

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

ANNUAL REPORT IN CONFORMITY WITH OPERATIVE PROVISION 8 OF THE EUROPEAN UNION CODE OF CONDUCT ON ARMS EXPORTS

(1999/C 315/01)

1. Summary

The European Union Code of Conduct on Arms Exports was adopted on 8 June 1998. Written into the Code was an annual reporting procedure, of which this is the first. Over this short period of implementing the Code considerable progress has been made. The experiences of the Member States in providing notifications and consultations on arms exports have been positive. The Code has ushered in a new degree of transparency between governments in arms transactions, and has enabled the Member States to act in greater concert when considering national arms licensing decisions. It has also provided a forum for the Member States to discuss their common concerns when matters of regional stability and human rights are at issue. The Code has been embraced by others beyond the Union, with the associated countries of central and eastern Europe and Cyprus, the EFTA countries members of the EEA and Canada all agreeing to align themselves with its principles.

Reflections on the Code after one year offer the opportunity not only to highlight experiences, but also to consider the way forward. Consequently the report is structured in four parts. First reviewed are issues surrounding the practical application of the Code. These are followed by guidelines that have been adopted by the Conventional Arms Exports Working Group (COARM) to enhance application of the Code. Priorities for coordinated action in the future are then identified. The report concludes by providing statistics on Member States' conventional arms exports. Recognising the desire of Member States to increase transparency, the Council has decided to render the report public.

2. Introduction

The Council adopted the European Union Code of Conduct on Arms Exports on 8 June 1998. The initial proposal for the Code was tabled at the end of January 1998 and then discussed in several meetings of the Working Group on Conventional Arms Exports, and in the Political Committee.

The Code builds on the common criteria for arms exports of Luxembourg and Lisbon that were adopted in 1991 and 1992, and establishes an information exchange and consultation mechanism. This is the first such mechanism applied by any group of states to their conventional arms exports. The

adoption of the Code ushered in a new phase in the EU development of a common approach to arms exports, as a component of the EU common foreign and security policy in accordance with Articles 11 and 17 of the Treaty on European Union. The Code sets high minimum standards for the management of, and restraint in, conventional arms transfers by all Member States. It is designed to strengthen the exchange of relevant information and to achieve greater transparency in arms transactions. The convergence of national export policies, on the basis of the Code of Conduct, complies with the wish of Member States to maintain a defence industry as part of their industrial base as well as their defence effort. This process of convergence is also consistent with European defence industrial restructuring and cooperation.

In accordance with its operative provision 8, the Code is now undergoing its first annual review. The review covers all aspects of the Code, i. e. both the interpretation and the application of the criteria for the export of conventional armaments and the implementation of operative provisions. It also identifies improvements that may be needed. As part of the review effort, each Member State has circulated an annual report on its conventional arms exports and its implementation of the Code.

3. The operation of the Code: experiences of the implementation of the Code of Conduct

The experiences of the Member States in implementing the Code of Conduct during the first year of its existence have been positive. The Code has increased mutual understanding of Member State policies on conventional arms both directly through the circulation of denial notifications and consultations, and indirectly through contributing to a culture of greater transparency and openness.

The unique consultation mechanism set out in the Code has been deemed to be efficient. A large number of denial notifications have been circulated and Member States have engaged in active consultations on specific export licensing issues.

The increased dialogue on the implementation and national interpretation of the Code of Conduct has been valuable. This

practical cooperation, based on the principles and operative provisions of the Code, contributes to a convergence of the arms exports policies and procedures of the European Union Member States.

The Member States have urged non-members to adopt the principles of the Code and have welcomed the alignment to these principles of the associated countries of central and eastern Europe and Cyprus, the EFTA countries members of the European Economic Area, and Canada. These countries have declared that they share the principles contained in the EU Code of Conduct and will use them to guide their national export licensing decisions. In the spirit of the Code, some of these countries have now begun to circulate information on their conventional arms export control procedures.

While the general experience of the implementation of the Code of Conduct has indeed been a positive one, there remain issues requiring additional clarification and development. In fact, improving the effectiveness of the Code to further enhance the high common European standards for arms exports will be an ongoing process, of which the annual review is an essential element.

During the first year of the Code of Conduct the COARM working group discussed a number of issues relating to the practical implementation of the Code. Of particular importance, Member States have exchanged views on the following issues:

- the practical details of the consultation process,
- clarification of definitions set out in the Code,
- the legal status of the Code,
- options for enhancing the participation of countries that have declared their alignment with the Code's principles,
- concern by some countries that the denial notification system could be overloaded if appropriate thresholds are not set, in particular when the end users are private persons,
- the possibility of taking into account recipient countries participation in the United Nations arms register when considering arms exports licences,
- interpretations of arms export embargoes, in particular in relation to equipment used in humanitarian aid operations.

In addition, a separate working group under COARM has discussed the finalisation of a common European list of military equipment. Work continues on items still to be added to the list. Various national proposals are under discussion

with the aim of creating a comprehensive common European list of military equipment that reflects current international security and human rights concerns.

4. Guidelines adopted by COARM to enhance the practical implementation of the Code of Conduct

During the first year of implementation, the COARM Working Group has adopted the following guidelines:

- serial number indicating the country of origin and the number of the denial will be introduced for denial notifications (accompanied by the Community acronym of the Member State concerned and indication of the year),
- denials still subject to appeal under national procedures will be notified under the Code of Conduct with an indication to that effect,
- decisions to revoke extant licences will be dealt with in the same way as refusals of licence applications,
- consensus has been reached to use the Austrian Presidency proposal as a basis for the continued discussions on the common list of equipment. Denials on items subject to national controls by Member States, but not included in the abovementioned list, will continue to be notified to all Member States. Member States which do not control these items will inform others,
- non-EU countries which have declared their adherence to the principles and criteria of the Code, and which have become involved in the restructuring of the European defence industry, shall be allowed to gain access to the evolving interpretation of the Code's principles and criteria. This shall not entail access to information made available in the course of the procedures referred to in the operative provisions of the Code,
- any individual case of arms exports can be raised for discussion by delegations in the COARM Working Group, if it is considered to be useful for national licensing deliberations,
- denial notifications that have been circulated in the international export control regimes will also be circulated as Code of Conduct denial notifications if relevant to the scope of the code,
- a period of two to four weeks from the date the request for consultations has been received is established for the

consultation procedure envisaged in operative provision 3 of the Code, unless a different time period is agreed on between the parties concerned,

- when an arms embargo is lifted, denials solely based on the embargo will expire unless they are renewed by the denying country within a period of one month on the basis of other criteria of the Code.

5. Priorities for coordinated action in the future

The Code of Conduct is a unique document that demonstrates the European Union commitment to maintaining high common standards on arms exports. However, it is a new document and this review can therefore reflect only the initial experiences with its implementation. With the aim of strengthening the Code, achieving greater transparency, enhancing harmonisation and promoting the respect of human rights, some key areas have been identified for consideration and action in the near term:

- I. *The finalisation of the common European list of military equipment is a top priority.* It is necessary that this list reflects the present threats to international peace and security and to the respect of human rights. The list is to be a cornerstone of the Code of Conduct and should not be limited to the lowest common denominator of existing national control lists.

- II. To strengthen further the implementation of the Code of Conduct, Member States will seek to *develop common understandings of what constitutes and 'essentially identical transaction'*. Member States will continue to engage in pre-consultation dialogue to determine whether particular transactions are essentially identical or not.

- III. To help Member States in their national licensing deliberations *a fuller description of the reasons for refusal should be included in the denial notification.* This would facilitate understanding of the general thinking behind each other's refusals, and help the Member States decide whether consultation would be warranted in cases where the proposed export is not essentially identical.

- IV. *Member States will continue to exchange information on national interpretations of UN, EU and OSCE embargoes with a view to developing common understandings and practices.*

In addition, Member States welcome the Moratorium on the importation, exportation and manufacture of light weapons by the Economic Community of West African States (Ecowas), and will continue to discuss further how to take into account the principles of the Moratorium in their national licensing deliberations.

6. Information on Member States conventional arms exports and implementation of the Code of Conduct

Country	Reporting period	Total value of arms exports (EUR)	Total number of licences issued	Number of notified denials	Number of bilateral consultations
Austria	1998	War material: not available Other weapons: 208 741 703 (1)	War material: 292 Other weapons: 1 313	War material: 0 Other weapons: 13	2
Belgium	1998	649 671 652 (1)	1 067	29 (of which 5 since the adoption of the Code)	1
Denmark	1998	Not available	219	2	0
Finland	1998	30 934 318 (2)	155	5 (of which 3 since the adoption of the Code)	0
France	1998	6 277 545 600 (2)	7 222 — 2 353 prior approvals of the level of sales — 4 869 authorisations of exports of war material	50 (from 8 June 1998 to 31 May 1999)	5 (from 8 June 1998 to 31 May 1999)

Country	Reporting period	Total value of arms exports (EUR)	Total number of licences issued	Number of notified denials	Number of bilateral consultations
Germany	1998	2 829 222 407 ⁽¹⁾	11 400	27 (since the adoption of the Code)	1
Greece	1998	Not available	22	0	0
Ireland	1998	20 060 000 ⁽¹⁾	381	0	0
Italy	1998	949 414 596 ⁽¹⁾	Final: 593 For temporary export: 140 Licence extensions: 63	7	1
Luxembourg	1998	23 547 ⁽¹⁾	27	0	0
Netherlands	1998	431 862 632 ⁽¹⁾	Not available	16 (since the adoption of the Code)	0
Portugal	1998	14 690 185 ⁽¹⁾	116	0	0
Spain	1998	163 847 920 ⁽¹⁾	2 019	1	1
Sweden	1998	407 987 925 ⁽²⁾	542 (export permits for sales)	0	0
United Kingdom	1998	Not available	Total number of licences: 10 385 ⁽³⁾ Standard individual export licences: 9 869 Open individual export licences: 499 Standard individual transshipment licences: 17	43 (since the adoption of the Code)	7

⁽¹⁾ Total value of licences issued.

⁽²⁾ Actual value of exports.

⁽³⁾ These figures include licences for goods on the UK military list as well as licences for other goods.

NB: Not all countries have been able to submit this information due to present procedures or legislation in the area of arms exports controls or data protection legislation.