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## OUTCOME OF PROCEEDINGS

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Subject: Eighteenth 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

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Delegations will find in the Annex the Eighteenth 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, adopted by the Council at its 3525<sup>th</sup> meeting held on 6 March 2017.

**EIGHTEENTH ANNUAL REPORT**

**ACCORDING TO ARTICLE 8(2) OF COUNCIL COMMON POSITION 2008/944/CFSP  
DEFINING COMMON RULES GOVERNING THE 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/CFSP<sup>1</sup> throughout 2015 and 2016. As far as data on conventional arms exports are concerned, the report covers the 2015 calendar year.

In addition, the report contains non-exhaustive information on intra-EU transfers of defence-related products that are governed by Directive 2009/43<sup>2</sup> on simplifying terms and conditions of transfers of defence-related products within the Community.

During 2015 and 2016, the EU and its Member States continued to implement Council Common Position 2008/944/CFSP defining common rules governing the 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.

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<sup>1</sup> OJ L 335 of 13 December 2008, pages 99-103

<sup>2</sup> OJ L 146 of 10 June 2009, page 1

2015 has notably witnessed the completion of the review of Common Position 2008/944/CFSP with the adoption of relevant Council Conclusions of 20 July 2015 relating to the review of Common Position 2008/944/CFSP on arms exports and the implementation of the Arms Trade Treaty (ATT). The conclusions took stock of progress made and underway regarding the implementation of both the EU Common Position and the ATT. All EU Member States are parties to the ATT.

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

The promotion of effective national arms export controls in selected third countries was pursued in 2015 and 2016 with the adoption of Council Decision 2015/2309/CFSP<sup>3</sup> of 10 December 2015 on the promotion of effective arms export controls, which secured the follow up to Council Decision 2012/711/CFSP<sup>4</sup>.

EU outreach efforts also significantly increased regarding the ATT with a large number of activities carried out during 2015 and 2016 under Council Decision 2013/768/CFSP<sup>5</sup> in support of universalisation and effective implementation of the ATT. With Council Decision 2013/768/CFSP expiring in April 2017, its follow up is now being worked on at Council level.

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<sup>3</sup> OJ L 326 of 11 December 2015, pages 56-63

<sup>4</sup> OJ L 321 of 20 November 2012, pages 62 -67

<sup>5</sup> OJ L 341 of 18 December 2013, pages 56-67

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

### **1. Implementation of Common Position 2008/944/CFSP**

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 the 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 is reported in the attached Table C.

#### *Denial notifications and consultations*

The Common Position foresees the notification of licence denials and consultations about them when a Member State is reviewing an essentially identical transaction to one denied before by another Member State. As a result of the review of the EU Common Position, a new IT system was put in place in 2016 to support this denials-related information-sharing and store the EU central database of denials and their related consultations. Over time, the new system is meant to provide a quicker and wider information-sharing to all national stakeholders involved in arms export control. It will further support transparency between Member States vis-à-vis specific countries of final destination and end users.

The number of denials notified in 2015 is 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.

## 2. User's Guide

The User's Guide is a key 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 was developed by the Council Working Party on Conventional Arms Exports (COARM) and is updated as appropriate. It was last updated in July 2015 as a result of the completed review of Common Position 2008/944/CFSP. The User's Guide 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 Service<sup>6</sup>.

### *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, including civil society.

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<sup>6</sup> [https://eeas.europa.eu/headquarters/headquarters-homepage/8465/arms-export-control\\_en](https://eeas.europa.eu/headquarters/headquarters-homepage/8465/arms-export-control_en)

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 use by licensing officers 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**

The EU Council reaffirmed in its Council Conclusions of 19 November 2012 that the Common Position and the instruments it provides for continue to properly support the objectives set by the Council in 2008 and to form a solid basis for the coordination of Member States' arms export policies. At the same time, it also emerged from the review that further progress was achievable in the actual implementation of the Common Position.

To this end, work was undertaken at the COARM level in areas such as amending the User's Guide and developing a new IT system supporting the denials-related information-sharing. The revised User's Guide was adopted in July 2015 and the new IT system was fully rolled out over the summer 2016. Council Conclusions closing the review of the EU Common Position were adopted on 20 July 2015.

#### **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.*” Outreach activities carried out by both the EU and by Member States individually continued in 2015 and 2016 as outlined in Table D, annexed to this report.

Under Council Decisions [2012/711/CFSP](#) of 19 November 2012 and [2015/2309/CFSP](#) of 10 December 2015, both implemented by the German Federal Office for Economic Affairs and Export Control (BAFA), a number of regional workshops, study visits and individual assistance events have taken place. In addition, further regional outreach activities, tailored national assistance programmes and ad hoc individual assistance workshops have been carried out under Council Decision [2013/768/CFSP](#), supporting the Arms Trade Treaty's effective implementation and universalisation.

#### **5. Political Dialogue meetings**

Political Dialogue meetings on arms export control issues were held on a regular basis in 2015 and 2016 with Norway, Canada and the United States. 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**

Under Article 12 of the Common Position, the Common Military List of the European Union covers the minimum scope of military items that Member States have to subject to export control. It is identical to the list of defence-related products annexed to Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009, simplifying intra-EU defence trade<sup>7</sup>.

On 9 February 2015, the Council adopted an updated version of the list which takes into account changes in the Wassenaar Arrangement's Munitions List agreed at the 2014 Plenary meeting of the Arrangement. The updated version of the Common Military List was subsequently published in the EU Official Journal C 129/1 of 21 April 2015.

## **7. Arms brokering**

In accordance with Article 5 of Common Position 2003/468/CFSP on the control of arms brokering, Member States have put in place separate arrangements for the exchange of information on brokering licences granted and denied. Furthermore, those Member States who require 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 attached Table AIII.

Detailed information on national implementation of Common Position 2003/468/CFSP is provided in the attached Table C.

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<sup>7</sup> OJ L 146 of 10 June 2009, page 1



## **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 a European External Action Service official. During 2015 and 2016, 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 2015-2016 on a six-monthly basis.

## **II. ARMS TRADE TREATY (ATT)**

### **1. Involvement in the ATT preparatory process and in the first Conference of States Parties**

With a view to preparing the decisions to be made by the first Conference of States Parties, the ATT preparatory process unfolded over 2014 and 2015 under the chairmanship of Mexican Ambassador Jorge Lomónaco. The EU and its Member States actively engaged in this preparatory process with notably two Member States acting as facilitators (France on Secretariat-related issues and Sweden on reporting templates) and two other Member States, Austria and Germany, hosting meetings of the preparatory process (in November 2014 in Berlin and in April 2015 in Vienna). Austria and Germany were also part of the Friends of the Chair group supporting the Mexican Chair throughout the preparatory process.

The EU and its Member States actively participated in the first Conference of States Parties (Cancun, Mexico, 24-27 August 2015) and welcomed its positive and substantive outcome as the Conference adopted solid foundations for the Treaty, notably deciding on the seat and size of the ATT Secretariat, on the rules of procedure and on financial rules. Further to the decision made by the first Conference to establish a management committee, the Czech Republic and France were appointed among the members of the committee.

The EU and its Member States also actively took part in the second Conference of States Parties (Geneva, 22-26 August 2016) and welcomed its conclusive outcome, notably regarding the appointment of the permanent Head of the ATT Secretariat (Mr Dumisani Dladla of South Africa), the completion of work regarding the reporting templates, as well as the establishment of the Voluntary Trust Fund and three working groups: on transparency and reporting, implementation and universalisation.

## **2. The EU Implementation Support Programme under Council Decision 2013/768/CFSP**

Further to its entry into force in December 2014 and with so far 90 States Parties, the ATT now faces the challenges of its universalisation and its effective implementation by States Parties.

To contribute to addressing these challenges, the EU adopted in December 2013 under Council Decision 2013/768/CFSP an ambitious and tangible implementation support programme for third countries. This programme was implemented by the German Federal Office for Economic Affairs and Export Control (BAFA), with co-financing by the Federal Republic of Germany. It assisted a total of 15 third countries on their request in strengthening their arms transfer systems in line with the requirements of the Treaty. Details of the activities carried out under the EU programme during 2015 and 2016 can be found in the attached Table D.

Follow up to Council Decision 2013/768/CFSP is now underway, with a new Council Decision to be adopted shortly.

### **III. PRIORITY GUIDELINES FOR COARM FOR THE NEAR FUTURE**

With the adoption of the legally-binding Common Position 2008/944/CFSP, the core elements of a common approach to the control of conventional arms exports by Member States are in place. 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. The following are therefore priority guidelines for the near future:

1. to continue and possibly further the exchange among EU Member States of relevant information on arms export policies towards specific destinations;
2. to assess the roll out of the new IT platform supporting the denials notification and consultation mechanism and to carry out improvements as appropriate;

3. 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;
4. to further support the effective implementation and universalisation of the Arms Trade Treaty, notably through the continuation of the EU Implementation Support Programme initiated by Council Decision 2013/768/CFSP;
5. to further develop information and best practices exchanges with third countries aligned with Common Position 2008/944/CFSP;
6. to continue to encourage other arms exporting States to apply the criteria of the Common Position;
7. to continue the dialogue with the European Parliament and to further develop contacts with civil society and industry;
8. to ensure the early finalisation and publication of the 19th EU Annual Report on Arms Exports.

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## BRIEF DESCRIPTIONS OF EU COMMON MILITARY LIST CATEGORIES<sup>8</sup>

- 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 fuze 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

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<sup>8</sup> The full description of the categories as adopted by the Council on 9 February 2015 (CFSP 2015/C 129/01) can be found on [http://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=CELEX%3A52015XG0421\(05\)](http://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=CELEX%3A52015XG0421(05))

- ML10 'Aircraft', 'lighter-than-air vehicles', 'Unmanned Aerial Vehicles' ('UAVs'), aero-engines and 'aircraft' equipment, related equipment and components, specially designed or modified for military use
- ML11 Electronic equipment, 'spacecraft' and components, not specified elsewhere on the Common Military List
- 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 specially designed for items 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
- ML19 Directed energy weapon (DEW) systems, 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'
- ML22 'Technology'