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Committee on the Internal Market and Consumer Protection

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*****I**

DRAFT REPORT

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))

Committee on the Internal Market and Consumer Protection

Rapporteur: Heide Rühle

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2007)0765),
 - having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0468/2007),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinions of the Committee on Foreign Affairs and the Committee on Industry, Research and Energy (A6-0000/2008),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

Amendment 1

Proposal for a directive

Recital 7

Text proposed by the Commission

(7) Harmonisation of those laws and regulations of Member States should not give prejudice to obligations of Member States ***under relevant international non-proliferation regimes, to export control arrangements, to treaties or to discretion of Member States on export policy.***

Amendment

(7) Harmonisation of those laws and regulations of Member States should not prejudice ***international obligations and commitments*** of Member States.

Or. en

Justification

“International obligations and commitments” is broader than the original text, and would include, “relevant international non-proliferation regimes, export control arrangements or treaties.” All Member States would, with the proposed text, be able to use individual licenses in order to fulfil all international obligations and commitments, including bilateral ones, rather than just the specific ones mentioned in the original text.

Amendment 2

Proposal for a directive

Recital 10

Text proposed by the Commission

(10) In order to deal with similar risks associated with the transfer of defence related products which are not listed in the Annex to this *directive*, Member States should be able to apply this *directive* to those defence related products and thus make transfer of those defence related products subject to the same rules.

Amendment

(10) In order to deal with similar risks associated with the transfer of defence related products which are not listed in the Annex to this *Directive*, Member States should be able to apply this *Directive* to those defence related products and thus make transfer of those defence related products subject to the same rules. ***Where they do so, they should inform the Commission and the other Member States accordingly.***

Or. en

Justification

Adaptation to the corresponding text of the Article 2.3.

Amendment 3

Proposal for a directive

Recital 12

Text proposed by the Commission

(12) In view of the safeguards provided in this directive for the protection of those objectives Member States would no longer need to introduce or maintain other restrictions for the achievement of those

Amendment

deleted

objectives.

Or. en

Justification

In this first step of harmonisation we should not limit Member States' possibilities for producing their own legislation, e.g. on the issue of end-use control.

Amendment 4

Proposal for a directive

Recital 16

Text proposed by the Commission

Amendment

(16) As regards sub-systems and components, Member States should refrain from export limitations as far as possible by accepting recipients declaration of use taking into account the degree of integration of such sub-systems and components into the recipients own products.

deleted

Or. en

Justification

This recital is contradictory to Article 4.6 and should be deleted.

Amendment 5

Proposal for a directive

Article 3 – point 2

Text proposed by the Commission

Amendment

(2) “transfer” means any transmission of a defence-related product to a recipient in another Member State *in the context of a commercial transaction*;

(2) “transfer” means any transmission of a defence-related product to a recipient in another Member State;

Or. en

Justification

Non-commercial transactions should be included, as they are covered by Member States' national rules, but no licences, e.g. for government transfer should be required by the directive.)

Amendment 6

**Proposal for a directive
Article 3 – point 6**

Text proposed by the Commission

(6) “export licence” means an authorisation to supply defence related products to a **recipient** in any third country.

Amendment

(6) “export licence” means an authorisation to supply defence related products to a **legal or natural person** in any third country.

Or. en

Justification

"Recipient" is defined as a legal or natural person established within the Community

Amendment 7

**Proposal for a directive
Article 3 – point 6 a (new)**

Text proposed by the Commission

Amendment

(6a) “third country” means any country that is neither a Member State of the European Union nor a contracting Party to the Agreement on the European Economic Area (EEA) to which this Directive also applies.

Or. en

Justification

Improving the clarity of the scope.

Amendment 8

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 **all** 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 **and without prejudice to national legislation on the control of end-user certificates**. Member States may pursue and extend existing intergovernmental cooperation in order to achieve the objectives of this directive.

Or. en

Amendment 9

Proposal for a directive Article 4 – paragraph 8 a (new)

Text proposed by the Commission

Amendment

8a. By way of derogation from paragraph 1, in cases where a recipient intends to return a defence related product to the supplier for the purpose of repair or maintenance, or owing to defects in the product, the transfer back to the supplier shall not be subject to a prior authorisation. However, in good time before the transfer is effected, notification shall be given by the recipient to the competent authorities [of the Member State from whose territory the product will be transferred] of the intention to transfer the product concerned. Such notification shall indicate the reason for the transfer and shall include any supporting evidence

thereof.

Where the competent authorities consider, or have reason to believe, that the notification is incomplete or inaccurate, or that the conditions of this Article are not satisfied, they may suspend the transfer, or, if necessary, otherwise prevent the product from leaving the territory of the Member State in question.

Once the product has been repaired, or the maintenance effected, or the defect eliminated, the subsequent transfer from the supplier to the recipient shall be allowed on the basis of the transfer licence delivered for the first transfer of the product from the supplier to the recipient.

Or. en

Amendment 10

Proposal for a directive Article 7 – point c

Text proposed by the Commission

(c) where it is necessary for compliance with obligations and commitments of Member States ***under the relevant international non-proliferation regimes, export control arrangements or treaties.***

Amendment

(c) where it is necessary for compliance with ***international*** obligations and commitments of Member States.

Or. en

Justification

International obligations and commitments” is broader than the original text, and would include, “relevant international non-proliferation regimes, export control arrangements or treaties.” With the proposed text, all Member States would be able to use individual licenses in order to fulfil all international obligations and commitments (including bilateral ones) rather than just the specific ones mentioned in the original text.)

Amendment 11

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 relating to **end-use, re-transfer or** export of defence related products.

Or. en

Justification

Clarification of the scope to avoid legal uncertainty.

Amendment 12

Proposal for a directive Article 8 – paragraph 3 – introductory wording and points a and b

Text proposed by the Commission

3. Member States shall ensure that suppliers keep detailed records of their transfers, in accordance with the practice in force in the respective Member State. Such records shall include commercial documents containing the following information:

- (a) the description of the defence-related product;
- (b) the quantity of the defence-related product and the dates of transfer;

Amendment

3. Member States shall ensure **and regularly check** that suppliers keep detailed records of their transfers, in accordance with the practice in force in the respective Member State. Such records shall include commercial documents containing the following information:

- (a) the description of the defence-related product;
- (b) the quantity **and value** of the defence-related product and the dates of transfer;

Or. en

Justification

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

Point b: It is important to register not only the quantity but also the monetary value.

Amendment 13

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.

Or. en

Justification

Access to suppliers' records by Member State authorities is lengthened from three to five years. This will provide for more transparency in the process, as well more time for investigations of possible breaches of the transposed national law or regulation and is more in line with the other timetables.

Amendment 14

Proposal for a directive Article 9 – paragraph 2 – point a

Text proposed by the Commission

(a) proven experience and reputation in defence activities, in particular by authorisation to produce **and** commercialise defence related products and by employment of experienced management staff;

Amendment

(a) proven experience and reputation in defence activities, in particular by authorisation to produce **and/or** commercialise defence related products and by employment of experienced management staff;

Or. en

Amendment 15

Proposal for a directive

Article 9 – paragraph 3 – introductory wording

Text proposed by the Commission

3. Certificates shall contain the following information:

Amendment

3. Certificates shall contain **at least** the following information:

Or. en

Amendment 16

Proposal for a directive

Article 9 – paragraph 8 – subparagraph 1

Text proposed by the Commission

8. Member States shall publish und update regularly a list of certified recipients and inform the Commission and the other Member States thereof.

Amendment

8. Member States shall publish und update regularly a list of certified recipients and inform the Commission, **the European Parliament** and the other Member States thereof.

Or. en

Amendment 17

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

Amendment

1. Member States shall ensure that recipients of defence related products, when applying for an export licence, **prove, to the satisfaction of** 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. **In such cases, Member States shall furthermore ensure that, once the export**

has taken place, the recipients of defence related products confirm to the competent authorities that export limitations have been complied with, providing any relevant evidence thereof.

Or. en

Justification

To avoid insecurity and perhaps infringement procedures

Amendment 18

**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. ***Following that consultation, if a Member State does not obtain the required consent for that export from the originating Member State, the export shall not take place. In such cases, the Commission and the other Member States shall be informed accordingly.***

Or. en

Justification

To avoid uncertainty and perhaps infringement procedures.

Amendment 19

Proposal for a directive Article 10a (new)

Text proposed by the Commission

Amendment

Article 10a

Administrative cooperation

Member States shall ensure that appropriate control measures are applied in order to verify that the terms and conditions of transfer licences are complied with both by the supplier and the recipient. Without prejudice to the application of penalties and other measures provided for in Article 14a, in cases where a transfer of defence related products is found to be in breach of those terms and conditions by a Member State, the competent authorities of that Member State shall immediately inform the competent authorities of the other Member State or Member States concerned.

Or. en

Amendment 20

Proposal for a directive Article 11 – title

Text proposed by the Commission

Amendment

Customs ***cooperation***

Customs ***procedures***

Or. en

Amendment 21

Proposal for a directive Article 11 – paragraph 2 – point a

Text proposed by the Commission

(a) relevant information ***on limitations of export to third countries concerning the defence related products included in the transfer licence***, was not taken into account when the export licence was granted;

Amendment

(a) relevant information was not taken into account when the export licence was granted;

Or. en

Justification

Reflects the wording of the dual use Regulation

Amendment 22

Proposal for a directive Article 13 – paragraph 1

Text proposed by the Commission

1. The Commission shall update the list of defence-related products set out in the Annex ***in conformity with*** the Common Military List of the European Union.

Amendment

1. The Commission shall update the list of defence-related products set out in the Annex ***on the basis of*** the Common Military List of the European Union.

Or. en

Justification

The comitology procedure makes only sense if there is a conflict over which items which should be included in the ANNEX - e.g. nuclear weapons

Amendment 23

Proposal for a directive Article 14 a (new)

Text proposed by the Commission

Amendment

Article 14a

Penalties

1. The Member States shall take appropriate measures to ensure the proper enforcement of the provisions of this Directive.

2. The Member States shall lay down rules on penalties applicable to infringements of the provisions adopted for the implementation of this Directive, and shall take all measures necessary to ensure that those rules are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

The Member States shall establish as a criminal offence, when committed intentionally, the re-export to third countries of defence related products received under transfer licence in breach of the conditions attached to its use, unless those conditions have been amended by the originating Member State to allow for such re-export.

Or. en

Amendment 24

Proposal for a directive Article 15 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. If a Member State does not obtain the required consent for a contemplated export from the originating Member State, that export shall not take place. In such cases, the Commission and the other

Member States shall be informed accordingly.

Or. en

Amendment 25

Proposal for a directive Article 16

Text proposed by the Commission

Amendment

Reporting

Review

1. The Commission shall report on such measures taken by Member States in view of the transposition of this directive, and in particular of Articles 9-12, 15 thereof, by [12 months of the date of transposition of the directive].

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.

By...*, the Commission shall review the effectiveness of this Directive and report to the European Parliament and the Council thereon. The Commission shall evaluate in particular whether, and to what extent, the objectives of this Directive have been achieved. In its report, the Commission shall review the application of Articles 9 to 12 and Article 15 of this Directive, and shall evaluate the impact of this Directive on the development of a European defence equipment market and a European defence technological and industrial base, having regard inter alia to the situation of small and medium-sized enterprises. If necessary, the report shall be accompanied by a legislative proposal.

*** 5 years from the date of transposition of this Directive.**

Or. en

EXPLANATORY STATEMENT

The Rapporteur welcomes the proposal for a Directive on simplifying terms and conditions of transfers of defence-related products within the Community as part of the Commission's "defence package" together with a proposal for a defence procurement Directive and a Communication on European defence industry competitiveness.

There are currently 27 poorly coordinated national defence equipment markets that are characterized by duplication and inefficient use of resources. Not only is most defence procurement organised on a national basis, but the transfer, transit and import of military equipment within the EU is as well. The proposed simplification of national licensing schemes for transfers of defence equipment within the internal market is a necessary precondition for the development of a European Defence Equipment Market (EDEM) and an internationally competitive European defence industry. Simplification of intra-community transfers of defence equipment will enhance security of supply for Member States while reducing the administrative burden by introducing conditions permitting a sharper focus on the more important transfers.

Although the Rapporteur welcomes the proposal, she is of the opinion that there is room for further improvement. She therefore proposes amendments along the following lines:

Enforcement and Review

There has to be a strict control that arms and arms related products do not, in general, ultimately reach conflict areas. The Rapporteur emphasises that re-export to third countries must not take place in cases where the originating Member State does not give its consent. Restrictions on re-export by the originating Member State must, under no circumstances, be ignored by the recipients of transfers.

She considers that the sanctions to be applied in cases of violation of licensing conditions need to be laid down in more detail. In particular, Member States should establish that, when committed internationally, to violate export limitations of defence products is a criminal offence. This would provide Member States with further insurance that there an effective remedy is possible in cases where the restrictions on re-export of transfer licences are not respected. This would additionally increase Member States' trust in the system. In addition, the Member States will be obliged to check that the suppliers keep detailed records of their transfers.

The Rapporteur points out that this proposal is a first step toward reinforcing internal market rules in an area which has been at the core of Member State sovereignty. It should be conceived of as a "pilot project" which can be the subject of further corrections and modifications where the proposed measures fail to achieve the objectives of this Directive. As a consequence, the Rapporteur suggests that the Commission should make a comprehensive assessment of the implementation of the directive after 5 years following the date of entry into force of this Directive. If necessary, it shall accompany the assessment with proposals to the European Parliament and to the Council to amend the Directive.

The Rapporteur is of the opinion that the development of the EDEM will crucially depend on the extent to which the implementation of this proposal will result in the strengthening of mutual trust between the Member States. Therefore, the assessment should focus in particular on the impact of the Directive on mutual trust between Member States.

Small and Medium-Sized Enterprises (SMEs) Interests

The certification system, the central element of the proposed licensing system, tends to be geared towards the needs of larger companies and might result in a competitive disadvantage for SMEs. Whereas larger enterprises can opt for certification to obtain general licences, the certification process is too costly and cumbersome for smaller enterprises.

All companies will profit from the provision that there will be no need, as a general rule, to obtain a licence for transfers of sub-systems or components that are integrated into armaments systems and cannot be transferred or exported at a later stage. There might be a considerable number of SMEs among producers of sub-systems and components that will profit from this provision. However, this provision might not compensate alone for the fact that the licensing system tends to favour larger companies. In order to make sure that the directive will not lead to a relative loss in competitiveness for SMEs compared to larger companies, she proposes that the Commission's assessment of the impact of the Directive after 5 years of the date of its entry into force should include an evaluation of the impact of the directive on SMEs.

Legal clarity

The Rapporteur points out that several parts of the proposal need clarification in order to provide for more legal certainty. She suggests that Member States' international commitments which justify using individual licences should not be defined via an enumerative list but via a general reference to "*Member States international commitments and obligations*". Her recommendations also contain a number of clarifications related to the obligations of defence equipment suppliers.