

(Acts adopted pursuant to Title V of the Treaty on European Union)

**SECOND ANNUAL REPORT ACCORDING TO OPERATIVE PROVISION 8 OF THE EUROPEAN UNION
CODE OF CONDUCT ON ARMS EXPORTS**

(2000/C 379/01)

The European Union Code of Conduct on Arms Exports, adopted on 8 June 1998, set up a mechanism for information exchange and consultation among the Member States based on the common criteria adopted by the Luxembourg and Lisbon European Councils held in 1991 and 1992 respectively. The European Union thus embarked on a process of convergence of national arms export control policies accompanying the restructuring of European defence industries.

The European Code of Conduct provides for an annual review procedure. The first report was published in the *Official Journal of the European Communities* on 3 November 1999⁽¹⁾ following a Council decision to publicise it in line with Member States' wishes.

This document constitutes the second annual report: it reviews the second year of implementation of the Code of Conduct. The second year was marked by consolidation of the first year's achievements and also by further progress, particularly in the priority areas defined in the first report. Finally, since the implementation of the Code of Conduct is part of a long-term process of convergence and harmonisation of arms export control policies, this report sets out guidelines which the Member States have adopted for the future.

**I. REVIEW OF THE SECOND YEAR OF THE CODE'S
IMPLEMENTATION: CONSOLIDATION OF ACHIEVEMENTS**

The first report stated that considerable progress had been made over a short period of time and that the results of the Code's implementation during the first year of its existence were already positive. In the second year the Code was substantially strengthened and the first year's achievements consolidated. It was marked by a considerable increase in the number of notified denials and consultations, as will be seen

from the table annexed to this report. This evolution is evidence of Member States' resolve to put into practice a new form of transparency in arms export control and to act in greater concert in this area.

Implementation of the Code of Conduct went hand in hand with greater concertation by Member States regarding not only the practical arrangements for implementing the Code and upgrading those arrangements, but also arms export control policies. The CFSP Working Party on Conventional Arms Exports (COARM) afforded a privileged framework for that concertation. During the second year of the Code's implementation, the working party concentrated on addressing the priority areas identified in the first report. The results achieved here are described below. The steady increase in the number of notifications and consultations, reflecting the Code of Conduct's rising impact, gives added substance to Member States' information exchanges in the said working party.

Operative provision 11 of the Code of Conduct provides that Member States will use their best endeavours to encourage other arms-exporting States to back the Code's principles. The first report already signalled support for these principles by the associated countries of central and eastern Europe, Cyprus, the EFTA countries' members of the European Economic Area and Canada. Turkey and Malta have since declared that they subscribe to the Code's principles and have undertaken to adjust their arms export policies accordingly but also, where necessary, their relevant rules. Member States welcome the fact that the Code's principles are being increasingly recognised; they are determined to continue encouraging that development.

In tandem with implementing the Code of Conduct, Member States have each embarked on a national drive to increase transparency. Thus, most arms-exporting Member States now publish national reports on arms exports. A list of those

⁽¹⁾ OJ C 315, 3.11.1999, p. 1.

reports and — for those that are available online — their Internet addresses are annexed to this document. Member States welcome this development as a boost to the Code of Conduct.

II. STATE OF PLAY AS REGARDS THE IMPLEMENTATION OF THE PRIORITY MEASURES IDENTIFIED IN THE FIRST REPORT

The first annual report identified four key areas for consideration and action by the Member States in the short term, with a view to strengthening the Code and ensuring greater transparency. Progress made in these areas during the second year of the Code's implementation is detailed hereafter:

Common list of military equipment

The first report emphasised that top priority needed to be given to finalisation of the common list of military equipment provided for in operative provision 5 of the Code because that list was to be a cornerstone of the Code of Conduct.

The list was adopted by the Council on 13 June 2000 and published in the *Official Journal of the European Communities* of 8 July 2000. The Council decided to publicise the list in accordance with the principle of wide-ranging transparency underlying the Code.

The adoption of the common list of military equipment represents a major positive development contributing significantly towards making the Code of Conduct more effective. It marks a further step towards convergence between the Member States in the area of controls on conventional arms exports. Member States will now use the common list's references in denial notifications (with retroactive effect for earlier denial notifications), thereby clarifying and simplifying their information exchanges on these matters.

The common list of military equipment has the status of a political commitment in the framework of the common foreign and security policy (CFSP). In this sense, all Member States have made a political commitment to ensure that their national legislation enables them to control the export of all the goods on the list. The common list of military equipment will act as reference point for Member States' national military equipment lists, but will not directly replace them.

Since the list has an evolutionary character, Member States will continue updating it on a regular basis within the COARM working party.

Lastly, the Member States have made it known that they would endorse efforts for any items from the common list of military equipment which are not contained in the Wassenaar list, to be put forward for consideration within the Wassenaar Arrangement.

'Essentially identical transactions'

The second priority identified in the first report was the development of a common understanding of what constitutes an essentially identical transaction. That concept is, in fact, central to the Code of Conduct's operative section; therefore, there is obviously a need for an understanding agreed by all Member States of the scope of essentially identical transactions.

Member States have continued discussion of this matter within the COARM working party. Progress has been made, but a common understanding has yet to be agreed. The concept is complex and the guidelines to be adopted here will have a major bearing on the Code's future operation.

Member States propose to continue exchanging information and harmonising matters in this area. The common list of military equipment will henceforward be the agreed basis for seeking a common understanding of what constitutes an essentially identical transaction.

More elaborate denial notifications

The first report also pointed to the need for denial notifications to give a fuller description of the reasons for denial in order to facilitate understanding of the general thinking behind each other's denials, and help Member States decide whether consultation would be warranted.

Here, Member States have agreed that denial notifications should include the following particulars:

- country of destination,
- full description of the goods concerned (with their matching common list number),
- buyer (specifying whether the buyer is a government agency, police, army, navy, air force, or paramilitary force, or whether it concerns a private natural or legal person and, if denial is based on criterion 7, the name of the natural or legal person),
- description of the end-use,

- reasons for denial (these should include not only the number(s) of the criteria, but also the elements on which the assessment is based),
- date of the denial (or information on the date when it takes effect unless it is already in force).

Member States have also agreed that denial of a licence for a transaction deemed essentially identical to a transaction already subject to a denial notified by another Member State should also be notified.

Embargoes on arms exports

Lastly, the first report emphasised that it was important for Member States to continue exchanging information on national interpretations of embargoes imposed by the United Nations, the European Union and the Organisation for Security and Cooperation in Europe.

Member States have also further concerted on national policies to control arms exports to certain embargo-free countries or regions that are being closely monitored (existence of an internal or external conflict, human rights situation, etc.).

III. FURTHER QUESTIONS ADDRESSED BY THE COARM WORKING PARTY IN CONNECTION WITH THE IMPLEMENTATION OF THE CODE OF CONDUCT

Member States have continued their efforts to upgrade and harmonise the arrangements for implementing the Code of Conduct mechanism.

Besides the questions referred to above, they have, *inter alia*, looked at the arrangements for the consultation procedures and, in particular, problems relating to the necessary confidentiality of such contacts, which should not, however, thwart the objective of transparency underlying the Code of Conduct.

Member States have further looked at military equipment used in humanitarian operations — in particular humanitarian mine-clearance operations — for which consideration was given to the possibility of making exceptions by means of a legal instrument.

As part of the implementation of the Code of Conduct, the Member States have also had to reflect on the question of arms brokerage control. This aspect was raised on several occasions and formed the subject of a meeting of experts specifically convened to address this problem. The Member States intend

to continue and deepen their discussions on the procedures for monitoring arms brokers' activities in order to incorporate this special topic — the importance of which has been recognised — into the process of convergence of the Member States' control policies.

Finally, with a view to the 2001 United Nations Conference on the illicit trade in small arms and light weapons in all its aspects, the Member States have started to define common guidelines and to strengthen their coordination as regards the control of transfers of small arms and light weapons by drawing on the experience gained during implementation of the Code of Conduct.

IV. PRIORITY GUIDELINES FOR THE NEAR FUTURE

The implementation of the Code of Conduct forms part of the long-term process for strengthening cooperation and for promoting convergence between the Member States of the European Union in the area of conventional arms exports.

As stated in the first report, such a process is unique to date. The implementation of the Code of Conduct constitutes an important milestone for the future of Europe as regards arms export controls by promoting greater transparency between States and *vis-à-vis* civil society, and the gradual development of harmonised policies.

The results achieved in the area of exchanges of information between Member States after two years of implementation of the Code are already considerable. The application of the Code should nevertheless be deepened and consolidated so as to make full use of its potential.

With a view to improving and deepening the implementation of the Code of Conduct, several issues have already been mentioned in this report as continuing to require joint consideration.

Moreover, and in addition to the above questions, the Member States have identified a number of guidelines on issues on which decisions should be taken or to which attention should be given in the near future.

1. *Finalisation of a common list of non-military security and police equipment*

The Member States consider that exports of certain non-military equipment which may be used for internal repression should be monitored by national authorities on the basis — as regards civil goods — of Community rules, in order to prevent equipment originating in the

European Union from being used for acts which violate human rights.

For this purpose, the COARM working party has undertaken to draw up a common list of non-military security and police equipment, the export of which should be monitored in accordance with the second criterion of the code 'Respect for human rights in the country of final destination'. The list drawn up by the working party will be submitted to the Commission which will be responsible for taking the initiative of proposing a draft Community mechanism for controlling exports of non-military equipment which may be used for internal repression. This instrument will be separate from the operative provisions of the Code of Conduct. However, it will be linked to it as control will be implemented on the basis of the second criterion of the Code.

The Council takes note of the Commission's intention of submitting as soon as possible a proposal based on the list, enabling Community control arrangements to be set up.

2. *Development of exchanges of information on national control policies for the export of arms to certain countries or regions regarded as requiring special vigilance*

However, the development of a dialogue between the Member States on national arms exporting policies lies at the heart of the objective of the Code of Conduct. The Member States are determined to make headway with this dialogue. The body of denials — which is now substantial — notified in the framework of the mechanism of the Code constitutes the concrete basis for such exchanges.

3. *Harmonisation of the procedures implemented in the framework of the operational provisions of the Code*

The Member States will continue the harmonisation work already initiated. They will endeavour in particular to clarify and strengthen the bilateral consultations mechanism, to define the method for revoking certain notifications at the request of the notifying State (except the lifting of an embargo which is already covered by agreed procedures) and finally to reflect on the concept of a minimum threshold for export notifications.

4. *Harmonisation of national annual reports on the application of the Code of Conduct*

The annual report on the application of the Code of Conduct is drawn up on the basis of the Member States' reports. However, the fact that some of the data transmitted are hard to compare, especially statistics, makes the task of summarising the information more complex and may hamper joint efforts to achieve transparency. In order to improve transparency and to increase the informative value of the annual report, the Member States will, as far as possible, endeavour to define a harmonised framework for national reports, particularly as regards statistics.

5. *Coordination of the Member States' national positions in multilateral bodies dealing with arms export control issues*

In order to implement operative provision 7 of the Code of Conduct, the Member States will help the Presidency strengthen coordination of their national positions and that of the European Union in international bodies dealing with arms export control issues.

6. *Promotion of the principles of the Code of Conduct in third countries*

Operative provision 11 of the Code provides that the Member States will use their best endeavours to encourage other arms-exporting States to subscribe to the principles of the Code of Conduct. The Member States will actively pursue their efforts along those lines and strengthen the dialogue with the countries that have said that they will back the principles of the Code, including initiatives to assist countries that experience difficulties in applying them. Moreover, they have taken note with interest of the adoption by the United States Congress of the law on the 'promotion of an international code of conduct for arms exports' and have welcomed the fact that the United States has thus embarked upon a path where the European Union has played a pioneering role. The Member States consider it highly desirable that the United States and the European Union should work together towards promoting common principles of arms export controls in third countries.

ANNEX I

Information on conventional arms exports and implementation of the Code of Conduct in the Member States over the period 1 January to 31 December 1999 (NB: figures in brackets refer to the period 1 January to 30 June 2000).

Statistics are compiled differently by each Member State: no uniform standard is used. Consequently, not all countries have been able to submit this information owing to current procedures in the area of arms export controls or data protection legislation.

Country	Total value of arms exports (in euro)	Total number of licences issued	Number of notified denials	Number of bilateral consultations initiated	Number of consultation requests received
Austria	395 453 327 ⁽¹⁾	1 294	11 (7)	4 (0)	1
Belgium	622 021 411 ⁽¹⁾	950	29 (13)	6 (7)	2 (2)
Denmark	Not available under the current system ⁽²⁾	228 in total (including 186 on common list + 17 for foreign police forces + 43 for, <i>inter alia</i> , hunting weapons)	2 (1)	0 (0)	0 (0)
Finland	40 155 692 ⁽³⁾	174 (licences granted, i.e. excluding prior notifications)	1 (2)	0 (0)	0 (1)
France	3 780 000 000 ⁽¹⁾	5 093 for exports of war material	62 (46)	15 (7)	5 (0)
Germany	3 026 167 800 ⁽¹⁾	9 373	61 (9)	4 (0)	14 (4)
Greece	43 158 770	23	0 (0)	0 (0)	0 (0)
Ireland	60 394 090	41 ⁽⁴⁾	0 (0)	0 (0)	0 (0)
Italy	1 340 812 490 ⁽¹⁾	Final: 495 For temporary export: 116 Extensions: 65	11 (12)	0 (2)	1 (3)
Luxembourg	39 093 ⁽¹⁾	20	0 (0)	0 (0)	0 (0)
Netherlands	366 336 768 ⁽¹⁾	Not available	12 (6)	0 (0)	4 (0)
Portugal	10 640 103,89 ⁽¹⁾ (for 57 effective operations)	898	2 (from 1.1.1999 to 30.6.2000)	0 (0)	0 (0)
Spain	141 383,860 ⁽³⁾	2 305	4 (2)	0 (0)	
Sweden	3 654 000 000 SEK ⁽³⁾ 7 153 000 000 SEK ⁽¹⁾	527 (export licences for sale)	0 (0)	0 (0)	0 (0)
United Kingdom	980 520 000 GBP ⁽³⁾	Total number of licences: 9 416 (Standard individual export licences: 8 967 Open individual export licences: 449)	26 (15 from 8.6.1999 and 7.6.2000)	4 (5 from 8.6.1999 and 7.6.2000)	

⁽¹⁾ Total value of licences issued.

⁽²⁾ A system for compiling these data has been operational since 1 July 2000.

⁽³⁾ Actual value of exports.

⁽⁴⁾ Irish law requires a licence to take out of the country guns and ammunition for any purpose whatsoever, including sports and hunting, repair and transfer of personal effects. A total of 419 licences were issued in 1999, including 378 for private purposes and 41 for the export of military equipment.

ANNEX II

National reports on arms exports are available in paper form or on the Internet at the following locations:

Belgium:	diplobel.fgov.be
Denmark:	Ministry of Foreign Affairs, No 2, Asiatick Plads 2, DK-1448 Copenhagen K, Denmark or www.um.dk (the report will be available at the end of 2000)
Finland:	www.vn.fi/plm/index.html
France:	www.defense.gouv.fr/actualites/dossier/d49/index.html
Germany:	www.bmwi.de , select politikfelder, select Aussenwirtschaft & europa, select exportkontrolle
Ireland:	www.irlgov.ie/iveagh
Italy:	Government report to Parliament on 1999 arms exports — published by Camera dei deputati and by Senato della repubblica (Doc. LXVII n.4)
Netherlands:	www.minez.nl/ezenglish/export.htm
United Kingdom:	www.fco.gov.uk/news/newstext.asp?3991
Sweden:	www.utrikes.regeringen.se/inenglish/pressinfo/information/publications.htm
