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FORWARDING NOTE

from : Secretariat

to : Delegations

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6046/98
6112/98

Subject : EU CODE OF CONDUCT ON ARMS EXPORTS

Delegations will find attached a revised proposal for an "EU code of conduct on arms exports" circulated by the Presidency.

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

The Governments of the EU Member States:

PROCEEDING from the Common Criteria agreed at the Luxembourg and Lisbon European Councils in 1991 and 1992,

RECOGNISING their special responsibility as being amongst the leading arms exporters in the world,

CONFIRMING their intention of setting high common standards for arms exports such as may enhance responsible management and restraint by all EU Member States, and greater transparency among them,

DETERMINED to prevent the export of equipment which might be used for internal repression or international aggression, or contribute to destabilising accumulations,

WISHING to reinforce their cooperation within the framework of the CFSP in the field of the export of conventional arms, and to promote the gradual harmonisation of their export policies,

COMMITTED to the maintenance of an efficient defence industry as a strategic part of their industrial base as well as their defence effort,

RECOGNISING 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,

have adopted the following Code of Conduct, the criteria of which will be applied to national consideration of export licence applications on a case-by-case basis, and associated mechanisms:

- 1. Respect for the international commitments of EU Member States, in particular the sanctions decreed by the UN Security Council and those decreed by the Community, agreements on non-proliferation and other subjects, as well as other international obligations.**

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

- 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 in the frameworks of the Australia Group, the Missile Technology Control Regime, the Nuclear Suppliers Group and the Wassenaar Arrangement;
- d) their commitment not to export anti-personnel land mines as defined under Article 2 of the Ottawa Convention.

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, including its attitude towards relevant principles established by international human rights instruments;
- 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.

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. The use of force by a government within its own borders does not necessarily constitute internal repression. However, force may only be used in accordance with international human rights standards.

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 provoke or prolong armed conflicts or aggravate existing tensions or conflicts.

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.

When considering these risks, 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 need not to adversely affect regional stability in any significant way.

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, while recognising that these factors cannot affect consideration of the criteria on internal repression and international aggression, will take into account:

- a) the potential effect on their defence and security interests and those of friends, 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 any collaborative defence production or procurement project;
- d) the protection of their essential strategic industrial base;
- e) the risk of use of the goods concerned against their forces or those of friends, allies or other Member States;
- f) the need to protect military classified information and capabilities;
- g) the risk of reverse engineering or technology transfer.

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 inter alia the record of compliance with regard to:

- a) support or encouragement of terrorism and international organised crime, in particular drug trafficking;
- b) international commitments, in particular on the non-use of force;
- c) non-proliferation and other areas of arms control and disarmament, in particular the signature, ratification and implementation of the relevant arms control and disarmament conventions.

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 capability of the recipient country to exert effective export controls;
- d) the risk of the arms being re-exported or diverted to 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

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

- public finances, including relative levels of military and social expenditure;
- balance of payments;
- external debt;
- economic and social development;
- economic reform programmes;
- information in the UN Human Development Index and World Bank and OECD reports.

FINAL OPERATIVE PROVISIONS

1. Member States may assess jointly within the mechanisms of the CFSP the situation of potential or actual recipients of arms exports from EU Member States, in the light of the principles and criteria of the Code of Conduct.
2. All EU Member States agree to circulate through diplomatic channels details of licences refused in accordance with the Code of Conduct for military equipment, as well as for items on the list of dual-use goods in Annex 1 of Council Decision 94/942/CFSP as amended, together with an explanation of why the licence has been refused. The details to be notified are set out in the form of a draft pro-forma at Annex A. 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.]

[provide the Member State issuing the original denial with a detailed explanation, and notify its decision to all other Member States.]

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, where a sale would otherwise have come about, or the conclusion of the relevant contract. Denials of permission to start negotiations or refusal to allow an initial enquiry may also be notified to partners.

3. EU Member States agree to keep such denials and consultations confidential and not to use them for commercial advantage.
4. 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 work for the adoption of an ad hoc EU list for military equipment based on similar lists within existing international arrangements.
5. Each EU Member State should prepare agreed guidelines and circulate to the other EU partners an annual report on its national arms transfers and its own implementation of the Code of Conduct.
6. An annual EU meeting held within the framework of the CFSP will allow a common assessment of the national reports with a view to ensuring the proper application of the Code and identifying any improvements which need to be made. After having been discussed in the Working Group on Convention Arms Exports, a consolidated EU report will be submitted to the Council for approval. The approved report will be made available to the public both in print and on the Internet.
7. This Code of Conduct and the operative provisions shall replace any previous elaboration of the 1991 and 1992 Common Criteria.
8. The above Code of Conduct represents a set of minimum common standards. Member States reserve the right to operate more restrictive national policies if they wish.

Annex A to ANNEX

..... (name of Member State) has the honour to inform partners of the following denial under the EU Code of Conduct:

Destination country:

Short description of equipment, including quantity and where appropriate, technical specifications:

Proposed consignee:

Proposed end-user (if different) :

Reason for refusal:
