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REPORT

on the Council's Second Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports (13177/1/2000 – C5-0111/2001 – 2001/2050(COS))

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

Rapporteur: Gary Titley

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PROCEDURAL PAGE

The Council's Second Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports was published in the OJ C 379 of 29 December 2000 (13177/1/2000 – 2001/2050(COS)).

At the sitting of 15 March 2001 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 (C5-0111/2001).

The Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy appointed Gary Titley rapporteur at its meeting of 20 March 2001.

The committee considered the Annual Report and the draft report at its meetings of 19 June and 11 September 2001.

At the latter meeting it adopted the motion for a resolution by 42 votes to 0, with 3 abstentions.

The following were present for the vote: Elmar Brok, chairman; Baroness Nicholson of Winterbourne and William Francis Newton Dunn, vice-chairmen; Alexandros Baltas, Michael Cashman (for Gary Titley), John Walls Cushman, Giovanni Claudio Fava (for Rosa M. Díez González), Pernille Frahm (for Andre Brie), Per Gahrton, Gerardo Galeote Quecedo, Jas Gawronski, Bertel Haarder, Klaus Hänsch, Joost Lagendijk, Armin Laschet (for Michael Gahler), Hanja Maij-Weggen (for Arie M. Oostlander), Cecilia Malmström (for Francesco Rutelli), Pedro Marset Campos, Hugues Martin, Linda McAvan, Patricia McKenna (for Daniel Marc Cohn-Bendit), Emilio Menéndez del Valle, Philippe Morillon, Pasqualina Napolitano, Raimon Obiols i Germà, Reino Paasilinna (for Mário Soares), Jacques F. Poos, Luís Queiró, Mechtild Rothe (for Magdalene Hoff), Lennart Sacrédeus (for Hans-Gert Poettering), Tokia Saïfi (for Jacques Santer), Jannis Sakellariou, José Ignacio Salafranca Sánchez-Neyra, Elisabeth Schroedter, Ioannis Souladakis, Ursula Stenzel, David Sumberg (for Jürgen Schröder), Hannes Swoboda, Johan Van Hecke, Geoffrey Van Orden, Paavo Väyrynen, Demetrio Volcic (for Sami Naïr), Jan Marinus Wiersma, Matti Wuori, Christos Zacharakis.

The report was tabled on 19 September 2001.

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 Second Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports (13177/1/2000 – C5-0111/2001 – 2001/2050(COS))

The European Parliament,

- having regard to the Council's Second Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports (13177/1/2000 – C5-0111/2001¹),
- having regard to Article 3 of the Treaty on European Union, on consistency in the Union's external activities, and to Article 11, on the objectives of the Common Foreign and Security Policy,
- having regard to the EU's Development Declaration of May 2000 with its commitment to policy coherence, including coherence between the EU's policy on arms exports and the EU's development objectives,
- having regard to the Guidelines on EU Policy towards third countries on torture and other cruel, inhuman or degrading treatment adopted by the General Affairs Council on 9 April 2001,
- 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 Action² adopted by the Council on the European Union's contribution to combating the destabilising accumulation and spread of small arms and light weapons³,
- having regard to the EU Programme⁴ for preventing and combating illicit trafficking in conventional arms⁵,
- having regard to its resolution of 5 October 2000⁶ on the Council's 1999 Annual Report on the EU Code of Conduct on Arms Exports (11384/1999 - C5-0021/2000) and to its previous resolutions on this subject,

¹ OJ C 379, 29.12.2000, p. 1

² OJ L 9, 15.01.1999, p. 1

³ The term 'small arms and light weapons' also covers very lethal and powerful weapons, such as portable anti-tank and surface to air missiles. International organisations have adopted different more precise definitions of this term.

⁴ Adopted by the General Affairs Council of 26 June 1997.

⁵ The term 'conventional arms' refers to arms that are not atomic, biological or chemical. Since there is no generally accepted definition of what constitutes arms, there is neither any such definition of this term.

⁶ OJ C 178, 22.06.2001, p. 273.

- having regard to Rule 47(1) of its Rules of Procedure,
 - having regard to the report of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy (A5-0309/2001),
- 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 EU Code of Conduct on Arms Exports was a major step forward in ensuring the consistency and coherence of EU Member States policies towards arms exports,
 - D. whereas the General Affairs Council on 9 April 2001 adopted Guidelines on EU policy towards third countries on torture, and the UN Commission on Human Rights recently called on all governments to "take appropriate effective legislative, administrative, judicial and other measures to prevent and prohibit the production, trade, export and use of equipment which is specifically designed to inflict torture or other cruel, inhuman or degrading treatment",
 - E. whereas the Code of Conduct should be strengthened so that exports of military, paramilitary and security equipment shall be denied in circumstances where they might contribute to gross human rights abuses; and to ensure that this is effectively implemented, multilateral dialogue and information sharing between the EU Member States should be improved,
 - F. whereas the first Annual Report on the Code of Conduct revealed that the Associated Countries of Central and Eastern Europe and Cyprus, as well as Iceland, Liechtenstein, Norway and Canada had agreed to align themselves with the principle of the EU Code of Conduct,
 - G. whereas Member States agreed to a Common List of Military Equipment covered by the EU Code of Conduct as adopted on 13 June 2000,
 - H. whereas the effective monitoring of end-use is crucial and whereas the lack of provision for verifying the end use of export weapons in the Code of Conduct is a major weakness,
 - I. whereas the control of arms brokers is absolutely essential to stem the proliferation of arms in crisis regions,
 - J. whereas controls on the licenced production of military equipment abroad by EU companies are fundamental for preventing the circumvention of arms export control measures,

- K. whereas transparency in this field is vital in order to ensure democratic accountability,
- L. whereas some Member States still do not produce annual reports on their arms export control policies and there is no consistency in the reports produced by the other Member States,
- M. whereas there was a UN Conference in July 2001 on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects,
1. Reiterates its belief that EU policy in arms export must:
 - a) ensure the consistency and efficiency of the EU's external action, in particular the Union's goals in conflict prevention, combatting 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. Welcomes the publication of the Council's second annual report and the clear signs contained within it that considerable progress has been made towards greater convergence of Member States' policies towards arms export controls;
 3. Recommends that the coming third annual report should make available an evaluation as full as possible in how far the goals as stated in article 1 have been reached;
 4. Underlines that the applicant countries should in their negotiations with the Union give guarantees that they will implement the Code of Conduct in full;
 5. Welcomes the decisions by Turkey and Malta to subscribe to the Code's principles;
 6. Regrets that so far the USA has not adopted its own code of conduct on arms exports; recommends that this issue should be made a permanent component of the Transatlantic Dialogue;
 7. Calls on the Member States, the Council and the Commission to work towards an international Code of Conduct on arms transactions and to inform Parliament of their activities in this respect in the annual report on the application of the Code of Conduct on arms exports;
 8. Regrets that so far the UN has not been able to establish a global arms exports control regime and that some of the Permanent Members of the Security Council, in particular Russia and China, continue to export arms without any restraints; asks the Council to take an EU-action for establishing a global arms exports control regime on UN-basis;
 9. Calls on the Council to encourage the Member States to deny arms deliveries to countries which do not submit information to the UN's Register of Conventional Arms;

10. Supports the Member States' intention to update regularly the Common List of Military Equipment and their willingness to put forward the list for consideration within the Wassenaar Arrangement;
11. Urges Member States to reach early agreement on what constitutes an "*essentially identical transaction*";
12. Welcomes the fact that there has been agreement in Council on a common list of non-military security and police equipment; urges the Commission to act swiftly to bring forward an appropriate Community mechanism to control such exports;
13. Welcomes the work being done to achieve greater convergence of Member States policy regarding exports to countries and regions not subject to embargoes but which merit special vigilance;
14. Is disappointed that little progress seems to have been made towards controlling arms brokerage; calls for Member States to increase their efforts towards controlling arms brokerage, and also to work towards the development of an international legally binding agreement on brokering;
15. Deeply regrets that no progress appears to have been made towards agreeing a common system of end-use monitoring;
16. Deeply regrets that no action has been taken to place controls in the licensed production abroad of military equipment by EU companies; calls upon the governments of the Member States to require their explicit consent for the transfer of military items produced abroad under a licensing agreement, in order to reduce the risk that equipment is transferred on to dubious and proscribed end-users;
17. Reiterates its position that as soon as possible the Code should be made legally binding for all current and applicant EU Member States;
18. Calls on the Council to ensure that the Member States move forward in a spirit of partnership, co-operation and mutual confidence-building with the applicant countries to develop and implement the provisions of the Code of Conduct together, attaching particular significance to effective respect for international embargoes, which should be legally enforceable through national legislation;
19. Calls on the Council and the Commission to provide assistance to the applicant states for a responsible disposal of surplus weapons in co-operation with NATO and OSCE;

As regards transparency

20. Welcomes the agreement by Member States to give a fuller description of the reasons for the denial of licences; expects this information to be included in future annual reports;

21. Calls on the Member States to extend the multilateral consultation mechanism agreed for dual-use items in the dual-use regulation of 22 June 2000, meaning that they would circulate a notification to all Member States if they grant an export licence for an item for which another Member State previously denied a licence;
22. Welcomes the increase in the number of countries producing annual reports on their arms export control policies; calls upon those Member States who do not yet publish annual reports to do so;
23. Underlines that the consolidated Council report in its current shape does not allow effective evaluation of Member States' export control policy; welcomes the commitment by Member States to harmonise their national annual reports and urges them to ensure that common minimum standards are set at the most comprehensive level possible;
24. Urges the Member States to ensure that their harmonised national annual reports will include:
 - information on licensing policy, including policy developments, treaty commitments, international obligations (e.g. embargoes), changes to legislation, and the way in which the state has implemented the EU Code,
 - for each licence granted or denied a description of the equipment, details on the quantity, destination, end-user and (at least approximate) value,
 - information on the type of licence and the dates of any decisions taken, and where applicable, the reasons for denial, including the substance and outcome of bilateral consultations on denials,
 - separately listed actual transfers, again including data on the nature of the goods, type of licence, quantities, values, destinations and end-users,
 - the same level of disclosure on all transfers of controlled goods which escape the licensing process, e.g. government-to-government transactions;
25. Believes that all Member States should make provisions for parliamentary scrutiny of their export control policies and export licensing decisions;
26. Reiterates the view 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; calls on Member States to actively follow up its contribution to the 2001 UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects; calls on Member States to promote the adoption of strict legally binding international criteria, based on States' obligations under international human rights standards and international humanitarian law, on arms transfers, in the form of a Framework Convention on International Arms Transfers;
27. Demands that arms exports are progressively integrated into the Common Commercial Policy and that article 296 is adapted accordingly;
28. 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

Code of Conduct – Annual Report

In December 2000, the EU Council of Ministers released the second consolidated report of the annual review of the EU Code of Conduct on Arms Exports. This followed the adoption on 25 May 1998 by the Council of the European Union of a Code of Conduct on Arms Exports based upon the eight criteria adopted in 1991 by the Luxembourg Council and in 1992 by the Lisbon Council. On 11 October 1999, the General Affairs Council adopted the first annual report on the Code of Conduct. This was subsequently passed for comment to the Foreign Affairs Committee of the European Parliament by the Finnish Presidency. The European Parliament's response to the report was adopted on 5 October 2000.

Before analysing the second annual report, it is worth recalling the main points of the Parliament's report on the first annual report.

The Parliament welcomed the first annual report and in particular the evidence it contained of greater dialogue between Member States on arms exports and the support for the principles of the Code for non-member states. It also welcomed the agreement on the Common List of Military Equipment covered by the EU Code of Conduct reached on 13 June 2000, subsequent to the Council's first report.

The Parliament however underlined the need to make progress on a number of areas.

- a) Agreement on a common list of equipment for paramilitary, public order and internal security purposes.
- b) Further extension of the principles of the Code to non-EU members.
- c) End-use monitoring. There is currently no EU provision for verifying the end user of exported weapons. There are big differences between member states and end user requirements and monitoring. Parliament urged EU countries to agree best practices in the field of end-use certification and monitoring and that a more comprehensive control system be adopted, including having a community wide database.
- d) Controls on licensed production and industrial co-operation agreements, which can sometimes be used to circumvent arms exports.
- e) Controls on the activities of arms brokers, particularly building on the controls brought forward under the German Presidency.
- f) Transparency. Parliament called for all EU Member States to publish annual reports on their arms exports. Parliament also called for the EU annual report to be made more transparent.

- g) Making the Code of Conduct legally binding on member states.
- h) Developing stronger controls on both legal and illegal trafficking in small arms.

Second Annual Report

The Council's second annual report states that the Code "*was substantially strengthened and the first year's achievements consolidated*". There was a marked increase in the number of denials and consultation between Member States during the second year of the Code's consolidation. The report stresses that there has been "*greater concertation by Member States regularly not only the practical arrangements for implementing the Code and upgrading these arrangements, but also arms export control policies*." Turkey and Malta have declared they subscribe to the Code's principles and have undertaken to adjust their arms export policies accordingly. More Member States are now publishing annual reports.

The Council reports that the Common List of Military Equipment was agreed on 13 June 2000 and that Member States intend to update the list regularly with the COARM working party. Member States have also expressed support for any items of the Common List which are not contained in the Wassenaar List to be put forward for consideration within the Wassenaar Arrangement. While Member States have still not reached a common understanding as to what constitutes an "*essentially identical transaction*", the Common List of Military Equipment will become the basis for seeking such understanding.

Member States have agreed for denial notifications to give a fuller description of the reasons for denial. In future, denial notifications should include:

- Country of destination
- Full description of the goods concerned
- Buyer
- Description of end use
- Reasons for denial
- Date of the denial

Member States have continued to exchange information on national interpretation of embargoes imposed by the UN, the EU and the OSCE. They have also worked towards further concertation on national policies towards those countries which are not subject to an embargo but which are being closely monitored.

The second annual report mentions that arms brokerage control has been discussed but does not refer to any agreement merely that "*the Member States intend to continue and deepen their discussion on the procedures for monitoring arms brokers' activities*."

In light of the 2001 UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, Member States have started to define common guidelines and to strengthen their coordination of control of transfer of small arms and light weapons.

Finally, the report highlights priorities for future action:

- Finalisation of a common list of non-military security and police equipment. The list will be drawn up by the COARM working party and submitted to the Commission which will then propose a Community mechanism for controlling exports of such equipment. This instrument will be separate from the operative provisions of the Code of Conduct.
- Development of exchanges of information on exports to certain countries or regions regarded as requiring special vigilance.
- Clarification and strengthening of the bilateral consultations mechanism.
- Harmonisation of national annual reports in the appliance of the Code of Conduct.

Observations on the Second Annual Report

It is clear that considerable progress has been made in bringing about greater convergence of Member States' arms export policies. This is to be welcomed, but there is a lot still to be done. Depending on one's point of view, the situation can be described as one in which the glass is either half full or half empty.

It is to be regretted that little progress has been made in controlling arms brokering and no progress appears to have been made on:

- A common system of end-use monitoring
- Controls on licenced production by EU companies
- Making the Code legally binding

The area where it appears that progress is most significant and rapid is in the field of transparency.

Transparency

A number of arms export scandals in the 1980s and 1990s have re-inforced the importance of transparency in this field. Transparency allows proper debate of the issues involved, builds confidence in national and international regulating regimes and discourages illegal activity and corruption.

The agreement on the EU Code of Conduct itself and the decision to publish the annual report, is a major advance in this field. There remain however concerns about the way the annual report is presented and the levels of transparency operated by Member States.

The consolidated annual report is essentially an amalgamation of national arms reports. Consequently it stands or falls by the quality of information provided by national governments. For that reason, the European Parliament called for all countries to publish their arms reports.

The next step would then be to get greater convergence of information provided in the reports.

The N.G.O. Saferworld recently published a study of transparency in arms export controls¹. It

¹ Transparency and accountability in European arms export controls by Bernardo Mariani and Angus Urquhart, December 2000.

notes that in recent years there has been a big increase in the number of countries producing annual reports. Belgium, Italy and Sweden have been producing them for sometime, however, Austria, Greece and Luxembourg do not produce public annual reports and Denmark only produced its first one in January 2001.

The quality of information varies greatly among member states. Saferworld describes the UK's third annual report published in July 2000 as "*the most transparent report published by a European country and it offers a potential template for best practice throughout the EU*". The report gives information on policy issues and then detailed information on licensing decisions. For each country destination, the number and value of licences granted is shown, along with details of the number of licences granted and refused, disaggregation by military list category or goods summary. Numerical data on major conventional weapons and small arms are also given.

The Italian Government produced its first annual report in 1991 and in certain areas its reports provide an unprecedented level of information. In particular, the annual report details armaments exported and imported giving a full description of the goods, their value and quantity broken down by company. Details of licences granted, including type, quantity and value of armaments, again broken down by company, are also provided. While the level of information provided in the Italian report is good, the level of transparency achieved is undermined by the complex structure of the report. The Italian reporting system, moreover, is one of the few to provide details of dual-use exports. However, in this area, it is the Irish system that allows for the greatest level of transparency, with the publication of monthly statistics on the Internet of dual-use export licences issued with respect to control list number, date and destination.

The Dutch annual report gives highly detailed information on refusals of licence applications. This information includes a full description of the goods for which a licence was refused, the destination country, proposed consignee, end-user, reason for refusal, date of denial and denial number.

The relatively high level of transparency evidenced in the reporting systems of these few member states is not matched elsewhere. Austria, Greece and Luxembourg provide no public information on licences granted. Spain does publish an annual report but this only contains values of exports and does not include any details of licences granted, the type and quantity of products exported, the ultimate end-user or transfers to police or security forces. France's report only gives information on export licences disaggregated into three very broad categories. The scant nature of the information provided on arms, dual-use goods and police/security equipment exported from these and other countries precludes comprehensive scrutiny and seriously impedes government accountability.

Parliamentary scrutiny

Parliamentary debate and the raising of questions in parliament is also an important way of monitoring and scrutinising government policy. In the Netherlands, as a result of a far-reaching Freedom of Information Act, a significant quantity of information is typically forthcoming in replies to parliamentary questions on this issue - in contrast to those states, such as Austria and Italy, in which responses tend to lack detail, limiting their usefulness as

an instrument of public scrutiny.

Very few national parliaments in Member States have the right to scrutinise the application of national export controls either before or after licences are granted. In the UK a Quadripartite Committee on Strategic Export Controls made up of members of the Defence, Foreign Affairs, International Development and Trade and Industry Select Committees has been established to examine the government's Annual Reports on Strategic Export Controls.

In Sweden a system of prior parliamentary scrutiny has been operating since 1984. The Swedish Government takes advice on export control policy from a specially convened body called the Export Control Council (ECC), made up of serving and former parliamentarians. Although any objections raised by the ECC are not legally binding, unanimous objections from the Council have, in practice, always led to the refusal of a licence. The Swedish system ensures parliamentary input into the licensing process and helps ensure that the government applies export licensing criteria on a consistent basis.

The provision for regular parliamentary debate on the application of arms export control policy is also an important mechanism of scrutiny in this area. However, the Netherlands and Sweden are the only countries where such debates take place on a regular basis.

The Annual Report's commitment to greater transparency

In light of the considerable variations between Member States in reporting procedures, the commitments contained within the annual report to seek a harmonised framework for national reports is to be greatly welcomed. As is the commitment by Member States to provide more detail in denial notifications. It is to be hoped that this information will be included in the next annual report.