Defence-related products: simplifying terms and conditions of transfers within the Community

2007/0279(COD) - 07/10/2008

The Committee on the Internal Market and Consumer Protection adopted a report drafted by Heide **RÜHLE** (Verts/ALE, DE), and amended 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.

The main amendments – adopted in 1st reading of codecision – are as follows:

Purpose: Members want to clarify that the Directive does not affect the discretion of Member States as regards policy on the export of defence-related products. It is without prejudice to Member States' ability to pursue and extend intergovernmental cooperation subsequently, while complying with the principles laid down by the Directive. The definition of "transfer" and "export licence"are amended. The latter means an authorisation to supply defence related products to a legal or natural person in any third country. Amended recitals state that Member States laws need to be harmonised in such a way as to simplify the intra-Community transfer of defence related products in order to ensure the proper functioning of the internal market taking due account of the objectives of the CFSP as enshrined in the Treaties, amongst which are the promotion and preservation of human rights, peace, security and stability. In addition, anti-personnel mines and cluster munitions, including sub-systems, components, spare parts, technology transfer, maintenance and repair, should be excluded from the scope of the Directive. The use, development, production, stockpiling, storage, acquisition, retention and transfer to any party, directly or indirectly, of either anti-personnel mines or cluster munitions should be prohibited.

Prior authorisation of transfer: Members clarified that the transfer of defence related products between Member States shall be subject to prior authorisation, except where the applicable national law provides that no such authorisation is required. Member States shall ensure that suppliers wishing to transfer defence-related products from their territories may apply for global or individual licences, subject to compliance with the terms and conditions attached thereto. Member States shall also publish general licences. The committee also made an amendment intended to ensure that in circumstances in which an individual licence may legitimately be granted, as set out in Article 7, Member States may refuse to grant a general or global licence. 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.

A new clause states that, 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 be allowed on the basis of the transfer licence delivered for the first transfer of the product from the supplier to the recipient and in accordance with the terms and conditions thereof. However, in good time before the transfer is executed, 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.

Members stated that it should be possible under **general licences**, if necessary, to supply defence-related products to government institutions which are not part of the armed forces. It should also be possible to transfer demonstration-only defence-related products to Member States, and transfer them back to the originating country, for a limited period.

Members stressed Member States' autonomy in setting terms and conditions for licences that companies need to fulfil. They substituted "international obligations and commitments of Member States" for "relevant international non-proliferation regimes, export control arrangements or treaties", stating that the former was broader than the latter. 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.)

Suppliers obligations: one of the major problems relating to the trade in defence products is that it is hard for governments, parliaments and NGOs to keep track of what is going where. In order to increase transparency and in order to decrease the risk of arms ending up in places where they do not belong, Members States should be informed of any limitations attached to the transfer licenses. 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 end-use, re-transfer or export of the defence-related products. Where limitations on the re-transfer of defence-related products are concerned, the licensing Members State shall inform the Member State in which the recipient is located of all terms, conditions and limitations of the transfer licence.

Records of transfers: records shall be kept for at least five years (rather than 3) from the end of the calendar year in which the transfer took place. The records shall be transmitted on a yearly basis to the competent authorities of the Member State in which the supplier and recipient are established respectively. Member States shall also ensure that recipients keep detailed and complete records of their receipt of defence-related products containing the prescribed information in accordance with practice in each Member State.

Certification: amongst the certification criteria for recipients, there must be, inter alia, a written commitment of the company that the company will take all necessary steps to observe and enforce all specific conditions related to the end-use, re-transfer and export of any specific received component or product, and will take into account cooperation in the framework of the European Union Code of Conduct on Arms Export. The duration of the certificate shall in any case not exceed 3 years (rather than 5 years.) . Competent authorities shall monitor compliance of the recipient with the criteria at least every three years, and with any condition attached to the certificates. The European Parliament should receive the list of certified recipients. The Commission shall make publicly available a central register of recipients certified by Member States on its website, whilst taking into account the sensitivity of information and observing applicable legislation relating to security of information.

Export limitations: Member States shall have the necessary resources and be able to verify compliance with export limitations. 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 Members insisted that re-export to a third country cannot take place without the consent of the Member State of origin.

Administrative cooperation: a new article states that Member States shall ensure that appropriate control measures are applied in order to verify compliance with the terms and conditions of transfer licences by both the supplier and the recipient. Without prejudice to the application of the penalties, 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. Member States may publish relevant, non-confidential information concerning information, certification and exportation after transfer.

Penalties: the Committee introduced a new article providing that Member States shall lay down rules on penalties applicable to infringements of the provisions adopted in implementation of the Directive, in

particular in the event that false or incomplete information is provided as regards compliance with export limitations attached to a transfer licence. Member States shall take all measures necessary to ensure that those rules are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

Review and reporting: the Commission shall review the functioning of the Directive and report to the European Parliament and the Council 5 years after the date of transposition. In its report, the Commission 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.