



The EU as a watchdog for responsibility in the field of arms control : a bridge too far?

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Conference on Export controls and the European defence market: Can effectiveness be combined with responsibility?"



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Necessary conditions for the European Union to act as watchdog :

- An **EU policy** relative to international instruments designed to regulate arms transfers
- An **EU arms export control regime** and not the compilation of Member State's ones

Presently it is not the case

Due to

- Lack of **EU legally binding power** in that area ?

Exception established by article 346 of
TFUE

- Lack of Member States **willingness** to do so ?

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Attempt to answer

Do we face a similar situation for dual-use items where the **EU has the competence** to legislate and has adopted a set of legislation ?

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How the export control is presently ruled by the EU and its Member States ?

- Up to 1994 ruled **only** by national legislation
- Establishment of the **internal market (1992)** :
de facto free movement of arms and dual-use items
- To counter the risk of diversion, necessity to **coordinate** Member States' export control policies or **create** a EC export control regime

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Different instruments have been adopted for arms and dual-use items due to the division of competencies between EC and its Member States established by the Treaty

- Adoption of **Common Criteria for arms** exports agreed by the European Council at the Luxembourg and Lisbon meeting in 1991 and 1992
- Commission proposal to adopt a EC Regulation establishing a **EC dual-use goods export control regime**

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Progressive mutation of the dual-use export control regime as proposed by the Commission

Commission proposal **rejected** by **Member States** : dual-use items are considered as included in the Treaty exception

Adoption of **integrated system** based on two instruments:

- A **Regulation** which contains essentially technical elements : the necessity of authorisation and territorial validity
- A **Joint Action** for the so considered political elements (list, criteria)

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- The Integrated system **invalidated** by the European Court of Justice : dual-use items export controls are included in the exception
- **New proposal** of a Regulation establishing a Community regime for the control of exports of dual-use items and technology
- **Two years to convince** several Member States to accept the ECJ's interpretation of the distribution of competencies

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- Adoption of one **Regulation** (1334/2000) of 22 June 2000 setting up a **Community regime** for the control of exports of dual-use items and technology

Amended in 2009 (428/2009) to include essentially the control of brokering and transit

- Adoption of a Council **Joint Action** of 22 June 2000 concerning the control of technical assistance related to certain military end-uses (2000/401/CFSP)

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Does the so called “Community regime for the control of exports, transfer, brokering and transit of dual-use items” is a Community Regime ?

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It is not a Community regime

Member States :

Hold **decision making power** to grant an authorisation

Have the right

- To **extend the list** of controlled items,
- To **restrict the movement** of dual-use goods within the EU,
- To establish **new categories** of authorisations,
- To extend the **catch-all clause** mechanism,
- To impose **specific** export control conditions.

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A Community regime on the way to be

Elements of a single export control regime:

- A **single list** of items to control,
- A **non-exhaustive list of criteria** to be considered by national authorities,
- A **community validity** of authorisation,
- Several binding and non-binding **consultation** mechanisms,
- **CGEA.**

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This Community regime is not fundamentally different from the Member States' coordination established for arms....

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EU arms export control coordination

- Council Common Position 2008/944/CFSP of 8 December 2008 defining **common rules** governing control of exports of military technology and equipment
- Council Declaration of 13 June 2000, issued on the occasion of the adoption of the **common list of military equipment** covered by the European Union code of conduct on arms export
- Council Common Position 2003/468/CFSP of 23 June 2003 on the control **of arms brokering**

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Coordination of Member States which sounds like a dual-use Community Regime

Member States coordination includes

- A single list of items to control,
- A non-exhaustive list of criteria to be considered by national authorities,
- A politically binding consultation mechanism.

Member States hold the decision making power to grant an authorization and have the right to extend the list of controlled items, define conditions,...

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Therefore

- If we don't consider the legally binding aspect, **both regimes are mostly equivalent**
- Member States are still **not ready to constraint** their export policies further than to some forms of coordination
- The **EU could not be considered as a watchdog** in the field of arms export control because it does not seem to fit Member States' expectations

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Nevertheless

The situation might be considered differently if we **sum up actions initiated by Member States** acting not necessary within the framework of the EU :

- Council conclusion, declaration on Arms Trade Treaty, NPT, Code of Conduct against ballistic missile proliferation, CWC, SALW, Mine action, Iran, DPRK,...
- EU Security Strategy : *Secure Europe for a better world* (2003)
- EU Strategy against proliferation of Weapons of Mass Destruction (2003)
- EU Strategy to combat illicit accumulation and trafficking of SALW and their ammunition (2005)