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REPORT

on the Council's Fifth Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports (2004/2103(INI))

Committee on Foreign Affairs

Rapporteur: Raúl Romeva Rueda

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the Council's Fifth Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports (2004/2103(INI))

The European Parliament,

- having regard to the Council's Fifth Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports¹,
- having regard to the User's Guide to the European Union Code of Conduct on Arms Exports, as agreed at the Working Party on Conventional Arms Exports on 28 October 2003 (14283/03),
- having regard to the Council Common Position 2003/468/CFSP of 23 June 2003 on the control of arms brokering²,
- having regard to the European Security Strategy, adopted by the Council on 12 December 2003,
- having regard to the EU Strategy against Proliferation of Weapons of Mass Destruction, adopted by the Council on 12 December 2003 and which aims inter alia to strengthen export control policy and practices,
- having regard to Article 17 of the EU Treaty and Article 296 of the EC Treaty,
- having regard to its resolution of 25 September 2003³ on the Council's Fourth Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports⁴,
- having regard to its resolution of 20 November 2003 on the communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - European Defence - Industrial and Market Issues - Towards an EU Defence Equipment Policy⁵,
- having regard to its resolution of 22 April 2004 on human rights in the world in 2003 and the European Union's policy on the matter⁶,
- having regard to its resolution of 18 December 2003⁷ on the removal of the EU embargo on arms sales to China,

¹ OJ C 320, 31.12.2003, p. 1.

² OJ L 156, 25.6.2003, p. 79.

³ P5_TA(2003)0418.

⁴ OJ C 319, 19.12.2002, p. 1.

⁵ P5_TA(2003)0522.

⁶ P5_TA(2004)0376.

⁷ P5_TA(2003)0599.

- having regard to its previous resolutions of 6 July 2000 on the abduction of children by the Lord's Resistance Army (LRA)¹ and of 3 July 2003 on trafficking in children and child soldiers²,
 - having regard to Rule 45 of its Rules of Procedure,
 - having regard to the report of the Committee on Foreign Affairs and the opinion of the Committee on International Trade (A6-0022/2004),
- A. whereas, specifically against the background of a post Cold War security climate characterised by a high level of regional instability, failing States, non-state players using child soldiers, terrorist networks and organised crime, observance of stringent controls on arms exports is of the highest importance,
 - B. whereas the Council has identified some of these characteristics of a post Cold War security climate as amongst the key threats in the above-mentioned European Security Strategy,
 - C. whereas organised crime and international arms smugglers have expanded their illegal activities in the area of small arms, the free and uncontrolled availability of which has been a major factor in the increase in the number of conflicts, 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,
 - D. whereas around half a million people die every year as a result of violence related to light arms, both in armed conflicts and in connection with criminal activity,
 - E. whereas the last decade has seen a marked increase in the use of private security or military companies, which calls for the introduction of legislation to control and monitor the activities of private providers of military, police and security services,
 - F. 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,
 - G. whereas maximum transparency in this field, including the production of comprehensive Annual Reports, is an essential prerequisite for democratic accountability as the best guarantee of peace and stability,
 - H. whereas the User's Guide to the European Union Code of Conduct on Arms Exports is an important step forward in clarifying the denial notification and consultation provisions of the Code and in helping to prevent diverging interpretations in different Member States,

¹ OJ C 121, 24.4.2001, p. 401,

² OJ C 74 E, 24.3.2004, p. 854.

- I. whereas the Council Common Position on the control of arms brokering presents a first step in the control of illegal arms brokering but a number of weaknesses still need to be corrected in order for its effectiveness not to be undermined,
- J. whereas despite the progress made, it appears that EU weapons, their components, EU licences to produce arms overseas, private EU military and security services, EU military personnel, expertise and training and equipment for capital punishment, torture and other cruel, inhuman and degrading treatment continue to be supplied to regions of the world in which the standards laid down by the Code of Conduct are undoubtedly being flouted,
- K. whereas, in order to combat illegal arms trading and effectively prevent the supply of arms to inappropriate end-users, it is essential that arms shipments, end-users of arms exports, other military and security equipment, licensed production and arms brokering should be subject to more effective controls,
- L. 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 control policy,
- M. whereas its above-mentioned resolution of 20 November 2003 emphasises that the internal opening-up of military markets should be accompanied by stringent export controls at the external borders of the EU,
- N. whereas the EU's share of the international arms trade in general and of exports of small and light weapons in particular has increased with the accession of ten new Member States on 1 May 2004, some of which have significant arms production and exporting activities; whereas some of the new Member States still lack sufficient capacity to meet the existing obligations of the Code immediately and would therefore need assistance to implement them,
- O. whereas approximately 80 percent of EU arms exports between 1999 and 2003 went to countries outside Europe,
- P. whereas the adoption of the Code of Conduct by the ten new Member States has increased the number of arms exports subject to the Code of Conduct,
- Q. whereas, in the context of the further enlargement of the EU, it is particularly important that the candidate countries Croatia, Bulgaria, Romania and Turkey 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 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 and production of comprehensive Annual Reports on their arms exporting activities,
- R. convinced that further harmonisation of 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,
- S. convinced that the EU's arms export control 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, strengthening of democracy and promotion of human rights,

- T. convinced that only an international arms trade regime centring on an international Arms Trade Treaty based on States' existing responsibilities under international law would be truly effective within a global context,
1. Considers that, in the fight against international terrorism and in the interest of conflict prevention and regional stabilisation and respect for human rights, a clear and efficient common arms export control policy is very decisive;
 2. Welcomes, therefore, the progress referred to in the Fifth Annual Report on the implementation of the Code of Conduct, and in particular the continuation of the compendium of Member States' agreed practices published in Annex I and the table in Annex II containing data on the number and value of export licences issued and the value of arms exports;
 3. Welcomes in particular the improvements in the information provided by both old and new Member States in regard to their respective arms exports; but is, nevertheless, concerned about the value of the data provided in some instances;
 4. Considers that the provision of timely, complete and compatible data by all Member States is essential to ensure the transparency of the data provided;
 5. Is delighted that the process of harmonising reporting procedures has been continued and that further steps have been taken towards achieving fully comparable statistics between EU Member States;
 6. Wishes, therefore, despite the progress made in achieving greater harmonisation of statistical data, to see that each Member State provides data 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;
 7. Welcomes in this regard the establishment of a central database of denial notifications at the Council Secretariat in Brussels and stresses its usefulness, since it will immediately give all Member States a source of information enabling them to investigate specific denials; calls for the expansion, in due course, of this database to include information on consultations under the Code of Conduct as well as on end-users who are known or suspected to have engaged in the re-export, diversion or misuse of arms and other controlled goods;
 8. Wishes, furthermore, that information be included in the national arms exports reports on informal denials of arms exports before an official application for obtaining a licence;
 9. Stresses the usefulness of this central database of denial notifications, since it will immediately give all Member States a source of information enabling them to investigate specific denials;

10. Welcomes the new and updated version of the EU Common Military List and its publication in the Official Journal; calls on Member States to make their reporting on "dual-use" exports more detailed and transparent because they have been frequently used for human rights abuses;
11. Considers that the wording of the Code of Conduct is leading to diverging interpretations by different Member States and welcomes, therefore, the User's Guide to the Code, which defines and clarifies the operative provisions of the Code; calls on Member States to amend the export criteria to improve their clarity and comprehensiveness and to ensure they fully reflect States' existing responsibilities under international law;
12. Welcomes the fact that a survey on how to apply criterion 8 (compatibility of arms exports with the technical and economic capacity of the recipient country) was initiated, representing a significant contribution to crisis prevention and sustainable development in socially less developed countries, whilst urging Member States to repeat the exercise with regard to the application of the remaining seven criteria;
13. Considers uniform EU rules on controls on arms brokering activities to be essential, and despite the welcome EU Common Position on arms brokering of 2003 there is still a lack of operative provisions for Member States to specifically control arms brokering, arms transporting and arms financing activities by EU nationals and residents when such activities, and the related arms deliveries, take place through "third countries";
14. Welcomes in particular the efforts of Austria, Belgium, Finland, France, Germany, the Netherlands, Sweden and the UK to control the brokering of conventional arms, and calls on the other Member States to speed up national processes for the implementation of the brokering controls provided for in the Council Common Position on the control of arms brokering;
15. Reiterates its view that a compulsory register and authorisation system should be introduced for the brokering of arms transactions, which should also apply to EU citizens and companies outside the territory of the EU in the same way as US legislation;
16. Calls on Member States to include arms transporting and arms financing services into their arms brokering legislation;
17. Calls on Member States to prohibit the brokering of equipment for capital punishment, torture and other cruel, inhuman and degrading treatment; and to criminalise violations, wherever committed, by EU nationals and EU-registered brokers and companies of the UN, EU or OSCE arms embargoes, as well as the national arms embargoes of the relevant EU Member State;
18. Welcomes the fact that the "indication of the end-use of the goods" was included in the minimum details to be set out in an end-user certificate; at the same time calling for the inclusion of a non-misuse clause, declaring that the material will not be used for proscribed uses; reiterates, however, its demand to set up a transfer verification and post-export monitoring system that should include systematic physical inspections at points of transfer and of stockpiles by the competent national authorities, with the possibility of imposing penalties;

19. Calls, therefore, again on Member States to examine the possibility of setting up a common monitoring system at EU level, and recommends that consideration be given to a European arms export control agency model;
20. Calls on the Council and the Member States to maintain the EU embargo on trade in arms with the People's Republic of China and not to weaken the existing national limitations on such arms sales;
21. Calls on the candidate countries - Croatia, Bulgaria, Romania and Turkey - to tighten their national legislation and above all their practices in the areas of arms exports on the basis of the Code, and to report on this practice in accordance with Annexes I and II to the Fifth Annual Report, calls on the Commission to follow the progress closely in the accession negotiation process and calls on all current Member States to compile and publish national annual reports for the calendar year 2004, and for each year thereafter;
22. 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 Code of Conduct; particular attention should be paid to Kaliningrad which has in the past served as a transit point for shipments of military equipment and arms from other parts of Russia for illicit end-users; calls on the Council and Commission to prioritise in their cooperation with the Russian Federation measures to combat illicit trafficking, including regular information exchange on export and transit controls and licences;
23. Calls upon Member States to provide in a co-ordinated way sufficient assistance to all states that do not have the necessary means to properly implement the Code of Conduct;
24. Welcomes in this regard the fact that the governments of Poland and Sweden initiated five informal COARM meetings between old and new Member States on arms exports controls, with the recommendation that this system of COARM meetings be maintained and also that it be made more representative and regular, and welcomes the efforts of the government of the Netherlands to introduce candidate countries and other interested states to the practical application of the Code of Conduct;
25. Reiterates its call for legally binding provisions and full harmonisation of Member States' arms export control policy as a short-term goal, and urges Member States to make progress in this direction, penalising any violation by enterprises registered in the EU of the arms embargoes of the UN, the EU, the OSCE or any Member State;
26. Recommends that, in the interim period, the following steps be taken:
 - (a) full pre-consultation between the Member States with regard to transfers to regions susceptible to crises, together with the development of an EU checklist of "red flag" early warning indicators to indicate when there are serious concerns with regard to a particular end-user which could impact upon the licensing of arms exports;
 - (b) a full multilateral approach to the consultation process in connection with decisions to grant or refuse licences, 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, particularly in the case of undercutting;

- (c) incorporation into national law of all the principles, criteria and operative provisions of the Code of Conduct, on the understanding that this does not affect the right of Member States to operate more restrictive national policies;
 - (d) all future EU embargoes to refer to those categories of equipment on the Common Military List or in the Annexes to the Dual-Use Regulation to which an embargo is to apply;
27. 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, in the context of a common EU arms export control policy through, for example, the agreement on a no-undercutting rule under the EU Code of Conduct;
 28. Strongly supports the proposal for a Council Trade Regulation imposing an export ban on all equipment for the death penalty, for torture or any other degrading or inhuman treatment, prohibiting specific arms such as anti-personnel mines and laying down strict controls for equipment that might be used for internal repression;
 29. 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 such as surveillance technology and similarly to spare parts and products suitable for use in cyber warfare or for non-lethal human rights abuses;
 30. Shares the concerns of COARM on the desirability of permitting the export of regulated goods for humanitarian ends in circumstances where an export permit would otherwise be refused; accepts that in conflict regions certain types of regulated goods may contribute to the security and welfare of the civilian population, but stresses that this must be investigated very strictly on a case by case basis, with the Member States being given sufficient guarantees against abuses;
 31. Calls upon Member States to acknowledge that the Code also applies to the licensing of items intended for incorporation by the importing country into a sub-assembly or finished weapons system for subsequent export to a third country;
 32. Calls upon Member States to approve legislation requiring the licensing of the production of EU licensed arms (or their components) in third countries;
 33. Calls upon Member States to acknowledge that the Code of Conduct also applies to all forms of "government to government" transfers, in particular to the transfer of surplus arms; reiterates that the export or transfer of surplus arms to countries where they will be used for human rights violations, breaches of international humanitarian law or other violations of international law is in violation of the Code;
 34. Calls upon Member States to acknowledge that the Code of Conduct also applies to the transfer of military, security and police personnel, expertise and training and to private military and security services;

35. Calls upon Member States to agree on a list of countries involved in armed conflicts to which arms exports should be banned in principle, drawing upon the reports and recommendations of the UN Security Council monitoring mechanisms on arms embargoes;
36. Stresses the importance of research aimed at guaranteeing legal supervision and controls on the electronic transfer of knowledge, software and technology having a potential link to goods on the Community list of goods for which an export licence is required;
37. Calls on non-EU arms-exporting countries, too, to give their support to the principle and criteria of the Code of Conduct, so that through the Code a genuine contribution can be made to world arms export control, conflict prevention and the promotion of peace in the world;
38. Considers that the effective global control of arms exports can only be achieved by an international arms trade control regime and calls, therefore, upon Member States to promote stringent international rules on arms exports in view of the 2006 UN Review Conference on Small Arms and to work towards a legally binding, international Arms Trade Treaty, including measures for the conversion and restructuring of enterprises producing military goods;
39. Calls on the Council and the Member States to strictly monitor compliance with end user certificates, and in particular with notifications concerning the country of final destination, the ban on re-export and the declaration that the goods will not be used for purposes other than the stated use;
40. Calls for the introduction in the EU of a special tax on the arms trade, and for the EU to carry on active diplomacy with a view to such a tax being levied worldwide, as is being suggested by the United Nations General Assembly as well as by the Presidents of Brazil, Chile and France, and by the Spanish Head of Government, with the revenue from these taxes being paid into funds for victims of armed conflicts in particular and poverty alleviation more generally;
41. Calls on the governments of Member States to conduct a thorough review of the Code of Conduct, taking into account the demands and recommendations mentioned above and consulting relevant parties such as parliaments and non-governmental organisations;
42. Instructs its President to forward this resolution to the Council and Commission, and to the parliaments and governments of the Member States and of third countries which have agreed to observe the principles of the 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. It consists of 8 determination criteria and 12 operative provisions. Up to the present day, it is the most comprehensive international arms export control regime.

The Council, in particular its COARM Working Party, and the Member States try continuously to find ways to strengthen transparency, dialogue and convergence in the area of the export control of conventional arms. The major achievements mentioned in the Fifth Annual Report and the attached Compendium are a User's Guide to the Code of Conduct, the establishment of a central database for denial notifications, the Common Position on arms brokering, a revised list of military equipment and the intention to initiate a review of the Code in 2004.

As in previous years, the European Parliament welcomes the improvements of the Code. It is concerned, however, about the continuous lack of implementation of its recommendations. In particular, the European Parliament's call for the Code to be legally binding still remains relevant. Moreover, the Annual Report on human rights of 22 April 2004 stresses that "EU human rights policies have been undermined by (...) Member States systematically not maintaining a restrictive application of the EU Code of Conduct on Arms Exports"¹.

The European Security Strategy of December 2003 identifies regional instability, failing states, organised crime and international terrorism as key threats for the EU. Although the strategy paper does not mention it specifically, uncontrolled arms exports to recipients outside of the EU can increase significantly these threats. In this context, it is necessary to take into consideration that 80 per cent of EU arms exports goes to non-European countries². Moreover, enlargement has increased the EU's share in the international arms trade in general and in the production of small and light weapons in particular. Thus, a clear common arms export policy is very important.

The harmonisation of the EU's arms export policy vis-à-vis third countries will also strengthen the Common Foreign and Security Policy (CFSP) framework, in which it takes place. This is particularly relevant in regard to enlargement on 01 May 2004, when 10 new Member States joined the EU.

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

1) Harmonisation of national reports

The Member States' national reports form the basis of the annual report. However, little

¹ P5_TA(2004)0376, paragraph 30.

² SIPRI Yearbook 2004, p. 458.

progress has been achieved in the harmonisation of these reports since the publication of the fourth annual report. Although all Member States should provide data for each recipient country on the number of licences issued, on the value of licences issued in Euros (if available), on the value of arms exports in Euros (if available), on the number of licence refusals and on the criteria numbers on which refusals are based, the SIPRI Yearbook 2004 highlights that some governments are still unwilling or unable to submit the necessary data. Table A in the Annex shows that Denmark, France, Germany, Greece and Ireland do not provide data on the value of arms exports, whereas the Netherlands and Portugal do not submit data on the value of licences issued. This is a clear obstacle to complete transparency and parliamentary control of EU arms exports. Another problem is the lack of compatibility of the data provided by each Member State. For example, Austria only provides data on 'war material', but not on 'non-war material'¹. The breakdown of the denials by geographical region in the national reports of Italy, Portugal, Spain, Sweden and the United Kingdom is a welcome development. The SIPRI Yearbook, however, points out correctly that the value of the data provided is problematic, as in some instances the sum of denials per region does not fit the total number of denials². After intra-Community trade, the second largest number of export licences concerned are still the Balkan countries, Russia, the Ukraine and the Caucasus region. The total number of consultations initiated, at 68, and of consultations received, at 48, appear low in relation to the 411 denials and more than 36000 licences granted. Moreover, the number of denials decreased by 54, whereas the number of licences issued increased by more than 11000.

2) End-user certificates

The only noteworthy development is that the "indication of the end-use of the goods" was included into the minimal details to be set out in an end-user certificate. However, the more ambitious recommendations of the previous annual report of the European Parliament have not been implemented. Yet, the setting up of a delivery verification and post-export monitoring regime for all exports under the Code of Conduct, including the possibility to impose penalties, remains important in order to control effectively the end-use of arms, of other military and security equipment and of licensed production abroad. As such a monitoring system may exceed the capacities of small states and of some of the new Member States, the Member States should again give serious consideration to the possibility of setting up a common EU monitoring system. A European arms export control agency could still be a suitable counterpart to the planned armaments agency in the area of production and procurement.

3) Arms brokering

The Common Position on the control of arms brokering, which was adopted by the Council in June 2003, is an outstanding achievement. It includes a definition of brokering activities, the obligation to obtain a licence or written authorisation for brokering activities by the competent authorities, the exchange of information on arms brokering and the establishment of adequate sanctions. In order to improve the effectiveness of the Common Position, the authorisation to act as an arms broker and the registration of arms brokers should be compulsory. Moreover,

¹ SIPRI Yearbook 2004, p. 471-472.

² SIPRI Yearbook 2004, p. 471.

the provisions of the Common Position, following the example of US legislation, should also be applicable to EU citizens and companies outside the territory of the EU. In this regard, the efforts of Austria, Belgium, Finland, France, Germany, the Netherlands and Sweden can serve as examples of best practice. However, Member States have not included arms transporting and arms financing services into their arms brokering legislation, which has prevented in several cases the interception of arms exports to recipients, where the standards laid down in the Code are clearly not respected. Even more worryingly, the Common Position does not prohibit explicitly the brokering of equipment for capital punishment, torture and other cruel, inhuman and degrading treating.

4) The Denial Circulation System

The User's Guide to the Code of Conduct has significantly improved the system of denial notifications and consultations, as it interprets and clarifies the operative provisions of the Code of Conduct. Diverging interpretations of the provisions by different Member States are, therefore, less likely and loopholes have been closed. The four major parts of the Guide are the definition of a denial, the necessary information for a denial notification, the revocation of denial notifications and the clarification of the procedures for denial notifications and consultations. Furthermore, it has been decided to set up a central denial database at the Council Secretariat in Brussels. It represents a valuable information resource for Member States and is a first step towards more co-ordinated EU arms exports policies. The next step should be the automatic circulation of the substance and outcomes of consultations to all Member States.

5) Dialogue with candidate countries and third countries

Although ten new Member States joined the European Union on 01 May 2004 and, thus, were fully incorporated into the system of the Code of Conduct, the dialogue between the EU and the remaining candidate countries - Bulgaria, Romania and Turkey - has to continue. This could take, for example, the form of the informal COARM meetings between old and new Member States as initiated by the Polish and Swedish governments. Denial notifications should be forwarded to these countries, and the EU should exchange national reports on arms exports with them. The candidate countries should, for their part, adopt national legislation to duly transpose the Code. Furthermore, the promotion of the Code of Conduct in associated and the new neighbouring countries, e.g. Ukraine, Belarus or Serbia and Montenegro, has to be intensified. Unfortunately, the Fifth Annual Report does not provide concrete improvements in this regard. As in the past, countries in Central and Eastern Europe have been an important point of departure and transit route for the arms trade and have significant capacity for producing light and also heavier weapons, sufficient assistance must be given to those countries inside and outside the EU, which do not have the means to fully implement the Code of Conduct and to adopt their practices to the standards established between the old Member States. Member States can follow, for instance, the example of the government of the Netherlands, which has introduced candidate and other interested countries to the practical implementation of the Code of Conduct.

6) EU Common List of Military Equipment

The first update of the EU common military list since June 2000 and its publication in the Official Journal is an important contribution to the harmonisation and strengthening of the Code of Conduct. It will be based on the numbering system of the Wassenaar Arrangement Munitions List. Unfortunately, certain "dual-use" items, which may well be used for human rights abuses, and certain parts of weapon systems are not included.

7) Implementation of Criterion 8 of the Code of Conduct

Criterion 8 is the so-called "sustainable development" criterion and determines the compatibility of arms exports with the technical and economic capacity of the recipient country. As this criterion is particularly important with regard to crisis prevention and sustainable development in socially less developed countries, the survey that was initiated to develop guidelines for its application is welcome. The objective should be to prevent too high a level of arms imports from jeopardising the social and economic development of a country.

8) Priority Guidelines for the Near Future

The Fifth Annual Report has identified in total 9 priority guidelines, of which guideline number 7 ("development of dialogue [sic!] with the European Parliament") and number 9 ("Review of the Code of Conduct") are of particular importance for the European Parliament. Increasing the dialogue with the Parliament will be a significant step towards more parliamentary scrutiny of EU arms exports and will enhance the democratic legitimacy of the Code of Conduct. The review of the Code can lead to clear improvements, if it takes the recommendations of the European Parliament resolution into account and if the review will be conducted in a broad and open way - including both parliaments and non-governmental organisations. In general, however, the vague formulation of the priority guidelines suggests that Member States are not fully committed to them.

III. Recommendations regarding tighter controls of arms exports, legally binding provisions and greater transparency

A recent report by Amnesty International on the EU's Arms Exports¹ has analysed numerous instances, in which loopholes, undercutting or insufficient clarifications and definitions have lead to EU weapons, their components, EU licences to produce arms overseas, private EU military and security services, EU military personnel, expertise and training and equipment for capital punishment, torture and other cruel, inhuman and degrading treating being - often secretly - exported to countries where the EU standards for democracy, human rights and sustainable development are clearly not respected. 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. Therefore, additional measures for more stringent controls, for legally binding provisions and for greater transparency are urgently needed.

1) More stringent controls

¹ Amnesty International: *Undermining Global Security: The European Union's Arms Exports*, 2004.

First of all, the Council should adopt the European Commission's proposal for a Council Trade Regulation imposing an export ban on all equipment for torture and laying down strict controls for equipment that might be used for internal repression. Furthermore, the Member States should also agree on a common list of countries involved in armed conflicts, to which arms exports should be banned in principle ('presumption of denial'). It is also necessary to systematise physical controls of arms shipments at point of import, transit and export. Finally, the Member States should interpret the Code of Conduct in the strictest way possible. In particular, they should acknowledge the application of the Code in the following cases:

- products which may be used for both civilian and military purposes such as surveillance technology and products or parts thereof which are suitable for cyber warfare or for non-lethal human rights abuses;
- items destined for incorporation by the importing country into a sub-assembly or finished weapons system;
- the production of EU licensed arms (or its components) in third countries;
- all forms of "government to government" transfers, in particular the transfer of surplus arms;
- military, security and police personnel, expertise and training and private military and security devices.

2) 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. It welcomes, therefore, the possibility that the Code of Conduct will be transformed into a Common Position. However, further substantial improvements and individual steps, which the European Parliament already outlined in its last report, are possible:

- (a) The Member States should consult amongst each other to a greater extent prior to decisions being taken to refuse licences or with regard to transfers to regions susceptible to crises. Closer co-operation between the COARM Working Party and the Council's various regional working parties would also contribute to achieving that end.
- (b) 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.
- (c) As a further interim step towards making the Code of Conduct legally binding, the European Parliament recommends to all Member States that the Code be transposed into national law.

3) Greater transparency

The inclusion of 10 acceding countries has made the harmonisation of future national annual reports a pressing issue. This provides also the opportunity to improve, in qualitative terms, the statistics in the annual report.

Member States should not only provide full information according to the agreed criteria (see II. 1), but also on the following points:

- type of arms (e.g. helicopter or machine gun), type of arms components and type of product which may be used for both civilian and military purposes (e.g. surveillance or

- intelligence technology) per destination;
- quantity (e.g. number of rifles, etc. supplied) per destination;
- transfer of military, security and police personnel, expertise and training;
- detailed data on end-users per destination;
- informal denials of licences for certain arms exports, which were given before a formal licence application.

Fuller, more harmonised data of this kind would make the annual report more transparent and a very valuable instrument for parliamentary scrutiny and, thus, for democratic accountability.

4) Tackling the brokering

Many EU states still do not have national brokering legislation, and even in countries where they exist, there is not always a criminalisation of violations of arms embargoes by national or registered individuals and entities when committed abroad. This means that an unscrupulous broker of EU nationality or residence, would simply have to step outside the EU to broker an arms deal in violation of a, for example, UN arms embargo without facing the risk of legal sanctions upon returning to the EU. This needs to be tackled also more seriously.

IV. Conclusion

The EU Code of Conduct has evolved significantly since its adoption in 1998 and many new provisions and clarifications have been implemented in one form or another, although the Code in itself has not been changed. The review of the Code in 2004 is a great chance to leap forward and to implement additional measures, as proposed by the European Parliament. Furthermore, the EU and its Member States have to recognise the global dimensions of the problem of illicit arms exports and should, therefore, work with their partner countries, above all the United States, towards a legally binding international Arms Trade Treaty. In the short term and in view of the 2006 UN Review Conference, they should promote at least stringent international norms on arms exports. This will reduce regional instability, organised crime, international terrorism and human rights abuses all over the world and will turn Europe into 'a more secure place in a better world.'

11.10.2004

OPINION OF THE COMMITTEE ON INTERNATIONAL TRADE

for the Committee on Foreign Affairs

on the Council's Fifth Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports (2004/2103(INI))

Draftsman: Jacky Henin

SUGGESTIONS

The Committee on International Trade calls on the Committee on Foreign Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Considers that arms control is essential for conducting coherent policies that meet EU objectives on peace, development, respect for human rights and democracy;
2. Notes that some progress has been made in implementing the EU Code of Conduct on Arms Exports, but nevertheless deplores the fact that massive quantities of European arms continue to be supplied, in violation of the Code; hopes that a European instrument can be adopted which will make the Code of Conduct legally binding;
3. Notes a slight drop in expenditure on armaments within the EU in recent years, but is concerned that this is more than offset by an increase in exports of manufactured arms to non-member States; considers that the EU and the Member States should not only implement the Code of Conduct but also help to reduce militarisation and levels of armaments in the world;
4. Supports Parliament's earlier call for legally binding provisions and a full harmonisation of the Member States' arms export policy in the medium term, and calls on the Member States to make progress to this end;
5. Considers that arms manufacturers should be encouraged to diversify and redirect their enterprise towards other products;
6. Considers that the EU should continue to encourage other countries, in particular the United States, Russia, Ukraine and China, to adhere to the Code of Conduct on the arms trade, and to limit arms exports and expenditure on arms;

7. Stresses the importance of research aimed at guaranteeing legal supervision and controls on the electronic transfer of knowledge, software and technology having a potential link to goods on the Community list of goods for which an export licence is required;
8. Considers that, in order to combat illegal arms sales and to ensure that arms do not end up in the hands of inappropriate end-users, it is essential to reinforce controls on shipping cargoes, arms end-users, other military and security equipment, manufacture under licence and brokerage; specifically calls, as far as end-users are concerned, for the inclusion of a non-misuse clause in end-user certificates declaring that the material will not be used for proscribed uses;
9. Supports the call on the Member States to investigate once again the possibility of setting up a Community supervision system; further recommends that consideration be given to the model of a European arms export control agency;
10. Calls on the Member States to introduce criminal sanctions for violations, wherever these take place, by European brokers or EU-registered brokers or enterprises, of arms embargoes laid down by the UN, the EU, the OSCE or any Member State;
11. Calls for the introduction in the EU of a special tax on the arms trade, and for the EU to carry on active diplomacy with a view to such tax being levied worldwide as is being suggested by the United Nations General Assembly as well as by the Presidents of Brazil, Chile and France, and by the Spanish Head of Government, with the revenue from these taxes being paid into funds for victims of armed conflicts in particular and poverty alleviation more generally;
12. Calls upon Member States to agree on a list of countries involved in armed conflicts to which arms exports should be banned in principle, drawing upon the reports and recommendations of the UN Security Council monitoring mechanisms on arms embargoes;
13. Calls upon Member States to initiate surveys, as carried out for criterion 8, on how to apply the remaining seven criteria;
14. Calls for the expansion, in due course, of the database of denial notifications at the Council Secretariat in Brussels to include information on consultations under the Code of Conduct as well as on end-users who are known or suspected to have engaged in the re-export, diversion or misuse of arms and other controlled goods;
15. Calls on Member States to amend the export criteria in the Code of Conduct to improve their clarity and comprehensiveness and to ensure that they fully reflect States' existing responsibilities under international law;

PROCEDURE

Title	Council's Fifth Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports
Procedure number	2004/2103(INI)
Committee responsible	AFET
Enhanced cooperation	–
Draftsman Date appointed	Jacky Henin 14.9.2004
Discussed in committee	30.9.2004 11.10.2004
Date suggestions adopted	11.10.2004
Result of final vote	for: 22 against: 0 abstentions: 0
Members present for the final vote	Enrique Barón Crespo, Daniel Caspary, Françoise Castex, Jean-Marie Cavada, Giulietto Chiesa, Christofer Fjellner, Béla Glattfelder, Jacky Henin, Erika Mann, Helmuth Markov, Javier Moreno Sánchez, Pasqualina Napoletano, Georgios Papastamkos, Peter Šťastný, Johan Van Hecke, Zbigniew Franciszek Zaleski
Substitutes present for the final vote	Margrietus J. van den Berg, Reimer Böge, Danutė Budreikaitė, Harlem Désir, Maria Martens
Substitutes under Rule 178(2) present for the final vote	Carl Schlyter

PROCEDURE

Title	The Council's Fifth Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports		
Procedure number	2004/2103(INI)		
Basis in Rules of Procedure	Rule 45		
Committee responsible Date authorisation announced in plenary	AFET 14.10.2004		
Committee(s) asked for opinion(s) Date announced in plenary	INTA 14.10.04		
Not delivering opinion(s) Date of decision			
Enhanced cooperation Date announced in plenary			
Motion(s) for resolution(s) included in report			
Rapporteur(s) Date appointed	Raül Romeva Rueda 13.9.2004		
Previous rapporteur(s)			
Discussed in committee	1.9.04	22.9.04	11.10.04
Date adopted	12.10.2004		
Result of final vote	for:	57	
	against:	4	
	abstentions:	3	
Members present for the final vote	Elmar Brok, Toomas Hendrik Ilves, Geoffrey Van Orden, Vittorio Emanuele Agnoletto, Angelika Beer, Panagiotis Beglitis, Bastiaan Belder, Monika Beňová, André Brie, Simon Coveney, Ryszard Czarnecki, Massimo D'Alema, Véronique De Keyser, Giorgos Dimitrakopoulos, Anna Elzbieta Fotyga, Maciej Marian Giertych, Ana Maria R.M. Gomes, Klaus Hänsch, Richard Howitt, Anna Ibrisagic, Jelko Kacin, Georgios Karatzaferis, Ioannis Kasoulides, Helmut Kuhne, Joost Lagendijk, Vytautas Landsbergis, Armin Laschet, Edward H.C. McMillan-Scott, Francisco José Millán Mon, Annemie Neyts-Uyttebroeck, Raimon Obiols i Germà, Cem Özdemir, Alojz Peterle, Tobias Pflüger, João de Deus Pinheiro, Mirosław Mariusz Piotrowski, Paweł Bartłomiej Piskorski, Poul Nyrup Rasmussen, Raül Romeva Rueda, José Ignacio Salafranca Sánchez-Neyra, György Schöpflin, Marek Maciej Siwiec, István Szent-Iványi, Konrad Krzysztof Szymański, Charles Tannock, Jan Marinus Wiersma, Karl von Wogau, Francis Wurtz		
Substitutes present for the final vote	Laima Liucija Andrikiienė, Irena Belohorská, Árpád Duka-Zólyomi, Carlo Fatuzzo, Michael Gahler, Anneli Jäätteenmäki, Glenys Kinnock, Jaromír Kohlíček, Miguel Angel Martínez Martínez, Pasqualina Napoletano, Borut Pahor, Józef Pinior, Rihards Pīks, Luís Queiró, Mechtilid Rothe, Aloyzas Sakalas, Pierre Schapira, Inger Segelström, Jean Spautz, Marcello Vernola		
Substitutes under Rule 178(2) present for the final vote			
Date tabled – A6	19.10.0000	A6-0022/2004	
Comments	...		