Dual-use items and technology: Community regime for the control of exports, transfer, brokering and transit

2008/0249(COD) - 16/12/2008 - Legislative proposal

PURPOSE: to achieve uniform and consistent application of controls of exports of dual-use items and technology throughout the Community in order to avoid unfair competition among Community exporters and ensure efficiency of the security controls in the Community.

PROPOSED ACT: Council Regulation.

BACKGROUND: Council Regulation (EC) No 1334/2000 setting up a Community regime for the control of exports of dual-use items and technology requires dual-use items (including software and technology) to be subject to effective control when they are exported from the Community. Dual-use items (including software and technology) are civil items which can be used for military purposes. They are subject to control when they are to be exported from the European Union. These controls are designed in particular to prevent the proliferation of weapons of mass destruction.

To ensure that such control is fully effective and complies with Member States' commitments at multilateral level, authorisation is required under Article 3 of Regulation (EC) No 1334/2000 for export of the dual-use items listed in Annex I. There are four types of export authorisations:

1) Community General Export Authorisation (CGEA) No EU001, as referred to in Article 6 of Regulation 1334/2000, covers most of the exports of controlled items to seven countries (United States of America, Canada, Japan, Australia, New Zealand, Switzerland and Norway);

2) for all other exports for which an authorisation is required under the Regulation, it leaves to the *national* authorities the final decision as to whether to grant a national general, global or individual export licence.

National general export authorisations are created by individual EU Member States and are valid in principle across the EU. However, in spite of the requirements of Regulation (EC) No 1334/2000, there is a lack of transparency across Member States regarding both the scope and conditions of use of national general export authorisations and the list of exporters denied access to national general export authorisations. As a result, the chances of infringement of the Regulation are significant. This leads to regulatory treatment of certain exports that benefits businesses established in one Member State at least partly at the expense of businesses established in and national security interests of other Member States, and is not in the best interests of the Community as a whole.

In its Communication of 18 December 2006, the Commission put forward the idea of the creation of new Community General Export Authorisations in a bid to simplify the

current legal system, enhance the industry’s competitiveness and establish a level playing field for all Community exporters when they export certain items to certain

destinations.

IMPACT ASSESSMENT: this initiative does not create new administrative burdens for companies. The objective is to provide exporters with a more comprehensive instrument than national authorisations — valid throughout the European Union. Even if it impossible to measure the exact impact, it is clear that the initiative will have a positive operational impact on exporters, that there will be no negative impact at EU level and that this narrow legislative initiative would have no far-reaching economic, social or environmental impact beyond the dual-use goods regime.

LEGAL BASIS: *please refer to the summary entitled "background note"*.

CONTENT: in order to create new Community General Export Authorisations for certain non-sensitive dual-use items to certain non-sensitive countries, the relevant provisions of Regulation (EC) No 1334 /2000 need to be amended by the addition of six new Annexes.

The draft proposal covers six new CGEAs. Compared to the preferences expressed by the Working Party sub-group on new CGEAs, this proposal has added a number of countries and items and made a number of changes to the conditions of use of the authorisations.

In addition, the draft Regulation states that the competent authorities of the Member State where the exporter is established should be provided with the possibility of not permitting the use of the Community General Export Authorisations foreseen in this Regulation where the exporter has been sanctioned of an export-related offence punishable by the withdrawal of the right to use these authorisations.

BUDGETARY IMPLICATION: this proposal has no implication on the EU budget.