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Amnesty International Press Briefing

STRICT EMBARGO:

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EU Code of Conduct on Arms Exports, Criterion two

The respect of human rights in the country of final destination

“Having assessed the recipient country's attitude towards relevant principles established by international human rights instruments, Member States will:

a) not issue an export licence if there is a clear risk that the proposed export might be used for internal repression;

b) exercise special caution and vigilance in issuing licences, on a case-by-case basis and taking account of the nature of the equipment, to countries where serious violations of human rights have been established by the competent bodies of the UN, the Council of Europe or by the EU;

For these purposes, equipment which might be used for internal repression will include, inter alia, equipment where there is evidence of the use of this or similar equipment for internal repression by the proposed end-user, or where there is reason to believe that the equipment will be diverted from its stated end-use or end-user and used for internal repression.” [...]

“Internal repression includes, inter alia, torture and other cruel, inhuman and degrading treatment or punishment, summary or arbitrary executions, disappearances, arbitrary detentions and other major violations of human rights and fundamental freedoms as set out in relevant international human rights instruments, including the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights”.

What is the EU Code of Conduct on arms exports?

The European Code of Conduct on Arms Exports was adopted by the Council of Ministers on 8 June 1998 under the UK Presidency. It contains eight criteria which the Member States have agreed to take into account when granting arms export licences.

These include:

- 1) Respect for international commitments;
- 2) Respect of human rights in the country of final destination;
- 3) The internal situation of the country of final destination;
- 4) Preservation of regional peace, security and stability;
- 5) The national security of the Member States and of territories whose external relations are the responsibility of a Member State, as well as that of friendly and allied countries;
- 6) The buyer country's behaviour with regard to the international community, in particular its attitude to terrorism, the nature of its alliances and respect for international law;
- 7) The existence of a risk that the equipment will be diverted within the buyer country or re-exported under undesirable conditions;
- 8) The compatibility of the arms exports with the technical and economic capacity of the recipient country.

These criteria of the Code of Conduct are complemented by operative provisions which:

- oblige the Member States to inform each other of any licences they have refused, along with an explanation;
- require the Member States to circulate an annual report on their defence exports and on the implementation of the Code.

Positive elements in the EU Code

The EU Code has had substantial impact on the conduct and modus operandi of EU arms export policy with a number of positive benefits:

- Denial notification procedure – Member States must circulate information regarding arms transfers they have denied on any of the grounds contained in the Code – another Member State wishing to take up the same transaction must justify their decision; this process is also particularly useful for countries without extensive and sophisticated intelligence capabilities that may be unaware of the risks posed by particular exports to particular destinations.
- Annual Reports which states are required to submit.
- The development of a Common List of Military Equipment.
- The development of The User's Guide on denial notifications.
- A Common Position on arms brokering.

The main shortcomings of the EU Code

- It is **not legally binding** and not all Member States have introduced the text of the Code or reference to it in their domestic controls. The Fifth Annual Report (2003) on the use of the Code¹ mentions that the possible reinforcement of the status of the Code is being debated. The Dutch Presidency has announced that it intends to address this issue.
- The **language** and the **application** of the Code also need to be clarified. This is essential in order to avoid differing interpretations by Member States and to enhance harmonisation. Clear guidelines are needed, e.g. for when an export licence should NOT be granted, instead of merely stating the factors that “should be taken into account”.
- The **scope** of the definition of export licence needs to be broadened. There is increasing evidence that “arms brokers often arrange weapons transfers to conflict areas [...and] that they play a role in supplying arms to terrorist organisations”.² Broadening the definition of export licence to brokering and applying the same EU Code criteria to these deals would be a step towards meeting this challenge. Again, the Dutch government has identified this as a matter to be addressed during the Presidency.
- The **transparency and accessibility of information should be enhanced**, both for Annual Reports and denial notifications. There is a need to develop common provisions for the production of national annual reports based on best practice. Currently the information provided by Member States in their Annual Reports differs greatly in both detail and scope, with many of them simply providing the bare minimum (destination, overall value and denials) required for the Consolidated Annual Report.

In its current form the Code of Conduct does not require the Member States to circulate explanation notes on denials to all Member States but only to the one(s) specifically requesting the information. Circulating all information about arms transfers should be swift, and there should be a central database for easy access to this information.

Infringements of the Code by EU Member States

In the Preamble to the Code the 15 Member States declared themselves:

“DETERMINED to set high common standards which should be regarded as the minimum for the management of, and restraint in, conventional arms transfers by all EU Member States, and to strengthen the exchange of relevant information with a view to achieving greater transparency”;

“DETERMINED to prevent the export of equipment which might be used for internal repression or international aggression, or contribute to regional instability”;

Yet despite these commitments certain EU and accession states have allowed arms and security equipment to be transferred to illicit end use. By neglect, lack of resources or intent they have undermined, by-passed or ignored their own national export criteria and the EU Code. They may have interpreted the Code in such a way that the use of weapons by regular armed forces in itself confers legitimacy.

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¹ Fifth Annual Report According to Operative Provision 8 of the European Code of Conduct on Arms Exports (2003/C 320/1); http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/c_320/c_32020031231en00010042.pdf

² International Alert & Saferworld: **Strengthening Global Security Through Addressing the Root Causes of Conflict: Priorities for the Irish and Dutch Presidencies in 2004**, February 2004; pp.39.