INTRODUCTION

The European Code of Conduct on Arms Exports was adopted on 8 June 1998. It builds on the common criteria for arms exports adopted by the Luxembourg and Lisbon European Councils in 1991 and 1992 and establishes a mechanism for information exchange and consultation among the Member States.

The Code sets high minimum standards for the management of, and restraint in, conventional arms transfers by all Member States. The European Union thus embarked on a process of convergence of national arms export control policies.

Operative Provision 8 provides for an annual review of the implementation of the Code, progress achieved and issues outstanding. This document constitutes the third annual report and reviews the third year of implementation of the Code of Conduct.

I. REVIEW OF THE THIRD YEAR OF IMPLEMENTATION OF THE CODE

The first annual report stated that considerable progress had been made in a short period of time. In the second year the Code was substantially strengthened and the first year's achievements consolidated. The third year was marked by the achievement of most of the priority objectives identified in the first and second reports and the identification of new issues for consideration and action.

At the same time, the number of notified denials and consultations has continued to increase, demonstrating not only an intensification of the dialogue on interpretation of the Code of Conduct at national level but also the Member States' growing confidence in this instrument, which contributes to the convergence of the policies and procedures on arms exports applicable in the Member States of the European Union.

Discussions have also been held on certain aspects of national policies with a view to being able to bring them closer together.

Dialogue with non-member countries which have aligned themselves with the Code's principles, particularly the associated countries of Central and Eastern Europe, as well as Cyprus, Malta and Turkey, has stepped up during the third year as a result of new initiatives aimed at improving the application of the Code in these countries both at legislative level and in actual implementation by the operators concerned. Member States welcome the fact that the Code's principles are being increasingly recognised and are determined to encourage that development.

II. STATE OF PLAY AS REGARDS THE IMPLEMENTATION OF THE PRIORITY MEASURES IDENTIFIED IN THE FIRST AND SECOND REPORTS

The first and second annual reports identified ten key areas overall (four in the first report and six in the second) for consideration and action by the Member States in the short term, with a view to strengthening the Code and ensuring greater transparency. Concrete achievements in some of these areas were already detailed in the second annual report. Further progress made in the remaining areas during the third year of implementation of the Code is described hereafter.

Essentially identical transactions

Member States have continued their discussion on this matter within the Working Party on Conventional Arms Exports (COARM), with a view to developing an understanding agreed, by all the Member States, of the concept of an essentially identical transaction. Discussion has led to a common approach.

Daily operation of the Code's denial mechanism will result in an accumulation of experience that will provide the basis for a clear understanding of what is meant by an 'essentially identical transaction'.
This process will be facilitated by the adoption of a comprehensive approach to assessing transactions, and by initially using a broad interpretation of the concept of 'essentially identical'. The resulting consultation will provide the experience needed to gradually evolve a more precise definition of the term.

In order to accelerate the process further, the consulting Member State will, to the extent compatible with national considerations and on a confidential basis, endeavour to share with other EU Member States, in the context of COARM deliberations, information on the occasions in which consultations result in the conclusion that two transactions are not essentially identical. According to the logic of the consultation mechanism, these cases are not considered as undercuts.

Harmonisation of national annual reports on the application of the Code of Conduct

In the light of the fact that some of the data transmitted by Member States, which are contained in their national annual reports, are hard to compare, thus making the task of summarising the information more complex and hampering joint efforts to achieve transparency, Member States have undertaken to try to define a harmonised framework for national reports, particularly as regards statistics.

To that end, a matrix containing statistical data from the national reports of every Member State has been compiled. This represents a further step towards achieving a harmonised framework, thereby improving overall transparency.

Coordination of the Member States’ national positions in multilateral bodies dealing with arms export control issues

Coordination within the European Union was exemplary at the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons held in New York from 9 to 20 July 2001, where the European Union was the only group of States to submit an overall plan of action.

The EU also established a high profile at the Conference’s preparatory committee meetings where it showed no hesitation in clearly articulating its ambitions in this area with one voice (that of the Presidency).

Promotion of the principles of the Code of Conduct in non-member countries

The European Union and the Member States continue to encourage other arms-exporting countries to subscribe to the principles of the Code.
On 18 December 2000 the European Union and the United States issued a declaration on the responsibilities of States and on transparency regarding arms exports. In that declaration the EU and the United States stated that they shared a common vision on the question of arms export controls, and that they had decided to work jointly to encourage all arms-exporting countries to adopt the principles and degree of transparency they applied to their own exports. They agreed that they had special responsibilities in that respect. Accordingly, they would continue to promote those principles with vigour and seriousness of purpose.

In the context of the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons held in New York from 9 to 20 July 2001, the application of export criteria was one of the European Union’s priorities, and on numerous occasions the European Union stressed the European Code of Conduct, which has, be it said, a scope wider than small arms and light weapons alone.

On 21 and 22 February a seminar on conventional arms exports was held in Phnom Penh within the framework of the Association of South-East Asian Nations (ASEAN) Regional Forum (ARF).

Moreover, two seminars on arms exports were held to brief the associated countries on European Code of Conduct practices, one in Warsaw in January 2001 and the other in Nicosia in June 2001.

The political dialogue meetings held at COARM expert level in a troika composition with the associated countries, the EFTA countries that are members of the European Economic Area, Russia and Ukraine are also suitable forums for discussion of the usefulness of the Code of Conduct principles.

III. FURTHER QUESTIONS ADDRESSED BY THE COARM WORKING PARTY IN CONNECTION WITH THE IMPLEMENTATION OF THE CODE OF CONDUCT

Member States have continued their efforts to upgrade and harmonise the arrangements for implementing the Code of Conduct mechanism in the following areas:

Export of equipment for humanitarian purposes

The issue of the desirability of allowing exports of controlled equipment for humanitarian purposes in circumstances which might otherwise lead to a denial on the basis of the Code of Conduct has been addressed by the COARM Working Party. In post-conflict areas, certain types of controlled equipment can make important contributions to the safety of the civilian population and to economic reconstruction. Member States have come to the conclusion that such exports are not inconsistent with the EU Code of Conduct. These exports, like all others, must be dealt with on a case-by-case basis, taking full account of the criteria set out in the Code. Member States will require adequate safeguards against misuse of such exports and, where appropriate, provisions for repatriation of the equipment.

In the context of the implementation of the Code of Conduct, the issue of arms brokering was raised and was discussed on several occasions by COARM. In accordance with the intention expressed in the second annual report, Member States have continued and deepened their discussions on the procedures for monitoring arms brokering activities. To that end, they have reached agreement on a set of guidelines for controlling brokering that could be a basis for national legislation.

Residents and entities within the EU must be prevented from engaging in arms transfer activities circumventing national, European Union, United Nations or Organisation for Security and Cooperation in Europe embargoes or export criteria of the EU Code of Conduct on arms exports; it is also desirable to establish the necessary tools for information exchange on both licit and illicit brokering activities, thereby enhancing cooperation within the EU with a view to preventing and combating arms trafficking. Member States have thus agreed that arms brokers resident or established within the territory of the EU and/or brokering activities that take place within the territory of Member States should be controlled. Such controls should cover the activities of persons and entities who act as agents, traders or brokers in negotiating or arranging transactions that involve the transfer of arms and military equipment from one foreign country to another. These measures will also establish a clear framework for legitimate brokering activities.

In order to prevent loopholes stemming from different national approaches and to facilitate the work of Member States wishing to develop or further elaborate national regulations,
some suggestions for controls on arms brokers were evaluated and the following conclusions were drawn.

For transactions involving the activities of buying and selling (where the arms or military equipment enter into the legal possession of the arms-brokering agent) or mediating (without direct acquisition of property), a licence or written authorisation should be obtained from the competent authorities in the Member State where the brokering activities take place or where the brokers are resident or legally established. Such licence applications should be assessed on a case-by-case basis against the criteria of the EU Code of Conduct on Arms Exports.

Additionally, Member States should seriously consider registering brokers or requiring them to obtain a written authorisation from the competent authorities of the Member State where they are resident or established. In the assessment of an application for authorisation to act as a broker, records of involvement in illicit activities should be taken into account. Such a system of registration or authorisation should not be construed as implying any form of official approval of brokering activities, a fact that is made clear also by the maintenance of a system of individual or global licences authorising transactions.

Legal controls in this important area should be supported by effective penalties. Member States could exchange information on legislation, registered brokers and brokers who have a history of proven involvement in illicit activities and could continue discussions in the COARM Working Party to further define, inter alia, possible criteria for the assessment of applications to register as a broker or obtain authorisation to act as a broker.

Corruption

The COARM Working Party discussed certain aspects of its powers in connection with the problem of corruption.

Appeal procedures

The COARM Working Party discussed possible appeal procedures relating to exports of military equipment.

Certificates of final destination

The COARM Working Party began discussing the particulars to be required in certificates of final destination.

IV. PRIORITY GUIDELINES FOR THE NEAR FUTURE

Intangible transfers of technology

COARM endorsed the importance of considering effective legal controls on electronic transfers of the software and technology associated with items on the common list, which is already done in certain Member States. It agreed to pursue its deliberations on this issue, taking into consideration the work done in the dual-use area.

Dialogue on undercuts

While reaffirming their support for the operative provisions set out in the Code of Conduct, Member States feel that licensing cases in which denial consultations lead to a positive decision could be of particular use in enhancing the dialogue on the interpretation of the criteria of the Code and thus in promoting convergence in the field of conventional arms exports.

Such cases might be based on developments concerning the destination in question and/or highlight different interpretations of the criteria. Member States deciding an undercut therefore agree to share, to the extent compatible with national considerations and on a confidential basis, information on the undercut decision not only (as specified in the operative provisions) with the State responsible for the relevant denial, but, in the context of COARM deliberations, with all Member States.

The Code of Conduct and the related common list of military equipment constitute a fundamental element in the convergence of the policies of the Member States of the European Union in the field of conventional arms exports.

This single approach testifies to the Member States’ concern for preserving regional stability and promoting respect for human rights through the implementation of high minimum standards when examining arms export licence applications.

The Code of Conduct also provides an opportunity, through the information exchange arrangements, to increase and reinforce confidence between the Member States and to improve transparency vis-à-vis civil society, particularly through the publication of this third annual report.
Although the fundamental elements of a common approach to the control of conventional arms exports by Member States of the European Union may be considered to be in place, implementation of the approach cannot be considered to have been definitively achieved, exposed as it is to being rapidly overtaken by events.

While the results achieved during the third year of implementation of the Code have been considerable, much remains to be done. In particular, work needs to begin on certain areas which have not been addressed in the past. In other areas, further work is necessary to consolidate and build on the results achieved, remarkable though they are.

Finally, efforts to promote the principles and criteria of the Code of Conduct among non-member countries, which have already yielded encouraging results, must be continued and intensified.

Member States welcome the interest shown by the European Parliament in the proceedings held in connection with the Code of Conduct.

The first and second annual reports established the practice of clearly identifying a number of guidelines on topics requiring consideration or action in the near future, thereby enabling the Member States and their partners within and outside the European Union to monitor and measure progress in the implementation of the Code.

Member States have thus identified the following guidelines:

1. Continue efforts to increase harmonisation of national reports and, consequently, to produce clearer, more transparent summary tables.

2. Agree on the definitive adoption of a system for controlling exports of non-military security and police equipment.

3. Continue proceedings in the area of arms brokering on the basis of the guidelines already approved.

4. Continue the proceedings on standardising the information to appear on the certificates of final destination.

5. Study the problem of manufacture under licence in non-member countries.

6. Begin proceedings on effective control by the authorities of each Member State of electronic transfers of the software and technology associated with the equipment on the common list. The system for the control of exports of dual-use goods could serve as a model in this respect.

7. Continue efforts to promote the principles and criteria of the Code among non-member countries and international organisations, on the basis inter alia of the Declaration by the European Union and the United States on the responsibilities of States and on transparency regarding arms exports.

8. Work towards greater involvement by the candidate States in the implementation of the Code of Conduct.
Information on conventional arms exports and implementation of the Code of Conduct in the Member States over the period 1 January to 31 December 2000

Statistics are compiled differently by each Member State: no uniform standard is used. Consequently, not all countries have been able to submit this information owing to current procedures in the area of arms export controls or data protection legislation.

A. GLOBAL STATISTICS

<table>
<thead>
<tr>
<th>Country</th>
<th>Total value of arms exports (in EUR)</th>
<th>Total number of licences issued</th>
<th>Number of notified denials</th>
<th>Number of bilateral consultations initiated</th>
<th>Number of consultation requests received</th>
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<td>Austria (1)</td>
<td>562 545,511 (*)</td>
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<td>Country</td>
<td>Total value of arms exports (in EUR)</td>
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(*) Total value of licences issued.
(**) Actual value of exports.
(1) Figures referring solely to exports of civilian firearms.
(3) The actual value of exports refers only to military equipment exported between 1 July and 31 December 2000.
(4) The actual value of exports refers only to war material.
(5) The identification of the value of exports is based on the classification of goods in EC Tariff Codes, which does not match the classification of goods subject to strategic export controls. For this reason, it has not been possible to provide an accurate total value of exported goods.
### B. STATISTICS BY GEOGRAPHICAL REGION

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<th>North America</th>
<th>Central America and the Caribbean</th>
<th>South America</th>
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<th>North-East Asia</th>
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</table>

(a) Number of licences issued.
(b) Total value of licences issued (in EUR).
(c) Actual value of exports (in EUR).
(d) Figures referring solely to exports of arms and ammunition sensu stricto. They do not include items subject to legislation on arms also used for non-military purposes.
(e) Figures referring solely to exports of civilian firearms.
(f) The figures mentioned under (b) refer solely to exports of arms and ammunition sensu stricto. They do not include items subject to legislation on arms also used for non-military purposes.
(g) Figures referring to military equipment only; the figures under (c) are for the period 1 July to 31 December 2000 only.
(h) The number of licences under (a) refers to military equipment only; the figures under (c) are for the period 1 January to 31 December 2000 only.
(i) The actual value of exports refers only to war material.
(j) The figures under (b) for the value of licences issued are inaccurate for two reasons: (i) where total licences to one country are worth more than GBP 0 but less than GBP 250 000, the figure has been rounded up to that figure; (ii) the value of licences issued is not necessarily the value of the goods eventually exported. For the figures under (c), the identification of the value of exports is based on the classification of goods in EC Tariff Codes, which does not match the classification of goods subject to strategic export controls. For this reason, it has not been possible to provide an accurate value of exported goods.
ANNEX II

National reports on arms exports are available in paper form or on the Internet at the following locations:

Belgium: diplobel.fgov.be
Denmark: Ministry of Foreign Affairs, N.4, Asiatisk Plads 2, DK-1448 Copenhagen K, Denmark, or www.um.dk (the report will be available end 2001)
Finland: www.vn.fi/plm/index.html
France: www.defense.gouv.fr/actualités/dossier/d49/index.html
Ireland: www.entemp.ie/export
Italy: Government report to Parliament on 2000 arms exports — published by Camera dei deputati and Senato della repubblica (Doc. LXVII n. 5)
Netherlands: www.minez.nl
United Kingdom: www.fco.gov.uk
Sweden: www.utrikes.regeringen.se/inenglish/pressinfo/information/publications.htm