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From:	General Secretariat of the Council
To:	Delegations
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Subject:	Seventeenth 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 in the annex the Seventeenth 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 noted by the Council at its 3457th meeting held on 14 March 2016.

SEVENTEENTH 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 2014 and 2015. As far as data on conventional arms exports are concerned, the report covers the 2014 calendar year.

Over 2014 and 2015, 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 worked out over 2014 and 2015. These developments as well as the entry into force of the Arms Trade Treaty (ATT) have factored in the Foreign Affairs Council conclusions of 20 July 2015 on the outcome of the review.

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 is in place since 2012.

The promotion of effective national arms export control regimes in selected third countries was carried out in 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 actively participated in the Arms Trade Treaty preparatory process that unfolded over 2014 and 2015 against the background of the ATT's entry into force on 24 December 2014. They also actively took part in the first Conference of States parties (Cancun, Mexico, 24-27 August 2015) and welcomed the positive and substantive outcome of the Conference that adopted solid foundations for the Treaty. Under Council Decision 2013/768/CFSP³, the EU activities in support of the Treaty's effective implementation and universalisation gained momentum over 2014 and 2015 with so far 10 beneficiary roadmap partner countries, several ad hoc partners and a number of regional outreach activities successfully carried out. The EU programme, implemented by the German Federal Office for Economic Affairs and Export Control and co-financed by the Federal Republic of Germany, will continue to assist a number of third countries upon their request in strengthening their arms transfer systems in line with the requirements of the ATT.

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 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

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 between 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. In the near future, denial notifications and consultations will be supported by a dedicated IT platform of a more accessible and user-friendly nature.

The number of denials notified in 2014 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 has been 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 Service⁴.

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

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.

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) initiated 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 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 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 2014 and 2015 in areas such as the information content and the new IT support system for the denials notification and consultation mechanism. Relevant sections of the User's Guide have also been updated notably as result of the review and of the entry into force of the ATT. The outcome of the review was noted in Foreign Affairs council conclusions of 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 2014 as outlined in table D, annexed hereto. Under Council Decision 2012/711/CFSP of 19 November 2012 implemented by the German Federal Office for Economic Affairs and Export Control, a number of regional workshops, study visits and individual assistance events took place. In addition, further regional outreach activities were 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 biannual basis in 2014 and 2015 with Norway, Canada, Ukraine 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 trade⁵.

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 annexed table AIII.

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

⁵ OJ L 146 of 10 June 2009, page1.

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. Over 2014 and 2015, 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 2014-2015 on a six-monthly basis.

II. ARMS TRADE TREATY (ATT)

1. Entry into force in December 2014

The EU Member States greatly contributed to the Treaty's entry into force on 24 December 2014 in bringing 26 out of the 50 ratifications necessary for the entry into force of the Treaty. So far, all EU Member States have signed the Treaty and 27 have ratified it. The EU itself cannot be a party to the ATT since the ATT is not opened for accession by regional integration organisations but only by States.

2. 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 also were 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 and contributed to the meetings of the preparatory process over 2014 and 2015 (Mexico City/ Sept.2014; Berlin/ Nov.2014; Port-of-Spain/Feb.2015, Vienna/ Apr.2015 and Geneva/July 2015). They also actively took part 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, size and head of the ATT Secretariat, rules of procedure, and financial rules, as well as taking note of the provisional reporting templates presented and deciding on a way forward on reporting).

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

In line with their longstanding support to the ATT, the EU and its Member States are now focusing on promoting its effective implementation and universalisation. To contribute to addressing these 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, implemented by the German Federal Office for Economic Affairs and Export Control, assists a number of third countries upon their request in strengthening their arms transfer systems in line with the requirements of the Treaty. There is also a consistent effort to reach out to countries not yet party to the Treaty. Details on the activities carried out under the EU programme can be found in the annexed table D.

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 Council conclusions of 19 November 2012 and 20 July 2015, 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 and possibly further the exchange among EU Member States of relevant information on arms export policies towards specific destinations;
2. to finalise the roll out of the new IT platform supporting the denials notification and consultation mechanism;
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 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;
 5. to work in support of Member States to contribute to the successful concrete establishment of the ATT regime, notably regarding the first steps of the Secretariat and work towards increasing transparency;
 6. to further develop information and best practices exchanges with third countries aligned with Common Position 2008/944/CFSP;
 7. to continue to encourage other arms exporting States to apply the criteria of the Common Position;
 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 18th EU annual report on arms exports.
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