

criteria agreed by MS in 1991-1992. The common position goes further than the Code by adding [new elements](#), such as extending controls to brokering, transit transactions and intangible transfers of technology. It requires MS to abide by the eight common criteria when assessing export licence applications for items contained on both the EU Common Military List (EU ML), adopted in 2000 and regularly [updated](#), and the Dual-Use list. The EU ML lists 22 categories of arms, munitions, military equipment and technologies.²

The common position, and the Code before it, establish [mechanisms for information exchange and coordination](#) between EU MS: confidential information is shared on denials and approvals of arms-export licences and on actual exports (including their financial value). Since 1999, the EU has published [annual reports](#). MS are also required to publish national reports. Moreover, they must consult other MS when considering granting approval for an export licence "essentially identical" to a licence that has been refused by another MS (the "no undercut" principle). In 2003, the Council's working party on Conventional Arms Exports (COARM) adopted a [User's Guide](#) to help MS implement the EU Code and the common position. In 2011, COARM created an information exchange system between the EU and third countries which have aligned themselves with the common position.³

The eight criteria of the EU common position

The criteria which MS must follow when granting export licences are:

1. Respect for the international obligations and commitments of EU MS, in particular EU and United Nations Security Council (UNSC) sanctions, including embargoes, and international agreements;
2. Respect for human rights in the recipient country and of international humanitarian law by that country. EU MS are obliged to **deny an export licence** if "there is a **clear**

risk that the military technology or equipment to be exported might be used for internal repression" and to **assess on a case-by-case basis** exports to countries where "serious violations of human rights" have been established by the UN, by the EU or the Council of Europe;

3. Internal situation in the recipient country (existence of tensions or armed conflicts);
4. Preservation of regional peace, security and stability;
5. National security of the MS [...], as well as that of friendly and allied countries;
6. Behaviour of the buyer country towards the international community, in particular its attitude to terrorism, the nature of its alliances and respect for international law;
7. Existence of a risk that the military technology or equipment will be **diverted** within the buyer country or re-exported under undesirable conditions;
8. Compatibility of the exports with the technical and economic capacity of the recipient country, implying the least diversion of human and economic resources for armaments.

Review of the EU common position

A review of the common position was initiated in 2011. In November 2012, the [Council concluded](#) that the provisions and instruments of the common position are still well-suited for its stated objectives.

EU efforts for an international Arms Trade Treaty (ATT)

The EU has been [promoting](#) the adoption of a [legally binding ATT](#), to regulate international conventional arms transfers. The [final UN conference](#) to conclude negotiations on the [draft text](#) is foreseen for March 2013.

The Dual-use Regulation

EU exports of [dual-use goods and technology](#) (i.e. items that can be used for both civilian and military purposes) are governed by a 2009 [Council Regulation](#). A list of dual-use items is annexed to the

Regulation and [updated](#) in accordance with MS' international obligations.

EU Intra-Community Transfers Directive
[Directive 2009/43/EC simplifying transfers of defence-related products within the Community](#) aims at eliminating barriers in the internal market and encouraging the competitiveness of the EU defence industry. It entered into force in June 2012.

Recent trends in EU arms exports

International trends⁴

According to the [SIPRI Yearbook 2012](#), the five [largest suppliers](#) of major conventional weapons in the world for the period 2007-2011 are the United States (30%), Russia (24%), Germany (9%), France (8%) and the UK (4%), accounting together for 75% of the global volume of exports. Compared to 2002-2006, the five largest suppliers remained the same (Germany became third overtaking France), but China and Spain became important suppliers in 2007-2011. [Data for 2011](#) shows a top five of USA, Russia, France, China and Germany. The main recipient regions (2007-2011) were Asia and Oceania (44%) - home to the single [five largest recipients](#) (India, South Korea, Pakistan, China and Singapore), followed by Europe (19%), the Middle East (17%), the Americas (11%) and Africa (9%).

The annual [Congressional Research Service \(CRS\) report](#) on conventional arms transfers to developing nations shows that for 2008-2011, the Near East region⁵ was in first place with 56.2% of all developing nations' **arms agreements** (\$116.6 billion in current US dollars) and Asia ranked second with \$60.3 billion (29.1%). Saudi Arabia was the leading developing-world arms purchaser from 2004 to 2011, with transfer agreements worth \$75.7 billion, or almost 22% of all developing nations' transfer agreements in this period. In 2011, Saudi Arabia also ranked first, followed by India and the United Arab Emirates.

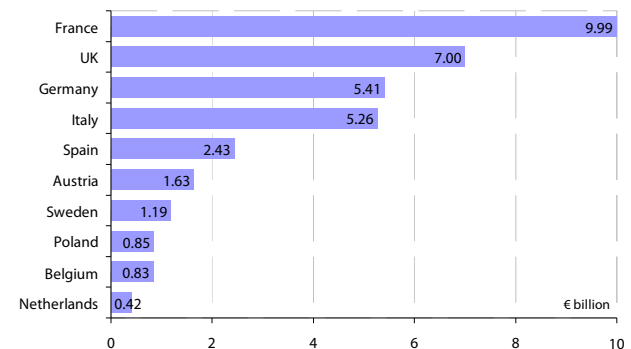
EU trends

The EU published its [14th annual report](#) on arms exports in December 2012. Not all MS have made full submissions or complied with their obligation to produce [national reports](#). A [change](#) with regard to the [13th EU Annual Report](#) is that some MS⁶ did not report the value of their actual exports (licences can be used partially or over several years).

Main EU exporters

In 2011, the EU granted [arms export licences](#) worth €37.52 billion, close to the 2010 figure (€37.72). France, UK, Germany and Italy are the largest EU exporters.

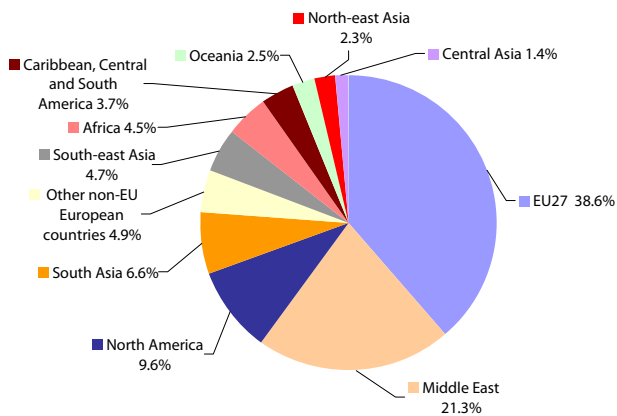
Fig.1. Major EU arms exporters in 2011



Source: [Bilan des exportations européennes d'armements en 2011](#)/ J. Seniors, GRIP, 2012.

Main recipients of EU conventional arms

In 2011, intra-EU transfers [accounted for](#) 38.6% of the total value of EU export licences (€14.50 billion), with France being the main recipient (€4.25 billion, or 11.3% of EU exports). The main extra-EU destination was the Middle East, followed by North America and South Asia. The largest country recipients of EU exports were Saudi Arabia (€4.20 billion, 11.2%), the United States (€3.20 billion, 8.5%) and the United Arab Emirates (€1.90 billion, 5.07%).

Fig.2. Destinations of EU arms exports in 2011

Source: [Bilan des exportations européennes d'armements en 2011](#) / J. Seniora, GRIP, 2012.

Small arms and light weapons (SALW)

[SALW](#) and their ammunition correspond to categories ML1 to ML3 on the EU list. The top exporters of SALW are Germany (€1.39 billion), Belgium (€504.37 million), Austria, France and Sweden. For ML1 weapons (small arms and ammunition only for military use), Belgium is the first exporter, with licences worth €273.35 million.

Impact and limitations

Positive impact

It is [argued](#) the EU common position has impacted positively on national arms export policies, mostly in terms of exchange of information, transparency, accountability and more restrictive arms exports. However, policy implementation still rests with the MS and the common position has not increased harmonisation in MS' arms exports.

The EU has put in place **the only legally binding regional arrangement** on conventional arms exports. MS' arms-export control policies have become more Europeanised: elements of the common position have been included in some national legislation (e.g. the EU criteria) and MS are legally bound to ensure their national laws enable export control over all items on the EU ML. The common position has had a positive impact on the **exchange**

of information and best practice between MS. The reporting mechanisms are [said](#) to have informed and strengthened national decision making on licensing. However, the biggest impact has been related to **public transparency**.⁷

Limitations of the common position

Firstly, the implementation of policy remains with the MS. An [intergovernmental cooperation instrument](#) under the Common Foreign and Security Policy (CFSP), the common position is not directly applicable in national law, its implementation by MS is not subject to the jurisdiction of the Court of Justice of the EU and no sanctions are foreseen for non-compliant MS.

Secondly, it is difficult to assess the impact of the common position on [national decisions](#) to grant or deny export licences. The common position seems not to have changed the degree of harmonisation of MS' exports, or the application of norms to actual arms exports. Though MS claim they implement more [restrictive](#) arms-export policies in accordance with the common criteria, observers point to their differing interpretations. MS apparently still authorise doubtful arms transfers, as shown below (MS' compliance with the common criteria).

Finally, the [limitations of the EU annual reports](#) are underlined: no uniform criteria for data collection (some MS continue to lack effective [mechanisms](#) for information-gathering), statistics compiled differently and MS using national classifications of military equipment different to the EU ML, which all affect data comparability. Some MS (including the largest exporters - UK, Germany) do not provide the financial value of their actual arms exports. Also, the reports do not supply data on the actual volumes and type of weapons subject to transfer and on the end-user of the deliveries (except for the UN or EU peace-keeping missions). Information on re-exports is also omitted. Errors in the actual data provided are another limitation.⁸ Furthermore, the ICT directive is expected to impact on reporting,

as information on intra-Community transfers will probably no longer figure in the report.

Compliance with the common criteria

Denials of licences - criteria invoked

The 14th EU report mentions the number of licences refused to each recipient and the criteria invoked to justify the refusal. Most licences were refused to non-EU European countries, followed by the Middle East and Africa. Criterion 7 (risk of diversion) was the most used, followed by 2 (respect for human rights and humanitarian law), 3 (tensions or armed conflicts), and 1 (international sanctions). The least invoked was criterion 8 (diversion of socio-economic resources in favour of military capabilities). Yet, data on denials only allow a [limited understanding](#) of how MS are [interpreting](#) the common criteria of the common position. Doubts about MS' compliance with the legally binding criteria have surfaced, in particular with criteria 1, 2 and 7.

Arms embargoes

Granting arms-export licences must be assessed against MS' commitments with regard to international agreements and UN, OSCE and EU sanctions. But suspected violations of arms embargoes have raised doubts about MS' compliance with the first criterion of the common position.

Currently, MS must respect [20 arms embargoes](#) in force. Most of them transpose UNSC sanctions into EU law, but the EU can impose more restrictive measures or institute its own [arms embargoes](#).⁹ [Exceptions](#) for some exports may be allowed (non-lethal military equipment, lethal equipment for UN or EU missions or mine-clearance equipment). The EU's autonomous embargoes are interpreted as covering all items on the EU military list and, for some destinations, all equipment and services that may be used for internal repression ([special list](#)). Governed by CFSP decisions, arms embargoes are implemented through national legislation on arms exports. Unlike [UNSC embargoes](#),

there is no mechanism to control implementation and no sanctions for MS violating an EU embargo. The [RELEX Sanctions Committee](#) charged with monitoring and evaluating EU sanctions appears to lack control over MS' implementation. The EU arms embargo on Uzbekistan (2005-2009) is revealing: public EU annual reports showed that some MS (Austria and Germany) had been transferring weapons and military equipment to this country during this time. Although no embargo violation was proven, analysts point to the absence of reaction from the Sanctions Committee on the issue.

MS may have differing national interpretations on what **material** EU arms embargoes cover. Several MS have exported weapons and military equipment to [China](#) (mainland, Macao and Hong Kong), despite the EU arms embargo in place. The 1989 [Political Declaration](#) instituting the embargo (prior to CFSP) has given way to different interpretations on the type of weapons and "military cooperation" covered. Thus, the [UK](#) and [France](#) see the embargo applying only to lethal and major weapon platforms. Exports to China are shown in the EU annual reports, with no explanation provided (China does not host any peacekeeping mission that would justify arms transfers).

In other cases, MS have reportedly authorised the **transit** of arms toward embargoed countries: in early 2012, Cyprus was identified as having approved the transit of Russian ammunition to embargoed Syria. Although EU and Cypriot officials state no embargo violation had taken place, the case illustrates the flexibility in interpreting the restrictions.

Reports of MS transferring weapons to **rebel fighters** in Libya, in violation of the [embargo](#) in place since February 2011, also surfaced: the French military apparently dropped light weapons and ammunition to anti-Gaddafi rebels, while Italian special forces trained rebels in using anti-tank missiles. French authorities asserted they

were acting to protect Libyan civilians within the remit of UNSC Resolutions. Nonetheless, [analysts](#) argue these actions contravened MS' legal obligations under the embargo, as well as the provisions of the [EU Joint Action](#) prohibiting supplies of SALWs to actors other than states.

Finally, Spanish exports of cluster munitions to Libya, prior to the adoption in 2008 of the [Convention on Cluster Munitions](#) (banning their use) illustrate the flexible interpretation of criterion 1 with regard to the international obligations of MS when granting export licences. Although not breaching any agreement, Spain had approved licences and exported such items, while party to the negotiations on the convention. The munitions were allegedly used against residential areas by Libyan forces during the uprising.

It is also argued that the failure to agree on a [post-embargo toolbox](#) to regulate arms exports to post embargo states impacted negatively on MS' restraint (e.g. [Libya](#)).

Human rights in the recipient country

The [Arab uprisings](#) in 2011 have brought into the spotlight MS' arms exports to countries in the Middle East and North Africa (MENA) region. Major conventional weapons, as well as SALWs and riot-control equipment, supplied or licensed by EU MS were recorded as being used for "internal repression" by government forces in some of these states.

A 2011 [Amnesty International report](#) argues that the sale of weapons and military equipment by MS to MENA countries has affected the human-rights situation in the region. During the uprisings, government security forces in Bahrain, Egypt, Syria, Libya and Yemen have reportedly used (lethal) arms and equipment, supplied by MS, against protesters. The report concludes that, in light of these countries' past records in engaging in widespread and serious violations of human rights, the assessment conducted by MS in their arms-transfer

decisions did not properly take into account the substantial risk of serious violations of human rights or international humanitarian law. Economic considerations seemed to have prevailed over assessments of human rights and internal repression in the recipient countries. The high demand from MENA states in the past decade and the resultant [economic opportunities](#) motivated MS to liberalise their arms exports and equate repression of dissent with stability.

Following the uprisings, some MS have [reviewed](#) their arms exports to MENA countries. Measures have ranged from the suspension of weapons deliveries to the region to revoking export licences or refusing to grant any further licences to specific countries. Experts conclude however that the lack of a coherent EU response and of deeper policy changes on national arms-export control, is likely to determine a return to a business-as-usual approach towards these states.

Saudi Arabia has been one of the largest markets for EU arms exports in the past decade. Despite serious concerns over the human-rights situation in the country, only one [licence denial](#) has been registered by MS during the 2001-2009 period. Also, despite Saudi Arabia's support for the suppression of anti-government protests in Bahrain in 2011 (it sent troops, mostly in tanks and armoured personnel carriers), in the latest EU annual report, Saudi Arabia is the top recipient of EU arms exports in terms of the value of licences granted, with only one licence denial (for risk of diversion). Although Germany traditionally refrained from exporting major weapon platforms to the Gulf States, a major debate started in 2011 over a planned transfer of 270 German Leopard 2 tanks to Saudi Arabia. Nonetheless, the German government is [reportedly](#) close to completing a €100 million deal with this country for 30 armoured vehicles.

Moreover, with Libya, export decisions have bypassed human-rights concerns: a

significant part of the weapons found in the aftermath of the uprising were authorised EU exports or have been acquired through MS brokerage.

Finally, another issue of [concern](#) regards the transfers of surveillance software and other technologies for monitoring opponents of the regime. As most of these are not covered by the EU ML or the Dual-use list, no control system is in place.

Risk of diversion

[Diversion](#) of military technology and equipment has a double dimension: items are either transferred from the legal end-user to an unauthorised end-user, or they are used in an unauthorised way by the authorised end-user (one difficulty is that some of the items exported do not figure on any military or dual-use lists). MS are obliged to assess the risk of diversion through both an end-user and an end-use control when granting export licences. The "risk of diversion" criterion is one of the most invoked for export licence denials, but there are still reported situations of illegal end-users and end-use of EU exports.

In 2009, the Belgian Walloon government had [authorised](#) export of SALWs to the Libyan army, with the stated end-use to help secure a UN humanitarian corridor between Benghazi and Sudan, although most of these weapons were considered to pose a high risk of proliferation and previous exports of Belgian SALWs had reportedly been found in Sudan. Another example relates to Libyan arsenals of Milan F2 anti-tank missiles with German-made warheads and launchers, but in fact exported to Libya by France, prior to the uprising. Furthermore, civilian vehicles that can be used for military purposes have apparently been sold by EU companies to **Sudan**, under EU embargo since 1994 (extended in 2011 to [South Sudan](#)).

The European Parliament has promoted public transparency in MS arms exports, by asking for public EU reports. It has consistently asked for a [legally binding EU export-control instrument](#) and for a [harmonised EU arms control policy](#) that would reinforce other dimensions of the EU's external action (promotion of human rights and regional stability). The EP also supported the creation of a post-embargo toolbox and demanded the common position be [reviewed](#), to ensure "[strict and consistent compliance](#) by all national authorities". MEPs have addressed [parliamentary questions](#) to the relevant EU institutions on the review and on doubtful MS arms exports. Currently, a draft [Report](#) on the implementation of the common position is being debated in the Foreign Affairs Committee.

Main references

[SIPRI Yearbook 2012: Armaments, disarmament and international security/](#) Stockholm International Peace Research Institute, Oxford University Press, 2012.

[Bilan des exportations européennes d'armements en 2011/](#) J. Seniora, GRIP, 2012.

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<http://www.library.ep.ec>

<http://libraryeuroparl.wordpress.com>

Annex - Main destinations of EU arms exports

Rank	Recipients 2011/ Transfers of major conventional weapons 2007-2011	Value of licences (€)	Rank	Recipients 2011/ Transfers of major conventional weapons 2007-2011	Value of licences (€)	Embargoed destinations 2011	Value of licences (€)
1.	Saudi Arabia	4 204 632 209	13.	Pakistan	410 765 773	Afghanistan	465 073 936
2.	United States	3 191 016 819	14.	Canada	397 417 160	China mainland	344 066 451
3.	United Arab Emirates	1 904 032 990	15.	Korea (Rep. of)	390 389 079	Iraq	291 811 203
4.	India	1 564 670 439	16.	Russia	376 314 615	Libya	34 021 154
5.	Singapore	961 234 906	17.	Malaysia	375 234 375	Lebanon	6 396 276
6.	Algeria	814 791 543	18.	Switzerland	372 443 751	China HKong	3 176 605
7.	Kuwait	622 932 640	19.	Kazakhstan	368 250 270	South Sudan	1 712 086
8.	Australia	603 707 556	20.	Brazil	356 141 896	Congo (DRC)	1 584 357
9.	Mexico	576 433 102	21.	China	344 066 451	Sudan	1 297 358
10.	Norway	485 634 130	22.	New Zealand	342 114 319	Belarus	596 589
11.	Afghanistan	465 073 936	23.	Morocco	335 585 378	Iran	473 884
12.	Turkey	453 814 853	24.	Egypt	302 898 143	Somalia	424 847
						Ivory Coast	387 268
						Liberia	243 605
						Syria	149 484
						China Macao	136 352
						Zimbabwe	20 802

Sources: [14th Annual Report under Article 8\(2\) of Council common position 2008/944/CFSP](#); [SIPRI Arms Transfers Database](#)

Endnotes

- ¹ Common position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment.
- ² The EU Military List is based on the [Wassenaar Arrangement](#).
- ³ Bosnia and Herzegovina, Canada, Croatia, the former Yugoslav Republic of Macedonia, Iceland, Montenegro and Norway.
- ⁴ International arms transfers are measured according to various, non comparable [methodologies](#). Although all are dependent on data availability, they differ with respect to the definition of the arms to be measured and to the units of measurement. The Stockholm International Peace Research Institute (SIPRI) measures the volume of deliveries of [major conventional weapons and components](#), having thus a more restrictive scope than the EU Military List. Also, SIPRI has developed a measuring unit, the trend-indicator value (TIV), which provides information on the transfers of military capabilities rather than the financial value of the transfers. The United Nations also, through the [UNROCA](#) (UN Register of Conventional Arms), collects information provided by UN member states. UNROCA covers [seven categories of weapons](#), considered most offensive, but it also registers exports and imports of [SALW](#). Conversely, the [Congressional Research Service \(CRS\)](#) provides in its annual report on conventional arms transfers the estimated financial value of arms-export agreements and deliveries from the largest arms exporters in constant and current US dollars, while covering a broader range of weapons and components than the SIPRI database.
- ⁵ The geographic regions and the countries they include are listed at pp. 83-84 of the CRS Report.
- ⁶ Belgium, Denmark, Germany, Poland, Greece, Ireland and the UK.
- ⁷ Six EU Member States have not yet produced a [national report](#): Cyprus, Greece, Latvia, Lithuania, Luxembourg and Malta.
- ⁸ Some MS have provided in the past the value of their transit licences granted, instead of the export licences. Malta, for example, reported for the year 2009 a significant value of export licences having [Libya as destination](#). It was proved afterwards that the figure reported was higher than in reality and that the licences granted were in fact for transit, the original exporter being an Italian company.
- ⁹ The EU has imposed its own arms embargoes on Belarus, China, Republic of Guinea (Conakry), Myanmar, Syria and Zimbabwe.