Arms: code of conduct on exports. 5th annual report

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PURPOSE : to present the Fifth annual report according to operative provision 8 of the European Code of Conduct on Arms Exports.

CONTENT : the European Union Code of Conduct on Arms Exports, adopted on 8 June 1998, provides for a mechanism of information exchange and consultation among Member States in order to ensure the convergence of national export control policies. Decisions by Member States on practices relating to the Code of Conduct and its application by Member States are recorded in subsequent annual reports.

The report states that the European Union Code of Conduct on Arms Exports can rightly be considered as the most comprehensive international arms export control regime. The high number of notified denials and consultations demonstrates the intense dialogue between Member States, contributing to the convergence of the policies and procedures on arms exports applicable in the Member States of the European Union.

The dialogue does not only have an internal dimension between Member States; it also takes place with non-member states, through troika meetings organized in the framework of the political dialogue of the Common Foreign and Security Policy (CFSP) of the European Union.

In this respect dialogue with the Acceding Countries and Associated Countries has been intensified. Changes and adaptations are required at the legislative level and in the training of the officials concerned.

A debate about the possible reinforcement of status of the Code of Conduct by transformation into Common Position has intensified following the adoption by the Council of Common Position 2003/468 /CFSP of 23 June 2003 on arms brokering. This issue was echoed in the explanatory statement of the Committee on Foreign Affairs, Human Rights and CSFP of the European Parliament, concerning the Council Fourth Annual Report of the Code of Conduct, which reiterated the call for the Code to be legally binding, and considered the possibility of it being transposed into national law. The Working Party examined the legal implications of the possible transformation of the Code into a Common Position, and is continuing its debate of the issue.

Concerning the state of play of the implementation of priority measures identified in the fourth annual report and in particular on the harmonisation of national reports, the report highlights that the process of harmonisation of reporting procedures has been continued, and further steps towards fully comparable statistical data have been made. As regards the standardisation of end user certificates, the report states that having defined the core elements which should appear on an end-user certificate when it is required by a Member State, in connection with the export of items included in the "Common list of military equipment", Member States continued to examine ways to further standardise such certificates. In this respect, the set of compulsory details has been enlarged and additional elements to be included have been discussed. On the issue of arms brokering, in June 2003, following final approval by the COARM Working Party, the Council adopted a Common Position on the control of arms brokering. The joint commitment is a formal confirmation of some of the agreed practices listed in the appendix of the fourth Annual Report. It also contains some criteria and definitions which Member States are to include in their national brokering legislation. For brokering activities, a licence or written authorisation should be obtained from the authorities where activities take place, and, where required by national legislation, where the broker is resident or established. Member States will assess applications for a licence or written

authorisation for specific brokering transactions against the provisions of the European Union On the Code of Conduct on Arms Exports, Member States may also require brokers to obtain a written authorisation to act as brokers; they may also establish a register of arms brokers. Registration or authorisation to act as a broker would in any case not replace the requirement to obtain the necessary licence or written authorisation for each transaction. On improving the denial circulation system, the report highlights that the circulation of denials is one of the most important ways through which the aims of Member States' export control policies, and the convergence of those policies, can be achieved. To this end, a "User's guide", intended to clarify Member States' responsibilities in this area, and lead to enhanced exchange of information, has been agreed by the Working Party, The Guide will not replace the Code of Conduct, but gives guidance on interpreting its operative provisions with regard to the definition of a denial, the notification procedure and the information it should contain, the revocation of a denial notification, and procedures for consultations. It is intended for use primarily by licensing officials. The creation of a central denial database for export licence denials has been decided, setting up a resource for all Member States to use, in order to search for specific denials.

Lastly, as regards promoting the principles and criteria of the Code among non-member countries and international organizations, the Code of Conduct, its aims and procedures are constantly presented and proposed in the framework of political dialogue with non-member states and international organizations. In this respect, the COARM Working Party has agreed in principle to share information on denials on an aggregate basis with selected non-member countries.

More specifically, as regards the implementation of criterion 8 of the Code of Conduct, a survey was initiated focusing on specific guidelines to assist Member States in applying the criterion, and which Ministries or Government Agencies are involved in this work. Other points that are currently being debated concern the indicators used to carry out the assessment required under criterion 8, which should take account of both the conditions prevailing in the importing country and the potential impact of the export, and the sources of information.

- Priority guidelines for the near future : five years of application of the Code of Conduct have shown that the fundamental elements of a common approach to the control of conventional arms exports by the Member States may be considered to be in place. However, there is still work to be done in certain areas that have not been addressed in the past, or where further work is necessary to consolidate and build on the results achieved.

The Member States have identified the following 9 priority guidelines for the near future:

- Continuation of the process of harmonisation of national reports in order to produce clearer, more transparent summary tables;

- Follow up of the implementation of the Common Position on arms brokering, taking into account the different situations of the national legislation;

- Consideration of ways to control the electronic transfer of software and technology associated with equipment on the Common List;

- Continuation of the policy of promoting the principles and criteria of the Code of Conduct among third countries;

- Provision of practical and technical assistance, when requested, for the Acceding Countries, in order to ensure the harmonisation of policies on arms export control and the full implementation of the Code of Conduct principles and criteria;

- Full implementation of the simplified rules contained in the "User's Guide" and ensuring its full implementation, including the central denials data base;

- Development of dialague with the European Parliament;

- Development of relations with third countries which have aligned themselves with the Code of Conduct;

- Review of the Code of Conduct.