

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on simplifying terms and conditions of transfers of defence-related products within the Community

Position Paper - 15 July 2008

Vredesactie vzw, B

On the context of the proposal

This directive aims at stimulating the European defence and arms industry by allowing the producers to trade arms and their components more swiftly within Europe. The Commission believes that the latter is now impaired by a complex and bureaucratic system of national transfer licences. The reasoning behind this proposal is that simplifying transfers of defence-related products within the EU, will strengthen the European defence and arms industry and make it more competitive.¹ The Commission seems to believe that arms production is a neutral, useful and economically sound activity, which should be stimulated. The fact that defence-related products are not regular economic goods, is recognised because of their security implications, but is never approached from an ethical point of view. This starting point leads to a directive which holds too little guarantees for a sound and transparent European arms trade policy. The point of departure of any legislation concerning arms production and trade should be precaution and prevention. Arms exports should be an exception to the rule, based on underpinned arguments, rather than a protected and stimulated practice.

The main concerns about the proposed directive are the lack of a legally binding framework for export from the EU, insufficient guarantees concerning transparency and the absence of sanction mechanisms.

We urge all parties involved in the discussion in the EP and the Council to amend the directive at least on the following points:

The general condition: a legally binding bottom line for all EU countries

A legally binding framework with clear conditions for export of arms, should be a **condition** for the simplification of transfers of defence related products within the Community. There should be a clear bottom line for all EU countries concerning their export to non EU countries, referring to respect for human rights, development and human security. The existing European Union Code of Conduct on Arms Exports can be a starting point.

Control inside EU

The directive only allows individual licences in specific cases. Global and General licences will make sure that most deliveries within the EU can happen without prior approval by the national governments.²

The push for moving from individual to general and global licences holds some serious risks. One of the disadvantages is the move from ex-ante to ex-post control. Governments, parliaments and civil society lose the possibility to discuss arms deliveries before they happen. The word 'control' does no longer apply here, as a discussion about a controversial arms delivery will only take place

1 COM (2007) 765 final, Explanatory Memorandum

2 COM (2007) 765 final, Chapter II, art 4, 5, 6 and 7

(years) after the weapons have been traded. Although the commission reasons that ex-ante control is unnecessary between European countries, this explicit choice for general licences lowers the national standards of transparency and may lead to a similar choices for export to non-EU states. Therefore the right for Member States to work with **individual licences** should not be put under conditions.

Control of export outside the EU

The proposal allows Member states to impose restrictions on the export by recipient parties to parties outside the EU.³ This is a crucial clause, as it is the only way flows of military products outside the EU can be controlled. In the current text, there are not enough guarantees that this clause will prevent unwanted exports.

There is some space for improvement:

Member states should be **obliged** to build in conditions for every re-export, based on principles, e.g. such as those formulated in the Code of Conduct.

The country of the supplier should give its **consent** for the re-export by the recipient to a third country, before this export can happen.

There should be a **sanction mechanism** for companies / countries which do not respect the position of the home country of the supplying company.

Subsystems and components

The current text of the proposal states that Member States are not allowed to restrict their re-export if they are fully integrated in a system.⁴ This means that a Member State is not allowed to prevent its products from being used in systems which will be delivered to unwanted parties outside the EU. This clause should be removed.

Transparency

In order to allow the member states and the EP to control the flow of defence-related goods within and outside the EU, there should be a clear obligation for transparency. The current text of the proposal does not include enough guarantees.⁵

At least following reporting should be obligatory:

Member States should be **obliged** to collect the information about trade from the companies every six months and should **communicate** this information to the EU.

Companies who do not provide this information should lose their certificate.

This information should be standardised, centralised and made publicly available on a European level by the **Commission**.

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3 COM (2007) final 765 final, Chapter III, art. 10

4 COM (2007) final 765 final, Chapter II, art. 4, provision 5 and 6

5 COM (2007) final 765 final, Chapter III, art. 8