	IMCO		
Opinion by Date announced in plenary	AFET 15.1.2008		
Drafts(wo)man Date appointed	Angelika Beer 29.1.2008		
Discussed in committee	9.6.2008	16.7.2008	9.9.2008
Date adopted	10.9.2008		
Result of final vote	+: 56	–: 4	0: 4
Members present for the final vote	Vittorio Agnoletto, Sir Robert Atkins, Christopher Beazley, Bastiaan Belder, Colm Burke, Marco Cappato, Philip Claeys, Véronique De Keyser, Giorgos Dimitrakopoulos, Michael Gahler, Jas Gawronski, Maciej Marian Giertych, Ana Maria Gomes, Alfred Gomolka, Klaus Hänsch, Jana Hybášková, Anna Ibrisagic, Ioannis Kasoulides, Metin Kazak, Helmut Kuhne, Vytautas Landsbergis, Johannes Lebech, Willy Meyer Pleite, Francisco José Millán Mon, Philippe Morillon, Annemie Neyts-Uyttebroeck, Baroness Nicholson of Winterbourne, Cem Özdemir, Ioan Mircea Paşcu, Béatrice Patrie, Alojz Peterle, Tobias Pflüger, João de Deus Pinheiro, Samuli Pohjamo, Bernd Posselt, Raül Romeva i Rueda, Libor Rouček, Christian Rovsing, Flaviu Călin Rus, José Ignacio Salafranca Sánchez-Neyra, Jacek Saryusz-Wolski, Marek Siwiec, István Szent-Iványi, Inese Vaidere, Geoffrey Van Orden, Marcello Vernola, Kristian Vigenin, Luis Yañez-Barnuevo García, Josef Zieleniec		
Substitute(s) present for the final vote	Laima Liucija Andrikiienė, Glyn Ford, Kinga Gál, Milan Horáček, Tunne Kelam, Alexander Graf Lambsdorff, Mario Mauro, Nickolay Mladenov, Rihards Pīks, Aloyzas Sakalas, Inger Segelström, Karl von Wogau		
Substitute(s) under Rule 178(2) present for the final vote	Costas Botopoulos, Antonio Masip Hidalgo, Pierre Pribetich		