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THE EUROPEAN UNION**

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**LIMITE**

**PESC 1223  
COARM 72  
CODUN 34**

**NOTE**

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from :	Permanent Representatives' Committee
to :	Council
Subject :	Draft Council Common Position defining common rules governing the control of exports of military technology and equipment

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No. prev. doc.	10569/05 PESC 568 COARM 34 CONOP 34 CODUN 13
	14937/06 PESC 999 COARM 54 CODUN 24
	15150/06 PESC 1111 COARM 62 CODUN 27

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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 intangible transfers of software and technology. 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.
  - (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.
4. The Common Position (like the current Code) would apply to all arms exports by each Member State to any country in the world.
5. At its 16-17 December 2004 session the European Council adopted the following conclusions:
- "The European Council welcomed the results of the seventh EU-China Summit that took place in The Hague on 8 December. It invited the Council and the Commission to further explore the feasibility of a new EU-China framework agreement and possible cooperation on issues such as re-admission and market economy status. The European Council confirmed that EU-China relations have developed significantly in all aspects in the past years. It is looking forward to further progress in all areas of this relationship as referred to in the EU-China Joint Statement, in particular the ratification of the International Covenant on civil and political rights. In this context the European Council reaffirmed the political will to continue to work towards lifting the arms embargo. It invited the next Presidency to finalise the well-advanced work in order to allow for a decision. It underlined that the result of any decision should not be an increase of arms exports from EU Member States to China, neither in quantitative nor qualitative terms. In this regard the European Council recalled the importance of the criteria of the Code of Conduct on arms exports, in particular criteria regarding human rights, stability and security in the region and the national security of friendly and allied countries. The European Council also stressed the importance in this context of the early adoption of the revised Code of Conduct and the new instrument on measures pertaining to arms exports to post-embargo countries ('Toolbox')."*

6. On 30 June 2005 COREPER reached agreement on the draft Common Position defining Common Rules governing the control of exports of military technology and equipment (Annex to doc. 10569/05). Consensus was not achieved at the 30 June 2005 COREPER to recommend that Council adopt the draft Common Position as an "A" item: the French delegation considered that the December 2004 European Council conclusions established a link between the lifting of the arms embargo on China and the adoption of the Common Position. It could not agree to such adoption unless delegations agreed that at the same time the EU arms embargo on China would be lifted. It was therefore agreed that the Common Position would be adopted "at the appropriate juncture". (cf. Summary report of 2103rd Coreper, 30 June 2005, doc. 10641/05, paragraph 44: "Le Comité est convenu que l'approbation du texte final révisé devra être recherchée dans l'avenir conformément aux conclusions du Conseil européen").
7. At its meetings on 31 October and 15 November the Permanent Representatives' Committee discussed the issue of adoption of the Common Position. At each of these meetings France continued to link the adoption of the Common Position with the lifting of the arms embargo. The Italian, Luxembourg and Spanish delegations expressed support for the French position.
8. The Presidency considers that the adoption the Common Position, legally binding upon Member States, regardless of any decision about the China arms embargo, would 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 credible and reliable. The adoption of robust, compulsory rules would also be consistent with the position of EU Member States concerning the proposal of an Arms Trade Treaty. Further to adoption on 3 October 2005 of Council conclusions expressing the belief that the European Union should play an active role in the process towards an Arms Trade Treaty, the European Union and Member States played a pivotal role in procuring the adoption on 6 December 2006 by the United Nations General Assembly of a resolution to look into the feasibility of an international legally binding Arms Trade Treaty. A clear majority of UN Member States voted in favour of the resolution which had 116 co-sponsors, including all EU Member States.

9. The December session of the General Affairs and External Relations Council is expected to adopt conclusions welcoming the adoption of the UN resolution, and expressing its conviction that EU Member States will continue play an active role in the UN process, and participate in the work of the group of governmental experts set up under the resolution.
  10. Against this background, on 28 November 2006 the President of the GAERC addressed a letter to all EU Member States' Ministers explaining its position and requesting cooperation (cf. copy of letter in English and in French annexed hereto). The Presidency hopes those delegations which continue to make a link between the adoption of the Common Position and the lifting of the China arms embargo will now lift their objections to the adoption of the Common Position.
  11. The Presidency therefore suggests that the Council express its political agreement on the draft Council Common Position, which will be adopted as an "A" item after finalisation by legal-linguistic experts.
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MINISTRY FOR FOREIGN AFFAIRS OF  
FINLAND

ANNEX (en)

28 November 2006

Dear Colleague,

I am approaching you on the important matter of strengthening EU arms control policy as a component of the Common Foreign and Security Policy. In the forthcoming meeting of the General Affairs and External Relations Council on 11-12 December, we will seek consensus on the adoption of the Draft Common Position defining Common Rules governing the control of exports of military technology and equipment.

The Code of Conduct on Arms Exports has been in force since 1998. The criteria on factors to be taken into account while considering arms export applications are reflections of our common values and include human rights, internal situation, regional stability and risk of diversion. The reporting obligation and the consultation mechanism have contributed to the harmonization of arms export policies within the EU and to the international success of the Code of Conduct.

In 2003, Member States agreed on the need to update the Code of Conduct. Important international developments such as the United Nations Conference on Small Arms and Light Weapons and the EU Common Position 2003/468 on the control of arms brokering contributed to the consensual decision that the Code needed to be updated.

The draft Common Position defining Common Rules governing the control of exports of military technology and equipment builds on the 1998 Code of Conduct. It includes some new elements, such as respect for international humanitarian law, and the broadening of the scope of the instrument also to applications for brokering, transit, transshipment and licensed production. In addition, Member States agreed that the new instrument should be adopted in the form of a Common Position, which would contribute to the strengthened credibility of EU export control standards by giving the instrument a legally binding character.

It is worth noting that the content of the Common Position was agreed already in June 2005. The question for decision now relates only to its adoption.

The instrument is, by definition, general in nature. No single destination, no region, no country is explicitly mentioned in it. It applies to all exports to all countries in the world. That is why the adoption of the Common Position

should not be linked to any other policy decision with regard to European arms exports, for example the lifting of the embargo against China which will

have to be considered separately from our objective of strengthening our general arms exportation rules.

All EU Member States supported the formal start of a process towards a legally binding Arms Trade Treaty at the United Nations earlier this autumn. The overwhelming support for such a treaty was in large measure due to the efforts made by the EU and its individual Member States. It is important to ensure that the EU will be able to continue to play an active role in this process. By agreeing to improve its own export control standards, the European Union would strengthen its credibility in the ATT process - including in the eyes of dialogue partners, and stake-holders such as industry, the European parliament and civil society.

I ask for your support in our common effort to strengthen our standards. The further delay of the Common Position might act against the image of the EU in its endeavours to strengthen its arms control policy and weaken its credibility.

I appeal to all of you to join the consensus at the forthcoming General Affairs and External Relations Council meeting.

Erkki Tuomioja  
Minister for Foreign Affairs



28 novembre 2006

Cher Collègue,

Je sollicite votre attention au sujet du renforcement de la politique européenne de contrôle des armements, élément de haute importance dans la politique étrangère et de sécurité commune. Lors de la réunion du Conseil Affaires générales et relations extérieures du 11 décembre prochain, nous tenterons d'aboutir à un consensus concernant l'adoption de la position commune en vue de renforcer les règles communes régissant le contrôle des exportations de technologies et d'équipements militaires.

Le Code de Conduite en matière d'exportations d'armements est en vigueur depuis 1998. Les critères applicables à l'exportation d'armements reflètent nos valeurs communes : droits de l'homme, situation interne, stabilité régionale et risque de détournement. L'obligation de notification et le mécanisme de consultation ont contribué, non seulement à l'harmonisation des politiques européennes d'exportation d'armements, mais encore au succès international du Code de Conduite.

En 2003, les États membres se sont mis d'accord sur la nécessité d'actualiser le Code de Conduite. Certains développements internationaux majeurs, comme la conférence des Nations Unies sur les armes légères et de petit calibre ou la position commune 2003/468 de l'UE sur le contrôle du courtage en armements, ont fait apparaître la nécessité d'une mise à jour de ce Code.

Le projet de position commune définissant les règles communes en matière d'exportation de technologies et d'équipements militaires, se base sur le Code de Conduite de 1998. Il inclut certains éléments nouveaux comme le respect du droit international humanitaire, l'élargissement de son champ d'application au courtage, transit, transbordement et production sous licence des armements. En outre, les États membres ont souhaité que ce nouvel instrument soit adopté sous forme de position commune, ce qui ne manquerait pas de renforcer la crédibilité des normes européennes de contrôle des exportations d'armements, conférant, de la sorte, à cet instrument, un caractère juridiquement contraignant.

Il convient de remarquer que le contenu de la position commune avait été finalisé déjà en juin 2005. Aujourd'hui il s'agit simplement de décider de son adoption.

L'instrument est, par définition, d'un caractère général. Aucune destination, aucune région, aucun pays n'y sont explicitement mentionnés. Il s'applique à toutes les exportations vers tous les pays du monde. En conséquence, l'adoption d'une position commune ne devrait être dépendante d'aucune autre décision en rapport avec les exportations européennes d'armement, telle la levée de l'embargo contre la Chine, qui doit être abordée indépendamment de notre objectif de renforcer nos règles générales en matière d'exportation d'armements.

Cet automne, aux Nations Unies, tous les États membres de l'UE ont été favorables à la mise en route du processus conduisant à un Traité international établissant des normes communes pour le commerce mondial des armes conventionnelles. Le soutien massif en faveur d'un tel traité est à porter au crédit, dans une large mesure, des efforts de l'UE et de ses États membres. Il est important de s'assurer que l'Union puisse continuer à jouer un rôle actif dans ce processus. En acceptant l'amélioration de ses propres normes de contrôle des exportations, l'UE accroîtrait sa crédibilité, y compris aux yeux de ses partenaires et des parties prenantes comme l'industrie et la société civile.

Je sollicite votre soutien dans notre effort commun de renforcement de nos normes. Un délai supplémentaire ne manquerait pas ternir l'image d'une UE pilote dans les contrôles d'exportations d'armements et d'affaiblir sa crédibilité.

Je vous engage tous à rejoindre le consensus lors de la réunion prochaine du Conseil Affaires générales et relations extérieures.

Erkki Tuomioja