

EUROPEAN PARLIAMENT

1999



2004

Session document

FINAL
A5-0244/2003

19 June 2003

REPORT

on the Council's Fourth annual report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports (2003/2010(INI))

Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy

Rapporteur: Karl von Wogau

CONTENTS

	Page
PROCEDURAL PAGE	4
MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION.....	5
EXPLANATORY STATEMENT	9

PROCEDURAL PAGE

At the sitting of 16 January 2003 the President of Parliament announced that the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy had been authorised to draw up an own-initiative report, pursuant to Rule 163 of the Rules of Procedure, on the Council's Fourth annual report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports.

The Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy appointed Karl von Wogau rapporteur at its meeting of 21 January 2003.

It considered the draft report at its meetings of 29 April, 21 May, 16 June and 17 June 2003.

At the latter meeting it adopted the motion for a resolution by 27 votes to 1, with 0 abstention.

The following were present for the vote: Elmar Brok, chairman; Armin Laschet for the rapporteur; Ole Andreasen, Per-Arne Arvidsson, Alexandros Baltas, Bastiaan Belder, Bob van den Bos, Michael Cashman (for Glyn Ford), John Walls Cushnahan, Véronique De Keyser, Michael Gahler, Jas Gawronski, Vitaliano Gemelli (for Gerardo Galeote Quecedo), Vasco Graça Moura (for José Pacheco Pereira), Nelly Maes (for Joost Lagendijk), Miguel Angel Martínez Martínez (for Rosa M. Díez González), Emilio Menéndez del Valle, Pasqualina Napoletano, Jacques F. Poos, Jannis Sakellariou, Ioannis Souladakis, Charles Tannock, Maj Britt Theorin (for Klaus Hänsch), Gary Titley (for Richard Howitt), Paavo Väyrynen, Joan Vallvé, Jan Marinus Wiersma and Matti Wuori.

The report was tabled on 19 June 2003.

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the Council's Fourth annual report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports (2003/2010(INI))

The European Parliament,

- having regard to the Council's Fourth annual report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports (13779/2002)¹,
 - having regard to the communication from the Commission of 11 March 2003 on European defence - Industrial and market issues (COM(2003) 113)²,
 - having regard to Article 17 of the Treaty on European Union concerning cooperation in the area of armaments policy and to Article 296 of the Treaty establishing the European Community on protection of national security interests,
 - having regard to its resolution of 26 September 2002³ on the Council's Third Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports⁴,
 - having regard to its resolution of 10 April 2003 on the new European security and defence architecture⁵,
 - having regard to the OSCE Document on Small Arms and Light Weapons (adopted at the 308th plenary meeting of the OSCE Forum for Security Co-operation on 24 November 2000),
 - having regard to Rule 163 of its Rules of Procedure,
 - having regard to the report of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy (A5-0244/2003),
- A. whereas, specifically against the background of a changed security climate characterised by a high level of regional instability, failing states, terrorist networks and organised crime, observance of stringent controls on arms exports is of the highest importance,
- B. whereas the EU should fulfil its increased responsibility with regard to peace and security in Europe and throughout the world by means of further arms limitation and disarmament initiatives,
- C. whereas organised criminals and international arms smugglers have expanded their illegal activities in the area of small arms and are trafficking weapons along routes which pass through the territory of the enlarged EU, and also through the new neighbouring countries of the enlarged EU and countries in the Western Balkan region,

¹ OJ C 319E, 19.12.2002, p. 1

² Not yet published in OJ

³ P5_TA(2002)0452

⁴ OJ C 351, 11.12.2001, p. 1

⁵ P5_TA(2003)0188

- D. whereas maximum transparency in this field is an essential prerequisite for democratic accountability as the best guarantee of peace and stability,
- E. whereas the EU Code of Conduct on Arms Exports is the most comprehensive international arms export control regime and represents a step forward in the direction of ensuring a consistent and coherent EU arms export policy, and whereas the information and consultation procedures laid down in the Code and the continuous exchange of views between the Member States are increasingly helping strengthen transparency, dialogue and convergence in the area of the export of conventional arms,
- F. whereas despite the progress in the reporting and practices, EU weapons (and their components) appear to continue to be supplied to regions of the world in which without any doubt the criteria of the EU Code of Conduct are being violated,
- G. whereas, in order to combat illegal arms trading and effectively prevent the supply of arms to inappropriate end-users, it is essential that end-users of arms exports, licensed production and arms brokering should be subject to more effective controls,
- H. whereas, specifically in the context of the development of a European armaments industry and a common security and defence policy, there needs to be greater harmonisation of EU arms export policy,
- I. whereas its resolution of 10 April 2003 on the new European security and defence architecture - priorities and deficiencies⁶ asks for the creation of a future Armaments and Research Agency that could be in charge of coordinating the EU arms exports policy,
- J. whereas, in the context of the forthcoming enlargement of the EU, it is particularly important that the acceding countries also prepare annual reports on their arms export policy, improve controls on their arms exports and ensure that fundamental standards relating thereto are observed; convinced that the EU Member States should not only actively support this process, but should also set a positive example with regard to strict observance of the Code of Conduct,
- K. convinced that further harmonisation of EU Member States' arms export policy would represent an important contribution to the development of the ESDP and would also contribute to a strengthened common foreign policy approach by the Member States,
- L. convinced that the EU's arms export policy must be such as to ensure coherence in terms of the Community's external policy action, including its goals in the areas of crisis prevention, combating of poverty and promotion of human rights,
1. Considers that, in the fight against international terrorism and in the interest of conflict prevention and regional stabilisation and the respect of human rights, a clear and efficient common arms export policy is very important;
 2. Welcomes, therefore, the progress referred to in the Fourth annual report on the implementation of the Code of Conduct, and in particular the compendium of Member States' agreed practices published in Annex I and the table in Annex II containing data on

⁶ P5_TA(2003)0188

the number and value of export licences issued and the value of arms exports;

3. Wishes, despite the progress made in terms of greater harmonisation of statistical data, to see more data provided on the type and quantity of arms supplied and on the total value of exports and the number of licences refused, stating the reasons for refusal, and more precise information on the country of destination and classification of end-users, in order, on the basis of such fuller and more harmonised data, to improve transparency;
4. Considers uniform EU rules on controls on arms brokering activities to be essential, and therefore welcomes the recent decision of Member States to adopt a common position and, especially those who did not do it yet, to transpose into national law the guidelines already adopted;
5. Reiterates its view that a register and authorisation system should be introduced for brokering of arms transactions, which should also apply to EU citizens and companies outside the territory of the EU;
6. Welcomes the fact that the Member States have reached agreement on the minimum data to be included in an end-user certificate; also considers it necessary, however, to set up a verification and post-export monitoring system, with the possibility of imposing penalties;
7. Calls, therefore, on the Member States to examine the possibility of setting up a common EU monitoring system, and recommends that consideration be given to a European arms export control agency model;
8. Calls on the candidate countries, and in particular the countries included in the forthcoming accession, to tighten their national legislation and above all their practices in the areas of arms exports on the basis of the Code, to report on this practice in accordance with Annex I and II of the 4th report, and calls on all current Member States and accession countries to compile and publish national annual reports for the calendar year 2003, and for each year thereafter;
9. Considers that the new neighbours of the enlarged EU and countries with which the EU has concluded, or intends to conclude, a stabilisation and association agreement should also be asked to observe the EU Code of Conduct;
10. Welcomes the French initiative concerning the submission of a proposal for an 'International Code on Transparency and Responsibilities for Arms Transfers', based on the model of the EU Code, and regrets that no progress at the G8 summit in Evian in June 2003 could be reached because of a lack of American and Russian support;
11. Considers that there is an urgent need for such an international initiative, not least in the light of the latest findings concerning the arming of Iraq;
12. Strongly supports the submission by the Commission of a proposal for a Community regulation imposing an export ban on all equipment for torture and laying down strict controls for equipment that might be used for internal repression;
13. Reiterates its call for legally binding provisions and full harmonisation of Member States' arms export policy as a medium-term goal, and encourages Member States to make

progress in this sense;

14. Considers that arms exports to countries involved in armed conflicts should be banned in principle;
15. Recommends that, in the interim period, the following steps be taken:
 - (a) a full pre-consultation between the Member States with regard to transfers to regions susceptible to crises;
 - (b) a full multilateral approach to the consultation process in connection with decisions to grant or refuse licenses, with, as a first step, a commitment by Member States to circulate to all other Member States the substance and result of any consultation to which they are party;
 - (c) a common definition of criterion eight concerning the compatibility of arms exports with the level of socio-economic development in the recipient countries, representing a significant contribution to improved crisis prevention and sustainable development in socially less developed countries;
 - (d) incorporation into national law of all the principles, criteria and operative provisions of the Code of Conduct, with the understanding that this does not infringe on the right of Member States to operate more restrictive national policies;
16. Calls, with regard to the establishment of a common European armaments market, for controls on the movement of armaments within the European Union to be removed step by step, given that the EU Member States are democratic countries which respect the rule of law and which are joined together in an increasingly close union;
17. Calls, with regard to export controls in relation to third countries, for particular attention to be paid to products which may be used for both civilian and military purposes and similarly to spare parts and products suitable for use in cyber warfare;
18. Calls upon Member States to acknowledge that the EU Code also applies to the licensing of items destined for incorporation by the importing country into a sub-assembly or finished weapons system for subsequent export to a third country;
19. Instructs its President to forward this resolution to the Council and Commission and the parliaments and governments of the Member States and of third countries which have agreed to observe the principles of the EU Code of Conduct.

EXPLANATORY STATEMENT

I. Introduction

The EU Code of Conduct on Arms Exports adopted on 8 June 1998 laid down minimum standards for the issuing of export licences for conventional armaments by the Member States.

The information and consultation procedures down in the Code and the regular exchanges of views between the Member States within the Council's COARM Working Party are increasingly helping strengthen transparency, dialogue and convergence in the area of the export of conventional arms.

In its resolution on the third annual report the European Parliament already commented favourably on progress in implementing the Code of Conduct.

The submission and discussion of the fourth annual report are taking place against the background of a political climate in which the link between regional instability, failing states, organised crime and international terrorism is becoming increasingly apparent. At the same time, the EU, currently undergoing enlargement, is seeking, within the context of the European security and defence policy (ESDP), to implement joint efforts to develop a European armaments and procurement policy. Both of these factors involve consequences for a European arms export policy:

- With a view to the development of a future common armaments market, it is necessary to facilitate intra-Community trade between the Member States;
- At the same time the EU's export policy vis-à-vis third countries must be gradually harmonised, helping lead to a strengthened common foreign policy approach by the Member States.

The European Parliament's call for the Code to be legally binding remains relevant.

Specifically in the fight against international terrorism and in the interests of conflict prevention and regional stabilisation, a clear common arms export policy is very important. Particular attention also needs to be paid to including the candidate countries in the process of exchange of information and consultation under the Code of Conduct, an aspect which was already referred to by Parliament in its last report but which has acquired particular urgency in anticipation of the forthcoming accession, given that a large number of Eastern and Central European countries are an important transshipment point for the export of conventional arms.

II. Assessment of the fourth year of implementation of the Code

1) Harmonisation of national reports

The annual report is based on Member States' national reports, which continue to vary in terms of the scope of the reports and the comparability of the data.

The Member States have agreed to include in their reports data on the number and value of export licences granted and the value of actual exports, broken down by recipient country . Data on exports refused should also be provided.

It is clear from the table in Annex II, given for the first time in the fourth annual report, that there are clear limits to the willingness of some Member States to provide complete transparency. Whilst the data given on exports to the USA and within the EU are almost complete, the situation is different as regards the exchange of information on exports to Africa or Central Asia. The most detailed statistics are provided by Belgium, followed by Austria, Germany, and, to a point, Italy and the United Kingdom. Greece provides almost no data, whilst the reports by Ireland, Portugal and – in part - Spain are not particularly informative.

After intra-Community trade, the second largest number of export licences concerned the Balkan countries, Russia, the Ukraine and the Caucasus region. Detailed data on exports refused, which represent the most interesting information from the point of view of transparency, are not given in the national reports published. The total number of consultations between Member States, at 45, appears low in relation to the 465 denials and more than 25 000 licences granted.

2) Arms brokering

The Member States are currently discussing a draft common position on the control of arms brokering. They have already reached agreement on a set of guidelines for controlling brokering, as welcomed by Parliament in its third annual report. In view of the fact that only six EU Member States have national legislation in this area (Belgium, Germany, Luxembourg, the Netherlands, Sweden and the United Kingdom), uniform EU rules are urgently needed.

The connection between arms pipelines and terrorism is evident. Taking Africa as a specific example, a clear connection has been established between the brokering of conventional arms and armed conflicts in Angola, Sierra Leone, Rwanda and the Democratic Republic of Congo.

At the UN Conference on the Illicit Trade in Small Arms held in July 2001 the EU already gave its support to a strong, legally binding international instrument for arms brokering. This commitment should now be translated into action within the EU, based on the principle laid down in the Code of Conduct that transfers of arms must not be authorised if they pose a threat to human rights, regional stability or sustainable development.

A register and system of authorisation should therefore be introduced for brokering, and, following the example of US legislation, should also be applicable outside the territory of the EU.

3) End-user certificates

The Member States' agreement on a common core of elements that should be found in a certificate of final destination represents significant progress. A number of minimum details are required to be given, including details of the exporter and of the end-user, the country of final destination, the type of goods being exported and the quantity and value of the goods, and also an end-use clause. In accordance with their national legislation, Member States may require additional elements to be included, for example a straightforward ban on re-export or

an undertaking that the goods will not be used in the development, production or use of chemical, biological or nuclear weapons or for missiles capable of delivering such weapons.

However, whilst, from the point of view of controls on the end-user, a system of end-user certification and documentation, which should be as fraud-proof as possible, is important, the setting up of a delivery verification and post-export monitoring regime is also important.

As such a monitoring system may exceed the capacities of small states, the Member States should give serious consideration to the possibility of setting up a common EU monitoring system.

A European arms export control agency could be a suitable counterpart to the planned armaments agency in the area of production and procurement.

4 Dialogue with candidate countries and third countries

In its comments on the third annual report, the EP already emphasised the need to step up the dialogue between the EU and the candidate countries. Denial notifications should also be forwarded to the acceding countries, and the EU should exchange national reports on arms exports with them. Acceding countries should, for their part, adopt national legislation to duly transpose the Code.

Regular ad hoc meetings of experts bringing together all the Member States and the associated countries are now held. Candidate countries are informed, via the Presidency, of export licences refused, with the following data being provided: country of destination, brief description of the goods and their classification under the list of military equipment, classification of end-users and the reasons for the denial.

In the past, Central and Eastern Europe has been an important point of departure and transit route for the arms trade. Countries such as Bulgaria, the Czech Republic, Hungary, Poland, Romania, Slovakia and Slovenia have significant capacity for producing light and also heavier weapons (Czech Republic, Hungary), in some cases also have large weapons surpluses which have not been destroyed (Bulgaria) or, in view of their geographical situation, are favoured as a transit region for the arms and drugs trade (Slovenia).

All of the candidate countries are making efforts to comply with the requirements laid down in the Code. However, the Code has yet to be transposed into national legislation. It is therefore urgently necessary that the countries concerned tighten their legislation and their practices in the area of arms export control and publish their first national annual reports. From May 2003 representatives of the countries included in the forthcoming accession will be taking part as observers in Council working parties, and can therefore be expected to become more closely integrated into the COARM Working Party consultation process.

The announcement of the French initiative concerning the submission at the forthcoming G8 summit in June 2003 in Evian of a proposal for an 'International Code on Transparency and Responsibilities for Arms Transfers', based on the model, and experience, of the EU Code, is to be welcomed. Should the G8 countries take up this proposal, this would make an important contribution to creating greater stability in crisis areas throughout the world.

5) Export controls on non-military equipment for security and police purposes

Within the COARM Working Party, the Commission has announced its intention to submit, by the end of 2003, a proposal for a Community regulation imposing a ban on all equipment used solely for torture and laying down strict controls for all equipment that may be used for internal repression.

III. Recommendations regarding greater transparency and tighter controls on arms exports

1) Greater transparency

The annual report is currently the only multilateral instrument in the area of European arms export control. The inclusion of the acceding countries in the reporting process could represent an opportunity to improve, in qualitative terms, the information provided in future annual reports.

Only three statistics are currently given in respect of each Member State in Annex II of the annual report, namely the number of licences issued, the value of licences and the value of arms exports. In future, the following data should also be included:

- type of arms (e.g. helicopter or machine gun)
- quantity (e.g. number of rifles, etc supplied)
- total value of exports
- data on end-users.

Fuller, more harmonised data of this kind would make the annual report more transparent and a very valuable instrument, including in the fight against terrorism and organised crime.

2) More stringent controls

A uniform arms export policy on the part of the EU Member States could make a significant contribution to conflict prevention and pro-active crisis management by the EU.

Apart from lists of countries subject to arms embargoes¹, the Member States should also agree on a common list of countries of concern in respect of which it is presumed that export licences will not be issued ('presumption of denial') unless legitimate security interests on the part of the country in question can be demonstrated (this might concern, for example, countries of destination such as Indonesia, India, Pakistan, Israel, Saudi Arabia, etc).

IV. Steps recommended with a view to greater harmonisation and legally binding provisions

Parliament has reiterated calls for the Code to be made legally binding and for EU Member States' arms export policy to be fully harmonised. These objectives can undoubtedly only be met in the medium term, and only in stages. In the meantime, however, substantial improvements and individual steps are possible:

(1) The Member States should consult amongst each other to a greater extent prior to decisions being taken to refuse licences.

Decisions on transfers or on refusing transfers of military equipment remain at the discretion of each Member State. However, a positive trend can be seen towards pre-consultation between Member States with regard to transfers to regions susceptible to crises, such as India and Pakistan or Israel.

Exchanges of views of this kind between the Member States would also enhance Member States' capacity to make common analyses within the framework of the CFSP, and is therefore unreservedly to be welcomed with a view to developing common positions. Closer cooperation between the COARM Working Party and the Council's various regional working parties would also contribute to achieving that end.

2) Whilst exchanges of information and consultation have to date only taken place on a bilateral basis, steered by respective Council Presidencies, a more multilateral approach to the consultation process in connection with decisions to grant or refuse licences would represent an important step in the direction of harmonisation.

3) A further important step in the direction of embodying the Code in law would be a common definition of criterion eight concerning the compatibility of arms exports with the technical and economic capacity of the recipient country. The objective should be to prevent too high a level of arms imports from jeopardising the social and economic development of a country.

A number of Member States have for some time been pressing for such an interpretation, which would undoubtedly make an important contribution to improved crisis prevention and sustainable development above all in relation to socially less developed countries.

4) As a further interim step towards making the Code of Conduct legally binding, the European Parliament could recommend to the Member States that the Code be transposed into national law, as has already been done in Belgium.

Particularly from the point of view of the broad principles underlying the EU's external policy, such as human rights, conflict prevention and sustainable development, a strict arms export control regime at European and international level is very important. In the light of the fight against terrorism and the lessons to be learned from the arming of Iraq at the start of the 1990s, Parliament can only encourage the Member States and the future new Member States to gear their arms export policy as closely as possible to the criteria laid down in the EU Code on arms.

¹ Lists of countries subject to arms embargoes

- EU:	Bosnia-Herzegovina, Burma, China, Democratic Republic of Congo (formerly Zaire), Iraq, Liberia, Libya, Sierra Leone, Somalia, Sudan, Zimbabwe
UN Security Council:	Afghanistan (only Taliban-controlled areas), Angola, Armenia, Azerbaijan, Iraq, Liberia, Rwanda, Sierra Leone, Somalia
OSCE:	Armenia and Azerbaijan

