

**Brussels, 31 March 1998**

**7255/98**

**LIMITE**

|              |           |
|--------------|-----------|
| <b>PESC</b>  | <b>73</b> |
| <b>COARM</b> | <b>5</b>  |
| <b>COMER</b> | <b>42</b> |
| <b>ECO</b>   | <b>91</b> |
| <b>UD</b>    | <b>38</b> |
| <b>ATO</b>   | <b>46</b> |

**OUTCOME OF PROCEEDINGS**

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of : Working Group on Conventional Arms Exports

on : 26 March 1998

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prev. docs 5645/98  
6046/98  
6112/98  
7081/98

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

1. At its meeting on 26 March 1998, the Working Group on Conventional Arms Exports examined a revised draft version of the EU Code of Conduct on Arms Exports, reproduced in doc. 7081/98 PESC 64 COARM 4 COMER 38 ECO 85 UD 29 ATO 43.

2. The Presidency indicated that question of the legal instrument for the adoption of the Code was still to be addressed but, in any case, the Code should be a non-legally binding document. The Commission stated that a declaration by the Council would be an appropriate instrument. The Presidency undertook to identify possible alternatives to the present formulation (declaration by the Governments of the EU Member States) and seek delegations' views.
3. In addition to several drafting amendments concerning different elements of the draft text, discussions focused on the following aspects of the draft text:
  - a new recital (considerant) noting the objectives of the EU Programme for preventing and combating illicit trafficking in conventional arms will be added to the preambular part; as to the recital on cooperation in the field of the export of conventional arms, a clear preference was expressed to refer to the harmonisation of procedures; it was also noted that the last part of the preamble ("the criteria of which will be applied to national consideration of...") could find a more appropriate place in the framework of the "Operative Provisions".
  - criterion 1: indent d) should read "their commitment not to export any form of anti-personnel land mines"; a suggestion to modify the text of the criterion to refer explicitly to embargoes was considered inappropriate, in order to respect the actual wording agreed upon by the European Council;
  - criterion 2: in addition to several drafting amendments, the following sentence will be inserted at the beginning of the last paragraph: "The nature of the equipment proposed for export, as well as the character of the transaction itself, will also be carefully considered". It was also agreed that the last two sentences of that paragraph should be merged into one, reading: "The use of force by a government within its own borders, in

accordance with internationally recognised human rights standards, does not constitute internal repression". The last part of 2 (ii) ("unless the end-use of the equipment is judged to be legitimate") will be deleted. Some reference to the legitimate use of the equipment in situations such as the fight against terrorism could be inserted. No agreement was reached on the suggestion to introduce wording along the lines of point 2 of doc. 6046/98, submitted by Italy

- criterion 3: the words "in the country of final destination" will be added at the end of the sentence.
- criterion 4: no agreement was reached on the suggestion to introduce, after indent a), the notion of illicitly occupied territories belonging to sovereign and independent states members of the UN and to refer specifically in the chapeau to use of the proposed export against an EU Member State;
- criterion 5: on the basis of the suggestions put forward by several delegations, the Presidency undertook to reformulate the draft text. The need to maintain indents a) and e), and possibly indent g), was underlined; indents b),c) and d) could be merged and indent f) could be deleted;
- criterion 6: the text of the criterion will be redrafted to take into account the different suggestions, in particular as to indent c);
- criterion 7: no specific amendments to the current text were suggested;

- criterion 8: several delegations suggested that the text be redrafted, as it was felt that the current wording focused excessively on too many references to economic and social factors. It was agreed that the Presidency would reexamine the text in the light of the suggestions, and in particular include a reference to those countries which are recipient of EU and/or bilateral aid.

4. As to the "Operative Provisions", the following considerations were made:

- Paragraph 1: will be reworded, in particular to take into account the need to establish a link with existing provisions of the "Guidelines for interpretation and practical measures for application of the common criteria to be applied to arms exports", which will be superseded by the Code pursuant to its paragraph 7.
- Paragraph 2: while fully sharing the common political objective of extending the Code's operative provisions to dual-use goods, the Commission, supported by some delegations, recalled that the question should be dealt with in the framework of the existing dual-use regime and in accordance to the procedures thereof. To that end, the Commission was fully prepared to take the appropriate steps. The possibility of using the EU secure communication system for the purposes of the Code was underlined. Other delegations noted that the Code's language did not impinge upon or contradict any of the provisions of the dual-use regime. One delegation suggested that, without prejudice to the existing dual-use provisions, a possible solution could be to qualify the reference to dual-use items in the Code in relation to military or security-related end users. The Council Legal

Service drew attention to the legal framework established in the dual-use regime. The Presidency stated that a solution of the legal aspects would be sought, to reflect the general view of the Group on the need to extend the provisions of the Code to dual-use goods, taking into account the legal framework established by the existing regime.

Further to paragraph 2, a majority of delegations expressed a preference for the second alternative, in brackets, concerning the notification of decisions to grant licences following a previous denial by another Member State. It was felt that no specific deadline for notifications should be included and that a more precise wording for the last sentence of the paragraph was needed, to address the question of initial enquiries.

- Paragraph 3: no specific comments. A new paragraph, to be inserted after 3, will take account of the proposal put forward by the Italian delegation in point 1 of doc. 6046/98.
- Paragraph 4: the Presidency will submit a new redrafting, to include a reference to the maximisation of the efficiency of export controls and to clarify the concept of an ad hoc common list for the purpose of the Code. The new version will underline that the Code would be operable, in the meantime, on the basis of national lists incorporating as appropriate common international commitments, such as the Wassenaar list.
- Paragraphs 5 and 6: the two paragraphs will be merged into one, and redrafted to the effect that the national report envisaged will address the implementation of the Code, and that the annual report which will be submitted for approval to the Council would be subsequently transmitted to the European Parliament. One delegation maintained a reservation on the principle of the national report.

- Paragraph 7: no specific comments (see comments to Paragraph 1 above).
  - Paragraph 8: delegations agreed to delete the first sentence of this paragraph. One delegation reaffirmed its preference to move the remaining text to the preambular part. Another delegation suggested that the sentence be inserted after the third but last sentence of paragraph 2. The Presidency undertook to reflect on the most appropriate way to address the issue, possibly in connection with the solution to be found for the last sentence of the preambular part.
5. The Presidency indicated that a new version of the Code will be issued by mid-April. It recalled also the interest expressed by the Associated Countries to receive the text of the Code. The Group agreed to revert to the question at its next meeting on 29 April, prior to the Troika scheduled for 30 April.
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