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NOTE

from:	Secretariat
to:	Delegations
Subject:	User's Guide to the EU Code of Conduct on Arms Exports

Delegations will find attached the updated version of the User's Guide to the EU Code of Conduct on Arms Exports, as agreed by the Working Party on Conventional Arms Exports at its meeting on 9 December 2005.

USER'S GUIDE TO THE EUROPEAN UNION CODE OF CONDUCT ON ARMS EXPORTS

Introductory note

All Member States have agreed to apply the EU Code of Conduct on Arms Exports when assessing applications to export items listed in the agreed EU Common Military List. The Code of Conduct also aims to improve the sharing of information between Member States and to increase mutual understanding of their export control policies.

The User's Guide is intended to help Member States apply the Code of Conduct. It does not replace the Code in any way, but summarises agreed guidance for the implementation of its operative provisions. It is intended for use primarily by export licensing officials.

This User's Guide will be regularly updated. The most recent version will be available on the Security-related export controls web-page of the Council internet site.

Contents **Page No.**

Chapter 1 - Denial Notifications and Consultations

Introduction 5

Section 1: The definition of a denial 6

Section 2: The denial information to be notified 8

Section 3: Revocation of Denial Notifications 12

Section 4: Notifying denials and carrying out consultations 13

Chapter 2 - Licensing Practices

Section 1: Best practices in the area of end-user certificates 18

Section 2: Assessment of applications for 'incorporation' and re-export 20

Section 3: The export of controlled equipment for humanitarian purposes 21

Section 4: Definitions 22

Chapter 3 - Criteria Guidance

Section 1: Best practices for interpretation of Criterion 8 23

Chapter 4 - Transparency

Section 1: Requirements for submission of information for the EU Annual Report 31

Section 2: Common template for information to be included in national reports 33

Section 3: Internet addresses for national reports on arms exports 35

Chapter 5 – Adherents to the Code of Conduct

Section 1: List of adherents, contact points, and official documentation relating to their adherence 37

Chapter 6 – EU Common Military List 38
The EU Common Military List - link to the electronic version 38

ANNEX

FORM 1 - Denial Notification under the EU Code of Conduct 39
FORM 2 - Amendment or Revocation of a DN under the Code of Conduct 41

CHAPTER 1 - DENIAL NOTIFICATIONS AND CONSULTATIONS

Introduction

Operative Provision 3 of the Code of Conduct states that Member States are to circulate details of licences refused together with an explanation of why the licence has been refused.

Sharing information on denials is one of the most important means through which the aims of Member States' export control policies, and the convergence of these policies, can be achieved. This chapter is intended to clarify Member States' responsibilities in this area. It also takes into consideration the fact that, on 23 June 2003, Member States agreed to assess applications for licences to carry out specific brokering transactions against the provisions of the Code.

Section 1: The definition of a denial

1.1.1 Operative Provision 3 of the Code of Conduct states that "*a denial of a licence is understood to take place when the Member State has refused to authorise the actual sale or ... export of the item of military equipment concerned, where a sale would otherwise have come about, or the conclusion of the relevant contract. ...a notifiable denial may, in accordance with national procedures, include denial of permission to start negotiations or a negative response to a formal initial enquiry about a specific order*."

1.1.2 Practices currently differ between Member States as to when their companies approach their government authorities to get export permissions. Some Member States will consider a request from business only when the formal export licence is applied for. Others deal with industry more informally, giving early and non-binding indications as to whether or not a proposed transaction would be permitted.

1.1.3 Whether the company's request concerning a possible export is made at an early stage in the marketing process or just prior to an export order being received, the request has meet certain formal requirements before a formal response can be given and, if negative, notified as a denial by the government authority. In the absence of certain factual information, a request could only be discussed on the basis of assumptions rather than handled as an application by the competent authority. A request over the telephone or a brief e-mail with general information or questions would therefore not constitute a situation in which the authority could approve or deny a specific business opportunity.

1.1.4 A denial should be notified when the government authority has refused an application for export approval made in writing (email, fax, or letter) with a certain degree of precision giving the competent authority enough information on which to make a decision. The minimum level of information that the written request has to contain is:

- country of destination;
- full description of the goods concerned, including quantity and where appropriate technical specifications;
- buyer (specifying whether the buyer is a government agency, branch of the armed forces, paramilitary force or a private natural or legal person);
- proposed end-user.

1.1.5 A denial notification (DN) should also be issued when:

- a Member State revokes an extant export licence;
- a Member State denies an export licence that is relevant to the scope of the Code, and has already circulated a DN relating to this denial in other international export control regimes;
- a Member State has refused an export transaction deemed essentially identical to a transaction previously refused by another Member State and notified as a denial. Among the points to be assessed more particularly in order to determine whether a transaction is "essentially identical" are the technical specifications, the quantities and volumes, and the customers and end-users of the goods concerned.

1.1.6 By contrast, in the following situation, a denial notification (DN) should not be issued:

- an application for approval has either not been made in writing or has not provided all the information required in section 1.4 above.

1.1.7 In the case of a licence being refused on the basis of a national policy that is stricter than that required under the Code, a DN could be issued "for information only". Such DN would be added to the central database by the Secretariat, but it would remain de-activated.

Section 2: The denial information to be notified

1.2.1 It is vital for the successful operation of the DN system that all relevant information is provided when notifying a denial, so that this information can be taken into account by other Member States in developing their export control policies. This section therefore sets out harmonised notification forms for DNs for export and brokering licences (model Form 1, in the Annex) and for modifications and revocations of DNs (model Form 2 in the Annex).

1.2.2 Descriptions of these information elements are set out below:

Identification number

Standard registry number assigned by the issuing Member State, in the following format:
Standard acronym to identify regime (EUARMS)/two-letter acronym for issuing country/year (4 numbers)/serial number (3 numbers). For example, EUARMS/PT/2005/007, EUARMS/ES/2003/168.

Country of final destination

Country where (according to the exporting country's information) the end-user is located.

Date of notification

Date of the message that informs EU partners of the decision to deny, or to amend or revoke the denial.

Contact details for more information

Name, phone number, fax number and email address of a person who can provide further information.

Short description of the goods

Technical specification, permitting a comparable assessment. If necessary for this purpose, technical parameters should be indicated. The French/English glossary of technical terms (to be developed) should be used where appropriate. In addition to this description, the following voluntary information may be provided:

- Quantity
- Value
- Manufacturer of the goods

Control List reference

Identification of the item number of the notified goods on the most recently agreed version of the EU Common Military List (with sub-item number where applicable) or on the dual-use goods list (give official reference) for goods on which DN information is shared pursuant to Operative Provision 6 of the Code of Conduct.

Stated end-use

Information on the intended use of the notified commodity (e. g. spare part for..., incorporation in ..., use as...). If it is a supply to a project, the name of the project should be indicated.

Consignee and end-user

This information should be as detailed as possible in order to permit a comparable assessment. Name/address/country/telephone number/fax number/e-mail address should be given in separate fields.

Reason for notification of denial/amendment/revocation

In case of a denial, the applicable criteria of the EU Code of Conduct for arms exports are given here. Where the relevant criteria consist of numerous "sections" (e.g. 7 (a), (b), (c) and (d)), they shall specify which one(s) were relevant. In case of amendment or revocation of a notification, a short explanation should be added, e.g. following lifting of an embargo, replacement by notification X, etc.

Additional remarks

Any additional information that could be helpful to other Member States in their assessment. Voluntary.

Origin country of the goods

Country from which the brokered goods are being exported. This category should only be filled in for brokering DNs.

Broker's name and details

Name(s), business address(es), country, telephone number(s), fax number(s) and e-mail address(es) of the brokers whose application for a licence has been refused. This category should only be filled in for brokering DNs.

Information element(s) to be amended

Specify which item of the original notification is to be changed.

New information element(s)

New content of the modified item.

Effective date of amendment or revocation

The date on which the decision to amend or revoke the denial takes effect.

Section 3: Revocation of Denial Notifications

1.3.1 The purpose of a denial notification is that it provides information on a Member State's export control policy that other Member States should then be able to take into account in their own export licensing decisions. Whilst it would not be possible for a Member State's stock of DNs to perfectly reflect its export control policy at all times, Member States can keep information up to date by revoking denial notifications where appropriate.

1.3.2 Revocations shall be carried out by COREU message as soon as possible after the decision to revoke has been made, and in any event within 3 weeks of this decision. The Member State shall use Form 2 (see Annex) for this purpose.

1.3.3 Member States shall annually review their extant denial notifications and revoke a notification if a change in national thinking means it is no longer relevant (updating), and suppress multiple notifications relating to essentially identical transactions (tidying) in order to retain only the ones which are most relevant to national export control policy.

1.3.4 Revocations shall also take place in the following circumstances:

- A Member State grants an export licence for a transaction that is "essentially identical" to a transaction it has denied in the past. In this case, the DNs that it issued previously shall be revoked.
- After an arms embargo has been lifted. In this case, Member States shall revoke the denials that were solely based on the embargo, within one month of the lifting of the embargo.
- A Member State decides that a licence which it previously revoked should be reinstated (see Section 1.1.5, first bullet)

1.3.5 It is not necessary for Member States to revoke DNs that were issued more than three years previously. These DNs will be automatically de-activated on the central data base by the Council Secretariat (see Section 1.4 8 below). Though de-activated, they will remain on the data base.

Section 4: Notifying denials and carrying out consultations

Export licences

Denial notifications: circulation

1.4.1 When an arms export or brokering licence is denied, the Member State must circulate the denial notification no more than one month after the licence has been refused.

1.4.2 Member States will circulate denials to all other Member States using Form 1. All fields must be filled in, or an explanation should be given of why a field is not relevant. Incomplete notifications will not be entered on the database by the Council Secretariat.

1.4.3 All denial notifications, revocations and modifications must be written in either English or French. They are to be circulated by COREU to all Member States (the message will automatically be copied to the Council Secretariat). The classification should be "Restricted". The priority setting should be "urgent".

Denial notifications: handling and storage

1.4.4 The Council Secretariat will operate a central DN database for export licence DNs. This will not prevent Member States from operating their own databases. The central DN database is a resource for all Member States to use. The database will allow Member States to search on any of the denial notification fields (country issuing the DN; country of destination of the equipment; criteria for refusal; description of goods,…), or combinations of fields. The database will allow statistics based on these fields to be compiled.

1.4.5 The information on the database is classified 'Restricted' and will be treated as such by all Member States and the Council Secretariat. It will be in the English language. Where the information provided is in French it will be translated into English by the Council Secretariat. For this purpose, the Member States will compile a glossary of technical terms.

1.4.6 The Council Secretariat will check each Form 1 DN to ensure that it contains all the essential information. If complete, it will be entered in the central database. If essential information has been omitted, the Secretariat will request this information from the Member State that has issued the denial. Denial notifications will not be entered in the database until at least the following information has been received:

- identification number;
- country of destination;
- short description of the goods (with their matching control list number);
- stated end-use;
- name and country of consignee, or end-user if different (specifying whether the buyer is a government agency, the police, army, navy or air force, a paramilitary force, or a private natural or legal person and, if denial is based on criterion 7, the name of the natural or legal person);
- reasons for denial (these should include not only the number(s) of the criteria, but also the elements on which the assessment is based);
- date of the denial (or information on the date when it takes effect, unless it is already in force).

1.4.7 When the Council Secretariat receives a Form 2 message revoking a DN, it will remove this DN from the central DN database. When the Council Secretariat receives a Form 2 message to change the details in a DN, it will amend them as requested so long as the new information conforms to the agreed format.

1.4.8 The Council Secretariat will regularly check each month that none of the active DNs on the central DN data base are more than 3 years old. All DNs of more than 3 years old shall be de-activated, though the information will remain on the database.

1.4.9 Until remote access to a secure database is possible, the Council Secretariat will, around the first working day of each month, send to Member States, via nominated persons in their Permanent Representations in Brussels, a disc containing the latest version of the database. Appropriate security procedures will be followed.

Consultation Procedures

1.4.10 When Member States are considering granting an export licence, they should consult the database to see if another Member State has denied an essentially similar transaction, and if so, consult the Member State(s) which issued the denial(s).

1.4.11 If a Member State is not sure whether or not a DN on the central database constitutes an 'essentially identical transaction'; it should initiate a consultation in order to clarify the situation.

1.4.12 Consultations shall be sent via COREU in English or French, addressed to the Member State who has issued the DN, and copied to all other Member States. The message will be in the following format:

"[Member State X] would be grateful for further information from [Member State Y] on EU Code of Conduct denial notification [identification number and destination concerned], as we are considering a relevantly similar licence application. Under the Users' Guide of the Code of Conduct, we hereby request a response on or before [deadline date]. It will be considered that there has been no response unless we receive a reply by this date. For further information please contact [name, telephone number, e-mail address]."

1.4.13 The deadline is 3 weeks from the date of transmission of the consultation request, unless otherwise agreed between the parties concerned. If the consulted Member State has not responded within this time, it is presumed to have no objection to the licence application.

1.4.14 If a Member State's refusal was based on intelligence information, it may choose to state that "*The refusal was based on information from sensitive sources*". The consulting Member State would then usually refrain from asking for further details about the source of this information.

1.4.15 The consulted Member State may, within the 3 week period, request an additional extension of one week. This should be requested as soon as practicable.

1.4.16 Whilst the initial consultation must be made in the manner set out above, Member States may continue the consultation through any jointly agreed format. However, the consulted Member State should provide a full explanation of this grounds for its refusal.

1.4.17 EU Member States will keep such denials and consultations confidential. They will treat them in the appropriate manner and not use them for commercial advantage.

After the consultation has ended

1.4.18 If the relevant Member States agree to share the outcome of the consultation in which they have participated, the consulting Member State shall inform all Member States, by COREU, of its decision on the licence application. This applies whether or not the consulting Member State decided to grant the licence. If the decision is to grant the licence, the Member State shall also provide a brief statement of its reasoning. If following consultation, the consulting Member State decides that its licence application is not an 'essentially identical transaction', it will inform the consulted Member State of this fact, and by the means it considers most appropriate. Notice of the decision should be sent within 3 weeks.

Licences for brokering, transit or transhipment, and intangible transfers of technology

1.4.19 All of the above procedures for the circulation, handling and storage of DNs, consultations and post-consultation actions (paragraphs 1.4.1 – 1.4.18), should also be followed in the case of DNs for brokering, transit and transhipment licences and licences for intangible transfers of technology.

1.4.20 All Member States which have laws on brokering and operate a licensing system for brokering transactions should notify denials in the same way as for export licence denials in accordance with and to the extent permitted by their national legislation and practice. Brokering DNs should be recorded on a separate database by the Council Secretariat, which will it, together with the export licence DN database, on a monthly basis.

CHAPTER 2 - LICENSING PRACTICES

Section 1: Best practices in the area of end-user certificates

2.1.1 There is a common core of elements that should be in an end-user certificate when one is required by a Member State in relation to an export of items on the EU Common Military List. There are also some elements which might be required by a Member State, at its discretion.

2.1.2 The end-user certificate should at a minimum set out the following details:

- exporter's details (at least name, address and business name);
- end-user's details (at least name, address and business name). In the case of an export to a firm which resells the goods on the local market, the firm will be regarded as the end-user;
- country of final destination;
- a description of the goods being exported (type, characteristics), or reference to the contract concluded with the authorities of the country of final destination;
- quantity and/or value of the exported goods;
- signature, name and position of the end-user;
- the date of the end-user certificate;
- end-use and/or non re-export clause, where appropriate
- indication of the end-use of the goods

2.1.3 The elements which *might* be required by a Member State, at their discretion, are *inter alia*:

- a clause prohibiting re-export of the goods covered in the end-user certificate. Such a clause could, among other things:

  - contain a pure and simple ban on re-export;

  - provide that re-export will be subject to agreement in writing of the authorities of the original exporting country;

  - allow for re-export without the prior authorisation of the authorities of the exporting country to certain countries identified in the end-user certificate,

- an undertaking, where appropriate, that the goods being exported will not be used for purposes other than the declared use,

- an undertaking, where appropriate, 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,

- full details, where appropriate, of the intermediary,

- if the end-user certificate comes from the government of the country of destination of the goods, the certificate will be authenticated by the authorities of the exporting country in order to check the authenticity of the signature and the capacity of the signatory to make commitments on behalf of its government.

Section 2: Assessment of applications for incorporation and re-export

2.2.1 As with all licence applications, Member States shall fully apply the Code of Conduct to licence applications for goods where it is understood that the goods are to be incorporated into products for re-export. However, in assessing such applications, Member States will also have regard inter alia to:

(i) the export control polices and effectiveness of the export control system of the incorporating country;

(ii) the importance of their defence and security relationship with that country;

(iii) the materiality and significance of the goods in relation to the goods into which they are to be incorporated, and in relation to any end-use of the finished products which might give rise to concern;

(iv) the ease with which the goods, or significant parts of them, could be removed from the goods into which they are to be incorporated;

(v) the standing entity to which the goods are to be exported.

2.3.1 There are occasions on which Member States consider permitting the export of items on the Common Military List for humanitarian purposes in circumstances that might otherwise lead to a denial on the basis of the criteria in the Code of Conduct. In post-conflict areas, certain items can make important contributions to the safety of the civilian population and to economic reconstruction. Such exports are not necessarily inconsistent with the criteria. These exports, like all others, will be considered on a case-by-case basis. Member States will require adequate safeguards against misuse of such exports and, where appropriate, provisions for repatriation of the equipment.

Section 4: Definitions

2.4.1 The following definitions apply for the purposes of the Code of Conduct and Operative Provisions:

2.4.2 - 'Transit': movements in which the goods (military equipment) merely pass through the territory of a Member State

- Transhipment: transit involving the physical operation of unloading goods from the importing means of transport followed by a reloading (generally) onto another exporting means of transport

2.4.3 As defined in Article 2 of Council Common Position 2003/468/CFSP,

- 'Brokering activities' are activities of persons and entities:
  - negotiating or arranging transactions that may involve the transfer of items on the EU Common Military List from a third country to any other third country; or
  - who buy, sell or arrange the transfer of such items that are in their ownership from a third country to any other third country.

2.4.4 - 'Export licence' is a formal authorisation issued by the national licensing authority to export or transfer military equipment on a temporary or definitive basis. Export licences include:
  - licences for physical exports, including where these are for the purpose of licensed production of military equipment;
  - brokering licences;
  - transit or transhipment licences;
  - licences for any intangible transfers of software and technology by means such as electronic media, fax or telephone.

  Given the wide divergence in procedures for the processing of applications by the national licensing authorities of Member States, information exchange obligations (e.g. denial notifications) should, where appropriate, be fulfilled at the pre-licence stage, e.g. for preliminary licences and licences to conduct marketing activities or contract negotiations.

  Member States' legislation will indicate in which case an export licence is required."

CHAPTER 3 - CRITERIA GUIDANCE

Section 1: Best practices for the interpretation of Criterion 8

Introduction

3.1.1 The purpose of these best practices is to achieve greater consistency among Member States in the application of Criterion 8 of the EU Code of Conduct on Arms Exports, which makes specific reference to sustainable development[1], by identifying factors to be considered when assessing export licence applications. They are intended to share best practice in the interpretation of Criterion 8 rather than to constitute a set of instructions; individual judgement is still an essential part of the process, and Member States are fully entitled to apply their own interpretations. The best practices are for the use of export licensing officials and officials in government departments and agencies whose development, military or regional expertise should inform the decision-making process.

3.1.2 These best practices will be reviewed regularly, or at the request of one or more Member States, or as a result of any future changes to the wording of Criterion 8.

How to apply Criterion 8

3.1.3 The EU Code of Conduct applies to all arms exports by Member States. Thus a priori Criterion 8 applies to exports to all recipient countries without any distinction. However, because Criterion 8 establishes a link with the sustainable development of the recipient country, special attention should be given to arms exports to developing countries. It would be expected only to apply when the stated end-user is a government or other public sector entity, because it is only in respect of these end-users that the possibility of diverting scarce resources from social and other spending could occur. **Annex A** outlines a two-stage "filter" system to help Member States identify export licence applications which may require assessments against Criterion 8. Stage 1 identifies country-level development concerns, while Stage 2 focuses on whether the financial value of the licence application is significant to the recipient country.

3.1.4 ***Information sources.*** If the filter system outlined in paragraph 3 indicates that further analysis is required, **Annex B** lists a series of social and economic indicators for Member States to take into account. For each indicator it provides an information source. The recipient country's

performance against one or more of these indicators should not in itself determine the outcome of Member States' licensing decisions. Rather these data should be used to form an evidence base which will contribute to the decision-making process. Paragraphs 6-12 outline elements of criterion 8 on which further judgement needs to be reached.

Elements to consider when forming a judgement

3.1.5 Criterion 8 refers to a number of broad, overarching issues which should be taken into account in any assessment, and which are highlighted in the following text.

The compatibility of the arms exports with the ***technical and economic capacity*** *of the recipient country, taking into account the desirability that states should achieve their* ***legitimate needs of security and defence*** *with the* ***least diversion for armaments of human and economic resources****.*

Member States will take into account, in the light of information from relevant sources such as UNDP, World Bank, IMF and OECD reports, whether the proposed export would seriously hamper the sustainable development of the recipient country. They will consider in this context the recipient country's relative levels of ***military and social expenditure****, taking into account also any* ***EU or bilateral aid****.*

Technical and Economic Capacity

3.1.6a ***Economic capacity*** refers to the impact of the arms import on the availability of the financial and economic resources of the recipient country for other purposes, in the immediate, medium and long term. In this regard, Member States might consider taking into account:

- both the capital cost of the arms purchase and the likely follow-on 'life-cycle' costs of related operation (e.g. ancillary systems and equipment), training and maintenance;

[1] The Millennium Development Goals encapsulate sustainable development and include progress on goals related to poverty, education, gender equality, child mortality, maternal health, HIV/AIDS and other diseases, the environment and a global development partnership.

- whether the arms in question are additional to existing capabilities or are replacing them, and - where appropriate – the likely savings in operating costs of older systems;

- How the import will be financed by the recipient country[2] and how this might impact on its external debt and balance of payments situation.

3.1.6b ***Technical capacity*** refers to the ability of the recipient country to make effective use of the equipment in question, both in material and human terms. In this regard, Member States should consider the following questions:

- Does the recipient country have the military infrastructure to be able to make effective use of the equipment?
- Is similar equipment already in service well maintained?
- Are enough skilled personnel available to be able to use and maintain the equipment? [3]

Legitimate Needs of Security and Defence

3.1.7 All nations have the right to defend themselves according to the UN Charter. Nonetheless, an assessment should be made of whether the import is an appropriate and proportionate response to the recipient country's need to defend itself, to ensure internal security, and assist in international peace-keeping and humanitarian operations. The following questions should be considered:

- Is there a plausible threat to security that the planned arms import could meet?
- Are the armed forces equipped to meet such a threat?
- Is the planned arms import a plausible priority considering the overall threat?

[2] This needs to be considered because the payment methods could have detrimental macro-economic and sustainable development effects. For example if the purchase is by cash payment then it could seriously deplete a country's foreign exchange reserves, impeding any exchange rate management safety net, and also have short term negative effects on the balance of payments. If provided on credit (of any form) it will add to the recipient country's total debt burden – and this may already be at unsustainable levels.

- [3] For instance, are a high proportion of the country's engineers and technicians already working in the military sector? Is there a shortage of engineers and technicians in the civilian sector that could be aggravated through additional recruitment by the military sector?

Least diversion for armaments of human and economic resources

3.1.8 What constitutes "least diversion" is a matter of judgement, taking all relevant factors into consideration. Member States should consider *inter alia* the following questions:

- Is the expenditure in line with the recipient country's Poverty Reduction Strategy or programmes supported by the International Financial Institutions (IFIs)?

- What are the levels of military expenditure in the recipient country? Has it been increasing in the last five years?

- How transparent are state military expenditures and procurement? What are the possibilities for democratic or public involvement in the state budget process?

- Is there a clear and consistent approach to military budgeting? Is there a well-defined defence policy and a clear articulation of a country's legitimate security needs?

- Are more cost-effective military systems available?

Relative levels of military and social expenditure

3.1.9 Member States should consider the following questions in assessing whether the purchase would significantly distort the level of military expenditure relative to social expenditure:

- What is the recipient country's level of military expenditure relative to its expenditure on health and education?
- What is the recipient country's military expenditure as a percentage of Gross Domestic Product (GDP)?
- Is there an upward trend in the ratio of military expenditure to health and education and to GDP over the last five years?

- If the country has high levels of military expenditure, does some of this "hide" social expenditure? (e.g. in highly militarised societies, the military may provide hospitals, welfare etc)
- Does the country have significant levels of "off-budget" military expenditure (i.e. is there significant military expenditure outside the normal processes of budgetary accountability and control)?

Aid Flows

3.1.10 Member States should take into account the level of aid flows to the importing country and their potential fungibility[4].

- Is the country highly dependent on multilateral as well as EU and bilateral aid?
- What is the country's aid dependency as a proportion of Gross National Income?

Cumulative Impact

3.1.11 An assessment of the cumulative impact of arms imports on a recipient country's economy can only be made with reference to exports from all sources, but accurate figures are not usually available. Each Member State may wish to consider the cumulative impact of its own arms exports to a recipient country, including recent and projected licence requests. It may also wish to take into account available information on current and planned exports from other EU Member States, as well as from other supplier states. Potential sources of information are, inter alia, the EU Annual Report, Member States' annual national reports, the Wassenaar Arrangement, the UN Arms Register and the annual reports of the Stockholm International Peace Research Institute.

3.1.12 Data on cumulative arms exports may be used to inform a more accurate assessment of:

- historical, current and projected trends in a recipient country's military expenditure, and how this would be affected by the proposed export.

- Trends in military spending as a percentage of the recipient country's income, and as a percentage of its social expenditure.

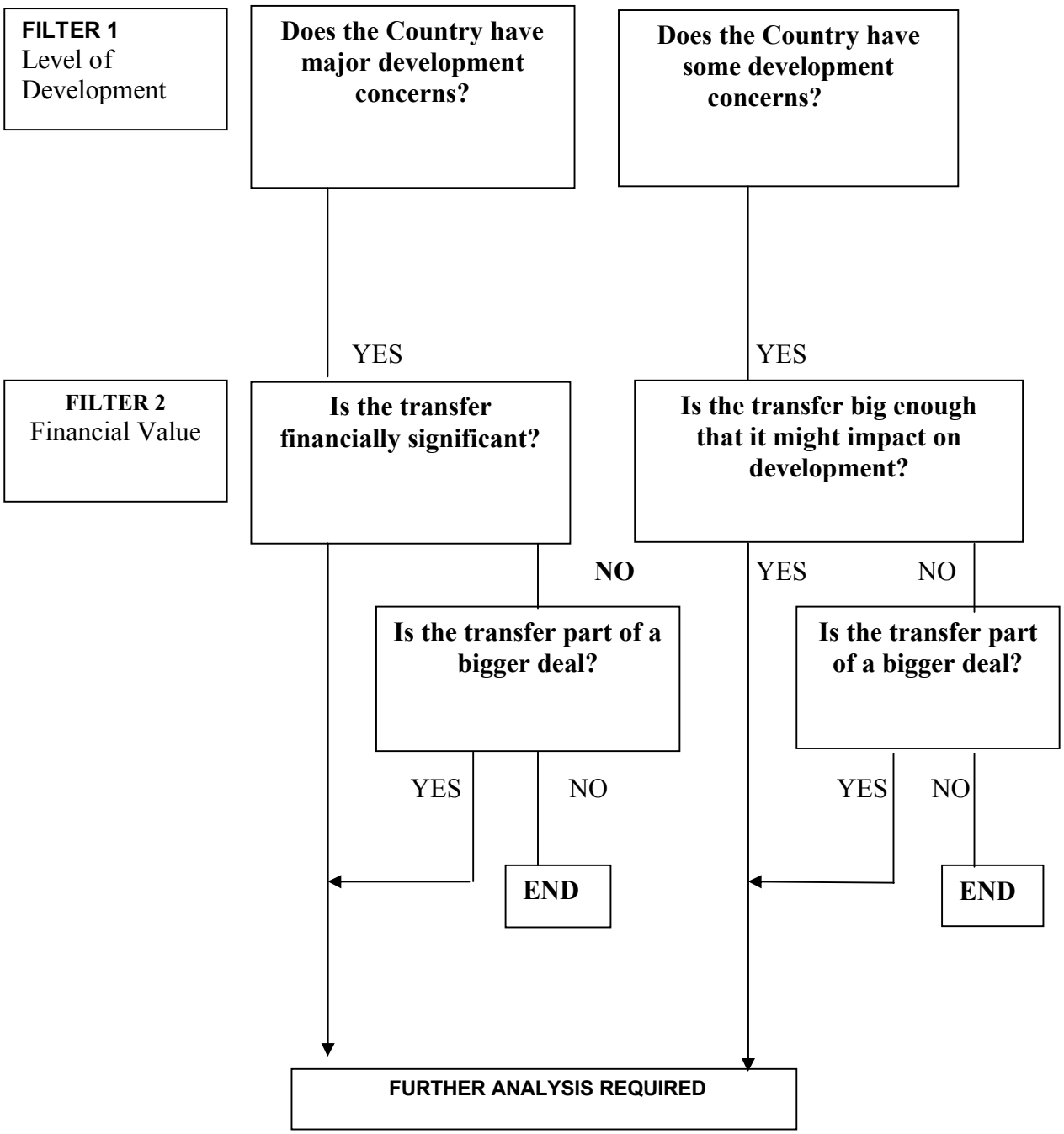
Arriving at a judgement

3.1.13. Based on data and assessment of critical elements suggested under paragraphs 6-12 above, Member States will reach a judgement as to whether the proposed export would seriously hamper the sustainable development in the recipient country.

[4] Fungibility refers to the potential diversion of aid flows into inappropriate military expenditure.

Annex A

In order to make an initial decision as to whether an export licence application merits consideration under Criterion 8, Member States will need to consider the level of development of the recipient country and the financial value of the proposed export. The following graph is designed to assist Member States in their decision-making process:



Annex B

Member States may wish to consider a number of social and economic indicators relating to recipient countries, and their trend in recent years which are listed below, along with data sources.

Indicator	Data source
Level of military expenditure relative to public expenditure on health and education	IISS Military Balance; SIPRI; WB/IMF Country Reports; WDI
Military expenditure as a percentage of Gross Domestic Product (GDP)	IISS Military Balance; SIPRI; WB/IMF Country Reports; WDI.
Aid dependency as a proportion of GNI	WDI
Fiscal sustainability	WDI, WDR, IFI Country Reports
Debt sustainability	WB/IMF, including Country Reports
Performance against Millennium Development Goals (post-2005)	UNDP, Human Development Report

LIST OF ABBREVIATIONS

IFI : International Financial Institutions watchnet
IISS : International Institute For Strategic Studies
IMF : International Monetary Fund
SIPRI : Stockholm International Peace Research Institute
UNDP : United Nations Development Programme
WB : World Bank
WDI : World Development Indicators
WDR : World Development Reports

LIST OF SOURCES (WEBSITES)

IFI : http://www.ifiwatchnet.org
IISS : http://www.iiss.org
IMF : http://www.imf.org
SIPRI : http://www.sipri.org
UNDP : http://www.undp.org.in
WB : http://www.worldbank.org
WDI : http://www.publications.worldbank.org/WDI
WDR : http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTRESEARCH/EXTWDRS/0,,contentMDK:20227703~pagePK:478093~piPK:477627~theSitePK:477624,00.html ”

CHAPTER 4 – TRANSPARENCY

Section 1: Requirements for submission of information to the EU Annual Report

4.1.1 Operative Provision 8 of the Code of Conduct states that *"Each EU Member State will circulate to other EU Partners in confidence an annual report on its exports of military equipment and on its implementation of the Code of Conduct ...."*

4.1.2 An EU Annual Report, based on contributions from all Member States, will be submitted to the Council and published in the "C" series of the Official Journal of the European Union. In addition, each Member State which exports equipment on the EU Common Military List will publish a national report on its defence exports, the contents of which will be in accordance with national legislation, as applicable, and will provide information for the EU Annual Report on the implementation of the Code of Conduct as stipulated in the User's Guide.

4.1.3 Each Member State shall provide the following information to the Council Secretariat on an annual basis. The information elements labelled with a * will not be published directly in the EU Annual Report, but aggregated in a manner to be agreed by Member States:

(a) Number of export licences granted to each destination, broken down by Military List category (if available);

(b) Value of export licences granted to each destination, broken down by Military List category (if available);

(c) Value of actual exports to each destination, broken down by Military List category (if available);

(d) Number of denials issued for each destination, broken down by Military List category*;

(e) Number of times each criterion of the Code is used for each destination, broken down by Military List category*;

(f) Number of consultations initiated;

(g) Number of consultations received;

(h) Number of undercuts carried out*;

(i) Address of national website for annual report on arms exports.

4.1.4 Where Member States make use of open licences, they shall provide as much of the above information as possible.

Section 2: Common template for information to be included in national reports

"[Member State] also produces statistical data for inclusion in the EU Annual Report on arms exports in accordance with operative provision 8 of the European Union Code of Conduct on Arms Exports. Member States have identified continued harmonisation of national reports, including statistical data, in order to promote more homogeneous data for inclusion in the EU annual report, as a priority for the near future. In order to facilitate this process [Member State] includes the table below which gives an outline of the data that all Member States will seek to provide to the EU Annual Report[1].

EU ARMS EXPORTS PER DESTINATION

Destination Country (A)																									
		ML 1	ML 2	ML 3	ML 4	ML 5	ML 6	ML 7	ML 8	ML 9	ML 10	ML 11	ML 12	ML 13	ML 14	ML 15	ML 16	ML 17	ML 18	ML 19	ML 20	ML 21	ML 22	TOTAL per destination
	a																								
	b																								
	c																								

[1] With respect to the breakdown of figures by military list category, and with respect to figures for actual exports (row (c)), for those Member States that are able to provide this data.

Destination Country (B)																								
		ML 1	ML 2	ML 3	ML 4	ML 5	ML 6	ML 7	ML 8	ML 9	ML 10	ML 11	ML 12	ML 13	ML 14	ML 15	ML 16	ML 17	ML 18	ML 19	ML 20	ML 21	ML 22	TOTAL per destination
	a																							
	b																							
	c																							

Destination Country (C)																								
		ML 1	ML 2	ML 3	ML 4	ML 5	ML 6	ML 7	ML 8	ML 9	ML 10	ML 11	ML 12	ML 13	ML 14	ML 15	ML 16	ML 17	ML 18	ML 19	ML 20	ML 21	ML 22	TOTAL per destination
	a																							
	b																							
	c																							

Etc…

Key: (a) = number of licences issued, (b) = value of licences issued in Euros, (c) = value of arms exports in Euros.
ML = EU Common Military List category (cf. OJ C 127 of 25 May 2005 for the full EU Common Military List)."

Section 3: Internet addresses for national reports on arms exports

The Internet addresses of Member States' national websites on arms export controls are shown below:

Austria:	www.bmaa.gv.at
Belgium:	diplobel.fgov.be
Czech Republic:	www.mzv.cz/kontrolaexportu
Denmark:	Paper version may be obtained from: Ministry of Foreign Affairs, N.SP, Asiatisk Plads 2, DK-1448 Copenhagen K, Denmark Electronic (pdf) version may be downloaded from: www.um.dk (full web address http://www.um.dk/da/menu/Udenrigspolitik/FredSikkerhedOgInternationalRetsorden/NedrustningIkkespredningOgEksportkontrol/Eksportkontrol/Udfoerselsrapporter/ Full English version to be published and obtainable from the same source.
Estonia:	http://www.vm.ee/eng/kat_153
Finland:	www.defmin.fi/index.phtml/page_id/75/topmenu_id/5/menu_id/75/this_topmenu/65/lang/3/fs/12
France:	http://www.defense.gouv.fr/actualites/dossier/d49/index.html
Germany:	http://www.bmwa.bund.de/Navigation/Aussenwirtschaft-und-Europa/Finanzierung-und-Recht/exportkontrolle.html
Hungary:	www.mkeh.hu/tev/fegyverek/fegyverekenglish.html
Ireland:	http://www.entemp.ie/trade/export/military.htm
Italy:	www.camera.it , go to "cerca", insert "materiali di armamento", select "documenti parlamentari", then "Indice Doc LXVII"
Latvia:	www.mfa.gov.lv
Lithuania:	www.urm.lt
Luxembourg:	www.mae.lu
Malta:	www.mcmp.gov.mt/commerce_trade04.asp
Netherlands:	www.exportcontrole.ez.nl
Poland:	http://dke.mg.gov.pl
Portugal:	www.mdn.gov.pt
Slovakia:	www.economy.gov.sk
Slovenia:	www.mors.si . On the bottom of the page select link « Objave or Publications ». Select link « Dokumenti MO : smernice, nacrti, letna porocila or MoD Documents – guidelines, plans, annual report etc ». Select document « Porocilo o uvozu in izvozu orozja v letu 2004 or Report on Arms Export and Import for the Year X».

Spain: www.mcx.es/sgcomex/mddu

Sweden: www.utrikes.regeringen.se/inenglish/pressinfo/information/Publications.htm

United Kingdom: http://www.dti.gov.uk/export.control/

CHAPTER 5 - ADHERENTS TO THE CODE OF CONDUCT

Section 1: List of adherents, contact points, and further information relating to their adherence

5.1.1 Norway:

Contact person/Institution

Name: Ministry of Foreign Affairs,
Department for Security Policy and Bilateral Relations
Section for Export Controls
Contact person: Anne Kari Lunde

Address: 7 juni pl./Victoria Terrace
N-0032 Oslo

Telephone: 47 22 24 35 96
Fax: 47 22 24 34 19

Email: s-ekso@mfa.no
anne.kari.lunde@mfa.no

Annual Report website reference: http://www.eksportkontroll.mfa.no

Background

- Aligned with the Code of Conduct when it was established in June 1998
- Respects embargoes on arms sales imposed by the EU.

Relevant International Agreements

- OSCE Criteria on conventional arms exports.
- The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies.
- Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Landmines and on their Destruction.

Relevant national legislative and other provisions

- Law of 18 December 1987 no.93 on Control over the Export of Strategic Goods, Services and Technology;
- Ministry for Foreign Affairs Decree of 10 January 1989 to implement export regulations for strategic goods, services and technology.

CHAPTER 6 – EU COMMON MILITARY LIST

6.1.1 The EU Common Military List has the status of a political commitment in the framework of the Common Foreign and Security Policy. The most recent version of the EU CML was published in Official Journal C 127 of 25 May 2005, and takes into account changes agreed within the Wassenaar Arrangement since publication of the previous list in December 2003.

6.1.2 The list will be updated to reflect changes in relevant international lists, and to incorporate any other changes agreed upon by Member States.

6.1.3 The most recent version of the EU CML is available at the following internet address: http://ue.eu.int/cms3_fo/showPage.asp?id=408&lang=en&mode=g#exp3 (i.e. the Security-related export controls web-page of the Common Foreign and Security Policy section of the Council Internet site).

ANNEX

FORM 1 - Denial Notification under the EU Code of Conduct

(* denotes an obligatory field)

1. Identification

1.1 Identification Number* :

1.2 Notifying Government* :

1.3 Country of Final Destination* :

1.4 Date of Notification* :

1.5 Contact details for more information :

2. Goods

2.1 Short Description of Goods* :

2.2 Control List Reference* :
(with sub-category if appropriate)

2.3 Quantity :

2.4 Value (voluntary) :

2.5 Manufacturer (voluntary) :

3. Stated End-Use* :

4. Consignee

4.1 Name* :

4.2 Address :

4.3 Country* :

4.4 Telephone number(s) :

4.5 Fax number(s) :

4.6 E-mail address(es) :

End-user (if different)

5.1 Name* :

5.2 Address :

5.3 Country* :

5.4 Telephone number(s) :

5.5 Fax number(s) :

5.6 E-mail address(es) :

6 Reason for Denial (Criteria)* :

7. Additional Remarks (voluntary) :

8. For brokering DNs only

8.1 Country of origin country of the goods :

8.2 Brokers' name(s)

8.3 Business address(es)

8.4 Telephone number(s) :

8.5 Fax number(s) :

8.6 E-mail address(es) :

FORM 2 - Amendment or Revocation of a DN under the Code of Conduct

Identification

1.1 Identification Number :

1.2 Issued by :

1.3 Country of destination :

1.4 Effective date of amendment or revocation:

1.5 Contact details for more information :

For Amendments only

2.1 Information element(s) to be amended :

2.2 New information element(s) :

2.3 Reason for amendment :

For Revocations only

3.1 Reason for revocation :