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## TEXTS ADOPTED

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### **P8\_TA(2017)0344**

#### **Arms export: implementation of Common Position 2008/944/CFSP**

##### **European Parliament resolution of 13 September 2017 on arms export: implementation of Common Position 2008/944/CFSP (2017/2029(INI))**

*The European Parliament,*

- having regard to the principles enshrined in Article 21 of the Treaty on European Union (TEU), notably the promotion of democracy and the rule of law and the preservation of peace, prevention of conflicts and strengthening of international security,
- having regard to Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment<sup>1</sup> (hereinafter ‘the Common Position’),
- having regard to the 17th<sup>2</sup> and 18th<sup>3</sup> EU Annual Reports, drawn up according to Article 8(2) of the Common Position,
- having regard to Council Decision (CFSP) 2015/2309 of 10 December 2015 on the promotion of effective arms export controls<sup>4</sup> and Council Decision (CFSP) 2017/915 of 29 May 2017 on Union outreach activities in support of the implementation of the Arms Trade Treaty<sup>5</sup>,
- having regard to the updated Common Military List of the European Union adopted by the Council on 6 March 2017<sup>6</sup>,
- having regard to the User’s Guide to the Common Position defining common rules governing the control of exports of military technology and equipment,
- having regard to the EU Strategic Framework and Action Plan on Human Rights and Democracy of 25 June 2012 and point 11(e) thereof, and to the EU Action Plan on Human Rights and Democracy (2015-2019) of 20 July 2015 and point 21(d) thereof,

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<sup>1</sup> OJ L 335, 13.12.2008, p. 99.

<sup>2</sup> OJ C 163, 4.5.2016, p. 1.

<sup>3</sup> OJ C 153, 16.5.2016, p. 1.

<sup>4</sup> OJ L 326, 11.12.2015, p. 56.

<sup>5</sup> OJ L 139, 30.5.2017, p. 38.

<sup>6</sup> OJ C 97, 28.3.2017, p. 1.

- having regard to the Arms Trade Treaty (ATT) adopted by the UN General Assembly on 2 April 2013<sup>1</sup>, which entered into force on 24 December 2014,
  - having regard to Council Decision 2013/768/CFSP of 16 December 2013 on EU activities in support of the implementation of the Arms Trade Treaty, in the framework of the European Security Strategy<sup>2</sup>,
  - having regard to Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community<sup>3</sup>,
  - having regard to Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items<sup>4</sup>, as amended by Regulation (EU) No 599/2014 of 16 April 2014, and to the list of dual-use goods and technology in its Annex I (hereinafter ‘Dual-Use Regulation’),
  - having regard to Regulation (EU) 2016/2134 of the European Parliament and of the Council of 23 November 2016 amending Council Regulation (EC) No 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment<sup>5</sup>,
  - having regard to its previous resolutions on the matter, in particular those of 17 December 2015<sup>6</sup> on implementation of the Common Position, of 25 February 2016 on the humanitarian situation in Yemen<sup>7</sup>, of 14 December 2016 on the Annual Report on human rights and democracy in the world and the European Union’s policy on the matter 2015<sup>8</sup>, and of 27 February 2014 on the use of armed drones<sup>9</sup>,
  - having regard to its resolution of 4 July 2017 on private security companies<sup>10</sup>,
  - having regard to Rules 52 and 132(2) of its Rules of Procedure,
  - having regard to the report of the Committee on Foreign Affairs (A8-0264/2017),
- A. whereas the inherent right of individual or collective self-defence is laid down in Article 51 of the Charter of the United Nations;
- B. whereas the latest data<sup>11</sup> show that international transfers of major weapons between 2012-2016 reached their highest volume for any five-year period since the end of the Cold War, and were 8,4 % higher than the figure for the 2007-2011 period;

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<sup>1</sup> Arms Trade Treaty, UN, 13-27217.

<sup>2</sup> OJ L 341, 18.12.2013, p. 56.

<sup>3</sup> OJ L 146, 10.6.2009, p. 1.

<sup>4</sup> OJ L 134, 29.5.2009, p. 1.

<sup>5</sup> OJ L 338, 13.12.2016, p. 1.

<sup>6</sup> Texts adopted, P8\_TA(2015)0472.

<sup>7</sup> Texts adopted, P8\_TA(2016)0066.

<sup>8</sup> Texts adopted, P8\_TA(2016)0502.

<sup>9</sup> OJ C 285, 29.8.2017, p. 110.

<sup>10</sup> Texts adopted, P8\_TA(2017)0289.

<sup>11</sup> ‘Trends in international arms transfers, 2016’ (SIPRI Fact Sheet, February 2017).

- C. whereas arms exports and transfers have an impact on human security, human rights, democracy, good governance and socio-economic development; whereas arms exports also contribute to circumstances that force people to flee from their countries; whereas this calls for a strict, transparent, effective and commonly accepted and defined arms control system;
- D. whereas the latest figures<sup>1</sup> show that exports from the EU28 amounted to 26 % of the global total in 2012-2016, which makes the EU28 collectively the second largest arms supplier in the world after the USA (33 %) and followed by Russia (23 %); whereas, according to the most recent report by the Working Party on Conventional Arms Exports (COARM), EU countries were granted arms export licences with a total value of EUR 94,40 billion in 2014;
- E. whereas the latest figures<sup>2</sup> show that arms exports to the Middle East rose by 86 % and accounted for 29 % of global exports between 2012-2016;
- F. whereas the latest official EU data indicate that the Middle East was the most significant region in terms of arms exports for the EU-28 in 2015, with a total of EUR 78,8 billion in authorised arms exports licences;
- G. whereas some arms transfers from EU Member States to unstable and crisis-prone regions and countries were used in armed conflicts or for internal repression; whereas some of these transfers were reportedly diverted into the hands of terrorist groups, for example in Syria and Iraq; whereas, in some cases, the arms exported to certain countries, for example Saudi Arabia, have been used in conflicts such as that in Yemen; whereas such exports clearly violate the Common Position and thus highlighting the necessity for better scrutiny and transparency;
- H. whereas there is no standardised verification and reporting system providing information as to whether, and to what extent, individual Member States' exports violate the eight criteria, and whereas there are no sanction mechanisms either, should a Member State engage in exports which are clearly not compatible with the eight criteria;
- I. whereas investigations by the Bonn International Conversion Centre (BICC) have revealed that in Germany alone in 2015, for example, 4 256 arms export licences were issued for exports to 83 countries that were rated problematic with a view to the Common Position<sup>3</sup>;
- J. whereas both the global and regional security environment has dramatically changed, especially with regard to the Union's southern and eastern neighbourhood, and this highlights the urgent need to improve methodologies with regard to producing information for export licensing risk assessments and to make them more secure;
- K. whereas some Member States have recently signed strategic agreements on military cooperation including transfers of large quantities and high-quality military technology with non-democratic countries in the Middle East and North African region;

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<sup>1</sup> Ibid.

<sup>2</sup> Ibid.

<sup>3</sup> 2016 report on arms exports, Gemeinsame Konferenz Kirche und Entwicklung (GKKE) (Joint Conference on Church and Development), p. 54.

- L. whereas, as enshrined in the Lisbon Treaty, eradicating poverty is the primary objective of EU development policy, and whereas this is also one of the priorities of the EU's external action in seeking to build a more stable and prosperous world; whereas supplying weapons to countries in conflict, as well as enabling the spread of violence, curtails those countries' development potential;
- M. whereas the industrial landscape of defence in Europe is a sector of key importance and is, at the same time, characterised by overcapacities, duplication and fragmentation, which acts as a brake on the competitiveness of the defence industry and which has led to expanding export policies;
- N. whereas the European Parliament resolution of 25 February 2016 on the humanitarian situation in Yemen called on the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy (VP/HR) to launch an initiative to impose an EU arms embargo on Saudi Arabia;
- O. whereas the situation in Yemen has since further deteriorated also due to military action carried out by the Saudi-led coalition; whereas some Member States have stopped providing arms to Saudi Arabia because of its actions in Yemen while others have continued supplying military technology contrary to criteria 2, 4, 6, 7 and 8;
- P. whereas the European Parliament resolution of 14 December 2016 on the Annual Report on human rights and democracy in the world and the European Union's policy on the matter 2015 stressed that human rights should be a priority, and called on the Member States to agree to move towards a more modern, flexible and human rights-based export policy, especially in relation to countries with proven track records of violent internal repression and human rights violations;
- Q. whereas the EU Global Strategy for the Foreign and Security Policy should serve to improve policy coherence on arms export control;
1. Notes that states have the legitimate right to acquire military technology for the purposes of self-defence; underlines that maintaining a defence industry serves as part of the self-defence of the Member States; recalls that one of the motivations behind the establishment of the Common Position was to prevent European weaponry from being used against Member States' armed forces as well as to prevent human rights abuses and the prolongation of armed conflict; reiterates that the Common Position is a legally binding framework that sets minimum requirements which Member States have to apply in the field of arms export controls, and that it includes the obligation to assess a request for an export licence against all eight criteria listed in it;
  2. Notes that the development of defence equipment is an important tool for the defence industry and that the yet to be developed competitive and innovative European Defence Technological and Industrial Base should serve as an instrument for guaranteeing the security and defence of Member States, Union citizens and contribute to the implementation of the Common Foreign and Security Policy (CFSP) and in particular the Common Security and Defence Policy (CSDP); calls on the Member States to overcome the current lack of efficiency in defence spending due to duplication, fragmentation, lack of interoperability and to aim for the EU to become a security provider also by better controlling arms exports; reiterates that Article 10 of the Common Position states that considerations of economic, commercial and industrial

interests by Member States must not affect the application of the eight criteria regulating arms exports;

3. Notes, however, that military technology does at times reach destinations and end users that do not meet the criteria of the Common Position; is concerned that the proliferation of weapon systems in wartime and in situations with significant political tension, may disproportionately affect civilians; is alarmed at the global arms races and at military approaches to solving political conflict and turmoil; underlines that conflicts should be solved by diplomatic means as a priority;
4. Urges the Member States and the European External Action Service (EEAS) to significantly improve the consistency of the implementation of the Common Position in order to enhance the security of civilians who are suffering because of conflict and human rights abuses in third countries, the security of the Union and its citizens, and create a level playing field for EU companies; stresses, in this regard, that a consistent implementation of the Common Position is essential for the EU's credibility as a values-based global actor;
5. Encourages countries in the process of attaining candidate status, or countries otherwise wishing to engage themselves on the path of EU accession, to apply the provisions of the Common Position; welcomes the fact that Albania, Bosnia and Herzegovina, Canada, Georgia, Iceland, the former Yugoslav Republic of Macedonia, Montenegro and Norway have aligned themselves with the criteria and principles of the Common Position and are thereby also pursuing further alignment with the CFSP and CSDP; calls on Member States to cooperate closely with third countries that have made a formal commitment to upholding the criteria of the Common Position especially with a view to improving the exchange of information and ensuring greater transparency in the granting of licences; calls furthermore on the EEAS to especially encourage European countries to align with the Common Position to ensure a securer wider European area;
6. Calls on the Member States and the EEAS to cooperate closely to prevent risks arising from the diverting and stockpiling of weapons, such as illegal arms trafficking and smuggling; stresses the risk of weapons exported to third countries re-entering the EU via arms smuggling and trafficking;
7. Notes the high degree of liability for the Union in terms of the security risk from the absence of a stronger support and commitment from the EU on the decommissioning of the many arms stockpiles still existing in Bosnia and Herzegovina, Albania and Ukraine;
8. Believes that the export licensing risk assessment methodology should incorporate a precautionary principle and that Member States, in addition to assessing whether specific military technology might be used for internal repression or other undesired ends (functional approach), should also assess risks based on the overall situation in the country of destination (principled approach);
9. Notes that in the context of Brexit, it would be important for the United Kingdom to remain bound by the Common Position and to apply its operative provisions as other European third countries do;
10. Asks the Member States and the EEAS to develop a dedicated strategy to provide

formal protection for whistle-blowers reporting practices by organisations and companies in the weapons industry that breach the criteria and principles set out in the Common Position;

11. Stresses the importance of coherence between all the Union's export control regimes, especially as regards the interpretation of the control criteria; reiterates in addition the importance of coherence between export control and other foreign policy instruments, as well as trade instruments, such as the Generalised System of Preferences and the Conflict Minerals Regulation;
12. Reiterates the detrimental effect that the uncontrolled export of cyber-surveillance technologies by EU companies can have on the security of the EU's digital infrastructure and on human rights; stresses, in this regard, the importance of a rapid, effective and comprehensive update of the EU's Dual-Use Regulation and calls on the Council to adopt an ambitious timeline on this issue;
13. Stresses the importance of effectively limiting arms exports to private security companies as an end user, and that any such licence be granted only when, after thorough diligence checks, it is determined the private security company in question has not participated in human rights violations; emphasises that accountability mechanisms must be put in place in order to ensure the responsible use of arms by private security companies;

#### ***Implementation of the Common Position criteria***

14. Notes that according to the Annual Reports, criterion 1 was invoked 81 times for denials in 2014 and 109 times in 2015;
15. Reiterates its call on the VP/HR to launch an initiative aimed at imposing an EU arms embargo on countries that are accused of serious breaches of international humanitarian law, notably with regard to the deliberate targeting of civilian infrastructure; stresses once again that the continued licensing of weapons sales to such countries constitutes a breach of the Common Position;
16. Notes that according to the Annual Reports, criterion 2 was invoked 72 times for denials in 2014 and 89 times in 2015; deplores the fact that the data reveal the lack of a common approach to the situation in Syria, Iraq and Yemen in particular; encourages the Member States and the EEAS to embark on a discussion on the extension of criterion 2 to include democratic governance indicators, as such assessment criteria could help establish further safeguards against the unintended negative consequences of exports; believes, furthermore, that a more principled approach to risk assessment would focus on overall respect of international humanitarian and human rights law by the recipient;
17. Believes that exports to Saudi Arabia are non-compliant with at least criterion 2 regarding the country's involvement in grave breaches of humanitarian law as established by competent UN authorities; re-iterates its call from 26 February 2016 on the urgent need to impose an arms embargo on Saudi Arabia;
18. Notes that according to the Annual Reports, criterion 3 was invoked 99 times for denials in 2014 and 139 times in 2015; stresses the need, within the context of criterion 3, to

assess recent arms transfers by Member States to non-state actors, including the provision of technical assistance and training, in light of the 2002 Joint Action 2002/589/CFSP on the European Union's contribution to combating the destabilising accumulation and spread of small arms and light weapons (SALW);

19. Notes that according to the Annual Reports, criterion 4 was invoked 57 times for denials in 2014 and 85 times in 2015; deplors the fact that military technology exported by the Member States is being used in the conflict in Yemen; urges the Member States to comply with the Common Position in a consistent manner on the basis of a thorough long-term risk assessment;
20. Notes that according to the Annual Reports, criterion 5 was invoked 7 times for denials in 2014 and 16 times in 2015; recalls that this criterion refers to the security interests of Member States and allied nations, while recognising that these interests cannot affect considerations of the criteria on respect for human rights and on regional peace, security and stability;
21. Notes that according to the Annual Reports, criterion 6 was invoked 6 times for denials in 2014, while no denial was notified for 2015; expresses its concern over reports of the diversion of arms exports by Member States to non-state actors, including terrorist groups, and warns that these weapons could be used against civilians, within and outside of EU territory; reiterates the importance of tighter controls over such arms exports in order to honour international commitments concerning the fight against terrorism and organised crime;
22. Is concerned about possible diversions of exports to Saudi Arabia and Qatar to armed non-states actors in Syria who commit serious violations of human rights law and humanitarian law, and calls on COARM to address the matter with urgency; acknowledges that most of the arms in the hands of insurgents and terrorist groups have come from non-European sources;
23. Notes that according to the Annual Reports, criterion 7 was invoked 117 times for denials in 2014 and 149 times in 2015; expresses its concern, inter alia, over the alleged diversions of exports of SALW from European countries to certain destinations from which these exports were diverted in order to supply non-state actors and other end-uses non-compliant with the Common Position in countries such as Syria, Iraq, Yemen and South Sudan; points to the urgent need to base assessments of the risk of diversion on more than just an acceptance of commitments made by a recipient state in an end-user certificate; highlights the need for effective mechanisms of post-shipment controls to ensure that arms are not being re-exported to unauthorised end users; highlights the potential role that the EEAS could play in supporting Member States' efforts in this area;
24. Notes that according to the Annual Reports, criterion 8 was invoked once for denials in 2014, while no denial was notified for 2015; recognises that better implementation of criterion 8 would constitute a decisive contribution to the EU's Policy Coherence on Development objectives and the UN's Sustainable Development Goals (SDGs), in particular SDG 16.4; calls on Member States and the EEAS to update the User's Guide to Council Common Position 2008/944/CFSP in this respect and to focus on the potential development harm done by the use of arms;

25. Calls on the Member States and the EEAS to add a new criterion to the Common Position in order to ensure that, when granting authorisations, due account is taken of the risk of corruption concerning the relevant exports;

***Boosting the exchange of information among the Member States***

26. Calls on the Member States and the EEAS to improve consistency in the implementation of the Common Position and to strengthen mechanisms for exchange of information by making available qualitatively and quantitatively better information for export licensing risk assessments based on a secured and extensive digitalisation of the current system, as follows:
- (a) providing more information on export licences and actual exports shared systematically and in a timely manner, including on end users of concern, cases of diversion, end-user certificates that are forged or otherwise of concern, and suspect brokers or transport companies, in accordance with domestic laws;
  - (b) maintaining a list of entities and individuals convicted of violating arms export-related legislation, of cases of identified diversion, and of persons who are known or suspected to be involved in illegal arms trading or in activities that pose a threat to international and national security;
  - (c) sharing the best practices adopted for implementing the eight criteria;
  - (d) turning the current User's Guide into an interactive online resource;
  - (e) turning the EU Annual Report into a searchable online database by the end of 2018, with the new format to be applied to the 2016 data;
  - (f) promoting clear, well-established cooperation procedures between law enforcement agencies and border authorities, based on the exchange of information, in order to strengthen cooperation on security and eradicate illegal arms trading, which poses a risk to the security of the EU and its citizens;
27. Welcomes the intention of COARM to involve the EEAS more systematically when preparing discussions on the situation in countries of destination and potential end users; insists on the importance of regular consultation of the Working Party on Human Rights (COHOM) in this process;
28. Notes that effective information exchange and cooperation also require meetings of policy, licensing and enforcement staff and encourages provisions of sufficient resources to this end; believes that a crucial factor in strengthening the implementation of the Common Position lies in expanding relevant capacities of Member States; calls on the Member States and the EEAS to increase the number of personnel working on export-related issues both at national and EU level; encourages the establishment of EU funds to be used for capacity-building among licensing and enforcement officials in Member States;
29. Stresses the need to develop an approach to address situations where Member States make a different interpretation of the 8 criteria of the Common Position for exports of products that are essentially alike, to similar destinations and end users, in order to preserve the level playing field and the EU's credibility abroad; believes that it is also



time to consider a stronger role for EU institutions with regard to the licensing process at Member State level, in particular with regard to such situations; calls on the Member States to support the creation of an arms control supervisory body under the auspices of the VP/HR; considers that an opinion should be issued to Member States that plan to grant a licence which has been denied by another Member State or Member States;

30. Stresses the urgent need to enhance the role of EU Delegations in assisting Member States and the EEAS with their export licensing risk assessments and the implementation of end-user controls, post-shipment controls and on-site inspections;
31. Urges Member States to create a provision in the Common Position to make sure that an EU embargo against a third country would automatically revoke licences that had already been granted for goods covered by the embargo;
32. Urges all Member States to continue to lend assistance to non-EU countries in drafting, updating, and implementing, where appropriate, legislative and administrative measures so as to ensure that an export control system for weapons and military technology is established;

#### ***Strengthening compliance with reporting obligations***

33. Finds regrettable the very late publication of the 17th EU Annual Report, which took place at least 17 months after the licences were issued or the exports took place; finds regrettable, moreover, that the 18th EU Annual Report was only made public in March 2017;
34. Criticises the violations of the eight criteria by Member States; considers that a uniform and consistent application of the eight criteria should be promoted; notes the lack of provisions on sanctions for Member States that fail to comply with the eight criteria when granting licences and advises Member States to make provision for arrangements to conduct independent checks; believes that it is time to launch a process leading to a mechanism which sanctions those Member States which do not comply with the Common Position;
35. Recalls that according to Article 8(2) of the Common Position, all Member States are obliged to report on their arms exports, and calls on all Member States to comply with their obligations; regrets that the number of Member States making full submissions to the EU Annual Report via disaggregated data on licences and actual exports was 21 for the 17th Annual Report and only 20 for the 18th; asks all Member States, including the three main arms-exporting Member States, France, Germany and the UK, which have not made full submissions, to provide a full set of data regarding their past exports with a view to the next annual report;
36. Calls for a more standardised and timely reporting and submission procedure to be guaranteed, by setting a strict deadline for submitting data of no later than January following the year in which the exports took place, and by setting a fixed publication date of no later than March following the year of exports;
37. Takes the view that the Common Position should be complemented by a regularly updated, publicly accessible list, with detailed reasons, providing information on the extent to which exports to particular recipient countries are, or are not, in line with the

eight criteria;

38. Considers that a standardised verification and reporting system should be established to provide information as to whether, and to what extent, individual EU Member States' exports violate the eight criteria;
39. Urges all the Member States to comply fully with their reporting obligations set out in the Common Position; stresses that high-quality data on actual deliveries is essential for understanding how the eight criteria are applied; calls on the Member States and the EEAS to explore how to use data generated by customs authorities, including by creating specific customs codes for military goods;
40. Recognises that all EU Member States are signatories to the ATT; calls for universalisation of the ATT and for more focus to be placed on those countries that are not signatories, including Russia and China; also commends the outreach efforts regarding the ATT and supports its effective implementation;

#### ***Modernising related tools***

41. Urges revision of the Common Military List and the lists annexed to the Dual-Use Regulation so as to ensure full coverage of all relevant unmanned systems; recalls its resolution of 27 February 2014 on the use of armed drones, and in particular paragraph 2(c) which called for armed drones to be included in relevant arms control regimes;
42. Encourages the Member States to undertake a more detailed examination of licensed production by third countries and to ensure stronger safeguards against undesired uses; demands the strict application of the Common Position regarding licensed production in third countries; encourages the Member States to consider the third country's attitude and status with regard to the ATT when deciding on transfers that would enhance the manufacturing and/or export capacity of that country as regards military equipment;
43. Finds that the implementation of Directive 2009/43/EC simplifying terms and conditions of transfers of defence-related products within the Community should be in consistent with the implementation of the Common Position, including spare parts and components; notes that the Common Position is non-restrictive in scope and, accordingly, the eight criteria also apply to exports within the EU;
44. Is concerned about cybersecurity challenges, particularly the breakthroughs in hacking methods used to access information and data of national licensing authorities; urges the Member States and the Commission to invest sufficient funds in technology and human resources to train individuals in specific cybersecurity programmes and methods in order to prevent and address these cybersecurity challenges;

#### ***The role of parliaments and public opinion***

45. Notes that not all EU national parliaments scrutinise governmental licensing decisions by, inter alia, producing annual arms exports reports, and, in this regard, calls for a general increase in parliamentary and public oversight; points to the European Parliament's Rules of Procedure, which provide for the possibility of regular responses to the EU Annual Reports on Arms Exports;

46. Welcomes regular consultations with national parliaments, arms export control authorities, industry associations and civil society as central to meaningful transparency; calls on COARM, all the Member States and the EEAS to enhance dialogue with civil society and consultations with national parliaments and arms export control authorities; encourages national parliaments, civil society and academia to exercise independent scrutiny of the arms trade, and calls on the Member States and the EEAS to support such activities, including by financial means;

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47. Instructs its President to forward this resolution to the Council, the Commission, the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy and the governments and parliaments of the Member States.