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LIMITE

PESC	29
COARM	1
COMER	6
ECO	21
UD	5
ATO	17

**FORWARDING NOTE**

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from : Presidency

to : Delegations

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**Subject : EU CODE OF CONDUCT ON ARMS SALES**

Delegations will find attached a proposal for an "EU code of conduct on arms sales" tabled by the Presidency.

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**DECLARATION BY EU MEMBER STATES ON AN  
EU CODE OF CONDUCT FOR ARMS EXPORTS**

- A. EU Member States are committed to the maintenance of a strong defence industry which is a strategic part of their industrial base as well as their defence effort. They recognise that defence exports can contribute to international stability by strengthening bilateral and collective defence relationships in accordance with the inherent right of self defence recognised by the UN Charter.
- B. EU Member States are amongst the leading arms exporters in the world, with approximately 40% share (1996) of the world market. They therefore have a special responsibility to promote restraint and transparency in the transfer of conventional arms and of technologies for military use.
- C. Wishing to reinforce their cooperation within the framework of CFSP, and on the basis of the Common Criteria agreed at the Luxembourg and Lisbon European Councils in June 1991 and June 1992, EU Member States have agreed to strengthen the exchange of information relevant to the export of conventional arms, with the aim of setting high common standards for arms exports from all EU Member States.
- D. All EU Member States agree to circulate through diplomatic channels details of licences refused in accordance with the following Code of Conduct for military equipment, as well as for items on the list of dual-use goods in Annex I of Council Decision 94/942/CFSP, as amended, when there are grounds for believing that the end-user of such dual-use goods will be the armed forces or the internal security forces of the recipient country, together with an explanation of why the licence has been refused. Before any Member State grants a licence which has been denied by another Member State for an essentially identical transaction within the last three years, it will first consult the Member State which issued the denial. If following consultations, the Member State nevertheless decides to grant a licence, it will notify the Member State issuing the original denial, giving a detailed explanation of its reasoning. The decision to transfer or deny the transfer of any item will remain at the national discretion of each Member State. A denial of a licence is understood to take place when the Member State has refused to authorise the actual sale or physical export of the equipment concerned.
- E. EU Member States agree to keep such denials and consultations confidential and not to use them for commercial advantage.
- F. In order to maximise the efficiency of this code, EU Member States agree to examine the scope for harmonising their export control procedures and to consider the adoption of an ad hoc EU list for military equipment.

- G. In application of the above principles, EU Member States have adopted the following code of conduct:

### **EU CODE OF CONDUCT**

1. Respect for the international commitments of EU Member States.

An export licence should be refused if approval would be inconsistent with:

- a) the international obligations of Member States and their commitments to enforce UN, OSCE and EU arms embargoes;
- b) the international obligations of Member States under the Nuclear Non-Proliferation Treaty, the Biological and Toxin Weapons Convention and the Chemical Weapons Convention;
- c) their commitments to the Australia Group, the Missile Technology Control Regime, the Nuclear Suppliers Group and the Wassenaar Arrangement;
- d) their commitment not to export all forms of anti-personnel landmines.

2. The respect of human rights in the country of final destination Member States will :

- a) take into account respect for human rights and fundamental freedoms in the recipient country;
- b) not issue an export licence if there is a clearly identifiable risk that the proposed export might be used for internal repression.

For these purposes equipment which might be used for internal repression will include:

- (i) Equipment where there is clear evidence of the recent use of similar equipment for internal repression by the proposed end-user, or where there is reason to believe that the equipment will be diverted from its stated end-use or end-user and used for internal repression;
- (ii) Equipment which has obvious application for internal repression, in cases where the recipient country has a significant and continuing record of such repression, unless the end-use of the equipment is judged to be legitimate, such as protection of members of security forces from violence.

The nature of the equipment proposed for export will also be carefully considered. Certain goods have more obvious potential for use in internal repression than others. In other cases, there may be prima facie reasons for believing that a particular equipment might be used in such roles in certain circumstances. Any proposed export which is to be used by the recipient country for internal security purposes should be considered particularly carefully.

Internal repression includes extra-judicial killings, arbitrary arrest, torture, suppression or major violation of human rights and fundamental freedoms. In some cases, the use of force by a government within its own borders does not constitute internal repression. The use of such force by governments is legitimate in some cases, eg, to preserve law and order against terrorists or other criminals. However, force may only be used in accordance with international human rights standards.

The attitude of recipient states towards relevant human rights instruments should also be taken into account although non-adherence should not preclude countries from receiving arms.

3. The internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts.

Member States will not allow exports which would:

- a) prolong or aggravate an existing armed conflict, taking into account the legitimate requirement for self-defence;
- b) be used other than for the legitimate defence and security needs of the recipient country.

4. Preservation of regional peace, security and stability.

Member States will not issue an export licence if there is a clearly identifiable risk that the intended recipient would use the proposed export aggressively against another country, or to assert by force a territorial claim. However, a purely theoretical possibility that the items concerned might be used in the future against another state will not of itself lead to a licence being refused.

When considering the risk that the country for which arms are destined might use them for international aggression, EU Member States will take into account:

- a) the existence or likelihood of armed conflict between the recipient and another country;
- b) a claim against the territory of a neighbouring country which the recipient has in the past tried or threatened to pursue by means of force;

- c) whether the equipment would be likely to be used other than for the legitimate national security and defence of the recipient;
- d) the potential for the equipment to increase the capability of one nation in such a way as to lead to instability in the region.
- e) the risk of reverse engineering or technology transfer.

The need not to affect adversely regional stability in any significant way will also be considered. The balance of forces between neighbouring states, their relative expenditure on defence, and the need not to introduce into the region new capabilities which would be likely to lead to increased tension, will all be taken into account.

5. The national security of the Member States and of territories whose external relations are the responsibility of a Member State, as well as that of friendly and allied countries.

Member States will take into account:

- a) the potential effect on their defence and security interests and those of allies and other Member States;
- b) the potential effect on their economic, financial and commercial interests, including their long-term interests in having stable, democratic trading partners;
- c) the potential effect on their relations with the recipient country;
- d) the potential effect on any collaborative defence production or procurement project with allies;
- e) the protection of their essential strategic industrial base;
- f) the risk of use of the goods concerned against their forces or those of their allies;
- g) the need to protect military classified information and capabilities.

6. The behaviour of the buyer country with regard to the international community, as regards in particular to its attitude to terrorism the nature of its alliances and respect for international law.

Member States will take into account the record of compliance with regard to:

- a) support or encouragement of terrorism;
  - b) international commitments, in particular on the non-use of force;
  - c) non-proliferation and other areas of arms control and disarmament.
7. The existence of a risk that the equipment will be diverted within the buyer country or re-exported under undesirable conditions.

In assessing the impact of the proposed export on the importing country and the risk that exported goods might be diverted to an undesirable end-user, the following will be considered:

- a) the legitimate defence and domestic security interests of the recipient country, including any involvement in UN or other peace-keeping activity;
  - b) the technical capability of the recipient country to use the equipment;
  - c) the risk of the arms being re-exported or diverted to an undesirable end-user, including terrorist organisations (anti-terrorist equipment would need particularly careful consideration in this context).
8. The compatibility of the arms exports with the technical and economic capacity of the recipient country, taking into account the desirability that states should achieve their legitimate needs of security and defence with the least diversion for armaments of human and economic resources.

Member States will consider whether the proposed export would seriously undermine the economy of the recipient country, taking into account its :

- public finances;
  - balance of payments;
  - external debt;
  - economic and social development;
  - economic reform programmes.
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