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Subject: Fifteenth Annual Report according to article 8(2) of Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment

Delegations will find attached the fifteenth annual report according to article 8(2) of Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment, as agreed by the Working Party on Conventional Arms Exports (COARM).

FIFTEENTH ANNUAL REPORT

ACCORDING TO ARTICLE 8(2) OF COUNCIL COMMON POSITION 2008/944/CFSP DEFINING COMMON RULES GOVERNING CONTROL OF EXPORTS OF MILITARY TECHNOLOGY AND EQUIPMENT

INTRODUCTION

The present report covers activities undertaken by the EU and its Member States in the framework of the implementation of Council Common Position 2008/944/CFSP¹ throughout 2012 and 2013. As far as data on conventional arms exports are concerned, the report covers the 2012 calendar year.

During 2012 and 2013, the EU and its Member States continued to implement Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment, which replaced in 2008 the EU Code of Conduct on arms exports in force since June 1998.

Article 15 of the Common Position establishes that the Common Position shall be reviewed three years after its adoption. On this basis, the Council, assisted by the Working Party on Conventional Arms Exports (COARM), has carried out a thorough assessment of the provisions and implementation of the Common Position. The preliminary results of such assessment, as noted in the Foreign Affairs Council conclusions of 19 November 2012, have confirmed the soundness of the text of the Common Position to further promote the convergence of Member States' export policies. A number of areas for further improvement relating to the concrete implementation of the Common Position have been identified by the review and are currently being worked out.

¹ OJ L 335 of 13 December 2008, pages 99-103.

The following third countries have officially aligned themselves with the criteria and principles of Common Position 2008/944/CFSP: Bosnia and Herzegovina, Canada, the former Yugoslav Republic of Macedonia, Iceland, Montenegro and Norway. A specific information exchange system between the EU and third countries aligned with the Common Position is in place since 2012.

The promotion of effective national arms export control regimes in selected third countries was carried out in 2012 and 2013 in the framework of Council Decision 2009/1012/CFSP of 22 December 2009² and Council Decision 2012/711/CFSP of 19 November 2012³ on support for EU activities in order to promote the control of arms exports and the principles and criteria of Common Position 2008/944/CFSP among third countries.

The EU and its Member States continued to play a leading role in the Arms Trade Treaty process, thoroughly preparing for, and actively participating in the UN Conferences on the Arms Trade Treaty in July 2012 and March 2013. Outreach to third countries in support of the Arms Trade Treaty was carried out in the context of Council Decision 2010/336/CFSP of 14 June 2010⁴ and Council Decision 2013/43/CFSP of 22 January 2013⁵ on EU activities in support of the Arms Trade Treaty.

In line with its early committed support to the ATT, the EU intends now to promote its early entry into force. All EU Member States have already signed the Arms Trade Treaty and ratification is now underway depending on the relevant national procedural requirements.

² OJ L 348 of 29 December 2009, pages 16-20.

³ OJ L 321 of 20 November 2012, pages 62-67.

⁴ OJ L 152 of 18 June 2010, pages 14-20.

⁵ OJ L 20 of 23 January 2013, pages 53-56.

I. IMPLEMENTATION OF COUNCIL COMMON POSITION 2008/944/CFSP

1. Implementation of Common Position 2008/944/CFSP in national legislation or administrative rules

The Common Position is an evolution of the EU Code of Conduct on arms exports, which it replaced in December 2008. It includes, inter alia, an extension of controls on brokering, transit transactions and intangible transfers of technology, as well as strengthened procedures to promote convergence of Member States' export policies.

Member States implement the provisions of the Common Position in their national export control systems and have to ensure that their national legislation or administrative rules conform to the Common Position. The situation regarding national implementation of the Common Position into Member States' arms export control regimes is reported in the annexed Table C.

2. User's Guide

The User's Guide is an essential instrument summarising agreed guidance for the implementation of the operative provisions of Common Position 2008/944/CFSP and the interpretation of its criteria. It is referred to in Article 13 of the Common Position.

It has been developed by the Council Working Party on Conventional Arms Exports (COARM) and is updated as appropriate. It is intended for use primarily by export licensing officials, thus substantially contributing, in a pragmatic way, to the convergence of Member States' arms export control policies and procedures. The Guide is a public document available on the website of the European External Action Service⁶.

⁶ http://www.eeas.europa.eu/non-proliferation-and-disarmament/arms-export-control/index_en.htm

The User's Guide contains sections, inter alia, on the following issues:

(a) Denial notifications and consultations

Denial notifications and bilateral consultations continue to take place via the EU's electronic coreu system on a daily basis. Information is circulated in a timely manner, ensuring transparency on the arms export policies of Member States vis-à-vis specific countries of final destination and end-users.

The denials notified, as well as the results of bilateral consultations, are included in a central electronic EU database of denials. The database is managed by the European External Action Service, and represents a dynamic system reflecting Member States' arms export control policies. The number of denials notified in 2012 are indicated in row (d) of the tables in Table AI (annexed to this report) per destination and per military list category; the number of consultations issued and received by each Member State, and the number of consultations per destination can be found in Tables BI and BII respectively.

(b) Best practice for interpretation of criteria

The best practices for interpretation of the criteria of Common Position 2008/944/CFSP have been developed by the COARM working party, building on national best practices and taking into account input from other relevant stakeholders.

Their purpose is to achieve greater consistency among Member States in the application of the criteria of the Common Position. This is achieved, inter alia, through the identification of factors that need to be considered when assessing export licence applications. The best practices are for the use by export licensing officials and other officials in relevant government departments and agencies. The decision-making process is informed by the expertise of these officials on matters covering regional, legal (e.g. human rights law, public international law), technical, development, as well as security and military related issues.

3. Review of Common Position 2008/944/CFSP

Article 15 of the Common Position establishes that the Common Position shall be reviewed three years after its adoption. On this basis, the EU Council Working Party on Conventional Arms Exports (COARM) conducted in 2012 a thorough assessment of the provisions of the Common Position. Involvement of relevant stakeholders, such as the European Parliament and civil society, has been ensured through usual meetings. On the basis of this review-related assessment, it emerged that the Common Position and the instruments it provides for continue to properly serve the objectives set by the Council in 2008 and to provide a solid basis for the coordination of Member States' arms export policies.

At the same time, it also emerged that further progress is achievable in the implementation of the Common Position in order to best support the convergence of Member States' arms export policies. To this end, work is underway in COARM to improve the implementation of the Common Position. Areas such as the information content and a new IT support system of the denials notification and consultation mechanism are slated for significant overhaul. Targeted updates of relevant sections of the User's Guide are also being prepared.

4. Outreach

Article 11 of the Common Position calls on Member States to “use their best endeavours to encourage other States, which export military technology or equipment to apply the criteria of the Common Position.” Coordinated outreach activities by Member States and the EU continued throughout 2012 and 2013 to date (see Table D, annexed hereto).

Council Decision 2009/1012/CFSP, that expired at the end of March 2012, allocated funds for five regional outreach seminars and four staff exchanges with third countries closely associated to the EU. The German Federal Office of Economics and Export Control (BAFA) was in charge of its technical implementation. Before it expired, Council Decision 2009/1012/CFSP enabled the organisation in January 2012 of a study visit hosted by the Czech Republic for officials from Croatia, the former Yugoslav Republic of Macedonia, and Montenegro.

COARM subsequently carried out a far-reaching assessment of its arms export control outreach activities funded under Council Decision 2009/1012/CFSP with a view to identifying strengths and weaknesses and to take them into account in the shaping of its future arms export control outreach activities. All relevant stakeholders had the opportunity to contribute to this assessment that resulted in a new Council Decision 2012/711/CFSP of 19 November 2012 that funds another cycle of outreach activities towards countries in the close EU neighbourhood. Council Decision 2012/711/CFSP allocates 1,86 million Euros to this purpose and further develops and extends the range and number of activities such as individual assistance workshops that are adjusted to the specific needs of the beneficiary countries.

5. Political dialogue meetings

Political dialogue meetings on arms export control issues were held on a biannual basis in 2012 and 2013 with Norway, Canada, Ukraine, the United States, the Russian Federation and, in 2012, for the first time with Serbia.

These political dialogues provided a forum for fruitful discussions on matters of mutual interest such as export policies to specific destinations, compliance and control issues and the Arms Trade Treaty process.

6. Update of the Common Military List of the European Union

The Common Military List of the European Union has the status of a commitment in the framework of the Common Foreign and Security Policy. It is copied as the scope of defence-related products annexed to Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community⁷.

On 11 March 2013, the Council adopted an updated version of the list which takes into account changes in the Wassenaar Arrangement's Munitions List agreed at the 2012 Plenary meeting of the Wassenaar Arrangement. The updated version of the Common Military List of the European Union was subsequently published in the EU Official Journal C 90/1 of 27 March 2013.

7. Arms brokering

The Council agreed that the information sharing requirements set out in Common Position 2003/468/CFSP of 23 June 2003 on the control of arms brokering should be implemented via the mechanism laid down in Common Position 2008/944/CFSP. In accordance with Article 5 of Common Position 2003/468/CFSP, Member States have put in place separate arrangements for the exchange of information on brokering licences granted and denied. Furthermore, in accordance with Articles 4 and 5 of Common Position 2003/468/CFSP, those Member States who have required brokers to obtain a written authorisation to act as brokers and/or have established a register of arms brokers, have put in place separate arrangements for the exchange of relevant information on registered brokers. Information on brokering licences granted and denied by EU Member States can be found in the annexed table AIII.

⁷ OJ L 146 of 10 June 2009, pages 1-36.

Detailed information on national implementation of the Common Position on brokering - or for those Member States which have not yet fully implemented the Common Position, information on the state of play of its implementation - is provided in the annexed Table C.

8. Dialogue with the European Parliament and NGOs

Dialogue with the European Parliament on arms export control issues usually takes place annually with the hearing of the COARM chair since the establishment of the European External Action Service. In 2012, a hearing took place on 5 December 2012. The EEAS also had regular contacts with MEPs on the Arms Trade Treaty and answered a significant number of parliamentary questions on arms exports issues.

In accordance with past practice, COARM meetings with non-governmental organisations were organized in the period 2012-2013 on a six-monthly basis.

II. ARMS TRADE TREATY (ATT)

1. Engagement in the sessions of the Preparatory Committee

Achieving a legally binding and robust Arms Trade Treaty (ATT) has been among the top foreign policy priorities for the European Union over the past years.

Throughout the period 2012-2013, the European Union and its Member States closely supported and participated in the UN-led Arms Trade Treaty process. In the run-up to the last session of the ATT Preparatory Committee in February 2012 and to the two diplomatic conferences in July 2012 and March 2013, a dedicated sub-group of interested members of the COARM and CODUN working groups on the ATT has met regularly to share views and coordinate positions, thereby allowing the EU to continue to be a very active and visible player in the ATT process.

On the basis of EU coordinated positions, the EU and its Member States also held extensive consultations with third countries, and in particular major arms-manufacturing countries, and with the Chairmen of the UN Conferences, Ambassador Roberto Garcia Moritàn first and Ambassador Peter Woolcott afterwards.

The EU and its Member States regretted that no agreement on a final text of the Treaty could be reached at the July 2012 Conference and consequently actively engaged in the continuation and successful conclusion of the negotiating process with the final UN Conference in March 2013 and the overwhelmingly positive vote on UN General Assembly Resolution 67/234 B on 2 April 2013. The Treaty was opened for signature by all States on 3 June 2012 and, by July 2012, all the 28 EU Member States had signed the Treaty. National ratifications are now underway, depending on the relevant national procedural requirements.

The EU itself cannot be a party to the ATT since the ATT is not open for signature or accession by regional integration organisations but only by States. With respect to those matters falling under the exclusive competence of the EU, Member States have been consequently authorised to sign the Treaty in the interests of the European Union by Council Decision 2013/269/CFSP of 27 May 2013. The Council Decision authorising the ratification is awaiting consent of the European Parliament before it can be formally adopted by the Council.

In line with its early committed support to the ATT, the focus of the EU is now on promoting its early entry into force and full implementation and a dedicated instrument on EU activities in support of the implementation of the ATT in third countries is being developed in this regard.

2. Outreach in the context of Council Decision 2010/336/CFSP of 14 June 2010⁸ and Council Decision 2013/43/CFSP of 22 January 2013⁹ on EU activities in support of the Arms Trade Treaty

Since 2009, the EU has been particularly active in promoting the ATT process vis-à-vis third countries notably with a view to increasing participation in the UN process and improving understanding by all UN Member States of the different elements of a future treaty.

In 2012 and 2013 to date, EU activities supporting the ATT have been funded by Council Decisions 2010/336/CFSP and 2013/43/CFSP. Outreach seminars in the framework of the 2010 Council Decision were held in Nairobi, Kenya, for Eastern and Southern African countries (February 2012), in Beirut, Lebanon for Middle East countries (March 2012) and in Belgrade, Serbia, for European and Caucasus countries (April 2012). A side event also took place in the margins of the July 2012 ATT Conference.

Activities funded under Council Decision 2013/43/CFSP have revolved around two seminars that took place in February / March 2013, ahead of the March 2013 ATT Conference, and in June 2013. The first seminar gathered relevant stakeholders in the run-up to the final UN Conference on the ATT and facilitated the exchange of views before the formal UN Conference. The second seminar focussed on challenges raised by the implementation of the ATT and paid specific attention to lessons learnt from existing export control assistance programmes and to the needs of beneficiary countries.

⁸ OJ L 152 of 18 June 2010, pages 14-20.

⁹ OJ L 20 of 23 January 2013, pages 53-56.

III. PRIORITY GUIDELINES FOR COARM FOR THE NEAR FUTURE

With the adoption of the legally-binding Common Position 2008/944/CFSP, the fundamental elements of a common approach to the control of conventional arms exports by Member States have been identified. In spite of the progress represented by the adoption of the Common Position, there is still work to be done, notably at the implementing level of the Common Position as identified by its review. Building upon the conclusions of the Council of 19 November 2012, improvements relevant to the implementation of the Common Position are now being worked out at COARM level with a view to their achievement notably as amendments of the User's Guide.

The following are priority guidelines for the near future:

1. to continue to exchange among EU Member States relevant information on arms export policies towards specific destinations;
2. to finalise the improvements relevant to the implementation of Common Position 2008/944/CFSP that have been identified by its review and in line with the provisions of the Arms Trade Treaty;
3. to update as appropriate the User's Guide and EU Common Military List, notably to reflect the improvements achieved as a result of the review;
4. to ensure that those Member States, which have not yet done so, adopt the appropriate national regulations or administrative rules to fully implement:
 - Common Position 2003/468/CFSP on the control of arms brokering;
 - Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment;

5. to support the early entry into force and full implementation of the Arms Trade Treaty notably through a dedicated EU implementation support programme for third countries;
 6. to ensure worthwhile COARM outreach activities in the framework of Council decision 2012/711/CFSP;
 7. to further develop information and best practices exchanges with third countries aligned with Common Position 2008/944/CFSP;
 8. to continue the dialogue with the European Parliament and to further develop relations with civil society and industry;
 9. to ensure the early finalisation and publication of the 16th EU annual report on arms exports.
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ANNEX

The attached tables contain the following information:

- A.I TABLES SETTING OUT EXPORTS AND LICENCE REFUSALS PER DESTINATION, PER REGION AND WORLD WIDE
- A.II TABLE SHOWING EXPORTS TO UNITED NATIONS-MANDATED OR OTHER INTERNATIONAL MISSIONS IN 2012
- A.III TABLE PROVIDING INFORMATION ON BROKERING LICENCES GRANTED AND DENIED PER MEMBER STATE
- B.I TABLE SHOWING TOTAL NUMBER OF CONSULTATIONS INITIATED AND TOTAL NUMBER OF CONSULTATIONS RECEIVED BY EACH MEMBER STATE IN 2012
- B.II TABLE SHOWING TOTAL NUMBER OF CONSULTATIONS FOR EACH DESTINATION CONCERNED IN 2012
- C. INFORMATION ON NATIONAL IMPLEMENTATION OF COMMON POSITION 2003/468/CFSP ON THE CONTROL OF ARMS BROKERING AND COMMON POSITION 2008/944/CFSP DEFINING COMMON RULES FOR THE CONTROL OF EXPORTS OF MILITARY TECHNOLOGY AND EQUIPMENT
- D. TABLE OF EU OUTREACH ACTIVITIES (January 2012 to October 2013)
- E. TABLE SHOWING INTERNET ADDRESSES FOR NATIONAL REPORTS ON ARMS EXPORTS

Brief descriptions of EU Common Military List¹⁰ categories

- ML1 Smooth-bore weapons with a calibre of less than 20 mm, other arms and automatic weapons with a calibre of 12,7 mm (calibre 0,50 inches) or less and accessories, and specially designed components therefor
- ML2 Smooth-bore weapons with a calibre of 20 mm or more, other weapons or armament with a calibre greater than 12,7 mm (calibre 0,50 inches), projectors and accessories, and specially designed components therefor
- ML3 Ammunition and fuse setting devices, and specially designed components therefor
- ML4 Bombs, torpedoes, rockets, missiles, other explosive devices and charges and related equipment and accessories, and specially designed components therefor
- ML5 Fire control, and related alerting and warning equipment, and related systems, test and alignment and countermeasure equipment, specially designed for military use, and specially designed components and accessories therefor
- ML6 Ground vehicles and components.
- ML7 Chemical or biological toxic agents, "riot control agents", radioactive materials, related equipment, components and materials
- ML8 "Energetic materials", and related substances
- ML9 Vessels of war, (surface or underwater) special naval equipment, accessories, components and other surface vessels

¹⁰ cf. OJ C 90 of 27 March 2013 for the full EU Common Military List.

- ML10 "Aircraft", "lighter than air vehicles", unmanned aerial vehicles, aero-engines and "aircraft" equipment, related equipment and components, specially designed or modified for military use.
- ML11 Electronic equipment, not specified elsewhere on the EU Common Military List, and specially designed components therefor
- ML12 High velocity kinetic energy weapon systems and related equipment, and specially designed components therefor.
- ML13 Armoured or protective equipment, constructions and components
- ML14 Specialised equipment for military training or for simulating military scenarios, simulators specially designed for training in the use of any firearm or weapon specified by ML1 or ML2, and specially designed components and accessories therefor
- ML15 Imaging or countermeasure equipment, specially designed for military use, and specially designed components and accessories therefor
- ML16 Forgings, castings and other unfinished products the use of which in a specified product is identifiable by material composition, geometry or function, and which are specially designed for any products specified by ML1 to ML4, ML6, ML9, ML10, ML12 or ML19
- ML17 Miscellaneous equipment, materials and "libraries", and specially designed components therefor
- ML18 Production equipment and components of products referred to in the EU Common Military List

- ML19 Directed energy weapon systems (DEW), related or countermeasure equipment and test models, and specially designed components therefor
- ML20 Cryogenic and "superconductive" equipment, and specially designed components and accessories therefor.
- ML21 "Software" specially designed or modified for the "development", "production" "use" of equipment or materials controlled by the EU Common Military List.
- ML22 "Technology" for the "development", "production" or "use" of items controlled in the EU Common Military List.
-