

EU NGO statement on the tenth anniversary of the EU Code of Conduct on Arms Exports

The EU Code of Conduct on Arms Exports (EU Code)¹, the foundation of the EU arms transfer control regime, is ten years old on 8 June 2008. When first adopted the EU Code was a groundbreaking step for major arms exporting states, being the world's first regional agreement on arms export controls.

The purpose of the EU Code is to set "*high common standards ... for the management of, and restraint in, conventional arms transfers by all Member States*".² It contains eight criteria that commit EU Member States to prevent arms transfers from the EU contributing to *inter alia* human rights abuses or internal repression, undermining international peace and security or sustainable development. It also contains a set of operative provisions intended to assist implementation by Member States, develop co-operation and promote convergence between them.

With the tenth anniversary, the time is ripe for the EU to take stock and to address the gaps and shortcomings which prevent the EU Code from fulfilling its stated purpose. Member States should, in particular:

- **transform the EU Code into a legally-binding Common Position;**
- **amend the language of the criteria or produce new guidance on criteria implementation** which reduces the possibility for Member States to make decisions contrary to the spirit and intent of the EU Code and reinforces co-operation and convergence within the EU's transfer control regime;
- **address the consequences of globalisation and the changing nature of the arms trade**, for example, by controlling extra-territorial production by EU companies outside the EU; and
- **introduce re-export controls as standard in all licences**, requiring that the original EU State should be consulted before onward re-export and reserve the right to carry out post-export end-use monitoring checks where there is a suspicion or significant risk that end-use guarantees are being broken.

The development of the EU Code and its operative provisions has not been static. In the ten years since its adoption, Member States have agreed a Common Military List of equipment covered by the EU Code³, a Common Position on Arms Brokering⁴, and an EU Code User's Guide to assist implementation⁵. This ability and willingness to update the EU Code regime is one of its main strengths, and one that bodes well for further improvements.

Yet the picture is far from perfect. Despite the positive developments and achievements, the EU Code's effectiveness is limited by its political rather than legally-binding status. However, in 2005, Member States finalised a draft text to

¹ EU Code of Conduct on Arms Exports (EU Code), 8 June 2008, <<http://www.consilium.europa.eu/uedocs/cmsUpload/08675r2en8.pdf>>.

² Ibid, preamble.

³ Common Military List of the EU (2007/197/CFSP), last updated 19 March 2007, <http://eur-lex.europa.eu/LexUriServ/site/en/oj/2007/l_088/l_08820070329en00580089.pdf>.

⁴ Council Common Position on the Control of Arms Brokering (2003/468/CFSP), 23 June 2003, <http://eur-lex.europa.eu/LexUriServ/site/en/oj/2007/l_088/l_08820070329en00580089.pdf>.

⁵ User's Guide to the EU Code of Conduct on Arms Exports, last updated 29 February 2008, <<http://register.consilium.europa.eu/pdf/en/08/st07/st07486.en08.pdf>>.

transform the EU Code into an EU Common Position, which would make it legally binding on EU Member States and go some way to mitigate these problems. Under a Common Position, Member States would be legally obliged to ensure conformity of their national practices with its criteria and provisions. However, EU governments have still not taken the decision to adopt the Common Position as a legal instrument. Failure to complete this process increasingly brings the will of Member States to fulfil the original purpose of the EU Code into question.

The vagueness of the language of the EU Code's criteria allows Member States too much scope to interpret the criteria differently. Member States continue to approve arms transfers that appear to contravene the EU Code criteria. There are also examples of where Member States undermined each other's licensing decisions by authorising deals which have previously been denied by another Member State. The large size and value of particular deals, and the perceived economic, political and strategic interests of some recipients of EU transfers, appear to influence Member States' decisions to loosen their obligations under the EU Code. Strengthening the language of the criteria in the EU Code and producing new guidance for Member States to implement each of the criteria would reduce the inconsistent application of the EU Code by Member States in their decision-making.

Furthermore, the phenomena of globalisation and technological development have significantly changed the old understanding of national arms industries as independent, stand-alone enterprises. Rising numbers of joint-ventures between states (both EU and non-EU), the transfer of production capacity by EU companies to locations in non-EU states, the increasing importance of non-military components in military production and the re-transfer of EU-sourced items by non-EU states are challenges which Member States have been slow to address.

Closely related to this is the question of how to prevent the misuse and the unauthorised retransfer of EU-supplied arms after the equipment or technology have left the EU. So far, Member States have proved reluctant to tackle the issue of post-export control head-on. While a rigorous pre-licensing approach must be central to any international arms transfer control regime, many Member States undervalue re-export controls and end-use monitoring checks. This increases the risk of EU equipment, components or technology being transferred or diverted to unlawful end-users or to end-users where such equipment will or is likely to be used to fuel conflict, poverty and serious violations of human rights and international humanitarian law. Member States should address the challenges of controlling the extra-territorial arms production by EU companies in non-EU states, and introduce re-export controls as standard into all licences, including for intra-community transfers.

To their credit EU Member States are working with other states to build a shared understanding of how to prevent irresponsible arms transfers in future, notably through their support for a global Arms Trade Treaty (ATT). Unfortunately, the work of the EU to support a global legally-binding ATT is undermined by its own inability to adopt a *regional* legally-binding agreement. Furthermore, as a regional bloc, the EU should be doing more to build on the relative successes of ten years of the EU Code, both at home and abroad, and to maintain control of its defence technology and equipment, including after it has left EU territory, if the EU Code is to fulfil its original purpose.

This statement has been endorsed by the following organisations:

- **Africa-Europe Faith and Justice Network (AEFJN)**, Belgium
- **Amnesty International**
- **Bonn International Centre for Conversion (BICC)**, Germany
- **Campagne tegen Wapenhandel**, The Netherlands
- **Caritas**, France
- **Comité Catholique contre la Faim et pour le Développement (CCFD Terre Solidaire)**, France
- **ControllARMI: Rete Italiana per il Disarmo (Italian Network on Disarmament)**, Italy
- **Groupe de recherche et d'information sur la paix et la sécurité (GRIP)**, Belgium
- **International Action Network on Small Arms (IANSA)**, United Kingdom
- **Internationaler Versöhnungsbund - Österreichischer Zweig (International Fellowship of Reconciliation - IFOR)**, Austria
- **KATU**, Finland
- **Oxfam Deutschland**, Germany
- **Oxfam France - Agir ici**, France
- **Oxfam GB**, United Kingdom
- **Peace Union of Finland**, Finland
- **Saferworld**, United Kingdom
- **School for a Culture of Peace**, Spain
- **Swedish Fellowship of Reconciliation (SweFOR)**, Sweden
- **Swedish Peace and Arbitration Society (SPAS)**, Sweden
- **The Verification Research, Training and Information Centre (VERTIC)**, United Kingdom
- **Transparency International**, United Kingdom