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REPORT

on the Council's 1999 Annual Report on the Implementation of the
EU Code of Conduct on Arms Exports
(11384/1999 – C5-0021/2000 – 2000/2012(COS))

Committee on Foreign Affairs, Human Rights, Common Security and Defence
Policy

Rapporteur: Gary Titley

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PROCEDURAL PAGE

By letter of 8 November 1999, the Council forwarded to Parliament its 1999 Annual Report on the Implementation of the EU Code of Conduct on Arms Exports (11384/1999 – 2000/2012(COS)).

At the sitting of 21 January 2000 the President of Parliament announced that she had referred this report to the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy as the committee responsible and the Committee on Industry, External Trade, Research and Energy for its opinion (C5-0021/2000).

The Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy appointed Gary Titley rapporteur at its meeting of 25 January 2000.

The committee considered the Annual Report and the draft report at its meetings of 3 April, 21 June and 10 July 2000.

At the last meeting it adopted the motion for a resolution by 49 votes to 6, with no abstentions.

The following were present for the vote: Elmar Brok, chairman; Baroness Nicholson of Winterbourne, William Francis Newton Dunn and Catherine Lalumière, vice-chairmen; Sir Robert Atkins (for Silvio Berlusconi), Alexandros Baltas, Bastiaan Belder, Andre Brie, María Carrilho (for Rosa M. Díez González), John Walls Cushnahan, Joseph Daul (for The Lord Bethell), Proinsias De Rossa (for Claudio Martelli), Olivier Dupuis, Pere Esteve, Michael Gahler, Per Gahrton, Gerardo Galeote Quecedo, Cristina García-Orcoyen Tormo (for Ingo Friedrich), Jas Gawronski, Vitalino Gemelli (for Alain Lamassoure), Alfred Gomolka, Bertel Haarder, Klaus Hänsch, Magdalene Hoff, Giorgos Katiforis (for Sami Naïr), Glenys E. Kinnock (for Mário Soares), Christoph Werner Konrad (for Franco Marini), Efstratios Korakas, Cecilia Malmström (for Francesco Rutelli), Pedro Marset Campos, Hugues Martin, Emilio Menéndez del Valle, Philippe Morillon, Pasqualina Napoletano, Raimon Obiols i Germa, Arie M. Oostlander, Reino Kalervo Paasilinna (for the rapporteur), José Pacheco Pereira, Doris Pack (for Jacques Santer), Hans-Gert Poettering, Jacques F. Poos, Luís Queiró, Lennart Sacrédeus (for Johan Van Hecke), Jannis Sakellariou, José Ignacio Salafranca Sánchez-Neyra, Pierre Schori, Jürgen Schröder, Elisabeth Schroedter, Ioannis Souladakis, Ursula Stenzel, Hannes Swoboda, Freddy Thielemans, Paavo Väyrynen, Jan Marinus Wiersma, Matti Wuori.

The opinion of the Committee on Industry, External Trade, Research and Energy is attached.

The report was tabled on 18 July 2000.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

MOTION FOR A RESOLUTION

European Parliament resolution on the Council's 1999 Annual Report on the Implementation of the EU Code of Conduct on Arms Exports (11384/1999 – C5-0021/2000 – 2000/2012(COS))

The European Parliament,

- having regard to the Council's 1999 Annual Report on the Implementation of the EU Code of Conduct on Arms Exports (11384/99 – C5-0021/2000¹),
- having regard to Rule 47(1) of its Rules of Procedure,
- having regard to the Article 3 of the Treaty on European Union, on consistency in the Union's external activities, and Article 11, on the objectives of the Common Foreign and Security Policy,
- having regard to Article 17 of the Treaty on European Union, on co-operation in the field of armaments, and to Article 296 of the Treaty Establishing the European Community, on protection of national security interests,
- having regard to the Joint Action adopted by the Council on the European Union's contribution to combating the destabilising accumulation and spread of small arms and light weapons²,
- having regard to the EU programme for preventing and combating illicit trafficking in conventional arms³
- having regard to its resolutions of 19 January 1995, 15 January 1998, 14 May 1998, and 7 October 1999 on an EU Code of Conduct on the export or transfer of arms⁴
- having regard to its resolutions of 15 May 1997 and 28 January 1999 on the European defence-related industries⁵
- having regard to the report of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy and the opinion of the Committee on Industry, External Trade, Research and Energy (A5-0211/2000),

¹ OJ C 315, 3.11.1999, p. 1-4

² 1999/34 CFSP, OJ L 9, 15.1 1999, p 1.

³ Adopted by the General Affairs Council of 26 June 1997

⁴ OJ C 43, 20.2.1995, p. 89; OJ C 34, 2.2.1998; C 167, 1.6.1998, p.226; OJ C 107, 13.4.2000, p.103

⁵ OJ C 167, 2.6.1997, p. 137; OJ C 128, 7.5.1999, p.86

- A. whereas the external action of the EU is guided by values of democracy and the protection of human rights,
- B. whereas it follows from the Treaty that the Common Commercial Policy must be consistent with the Common Foreign and Security Policy,
- C. whereas the ending of the Cold War has changed the security context in which the EU operates towards one in which regional and internal conflicts predominate,
- D. whereas there have been a number of conflicts in the last decade in which military personnel from EU Member States, acting in a peace-keeping capacity, have been confronted by weapons manufactured and supplied by EU companies,
- E. whereas the proliferation of light weapons and small arms is a major force for instability in Third World countries and crisis regions, and creates a risk of disturbances by the parties concerned in the European Union itself,
- F. whereas organised criminals and international arms smugglers have developed their illegal activities in the area of small arms and are trafficking vast quantities of weapons along routes which, in some instances, involve the territory of the European Union,
- G. whereas given the current security perspective of the EU, the effective monitoring of end-use is absolutely essential and whereas the lack of provision for verifying the end-user of exported weapons in the Code is a major weakness,
- H. whereas effective control of legal arms exports, licensed production, industrial cooperation agreements and arms brokering is a prerequisite of success in the combat of illicit arms trade and effective prevention of arms transfers to inappropriate end-users,
- I. whereas military, security and police equipment as well as dual-use goods are used for international aggression and internal repression and must all be included in the common list of controlled items,
- J. whereas, as the Code of Conduct lays down, special caution and vigilance must be exercised in issuing export licences to countries where serious violations of human rights have been established and better and more multilateral dialogue and information sharing between EU Member States would help to ensure that this provision is effectively implemented, with a view to establishing a presumption of denial of an export licence to countries where such human rights violations are taking place,
- K. whereas the European Defence Industry is economically and strategically important to the EU,
- L. whereas enlargement will bring the EU's borders closer to areas of instability,
- M. whereas the Associated Countries of Central and Eastern Europe and Cyprus, as well as Iceland, Liechtenstein, Norway and Canada have all agreed to align themselves

with the principles of the EU Code of Conduct,

- N. whereas increased transparency is needed for the achievement of better control of the arms trade,
 - O. whereas any regime for the control of arms exports would be most effective within a global context,
 - P. whereas efforts are being made in the framework of the United Nations to increase transparency in international arms trade in order to facilitate identification of possibly destabilising accumulations of weapons, in particular through the UN Register of Conventional Arms (UNROCA),
 - Q. whereas the EU should firmly support these efforts and also seek to enhance its co-operation with other main exporters of arms, dual-use goods and other relevant equipment,
 - R. whereas a European arms policy is an essential element in the gradual development of a common defence policy in the context of the CFSP and the establishment of a European Security and Defence Identity within NATO,
 - S. whereas in July six EU countries will sign a binding 'letter of intent' containing common rules for their arms policy,
 - T. whereas the security situation confronting the EU is delicate and potentially dangerous and therefore requires an arms export policy with clearly defined objectives,
1. Believes that an EU policy on arms exports must:
 - a) ensure the consistency of the EU's external action, including the Union's goals in conflict prevention, combating poverty and its promotion of human rights
 - b) reinforce the EU's development cooperation objectives, and international development goals
 - c) satisfy the security policy imperatives and needs of the EU
 - d) meet the needs and challenges of the European Defence Industry
 - e) contribute to the development of a Common Defence Policy;
 2. Believes that a coherent and consistent arms export policy would strengthen the consolidation of the European Defence Industry;
 3. Believes that the establishment of a European Armaments Agency to manage European projects would also be beneficial for the development of a common arms export policy;
 4. Welcomes the evidence in the Annual Report that the Code has led to greater dialogue between Member States; welcomes, also, the decision of the Council Presidency to send the annual report to Parliament;

5. Believes that the applicant countries should be more actively involved in the further development of the Code and in the information exchange system;
6. Calls for the application of the Code to be extended to all states which have signed the Wassenaar arrangement; calls in particular for the Member States to cooperate with the USA in devising a common approach to conventional arms export controls similar to that established for chemical weapons control (Australian Group);
7. Believes that Member States should only invoke article 296 in exceptional circumstances in which they regard their essential interests at risk;
8. While welcoming the EU joint action on small arms believes that greater effort is needed to establish common rules for EU control of the legal trade in small arms and light weapons, and effective EU controls to combat and eradicate trafficking and smuggling in such arms;
9. Believes that the Code of Conduct should be made legally binding;
10. Urges the Member States to rapidly finalise and put into effect the military items section of the common control list and to speed up the negotiations on the dual-use goods and civilian items (essentially police equipment) sections of that list;
11. Calls for the prohibition of the manufacture, promotion, marketing, brokering and transfer of equipment and expertise whose primary practical function is for torture, cruel, inhuman or degrading treatment and the death penalty and for offenders to be severely punished. This prohibition should cover all EU Member States and be extended also to EU citizens or EU companies operating in third countries; considers that the applicant countries should also adopt corresponding measures to prohibit the manufacturing of and trade in torture equipment;
12. Considers that countries which do not submit information to the UN's Register of Conventional Arms should be pressurised to do so in connection with the processing of applications for export licences to these countries;
13. Calls on the Member States to carry out more monitoring and more effective monitoring of arms exports and transit; calls on the Member States to make the necessary expert personnel available for this purpose;
14. Calls on the other EU Member States to subscribe as soon as possible to the 'letter of intent' which is to be signed by six EU Member States in July and which introduces common rules on arms policy;

As regards End-Use Monitoring

15. Believes that it is essential to make progress on the following:
 - i) Adoption of standardised models for end-use certificates and authorisations, and guidelines on end-use certification requirements

- ii) Development of end-use agreements which have the status of legally binding contracts. Such end-use agreements should include a clause which would result in the breaking of the contract if the goods are found to be used for proscribed purposes - such as the violation of human rights - as set out in the agreement. Following such a breach the customer would no longer be entitled to further deliveries of goods, even under the original terms of the sale; neither would they be permitted any associated equipment or services such as spare parts, maintenance or training
- iii) Common procedures for verification of authorisations from importing states before licences are issued, including requirements for detailed information on transit routes and shipping agents, pre-notification of importing and transit states and use of authenticated documents
- iv) Common procedures to verify delivery of the arms at the authorised end-user in the country of final destination
- v) A common requirement for the national authorities in the recipient country to get the approval of the original exporting country before re-export or change of end-use can take place: and in case of non-compliance no further exports to the recipient country
- vi) The establishment or strengthening of formal information exchange and consultation arrangements amongst EU countries to assist with assessments of risks associated with certain end-uses, recipient countries or transit routes
- vii) The establishment or strengthening of formal information exchange and co-ordination of responses amongst EU countries systems where there is evidence of non-compliance with end use agreements
- viii) The establishment of a single and complete community wide database containing details of licences granted, end-users (sensitive or otherwise) and all companies in the EU legally involved in the exporting of conventional weapons;

As regards Control of Licensed Production and Industrial Cooperation Agreements

- 16. Calls upon Member States to consider how best to prevent the licensed production of military equipment where there is a risk that the equipment will be transferred to dubious and proscribed end-users;
- 17. Further calls on Member States to consider the feasibility of introducing extra-territorial powers to discourage the unlicensed transfer of military and paramilitary technology imported from the EU;

18. Calls on the Member States to monitor more effectively industrial cooperation agreements under which various suppliers supply seemingly 'innocent' goods to certain countries and these goods are assembled into or incorporated in arms;

As regards Brokering

19. Believes that it is essential to control through a licensing regime the mediation, buying, selling and transportation of arms by arms brokers;
20. Calls upon Member States to further develop and implement the proposals brought forward by the German government during their presidency;
21. Believes that such controls should apply to all EU passport holders and EU companies, regardless of from where they operate;

Associated countries

22. i) Believes that responsible arms trade practices form part of the 'acquis communautaire' and invites the applicant countries to enact the necessary legislative reform and ensure proper implementation to attain EU standards;
- ii) Calls on the Council to ensure that existing Member States move forward in a spirit of partnership, co-operation and mutual trust-building with the associated countries to develop and implement the provisions of the Code together, attaching particular significance to effective respect for international embargoes, which should be legally enforceable through national legislation upon all residents and nationals of existing EU Member States and associated countries;
- iii. Calls on the Council to enhance the dialogue with the applicant countries on the implementation of the Code of Conduct and invites the Council to consider circulating denial notifications to the associated countries to allow them to familiarise themselves with EU standards;
- iv. Calls on the Council and the Commission to provide assistance to them for the responsible disposal of surplus weapons in cooperation with NATO and other international organisations and countries;

As regards Transparency

23. Calls upon all Member States to publish annual reports on their arms exports in sufficient detail to allow parliamentarians and the public to assess whether the EU Code is being observed; these annual reports of the Member States should be annexed to the annual report of the Council;
24. Urges the French Presidency to ensure that the Council publishes its annual report on the Code of Conduct not later than November 2000;

25. Calls on the Council to greatly enhance the transparency of its annual reports on the implementation of the Code of Conduct;
26. Calls on the Council to decide to publish the Code of Conduct in the Official Journal;
27. Decides to annually adopt a resolution on the basis of a report in the European Parliament following the publication of the Council Annual Report on the implementation of the EU Code of Conduct on arms exports;
28. Instructs its President to forward this resolution to the Council, the Commission, the Governments of the Member States and the Governments of the third countries who have agreed to align themselves with the principles of the EU Code of Conduct.

EXPLANATORY STATEMENT

Introduction

The Treaty of Amsterdam asserts that the external action of the EU is guided by values of democracy and the protection of human rights. It also states the Community's commercial policy should be consistent with the Common Foreign and Security Policy (CFSP). In the field of arms exports this consistency cannot be said to exist fully, which weakens the CFSP and diminishes the credibility of a European Defence policy.

Arms export policy depends on the development of the European and international strategic context. During the Cold War the aim of the West in controlling exports was to prevent the export of high technology equipment to countries in the former Soviet bloc, through multilateral agreements such as COCOM. At the same time it tried to prevent third countries from developing programmes involving weapons of mass destruction and it tried to control the arms race in certain parts of the world. The destinations of the arms exports and the identity of the recipients were on the whole obvious.

The end of the Cold War changed the strategic context for arms sales and reduced demand. According to Pentagon estimates in 1994 the projected volume of the world arms trade for the 1991-2000 period was about 50% less than the figure for 1981-1990. The nature of global demand has changed from a context of rivalry between the two super powers and their clients to being motivated by regional or even internal conflicts. This raises serious questions about the protection of human rights and democracy in the field of arms exports. Many of the arms exported are being used in internal conflicts, some of which turn into humanitarian disasters, as in Rwanda or the former Yugoslavia. Despite the fall in global demand for arms many countries, particularly developing countries, are continuing to obtain substantial quantities of weapons on an increasingly competitive market.

The post Cold War strategic context for Europe is very different from that of the USA. The frontier of the EU, particularly along its southern edge is adjacent to areas of the world experiencing major instability and crises including the Maghreb countries, the Middle East, the Aegean and the Balkans. Enlargement to the east will bring the EU border closer to the unstable countries of the former Soviet Union and Turkey's accession would give the EU a frontier with Syria, Iran and Iraq. Further south in the African continent there are a number of serious conflicts. The immediate scenario is one of worsening crises on the EU's borders.

This challenging context raises two key issues. Firstly, Europe may need to intervene militarily. Secondly, in some circumstances it will need to export arms in order to create conditions for the resolution of these conflicts by local participants. This dual requirement necessitates a very careful arms export policy with clearly defined objectives in order to avoid situations such as those in the Gulf, Bosnia, Somalia and Rwanda where troops from EU member states faced weapons supplied or financed by EU member states.

This is a very difficult issue to resolve particularly while there are in operation 15 different arms export policies. Unlike weapons of mass destruction which are subject to multilateral agreements and treaties, conventional weapons have virtually never been included in

international accords except for the CFE Treaty which has been in force since 1992. Consequently trade in these weapons is almost entirely governed by national regulations which differ widely, making it difficult to monitor and control. Of particular concern is the trade in light weapons. There is no transparency and little control over the production, transfer and trade in light weapons, the market for which forms one of the main procurement sources for terrorist groups and organised crime.

There is a further factor to be taken into consideration – the state of the European defence industry. The situation of the industry has deteriorated in recent years as a result of surplus capacity, falls in demand, the fragmentation of the European Market and export difficulties due to greater competition from the USA. Nonetheless the industry remains very important to the European economy. It is a major employer, which operates often at the cutting edge of technology and as such is a major driver of high tech research. The industry has responded to the post cold war situation by shedding jobs and consolidating. It has emerged as a much leaner and more competitive industry. For it to thrive further however, the industry has to be able to operate within a clear framework. Part of that framework must be a coherent policy on arms exports. This is particularly so in view of the many cross border mergers which have taken place. Clearly different national regulations hinder the development of such multinational companies.

In July 2000, France, Germany, Italy, Spain, Sweden and the United Kingdom signed a legally binding agreement aimed at facilitating the consolidation of their defence industries, *inter alia* through harmonisation of their export controls. This should be welcomed and it is to be hoped that other EU Member States will soon add their signatures to this agreement.

It follows therefore that European policy in the field of arms exports must satisfy four essential criteria:

1. It must ensure the consistency of the Union's external action (including the Union's goals in conflict prevention and its promotion of human rights).
2. It must satisfy the security imperative of the Union and its member states.
3. It must meet the needs and challenges of the European defence industries.
4. It must contribute to the development of a common defence policy.

The road towards an EU Code of Conduct and its publication

Prior to the end of the Cold War, controls on exports of arms by member states were applied solely under national legislation. Negotiations about these controls took place within international non-proliferation regimes such as COCOM. At the beginning of the 1990s three events took place, which caused member states to identify the need to co-operate in the control of exports. Firstly, the end of the Cold War changed the strategic situation. Secondly, the Gulf War demonstrated that Iraq's military power had originated at least in part from technology and equipment provided by European companies in the 1980s. Thirdly, the Community was in the process of creating the single market and abolishing frontier controls making some form of common policy essential.

The main obstacle to progress, however, was Article 223 of the Treaty of Rome, which allows

member states to exclude military weapons and equipment from the commercial policy of the Community. This has meant that progress has been largely based on inter-governmental co-operation and voluntary agreements rather than on community law.

In 1991 the European Council in Luxembourg of 28th and 29th June adopted seven criteria for arms exports. In 1992 the European Council in Lisbon (26th and 27th June) adopted an eighth criteria. To date all legislation on the export of arms and strategic goods applicable to EU countries including the code of conduct derives from these eight criteria. In September 1991 COARM was created. This is a working group of representatives of member states, which discusses ways of increasing co-ordination between the member states and of working towards a common interpretation of the eight criteria.

In 1994 the Council adopted a regulation setting up a community regime for the control of the export of dual use goods. On the same day the Council adopted a joint action based on article J3 of the Treaty of European Union with regard to the control of exports of dual use goods. The regulation contains provisions on the control of exports while the joint action specifies the list of goods subject to control and the guidelines for granting export authorisations. The hybrid nature of this regime, astride both the community and intergovernmental pillars of the Union, reflects the sensitivities of member states. In November 1997 the Commission presented a report on the practical application of this regime. It concluded “although the regime has as a whole achieved its objectives in terms of the internal market, it has failed to establish a credible common system of export controls, accepted by exporters and applied on a daily basis by customs services, due to a lack of convergence between the policies and national practices”

In June 1997 the Council adopted the EU programme on preventing and combating the illicit trafficking in conventional arms, which commits member states to strengthen national efforts, to strengthen intra-EU co-operation and to support efforts to third countries requesting EU assistance.

On 25th May 1998 the Council of the European Union adopted the Code of Conduct based on the common criteria adopted in Luxembourg and Lisbon. This was the result of a Franco-British proposal.

In December 1998 the EU joint action on small arms was adopted.

On the 11th October 1999 the General Affairs Council adopted the first annual report on the code of conduct. The European Parliament in its 7th October resolution on the code requested a presentation of the report for “consideration and debate”. In the Foreign Affairs Committee on 12 October the Finnish Foreign Minister promised that she would formally present it to the Foreign Affairs Committee on the 24th November 1999.

Experiences of the implementation of the Code of Conduct

The 1999 Annual Report on the implementation of the Code of conduct shows that experiences have been positive.

“The code has increased mutual understanding of member state policies on conventional arms both directly through the circulation of denial notifications and consultations, and indirectly through contributing to a culture of greater transparency and openness”

“ The unique consultation mechanism set out in the Code has been deemed to be efficient. A large number of denial notifications have been circulated and member states have engaged in active consultations of specific export licensing issues.”

“The practical co-operation, based on the principles and operative provisions of the Code, contributes to a convergence of the arms export policies and procedures of the EU member states”

Some of the non-EU countries associated have begun to circulate information on their conventional arms export control procedures.

There remain issues to be *“clarified and developed”*

Priorities for co-ordinated action in the future, as outlined in the annual report

1. The finalisation of the common European List of military equipment is top priority. *“It is necessary that this list reflect the present threats to international peace and security and to the respect of human rights. The list is to be a cornerstone of the Code of Conduct and should not be limited to the lowest common denominator of existing national control lists.*

On 13 June 2000, a common list of military equipment was adopted. The Council declared that export of certain non-military goods should also be controlled for human rights reasons and noted the Commission's intention to present a proposal on this.

2. Member States will seek to develop common understandings of what constitutes an *“essentially identical transaction”*.
3. A fuller description of the reasons for refusal should be included in the denial notification.
4. Member states will continue to exchange information on national interpretations of UN, EU and OSCE embargoes with a view to developing common understandings and practices.

Further issues to be considered for future action

While the annual report reveals that a lot of progress has been made towards a coherent EU policy on arms exports there are a number of issues which need to be considered in addition to those highlighted in the report itself.

End Use Monitoring

Arguably the most important omission in the Code of Conduct is the fact that it has no provision for verifying the end-user of the exported weapons. It therefore offers no means for monitoring, nor of preventing, the re-export of weapons to recipients for whom export licenses would otherwise not have been granted. In the Cold War, where the destinations and

recipients of arms were reasonably obvious for the most part, this was probably not a major issue. Today, with widespread ethnic and regional conflicts, the issue of end use is of prime importance. In all the major conflicts of the 1990s there has been evidence of EU arms ending up in the wrong hands.

1. Scope of the problem

In most national arms export control systems, applicants for an arms export licence are normally obliged to supply information on the type of goods, the end-user and the end-use to which they will be put. However, the design and stringency of national end-use assessment, certification and control systems currently vary significantly across the EU. Moreover they mostly remain too vulnerable to circumvention, forgery or non-compliance.

There are two key problems:

- There are too many variations of end-use certificates in operation throughout the EU and too little commonality between them.
- Monitoring and enforcement of end-use assurances differs throughout the EU, in terms of the number and scope of end-use certificates monitored and the allocation of resources to such ends. Indeed, most governments have traditionally been unwilling to monitor or enforce end-use assurances.

As a result of these differing levels of end-use controls, it is too easy for unscrupulous and irresponsible companies and end users to obtain and use arms for proscribed purposes.

2. Some examples of 'best practice'

There is, therefore, a pressing need for the EU countries to agree on, and adopt, best practice in the field of end-use certification and monitoring. Examples of such practices are requirements for explicit assurances not to re-export equipment without prior consent (Belgium and Germany), post-export follow-up checks (Belgium and Germany), advanced export data collection systems (Germany and Sweden), a requirement that exporting companies ensure that all proposed exports to sensitive destinations are for civilian use only and a legal obligation for exporting companies to appoint a "Person Responsible for Exports", who can later be held accountable for any foreseeable diversion (Germany).

3. Options for developing a comprehensive control system

Some initial work on exploring the potential for harmonising end-use certification in the EU has already been undertaken within the EU Working Group, COARM. Also within the Wassenaar Arrangement (33 members from the EU, Central and Eastern Europe, North America and Asia) work is being done to develop more effective and common end-use certification. Similarly some candidate countries are also exploring the issue. At a regional conference in Sofia organised under the auspices of the Stability Pact, participants agreed a "Statement on the harmonisation of End-Use/ End-user Certificates"

Building on this work, the following points might be considered:

- Adoption of standardised models for end-use certificates and authorisations, and

guidelines on end-use certification requirements (including the information required on end-users).

- Common guidelines restricting transfers of arms and military equipment to non-state actors.

A standard format might include, for example, full details on the end-user, including a description of the business in which they are engaged, and of the specific use to which the arms will be put. Certificates could also provide a written guarantee by the importing agency that they will not re-export the arms without the prior written consent of the exporting country. Under certain circumstances, it could also state that the recipient would not use the arms for proscribed purposes, including the committing of serious violations of human rights or international humanitarian law. Such guarantees would give end-use certificates the status of a legally binding contract, which, if broken, would provoke specific sanctions - including the refusal of spare parts or the revoking of a maintenance contract. Follow-up orders would also be rendered null and void. The more explicit the guarantees, the better-prepared governments can be to deal with these situations when they arise.

- Common procedures for verification of authorisations from importing states before licences are issued, including requirements for detailed information on transit routes and shipping agents, pre-notification of importing and transit states and use of authenticated documents.
- Common procedures to verify delivery of the arms at the authorised end-user in the country of final destination.
- A common requirement for the national authorities in the recipient country to at least notify the exporting country before re-export or change of end-use.

In cases where a serious risk of diversion or re-export has emerged since an export occurred, Embassy or Consular staff, accompanied by representatives of the company which manufactured the equipment could be required to investigate its whereabouts and use. It would be crucial, therefore, for end-use certificates to include a clause, which permits the exporting government to follow up the equipment in cases where diversion or re-export is suspected. Clearly such checks would not be required in all cases. However, the deterrent effect of such a clause might help reduce instances of misuse.

- The establishment or strengthening of information exchange and consultation arrangements amongst EU countries to assist with assessments of risks associated with certain end-users, recipient countries or transit routes.
- The establishment or strengthening of information exchange and co-ordination of responses amongst EU countries systems where there is evidence of non-compliance with end-use agreements.

The efficient functioning of end-use controls requires co-operation on intelligence gathering and analysis. Although some intelligence dissemination does occur within the other non-proliferation regimes, and between individual member states on an ad hoc basis, a more co-

ordinated and systematic approach by EU member states will probably be necessary. There may also be scope to adapt and develop existing co-operative structures between police forces, intelligence services and justice ministries to the control of small arms.

Finally, the absence of a Community-wide database of information on licences and sensitive end-users is also a cause for concern. A potential model is the existing KOBRA system used in Germany or the Schengen Information System (SIS).⁶ An EU-wide computer system could also be responsible for updating and explaining new export control guidelines to companies; alerting suppliers to new techniques used by front companies and countries to circumvent regulations; and share intelligence information throughout an enlarged EU via a computer network.

Control of Licensed Production

Licensed production, the system where one company enables a company in another country to manufacture its products under licence, is increasingly supplementing or even replacing direct exports of military equipment and weaponry. In many EU countries, such licensed production agreements are inadequately controlled or not controlled at all.

In view of the fact that such licensed production arrangements can often result in the establishment of new centres of production of military equipment over which the licensing government can have little or no control, these agreements must be subject to greater restrictions than are standard export agreements.

EU member states should not allow the licensed production of military equipment where there is a risk that this equipment will be transferred to sensitive and proscribed end-users. Beyond this, the EU member states could introduce US-style extra-territorial powers (which prohibit the re-export of US technology without US government consent), in order to discourage recipients from engaging in the unlicensed transfer of military and paramilitary technology imported from the EU.

Brokering

The EU Code makes no reference to controls on the activities of EU arms brokers and shipping agents. These are companies or individuals that organise or are involved in the transfer of arms from third countries to their customers, without the weapons touching EU soil. Although some states such as the USA, Sweden and Germany have regulations which control the activities of arms brokers, the vast majority of EU states do not, leaving the brokers free to ply their trade virtually as they please. Recently EU brokers have been linked with arms shipments to Eritrea.

⁶ The Schengen Information System (SIS) is a Trans-European database with descriptions of people and objects wanted or missing in each Schengen country which police, customs officers etc. can access at any time. The database currently contains about 8 million names of criminals, suspected terrorists, drug smugglers and illegal immigrants.

During its EU Presidency, the German government brought forward proposals to provide for a system to control the buying and selling of arms by arms brokers, as well as their acting as intermediaries by bringing suppliers and recipients or arms together. The system would require arms brokers situated in EU member states to apply for authorisation before they enter into each transaction. The proposed controls would cover transactions involving goods listed under the seven categories of major conventional weapons as detailed in the UN Register of Conventional Arms Transfers and the EU Joint Action on small arms. Although these proposals constitute a major step in the right direction, they still contain a number of dangerous omissions.

To be effective, EU controls should apply to all EU passport holders wherever they live, and to any company or individual resident or registered in the EU. Such measures would help to ensure that European brokers were unable to escape regulation simply by stepping outside the EU. In addition, all EU member states should require nationals, who are arms brokering agents, to register as such and to publish their audited accounts relating to arms trading. Agents who break laws regulating arms exports or deliberately supply misleading information about their arms transactions should be prosecuted and banned from any further arms brokering.

Transparency

The Annual Report provides information about the number of export licences denied, and the number of bilateral consultations which took place when a country intended to provide an export licence for an item previously denied a licence by another country. The report however does not provide information on the result of the consultations so making impossible to evaluate the effectiveness of the mechanism. Furthermore the report does not provide information about: -

- the numbers and types of weapons for which export licences were requested and /or denied
- the names of the exporting countries and the recipient countries
- the reasons for the denial of export licences.

Clearly without this information it is not possible to get a full picture of the effectiveness of the Code.

Concern has also been expressed about the fact that the Code only foresees bilateral discussions between the country wishing to grant a licence and the country which had previously refused it. There is a view that these consultations should take place between all 15-member states.

The difficulty here, as with all aspects of the Code, is that the perspectives of the member states are so diverse in this field. Member states can be grouped into four categories.

1. The major arms producing and exporting countries - UK, Germany and France
2. Countries which are members of NATO and have significant defence industry capacity - Italy, Netherlands, Spain and Belgium

3. Countries which are members of NATO with a small defence capacity - Portugal, Greece, Denmark and Luxembourg
4. Non NATO members - Austria, Finland, Ireland and Sweden (which has major defence industry capacity)

Given this wide variety of interest, it is perhaps surprising that the Code of Conduct was even agreed at all! It is probably too early and possibly counter productive to be making detailed demands of the reporting system. Rather, as is clear from the annual report, the operation of the Code will bring a gradual convergence of procedures. Transparency would be however greatly enhanced if all Governments were to publish an annual report on their arms exports. The British Government published annual reports on arms exports in 1997 and 1998 which were regarded as comprehensive. If all governments were to do the same, then the consolidated Annual Report would be much clearer and more precise.

Conclusion

The Code of Conduct was a major step forward for the EU. The publication of the annual report was also a major advance. It is clear from the report that the Code has led to a greater understanding between member states. Far greater progress towards a coherent and consistent EU policy on arms exports has been made than many predicted when the report was adopted in 1998. Such an EU policy on arms exports is essential for the development of a European security and defence policy.

Both the Code of Conduct and the annual report have weaknesses, which are outlined in this report. It is the opinion of your rapporteur however that we should focus on four priorities.

1. The Code of Conduct should be legally binding
2. Member states should agree on a common list of items to which the code applies
3. There should be a common system of end-use monitoring
4. Progress should be made on the German Government's proposals for regulation of brokering and trafficking.

12 juillet 2000

AVIS DE LA COMMISSION DE L'INDUSTRIE, DU COMMERCE EXTÉRIEUR, DE LA RECHERCHE ET DE L'ÉNERGIE

à l'intention de la commission des affaires étrangères, des droits de l'homme, de la sécurité commune et de la politique de défense

sur le rapport annuel 1999 du Conseil sur l'application du code de conduite de l'Union européenne en matière d'exportation d'armements
(11384/1999 - C5-0021/2000 - 2000/2012(COS))

Rapporteur pour avis: Luisa Morgantini

PROCÉDURE

Au cours de sa réunion du 27 janvier 2000, la commission de l'industrie, du commerce extérieur, de la recherche et de l'énergie a nommé Luisa Morgantini rapporteur pour avis.

Au cours de ses réunions des 25 mai 2000, 22 juin 2000 et 11 juillet 2000, elle a examiné le projet d'avis.

Au cours de cette dernière réunion, elle a adopté les conclusions suivantes à l'unanimité.

Étaient présents au moment du vote Carlos Westendorp y Cabeza, président, Nuala Ahern, Peter Michael Mombaur, vice-présidents, Luisa Morgantini rapporteur, Konstantinos Alyssandrakis, Maria del Pilar Ayuso González (for Jaime Valdivielso de Cué), David Robert Bowe (for Linda McAvan), Gérard Caudron, Giles Bryan Chichester, Dorette Corbey (for Massimo Carraro), Elisa Maria Damião (for Erika Mann), Claude J.-M.J. Desama, Harlem Désir, Concepció Ferrer, Francesco Fiori (for Renato Brunetta), Christos Folias, Glyn Ford, Norbert Glante, Lisbeth Grönfelt Bergman (for Malcolm Harbour), Michel Hansenne, Dimitrios Koulourianos (for Robert Hue), Werner Langen, Rolf Linkohr, Caroline Lucas, Eryl Margaret McNally, Albert Jan Maat (for W.G. van Velzen), Nelly Maes, Marjo Tuulevi Matikainen-Kallström, Reino Kalervo Paasilinna, Yves Piétrasanta, Elly Plooij-van Gorsel, John Purvis, Godelieve Quisthoudt-Rowohl, Alexander Radwan (for Angelika Niebler), Imelda Mary Read, Christian Foldberg Rovsing, Paul Rübig, Ilka Schröder, Konrad K. Schwaiger, Esko Olavi Seppänen, Helle Thorning-Schmidt (for Mechtild Rothe), Elena Valenciano Martínez-Orozco, Anders Wijkman, Myrsini Zorba, Dieter-Lebrecht Koch (suppléant Guido Bodrato conformément à l'article 153, paragraphe 2, du règlement).

JUSTIFICATION SUCCINCTE

Historique

L'article 296 (ex-article 223) du Traité de l'UE accorde aux États membres la liberté de légiférer à leur convenance sur les questions relatives aux armements et aux équipements militaires. Cette liberté est interprétée de manière très large par les États et a entraîné le développement de politiques contradictoires dans les pays de l'Union européenne quant à la production et aux transactions d'armes, et la fragmentation du marché européen de la défense. Le Traité de Maastricht désigne la politique d'exportation d'armement comme un domaine d'action commune.

Les Conseils européens de Luxembourg en juin 1991 et de Lisbonne en juin 1992 ont adopté des critères communs et le règlement du Conseil (CEE) n° 3381/94 du 10.12.1994 instituant un régime communautaire de contrôle des exportations de biens à double usage, est accompagné d'une décision relative à une action commune dont l'objectif est la libre circulation intra-communautaire et l'harmonisation des contrôles à l'exportation. Cette disposition ne porte pas préjudice à la faculté des États membres d'approuver ou de maintenir des mesures supplémentaires de contrôle d'exportations d'armes dans la mesure où elles sont compatibles avec les objectifs du règlement.

L'existence du règlement précité et des huit autres critères communs s'est révélé insuffisante et ils ont en outre été interprétés de manière très différente d'un État à l'autre. Alors que certains États membres, par exemple, prennent des mesures pour décréter un embargo temporaire sur les exportations vers certains pays, d'autres profitent de ces restrictions unilatérales pour essayer d'augmenter leurs ventes d'armes. Ces différentes interprétations sont à l'origine de diverses initiatives visant à améliorer la législation communautaire et à mieux préciser le sens des critères communs : le Code de conduite de l'Union européenne en matière d'exportation d'armements constitue le premier pas dans ce sens.

CODE DE CONDUITE DE L'UNION EUROPÉENNE EN MATIÈRE D'EXPORTATION D'ARMEMENTS

Le Code de conduite de l'Union européenne en matière d'exportation d'armements a été adopté par le Conseil de l'Union européenne le 8 juin 1998, sur la base des critères communs pour l'exportation d'armements adoptés à Luxembourg en 1991 et à Lisbonne en 1992, établit un mécanisme d'échange et de consultation, et constitue dès lors un premier pas vers une attitude commune pour le contrôle des exportations d'armes conventionnelles des États membres de l'Union européenne, et constitue dès lors un élément de la politique extérieure et de la sécurité commune de l'Union.

On peut dire qu'il s'agit d'un code d'exigences minimales pour la gestion et la limitation des transactions d'armes conventionnelles de tous les États membres de l'Union européenne, en donnant toutefois satisfaction aux États membres qui souhaitent maintenir une industrie de l'armement.

Son objectif peut être défini comme suit :

- renforcer les échanges d'information entre les États membres de l'Union européenne,
- assurer une plus grande transparence dans l'exportation d'armements.

Le Code étant un instrument politique de contrôle des exportations d'armements des pays de l'Union européenne n'ayant pas de valeur juridique, il ne réglemente pas les exportations d'armements, mais fixe des règles minimales pour l'autorisation des exportations d'armements vers des pays qui ne respectent pas les huit critères du Code.

Si le Code constitue un pas en avant, on peut affirmer qu'il reste beaucoup à faire pour éviter des situations scandaleuses comme l'utilisation de balles d'origine finlandaise dans la répression menée par les groupes paramilitaires à Dili (Timor Oriental) ou l'armement des deux parties en conflit au Congo par l'industrie de l'armement du Royaume Uni.

RAPPORT ANNUEL SUR LE CODE DE CONDUITE

Conformément au point n° 8 du dispositif, le Code de conduite de l'Union européenne en matière d'exportation d'armements fait l'objet d'une révision annuelle.

Cette révision porte sur :

- l'interprétation et l'application des critères fixés par le Code pour l'exportation d'armes conventionnelles,
- la mise en œuvre du dispositif,
- les améliorations nécessaires.

Le présent rapport, rendu public en octobre 1999 sous la présidence finlandaise, recueille les contributions de chaque État membre axées essentiellement sur quatre aspects :

- 1) valeur totale des exportations au cours de la période de référence,
- 2) nombre de refus,
- 3) nombre de consultations découlant des refus,
- 4) nombre des licences ou autorisations accordées ou réalisées.

Les éléments qui ont été pris en compte lors des débats, aux fins de la révision et par ordre d'importance, ont été les suivants :

- a) Adoption d'une liste commune de produits auxquels s'appliquent les huit critères contenus dans le Code,
- b) Définition de la notion de "transaction globalement identique",
- c) Introduction d'une description plus précise des motifs de refus, surtout en ce qui concerne le destinataire final de l'exportation,
- d) Étude des délais les plus appropriés pour la réalisation du processus de consultation.

En ce qui concerne la liste commune, il s'agit d'étudier quels sont les produits qu'il convient

d'ajouter aux 22 articles de matériel de défense que la plupart des pays ont introduit dans leurs législations nationales, sur la base des articles équivalents de la liste militaire de l'Accord de Wassenaar. Force est de constater la nécessité d'élargir la liste aux produits et aux services assimilés aux armements comme par exemple le matériel de répression et de torture, les biens à double usage et la formation policière et militaire.

Cette première année de vie du Code a mis en évidence des différences substantielles dans son interprétation, en raison des priorités de politique extérieure et des intérêts industriels et commerciaux divergents des États membres de l'Union européenne.

Quant au rapport même et au processus qui a abouti à son élaboration, il est déplorable que les niveaux de transparence différents qui existent entre les États membres et l'absence de règles pour recueillir ces informations aient entraîné des incohérences dans le rapport final. Il s'agit d'établir un niveau de base de transparence étant donné que ce rapport a été approuvé par tous. On peut aussi regretter qu'il n'y ait pas eu de processus de consultation du Parlement, des ONGs et des centres de recherche au cours du processus même d'élaboration du rapport.

Le rapport présente le nombre d'autorisations d'exportations refusées et le nombre de consultations bilatérales qui ont eu lieu, lorsqu'un État membre essaie de prévoir une licence pour un contrat qui a été précédemment refusé par un autre État membre. Toutefois, malheureusement, il n'y a pas d'information concernant les résultats de ces consultations et, par conséquent, les informations recueillies ne permettent pas d'évaluer l'efficacité du système. Il n'y a pas non plus d'information concernant le nombre et le type d'armements pour lesquels les licences ont été autorisées ou refusées, ni sur l'identité des pays exportateurs et destinataires. Ce manque d'information rend difficile l'évaluation de l'efficacité du Code de conduite. Il n'y a pas non plus d'information sur les raisons qui ont amené à refuser ces exportations.

Le rapport du Conseil reconnaît qu'il convient d'adapter dès que possible le statut du Code qui est déficient puisqu'il n'est pas légalement contraignant.

CONCLUSIONS

La commission de l'industrie, du commerce extérieur, de la recherche et de l'énergie invite la commission des affaires étrangères, des droits de l'homme, de la sécurité commune et de la politique de défense, compétente au fond, à incorporer dans la proposition de résolution qu'elle adoptera les éléments suivants:

Le Parlement européen : :

- 1) Considère que la politique de l'UE et des États membres doit viser, non seulement à l'élaboration d'un code de bonne conduite sur les exportations d'armement, mais également à une réduction globale des armements et à un désarmement à l'échelle de la planète;
- 2) Se réjouit qu'autant de pays, les pays associés d'Europe centrale et orientale, Chypre, les pays non-UE de l'EEE et le Canada, soient tous convenus de s'aligner sur le code de conduite;
- 3) Invite le Conseil à développer une politique extérieure visant à amener d'autres pays, tels que Malte, la Suisse et les États-Unis, à s'aligner sur le code de conduite;
- 4) Considère que l'objectif ultime de la politique de l'UE dans ce domaine doit être la création d'un code international de conduite sur les transferts d'armements;
- 5) Invite le Conseil à inclure dans le Code de conduite des dispositions qui permettent de contrôler les intermédiaires (brokers), la destination finale des armements et le contrôle de la fabrication des armements dans les pays tiers sous licence européenne;
- 6) Estime que la réalisation du marché intérieur ne doit pas impliquer la réalisation de contrôles frontaliers internes à l'UE et par conséquent, estime que la possible suppression de l'article 296 du Traité UE n'a de sens que si l'on élève préalablement les niveaux communautaires de contrôle;
- 7) Considère que l'UE doit redoubler d'efforts pour que les pays tiers adhèrent au Code de conduite dans les négociations qu'elle mène à différents niveaux, qu'il s'agisse de l'élargissement, de l'association, de l'union douanière, du commerce, de la coopération et promouvoir l'élaboration d'un Code international de conduite sur les transactions d'armes;
- 8) Estime qu'il convient de commencer par lier au Code de conduite les pays signataires de l'Accord de Wassenaar, car cela faciliterait l'application par les États membres de l'Union de leur propre Code de conduite et préparerait la voie pour aboutir à des accords avec les États-Unis, premier exportateur mondial d'armements;
- 9) Est préoccupé par le risque que constitue pour le contrôle de l'exportation d'armements de l'Union européenne le processus de libéralisation actuelle des industries de défense dans l'Union européenne et demande que le contrôle des exportations d'armements soit un critère prioritaire pour l'approbation de nouvelles libéralisations dans ce secteur;
- 10) Estime que, eu égard à l'évolution de la PESC, l'Union européenne doit à présent se doter d'un instrument légalement contraignant en matière de contrôle de la production et de transfert d'armements et demande à la Commission et au Conseil de réaliser les étapes nécessaires à cet effet;
- 11) Estime que le Parlement européen et les parlements nationaux des pays exportateurs doivent être consultés avant la prise de décision et au moins, en cas d'octroi de licences qui ont été refusées antérieurement par un autre pays;

- 12) Demande qu'un rapport annuel continue de lui être transmis et que, pour pouvoir évaluer correctement l'application du Code de conduite, le rapport annuel inclue le résultat des consultations réalisées dans les États, le nombre et le type d'armements pour lesquels les licences ont été accordées ou refusées, et l'identité des pays exportateurs et destinataires;
- 13) Estime nécessaire que le Parlement européen, les experts et les ONGs soient consultés régulièrement pour enrichir le rapport annuel sur l'exportation d'armements.