



**COUNCIL OF
THE EUROPEAN UNION**

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LIMITE

**PESC 1111
COARM 62
CODUN 27**

NOTE

from :	Presidency
to :	Permanent Representatives' Committee
Subject :	Draft Council Common Position defining common rules governing the control of exports of military technology and equipment
No. prev. doc.	14937/06 PESC 999 COARM 54 CODUN 24

1. The EU Code of Conduct on Arms Exports, which builds upon the Common Criteria for arms exports adopted in 1991 and 1992 and includes denial notification and consultation mechanisms, was adopted on 8 June 1998. The adoption of the Code marked a qualitatively new stage in the EU's development of a common approach to arms exports as an important element of the Common Foreign and Security Policy.
2. In December 2003, after five years' operation of the Code, Member States agreed that the time was ripe to update and strengthen the Code. The decision to commence work on a revised Code was in no way linked to any specific country or the lifting of any arms embargo.
3. During 2004 and the first half of 2005 the Working Party on Conventional Arms Exports (COARM) worked on the drafting of a revised Code. The resulting revised draft included the following new elements compared with the 1998 Code:

- (i) The scope of the Code was clarified by explicitly making its provisions applicable not only to applications for licences for physical exports, including those for the purpose of licensed production of military equipment in third countries, but also to applications for licences for brokering, transit or transshipment, and any intangible transfers of software and technology by means such as electronic media, fax or telephone; the drafting of the criteria (factual situations to be taken into account by licensing officers assessing export licence applications) was improved, and criterion 2 (human rights) was expanded to read "the respect of human rights in the country of final destination as well as respect by that country of international humanitarian law";
 - (ii) References to relevant instruments which had come into being since its adoption were inserted. Such instruments and documents include the Joint Action 2002/589/CFSP of 12 July 2002 on the European Union's contribution to combating the destabilising accumulation and spread of small arms and light weapons, Common Position 2003/468/CFSP of 23 June 2003 on the control of arms brokering, and the 2001 UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects;
 - (iii) Reference was made to the User's Guide to the Code, a document agreed and regularly updated by COARM, which provides guidance for the interpretation of the Code's criteria and implementation of its operative provisions, principally for use by export licensing officials.
5. On 30 June 2005, the Permanent Representatives' Committee agreed on the revised text, to take the form of a CFSP Common Position, to be entitled "Council Common Position defining common rules governing the control of exports of military technology and equipment" (doc. 10569/05). However, the Committee considered that adoption of the Common Position by the Council would take place at the appropriate juncture.

6. The provisions of the Common Position, once adopted by Council, will be legally, and not only politically, binding upon Member States. This new status will demonstrate to third countries and important stakeholders with interest in the field, such as the European defence industry and civil society, that common EU standards on control of arms exports are indeed credible and reliable.
7. The need for robust rules ensuring that we all behave as responsible arms exporters cannot be overestimated; the European Union and Member States played a pivotal role in procuring the adoption in October by the United Nations First Committee of a resolution to look into the feasibility of an international legally binding Arms Trade Treaty. On 3 October 2005, the Council issued a declaration expressing the belief that the European Union should play an active role in the process towards an Arms Trade Treaty.
8. It seems therefore that now is indeed the appropriate juncture for the EU to adopt this Common Position, which will update and strengthen our current Code of Conduct, and set a good example to other actors in the field. It would also respond to the European Parliament's repeated calls for the transformation of the Code into a common position.
9. The Common Position (like the current Code) will apply to all arms exports by each Member State to any country in the world.
10. Further to the exchange of views by the Permanent Representatives' Committee at its meeting on 31 October 2006, the Committee is invited to:
 - suggest to the Council that it adopt as a "A" item the Common Position defining common rules governing the control of exports of military technology and equipment, as set out in the annex to document 10569/05 PESC 568 COARM 34 CONOP 34 CODUN 13 (to be finalised by the legal linguistic experts).