Arms: code of conduct on exports. 6th annual report

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PURPOSE : to present the 6th Annual Report on Arms Exports.

CONTENT : although differences in national reporting still remain, a number of steps have been taken to further the harmonization of reporting procedures, and to achieve fully comparable statistical data. Member States have agreed to include references to the Military List numbers in their contribution to the EU annual report (if available). Furthermore, consensus has been reached on providing national data on the value of licences issued. Due to the fact that some States are unable to provide additional data on actual exports, it has been agreed that these will be made available by those States able to do so.

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 to the Fourth Annual Report. It also contains some criteria and definitions that Member States are to include in their national brokering legislation. The Working Party has agreed that the Common Position should be implemented via the mechanism laid down in the Code of Conduct. This is expected to be expressly stated in the relevant operative paragraph of the revised Code of Conduct. However, since not all Member States yet have legislation on brokering in place, the notification and consultation system will operate on a mandatory basis only for Member States that have.

In the framework of the review of the Code of Conduct, agreement is expected to be reached to include a new provision in the relevant operative paragraph of the Code stating that export licence applications shall include applications for any intangible transfers of software and technology by means such as electronic media, fax or telephone.

The Code of Conduct, its aims and procedures are constantly presented and promoted in the framework of political dialogue with non-member states and international organisations. In this respect, in 2003, the COARM Working Party agreed in principle to share information on denials on an aggregate basis, without indicating which Member States issued the denials, with selected non-member countries whose export control legislation and policy meet the high standards set by Member States for themselves. Each decision in this respect will be taken on a case-by-case basis, after consultation by the Presidency or the Council Secretariat with the Member State in question as to which details can be provided in accordance with national law. The first country with which such an agreement has been reached is Norway. The exchange of denials between the EU and Norway was to take place as of 18 November 2004.

Member States have reached agreement on a mechanism to improve the co-ordination of outreach initiatives undertaken by them in order to promote the principles and criteria of the Code among candidate countries and other third countries. This mechanism will consist amongst others of a database containing information on national activities with such countries. This will help Member States to better prioritise and plan their efforts in this field and promote joint activities.

The User's Guide became fully applicable as from 1 January 2004. It contains procedures to improve the denial notification and consultation system and to clarify responsibilities of Member States in this respect. As of the aforementioned date national notifications and bilateral consultations have taken place via the EU's electronic coreu system almost on a daily basis, thus significantly increasing the transparency of the arms exports policies of Member States vis-à-vis specific countries of final destination and specific end-users. Member States have updated their national denial notifications list and have committed themselves

to continue to do so on a regular basis. These lists, as well as the results of bilateral consultations are included in a central electronic EU database of denials. The database, managed by the EU Council Secretariat, may thus develop into a dynamic system reflecting Member States' arms exports control policies. Chapters describing agreed practices on licensing procedures, guidance on criteria and requirements for submission of information to the EU annual report will be included in the revised version of the User's Guide.

In September 2004, the Netherlands Presidency, at the invitation of the European Parliament Sub-committee on Security and Defence had an exchange of views on the Fifth Annual Report on the European Code of Conduct of Arms Exports and related arms exports issues with members of the Sub-committee. MEPs were particularly interested in the following issues: transformation of the Code of Conduct into a common position, illegal transfers of small arms and light weapons, transparency, brokering, outreach and clarification and harmonised interpretation of the criteria of the Code.

Useful COARM Troika meetings were held by the Irish and the Netherlands Presidencies respectively with the United States, Canada, the Russian Federation and Ukraine in the framework of the political dialogue of the EU's Common Foreign and Security Policy. At these, the Presidency informed their interlocutors about new developments with respect to the EU Code of Conduct, in particular the review process. Other matters of mutual interest were discussed such as arms exports compliance and control issues and membership applications of six new EU Member States for the Wassenaar Arrangement.

COARM has conducted in depth discussions in order to bring forward the review of the Code that it decided to undertake in December 2003. As a result of the review, the first since the adoption of the Code in 1998, it is expected that the Code will be significantly reinforced by including several new elements in the text, most notably: brokering, transit/transshipment, licensed production overseas, intangible transfer of software and technology, end-user certification and national reporting. Discussions on the possible inclusion of other elements are ongoing. No agreement has yet been reached to transform the Code into a legally binding instrument.

Six 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. Member States have identified the following priority guidelines for the near future:

1) The process of harmonisation of national reports so as to produce clearer, more transparent summary tables to be continued;

2) Implementation of the Common Position on arms brokering;

3) The simplified rules contained in the User's Guide to be fully implemented;

4) Feasibility of formulating joint guidelines with respect to end use controls and post shipment verification in countries of final destination of arms exports originating from EU countries to be examined;

5) Development of best practices for the interpretation of criteria, as is being done in regard to criterion 8;

6) Continuation of the policy of promoting the principles and criteria of the Code of Conduct among third countries, specifically those that have aligned themselves with the Code of Conduct.

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

8) Further development of dialogue with the European Parliament.