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REPORT

on the Council's Third Annual Report according to Operative Provision 8 of
the European Union Code of Conduct on Arms Exports
(2001/2254(INI))

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

Rapporteur: Gary Titley

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PROCEDURAL PAGE

At the sitting of 17 January 2002 the President of Parliament announced that the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy had been authorised to draw up an own-initiative report, pursuant to Rules 47(2) and 163 of the Rules of Procedure, on the Council's Third Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports.

The Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy appointed Gary Titley rapporteur at its meeting of 25 February 2002.

It considered the draft report at its meetings of 11 July, 9 and 10 September 2002.

At the latter meeting it adopted the motion for a resolution unanimously, with 1 abstention.

The following were present for the vote: Elmar Brok, chairman; Baroness Nicholson of Winterbourne, Geoffrey Van Orden, Christos Zacharakis, vice-chairmen; Gary Titley, rapporteur; Bastiaan Belder, Andrew Nicholas Duff (for Ole Andreasen), Marielle de Sarnez (for Gunilla Carlsson), Pernille Frahm (for André Brie), Michael Gahler, Jas Gawronski, Alfred Gomolka, Giorgos Katiforis (for Alexandros Baltas), Christoph Werner Konrad (for John Walls Cushnahan), Joost Lagendijk, Catherine Lalumière, Cecilia Malmström, Pedro Marset Campos, Emilio Menéndez del Valle, Pasqualina Napoletano, Arie M. Oostlander, Jacques F. Poos, Lennart Sacrédeus (for Gerardo Galeote Quecedo), Jannis Sakellariou, Jacques Santer, Amalia Sartori, Jürgen Schröder, Elisabeth Schroedter, Ioannis Souladakis, The Earl of Stockton (for Alain Lamassoure), Ilkka Suominen, Charles Tannock, Bob van den Bos, Paavo Väyrynen, Karl von Wogau, Matti Wuori.

The report was tabled on 10 September 2002.

MOTION FOR A RESOLUTION

European Parliament resolution on the Council's Third Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports (2001/2254(INI))

The European Parliament,

- having regard the Council's Third Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports (2001/C351/01),¹
 - 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 its resolution of 3 October 2001 on the Council's 2000 Annual Report on the EU Code of Conduct on Arms Exports (13177/1/2000 - C5-0111/2001),²
 - having regard to Rules 47(2) and 163 of its Rules of Procedure,
 - having regard to the report of the report of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy (A5-0286/2002),
- 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 treaties that the Common Commercial Policy of the EU should be consistent with the Common Foreign and Security Policy,
- C. whereas events in 2001 showed once again that the proliferation of weapons is a major force for instability in the world,
- D. whereas organised criminals and international arms smugglers have developed their illegal activities in the area of small arms and are trafficking quantities of weapons along routes which in some instances, involve the territory of the European Union,
- E. whereas the EU Code of Conduct on Arms Exports in the most comprehensive international arms export control regime,
- F. whereas the effective control of the end-user of arms exports, licensed production and arms brokering is essential in the fight against the illicit arms trade and the effective prevention of arms transfers to inappropriate end-users,
- G. whereas the European defence industry is economically and strategically important to the EU,

¹ OJ C351/2001 of 11 December 2001

² OJ C87E/2002 of 11 April 2002, pg. 136

- H. whereas further enlargement of the EU is imminent,
- I. whereas any regime for the control of arms exports would be most effective within a global context to achieve the objective of reducing the arms trade internationally,
- J. whereas transparency in arms exports policy is the best guarantee for the security of the EU,
- K. whereas some member states still do not produce annual reports on their arms export policies and there is no consistency in the reports produced by other member states,
1. Welcomes the 3rd Annual Report on the implementation of the Code of Conduct;
 2. Believes the report represents a significant step forward in member state co-operation in the field of arms exports;
 3. Welcomes the agreement on guidelines for controlling brokering and believes that all member states should ensure that these guidelines are incorporated into their national legislation and that these guidelines are supported by effective penalties;
 4. Hopes that the Council will come forward with a timetable for the implementation of these guidelines;
 5. Also believes that the Council should further consider
 - a. The practicability of taking action against EU nationals engaged in arms brokering outside EU territory;
 - b. What measures can be taken towards regulating services on which arms brokers depend e.g. shipping and financial services;
 6. In this perspective, welcomes the recently adopted Belgian law on brokering. Points out that this law establishes a register of licensed arms brokers; puts firm conditions for individuals to be included in the register; and provides firm sanctions against those who violate these conditions, or broker arms transactions without licence. Encourages all EU Member States to proceed urgently with this type of legislation;
 7. Recognises that the 3rd Annual report is an improvement on the first two reports in terms of the transparency of the information provided. Is nonetheless concerned that the different national systems of data collection and reporting are an obstacle to proper scrutiny. Calls upon the Danish Presidency to achieve improvements in data reporting;
 8. Welcomes the compilation of a matrix containing statistical data from national reports of every member states. Believes this should lead to greater convergence of information provided;
 9. Believes that all member states should publish national annual reports based on agreed standards and best practice;

10. Believes that such reports should *inter alia* provide details on individual licences granted or denied including a description of the goods and details regarding the value, quantity and end user of the equipment, as well as details of the supplier country and the recipient state;
11. Believes that member states should agree a common approach for dealing with informal denials;
12. Welcomes the commitment to use a broad interpretation of the concept of “essentially identical transaction”. Believes that this interpretation should be based on the consequences of those transactions;
13. Welcomes the agreement for a more multilateral consultation between member states where a conclusion has been reached that two transactions are not essentially identical. Further believes that ultimately all member countries should be involved in the consultation process;
14. Welcomes the work being done in COARM on working towards common standards of end-user certification;
15. Believes that a comprehensive system of end-user controls should incorporate pre-export checks, an effective system of end-user certification and post export monitoring and follow up procedures;
16. Believes that consideration should be given to how best for member states to share information on problems with end-users;
17. Welcomes the Council’s commitment to investigated licensed production overseas. Hopes that measures will be taken to ensure the implications for diversion and misuse are considered when licences for overseas production are decided;
18. Believes it is essential to ensure the maximum involvement of the accession countries in the information exchange and consultation process of the Code of Conduct and calls on the accession countries to abide by the principles of the EU Code of Conduct, to enact the necessary legislation and to implement measures for proper application of the Code;
19. Calls upon member states to seek to re-engage the U.S.A. in the process of developing an international Code of Conduct;
20. Calls on member states to continue to encourage other arms exporting countries to subscribe to the principles of the EU Code in particular the countries of the Western CIS;
21. Recognises the importance of work being done in COARM on developing legal controls on electronic transfers of the software and technology associated with the items on the common list;
22. Reiterates its view that the Code of Conduct should be legally binding on member states;
23. Instructs its President to forward this resolution to the Council, the Commission and the parliaments and governments of the member states and of the third countries who have

agreed to align themselves with the principles of the EU Code of Conduct.

EXPLANATORY STATEMENT

In December 2001, the EU Council of Ministers released its 3rd Annual Report on the EU Code of Conduct on Arms Exports. The Code was adopted on 25th May 1998 by the Council of the European Union, based on the 8 criteria adopted by the Luxembourg Council and in 1992 by the Lisbon Council. Previous Annual Reports were published in 1999 and 2000. The European Parliament welcomed both reports, but set out further areas where it believed the working of the Code of Conduct could be strengthened. These observations and criticisms should not, however, stop us from recognising that the Code is the most comprehensive international arms export control regime. No other such regime has such a sharing of information on arms transfers. It sets the standards which others should follow.

The 3rd Annual Report reveals the extent to which the Code of Conduct has its own built-in dynamics. The application of the Code is leading member states towards greater dialogue, mutual understanding and convergence. It is clear that the initial mistrust of some member states is giving way to greater confidence. Progress is being made in areas regarded by the Parliament as important.

Arms brokering

The European Parliament has always felt that a major omission from the Code was any reference to controls on arms brokering.

The 3rd Annual Report states that member states “have reached agreement on a set of guidelines for controlling brokering that could be the basis of national legislation”. These guidelines recommend that member states provide a licence or written authorisation for “transactions involving the activities of buying and selling (where the arms or military equipment enter into the legal possession of the arms-brokering agent) or mediating (without the direct acquisition of property). Member states are also requested to “seriously consider registering brokers or requiring them to obtain a written authorisation from the competent authorities of the member states where they are resident and established. More “legal controls.... should be supported by effective penalties”. Further work in this area is promised.

This is a major breakthrough and should be fully supported by Parliament. However there is no timetable in the 3rd Report for implementing the controls on arms brokers. This should be a key priority for member states.

Consideration should also be given towards how to control the activities of EU arms brokers when they operate from outside the EU and the ancillary services such as shipping and financial services, on which brokering operations depend.

Transparency

The effectiveness of the Code of Conduct can only be properly assessed if the information the Annual Report provides is fully transparent. Parliament feels this is not currently the case, partly as a result of the way information is presented, but mainly as a consequence of different national standards of reporting. The Council has recognised this and there has been some improvement in information made available, both at EU and national levels.

EU Level

The EU Code commits member states to circulate, in confidence, an annual report that includes information on defence exports but does not specify what that information should consist of.

The 3rd Report is a clear improvement on its predecessors as, for each member state, the data consists of:

- the total number of licences granted (global total and broken down by recipient region)
- the total value of licences granted and/or goods exported (global total and broken down by recipient region)
- the number of notified denials
- the number of bilateral consultations initiated
- the number of consultation requests received.

Unfortunately, due to the different data collection and reporting systems in use across the EU, these figures are not directly comparable. Denmark has indicated that a priority of its Presidency (July-December 2002) is the improvement in data reporting. This should be welcomed.

National Level

As the EU Annual Report is a consolidation of national reports, then full transparency will only be achieved when there is agreement on a set of common national reporting standards. To this end, the 3rd Annual Report announces that a matrix has been compiled, containing statistical data from the national reports of every member state, so as to highlight areas of convergence and divergence and thus help identify priority areas where harmonisation might be best focussed. This matrix is to be welcomed, provided it is used as a means of increasing disclosure and not as a rationale for reducing transparency to the level of the lowest common denominator.

Full transparency would seem to require that Annual Reports should, *inter alia*, provide full details on individual licences granted or denied and match the supplying member state to the recipient state. This would include a description of the goods and details of the

value, quantity and end-user of the equipment licensed. The same level of data should be provided in the case of a licence denial, along with the reason for the denial.

Denials

EU member states agreed in the EU Code to circulate “details of licences refused in accordance with the Code of Conduct ... together with an explanation of why the licence has been refused”. During the 2nd annual review process, member states elaborated on the information to be included in each denial notification, especially the reasons for the decision.

There is a need for a common approach to determining precisely what constitutes a denial. Some member states circulate denials based on informal approaches by prospective exporters. Others ensure that applications, which are likely to be refused, do not reach an advanced stage, so that there are few official denials. This type of informal denial process - whereby other member states are not aware that a denial has in effect been issued - could inadvertently lead to undercutting.

Consultations

According to operative provision 3 of the EU Code, a member state considering granting a licence for an essentially identical transaction, previously denied by another state, should consult with that state before making a decision.

There has been a lot of discussion among member states on how to interpret what constitutes “an essentially identical transaction” (EIT). The 3rd Report reveals welcome progress in this area by member states:

“Initially using a broad interpretation of the concept of ‘essentially identical’. the resulting consultation will provide the experience needed to gradually evolve a more precise definition of the term”.

It is unclear what form “broad interpretation” is to take. One way forward would be for EITs to be based on whether a transaction might have essentially identical consequences, i.e. where they would contribute to similar capabilities for end-users, or raise the same risks for, human rights, regional stability or diversion.

The 3rd Annual Report makes clear member states believe that the consultation process is key to developing a common approach to export licensing decisions. Yet the Code states that the consultations will be bilateral between the two member states concerned and calls upon these member states to keep consultations confidential. Parliament believes that consultations should be multilateral in order to develop greater mutual understanding between national administrators.

The 3rd Annual Report marks a very significant step forward in this regard.

“the consulting member state will, to the extent compatible with national considerations and on a confidential basis, endeavour to share with other EU member states, in the context of COARM deliberations, information on the occasions in which consultations result in the conclusion that two transactions are not essentially identical.”

Your rapporteur believes that Council should build on this with the ultimate aim of involving all member countries at each stage of the consultation process.

End User Controls

The diversion of controlled goods (or technology) to unintended end-users or for unintended purposes is a significant threat to the effectiveness of any export control regime. COARM is currently working toward agreeing common standards for end-use(r) certification. Any harmonisation should be based on the best practice among EU member states.

A truly effective system of end-use control should include:

- comprehensive and thorough risk assessment at the licensing stage
- a system of end-use certification and documentation that is not liable to forgery
- explicit end-use assurances that take the form of a legally-binding contract
- a delivery, verification and post-export monitoring regime, with provision for the application of sanctions

It has been argued that a comprehensive end-use monitoring system is beyond the capacity of smaller states. If that is the case, there is an argument for COARM to examine the possibility of establishing a joint EU monitoring system.

Controlling licensed production overseas

Parliament has argued that in order to control weapons proliferation, there must be control of licensed production overseas (LPO), since it involves setting up new centres of production, over which the original host government has little or no control.

In the 3rd Consolidated Report, an undertaking is made to “study the problem of manufacture under licence in third countries”. It is believed that since then, member states have agreed a text to apparently require member states to consider the implications for diversion or misuse that would stem from the supply of controlled goods to be used in a licensed production facility. This is to apply to the eventual use of the goods produced under licence as well as the production technology or equipment exported from the member state.

This would be another major step forward if confirmed. It is not yet clear, though, if there will be any obligation on member states to scrutinise and subject individual licensed production agreements to authorisation.

Promoting the principles of the EU Code

The 3rd Annual Report states that dialogue with non-member states, who have aligned themselves with the Code, was stepped up “as a result of new initiatives aimed at improving the application of the Code in these countries, both at legislative level and the actual implementation by the operators concerned”.

The imminence of the further EU enlargement means that there should be a deepening of dialogue between the EU and the accession countries. Denial notifications should be circulated to the candidate states. The EU should exchange national reports on arms exports with the accession countries who, in turn, should be enacting the necessary legislation for proper implementation of the Code.

The EU has also examined the possibility of developing export control policy in tandem with the USA. Events, including September 11th, have pushed this question off the agenda. However, these events should reinforce the importance of having an international Code of Conduct on arms exports. Member states should therefore re-energise discussions on this subject with the USA in the next EU-USA Summit.

Other Issues

Parliament has previously demanded a common list of non-military security and police equipment. The European Commission has now announced a proposal for a Community mechanism of controlling exports of non-military equipment that may be used for internal repression. Further work is being done in COARM on developing “legal controls on electronic transfers of the software and technology associated with items on the common list”.

Conclusions

The Code of Conduct continues to accelerate the development of an effective common European policy towards arms exports. No one should underestimate the progress made to date in an area that traditionally was shrouded in secrecy and mutual suspicion.

However, much of the 3rd Annual Report is a statement of good intentions without setting out a clear and concrete timetable for progress. That makes it difficult to pin down and measure tangible outcomes. The final word can perhaps be left to the 3rd Annual Report itself:

“Although the fundamental elements of the common approach to the control of conventional arms exports by member states of the European Union may be considered to be in place, implementation of the approach cannot be considered to have been definitively achieved.”

In other words – a lot done, a lot more to do.