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## OUTCOME OF PROCEEDINGS

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From: General Secretariat of the Council

To: Delegations

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Subject: Nineteenth 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 attached the nineteenth 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 3587<sup>th</sup> meeting held on 11 December 2017.

**NINETEENTH 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 statistics on licences and exports of conventional arms from EU Member States during the 2016 calendar year. It also 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 2016 and 2017, in addition to those activities mentioned in the eighteenth annual report.

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 2016 and 2017, 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.

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.

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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

The promotion of effective national arms export controls and the principles and criteria of Common Position 2008/944/CFSP in selected third countries was pursued in the period covered by this report with the adoption of Council Decision 2015/2309/CFSP<sup>3</sup>, which secured the follow up to Council Decision 2012/711/CFSP<sup>4</sup>. EU outreach efforts also significantly increased on universalisation and implementation of the ATT, with a large number of activities carried out during the same period under Council Decision 2013/768/CFSP<sup>5</sup>, and subsequently under the follow-on Council Decision 2017/915/CFSP<sup>6</sup>.

## **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, assessment criteria for export licence applications, 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.

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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

<sup>6</sup> OJ L 139 of 30 May 2017, pages 38-48

## *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 functionality was added to the COARM online information system in 2016 to support this denials-related information-sharing and to store the EU central database of denials and their related consultations. During 2016 and 2017, adjustments and improvements were made to this online system with a view to enhancing its security and to providing a quicker and more efficient information-sharing to all national stakeholders involved in arms export control. The system has already proven to further support transparency between Member States vis-à-vis specific countries of final destination and end users.

The number of denials notified in 2016 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 licencing officials, thus substantially contributing in a pragmatic way to the convergence of Member States' arms export control policies and procedures.

The guide presents good practices for interpretation of the criteria of Common Position 2008/944/CFSP that 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 use by licencing 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, judicial, technical, development, as well as security and military related issues.

The Guide is a public document available on the website of the European External Action Service<sup>7</sup>.

### 3. 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.*” Intensive outreach activities carried out by both the EU and by Member States individually continued in 2016 and 2017, 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 took place. In addition, further regional outreach activities, tailored national assistance programmes and ad hoc individual assistance workshops were carried out under Council Decision 2013/768/CFSP, supporting the Arms Trade Treaty's effective implementation and universalisation (further information on the latter activities is reported in section II.2).

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<sup>7</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)

#### **4. Political Dialogue meetings**

Political Dialogue meetings on arms export control issues were held on a regular basis in 2016 and 2017 with Norway, Canada, the United States and Ukraine. 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.

#### **5. 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 (CML) 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>8</sup>.

As this report covers statistics on conventional arms exports from EU Member States during the 2016 calendar year, the CML included is that relating to 2016 that was adopted by the Council on 14 March 2016, and that takes into account the changes in the Wassenaar Arrangement's Munitions List agreed at the 2015 Plenary meeting of the Arrangement. This updated version of the CML was published in the EU Official Journal C 122/1 of 6 April 2016.

#### **6. 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>8</sup> OJ L 146 of 10 June 2009, page 1

## **7. Dialogue with stakeholders: European Parliament, civil society and industry**

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 2016 and 2017, the EEAS also had regular contacts with the EP's Rapporteur on arms export control and answered a significant number of parliamentary questions on arms exports issues.

In accordance with past practice, COARM meetings with non-governmental organisations were organised in the period 2016-2017 on a six-monthly basis. In 2017, COARM also invited representatives from industry to one of its meetings.

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

### **1. Involvement in the ATT: Conferences of States Parties**

As with the First and Second Conferences of States Parties (reported on in previous Annual Reports), the EU and its Member States played an active part in the Third Conference of States Parties, held in Geneva on 11-15 September 2017. The Third Conference of States Parties, chaired by Ambassador Klaus Korhonen of Finland, saw support for the consolidation of the work of the three Working Groups and for the activities of the Voluntary Trust Fund and Sponsorship Programme. It agreed that the Working Groups would continue as Standing Working Groups with agreed terms of reference, and to a new call for projects to be funded from the VTF. It decided on its budget for 2017/2018 and agreed that the Secretariat could explore a number of options to ease the burden on the over-stretched Secretariat, particularly as regards the management of the VTF projects. It agreed to continue the work to enhance reporting, in particular the number and timeliness of national reports, and to further explore the links between the ATT and the Sustainable Development Goals. The Conference elected Ambassador Nobushige Takamizawa of Japan as President of the Fourth Conference of States Parties in 2018. The meeting was characterised by the active engagement of States Parties and Observers, as well as of Civil Society, Industry and Academia representatives. With the structure and processes of the Treaty in order, States Parties are in agreement that attention should, in future, be on effective 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 92 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 2016 and 2017 can be found in the attached Table D. Towards the end of 2016, follow-up to Council Decision 2013/768/CFSP was considered by COARM and a decision was taken in November 2016 to continue the EU's outreach with a further 3 year programme to be implemented by both BAFA and Expertise France (EF). The new Council Decision 2017/915/CFSP was adopted by the Council on 29 May 2017.

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

With the adoption of 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 to reinforce cooperation and to promote convergence in the fields of exports of military technology and equipment in accordance with Common Position 2008/944/CFSP, with the aim to strengthen the European Union's export control policy, including by the exchange among EU Member States of relevant information on denial notifications and arms export policies.



2. to complete the evaluation of the COARM online system and to continue the discussion of extra functionalities in the system.
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 2017/915/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 strive for finalisation and publication of the 20th EU Annual Report on Arms Exports as early as possible in 2018.

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## **BRIEF DESCRIPTIONS OF EU COMMON MILITARY LIST CATEGORIES<sup>9</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>9</sup> The full description of the categories as adopted by the Council on 14 March 2016 (2016/C 122/01) can be found on [http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1499171400953&uri=CELEX:52016XG0406\(01\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1499171400953&uri=CELEX:52016XG0406(01))

- 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 EU 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'

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