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Delegations will find attached the Sixteenth 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, following the Council ("Foreign Affairs") of 9 February 2015.

SIXTEENTH 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 2013 and 2014. As far as data on conventional arms exports are concerned, the report covers the 2013 calendar year.

Over 2013 and 2014, 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.

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

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, assisted by the Council 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 have been accordingly developed over 2013 and 2014. The main work strand relates to the denials notification and consultation mechanism to be overhauled on a new dedicated IT platform.

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, 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 2013 and 2014 in the framework of Council Decision 2012/711/CFSP of 19 November 2012 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 countries².

² OJ L 321 of 20 November 2012, pages 62 -67.

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 final UN Conference on the Arms Trade Treaty in March 2013. With the entry into force of the Treaty on 24 December 2014 and in order to support its effective implementation, the EU adopted in December 2013 an ambitious implementation support programme under EU Council Decision 2013/768/CFSP³. The programme, co-financed by the Federal Republic of Germany, will notably assist a number of third countries upon their request in strengthening their arms transfer systems in line with the requirements of the Treaty.

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 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 into Member States' arms export control regimes is reported in the annexed Table C.

³ OJ L 341 of 18 December 2013, pages 56-67.

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 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 Service⁴.

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, ensuring transparency on the arms export policies of Member States vis-à-vis specific countries of final destination and end users. In the near future, denial notifications and consultations will be supported by a dedicated IT platform of a more accessible and user-friendly nature.

⁴ http://www.eeas.europa.eu/non-proliferation-and-disarmament/arms-export-control/index_en.htm

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 2013 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.

(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 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

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 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 is achievable in the actual implementation of the Common Position in order to best support the convergence of Member States' arms export policies. To this end, work has been undertaken over 2013 and 2014 in areas such as the information content and the new IT support system for the denials notification and consultation mechanism. Targeted updates of relevant sections of the User's Guide are also being prepared, notably in the light of the Arms Trade Treaty.

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 between Member States and the EU continued throughout 2013 and 2014 under Council Decision 2012/711/CFSP of 19 November 2012 that funds another cycle of outreach activities towards countries in the close EU neighbourhood. As in the case of the previous Council Decision 2009/1012/CFSP the German Federal Office for Economic Affairs and Export Control was tasked with implementing Council Decision 2012/711/CFSP. A number of regional workshops, study visits and individual assistance events took place as outlined in table D, annexed hereto.

5. Political dialogue meetings

Political dialogue meetings on arms export control issues were held on a biannual basis in 2013 and 2014 with Norway, Canada, Ukraine, the United States and the Russian Federation.

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 make 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 trade⁵.

On 17 March 2014, the Council adopted an updated version of the list which takes into account changes in the Wassenaar Arrangement's Munitions List agreed at the 2013 plenary meeting of the Arrangement. The updated version of the Common Military List was subsequently published in the EU Official Journal C 107/1 of 9 April 2014.

⁵ OJ L 146 of 10 June 2009, p.1.

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 annexed table AIII.

Detailed information on national implementation of Common Position 2003/468/CFSP 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. Over 2013 and 2014, 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 2013-2014 on a six-monthly basis.

II. ARMS TRADE TREATY (ATT)

1. Engagement towards final adoption, signature and ratification of the Treaty

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. The EU and its Member States consequently actively engaged in the successful conclusion of the negotiating process with the final UN Conference in March 2013 and the overwhelmingly positive vote adopting the Treaty through UN General Assembly Resolution 67/234 B on 2 April 2013.

The Treaty was opened for signature on 3 June 2013 and, by January 2015, 26 EU Member States have ratified it.

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 UN States. For matters falling under the exclusive competence of the EU, Member States have been consequently authorised to sign and ratify the Treaty in the interests of the European Union by respectively Council Decision 2013/269 of 27 May 2013 and Council Decision 2014/165 of 3 March 2014⁶.

⁶ OJ L155 of 7 June 2013, p.9 and OJ L 89 of 25 March 2014, p.44.

2. Outreach under Council Decision 2013/43/CFSP of 22 January 2013 on EU activities in support of the Arms Trade Treaty

Building on an array of previous EU and Member States' outreach activities to promote the ATT, activities funded under Council Decision 2013/43/CFSP⁷ have revolved around two seminars that took place in 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.

3. The EU implementation support programme under Council Decision 2013/768/CFSP

In line with its early committed support to the ATT, the focus of the EU is now on promoting its early entry into force, effective implementation and universalisation. To contribute to addressing those challenges, the EU adopted in December 2013 under Council Decision 2013/768/CFSP³ an ambitious and tangible implementation support programme for third countries.

This programme will assist a number of third countries upon their request in strengthening their arms transfer systems in line with the requirements of the Treaty. There will also be a consistent effort to reach out to countries not yet party to the Treaty.

⁷ 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 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. Building upon the conclusions of the Council of 19 November 2012, improvements relevant to the implementation of the Common Position are now being finalised at COARM level.

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 and in line with the provisions of the ATT;

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 effective implementation and universalisation of the Arms Trade Treaty notably through the dedicated EU implementation support programme for third countries adopted under Council Decision 2013/768/CFSP;
6. to support that the first steps of the ATT regime best contribute to a robust treaty regime;
7. to further develop information and best practices exchanges with third countries aligned with Common Position 2008/944/CFSP;
8. to continue to encourage other States which export military technology or equipment to apply the criteria of the Common Position;
9. to continue the dialogue with the European Parliament and to further develop relations with civil society and industry;
10. to ensure the early finalisation and publication of the 17th EU annual report on arms exports.
