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DRAFT REPORT

on Arms export: implementation of Common Position 2008/944/CFSP
(2020/2003(INI))

Committee on Foreign Affairs

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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, the preservation of peace, the prevention of conflicts and the strengthening of international security,
- having regard to Council Decision (CFSP) 2019/1560 of 16 September 2019 amending Common Position 2008/944/CFSP ('the Common Position') defining common rules governing control of exports of military technology and equipment¹ and the Council conclusions of 16 September 2019 setting out its review of the Common Position,
- having regard to the Twentieth Annual Report drawn up in accordance with Article 8(2) of the Common Position²,
- having regard to the Twenty-First Annual Report drawn up in accordance with Article 8(2) of the Common Position³,
- having regard to Council Decision (CFSP) 2018/101 of 22 January 2018 on the promotion of effective arms export controls⁴ and Council Decision (CFSP) 2017/915 of 29 May 2017 on Union outreach activities in support of the implementation of the Arms Trade Treaty⁵,
- having regard to Council Decision (CFSP) 2019/2191 of 19 December 2019 in support of a global reporting mechanism on illicit conventional arms and their ammunition to reduce the risk of their diversion and illicit transfer (iTrace IV)⁶,
- having regard to the updated Common Military List of the European Union, adopted by the Council on 18 February 2019⁷,
- having regard to the User's Guide to the Common Position,
- having regard to the Wassenaar Arrangement of 12 May 1996 on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, together with the lists, updated in December 2019, of these goods and technologies and munitions,
- having regard to the Arms Trade Treaty (ATT) adopted by the UN General Assembly

¹ OJ L 239, 17.9.2019, p. 16.

² OJ C 453, 14.12.2018, p. 1.

³ OJ C 437, 30.12.2019, p. 1.

⁴ OJ L 17, 23.1.2018, p. 40.

⁵ OJ L 139, 30.5.2017, p. 38.

⁶ OJ L 330, 20.12.2019, p. 53.

⁷ OJ C 95, 12.3.2019, p. 1.

on 2 April 2013⁸, which entered into force on 24 December 2014,

- 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 Community⁹, and to Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC¹⁰,
- 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 items¹¹, as amended by Commission Delegated Regulation (EU) No 2016/1969 of 12 September 2016¹², and to the list of dual-use goods and technology in Annex I thereto ('the Dual-Use Regulation'),
- having regard to Regulation (EU) 2018/1092 of the European Parliament and of the Council of 18 July 2018 establishing the European Defence Industrial Development Programme (EDIDP) aiming at supporting the competitiveness and innovation capacity of the Union's defence industry¹³,
- having regard to the Commission proposal for a regulation of the European Parliament and of the Council of 13 June 2018 establishing the European Defence Fund (EDF) (COM(2018)0476) and to the common understanding reached between the co-legislators during negotiations,
- having regard to the proposal of the High Representative of the Union for Foreign Affairs and Security Policy, with the support of the Commission, to the Council for a Council Decision establishing a European Peace Facility (EPF) (HR(2018)94),
- having regard to the UN Sustainable Development Goals (SDGs), in particular Goal 16 promoting just, peaceful and inclusive societies for sustainable development,
- having regard to the UN Disarmament Agenda – 'Securing our Common Future',
- having regard to Regulation (EU) 2019/125 of the European Parliament and of the Council of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment¹⁴,
- having regard to the Report of the Office of the UN High Commissioner for Human Rights for the Human Rights Council on the impact of arms transfers on the enjoyment

⁸ Arms Trade Treaty, UN, 13-27217.

⁹ OJ L 146, 10.6.2009, p. 1.

¹⁰ OJ L 216, 20.8.2009, p. 76.

¹¹ OJ L 134, 29.5.2009, p. 1.

¹² OJ L 307, 15.11.2016, p. 1.

¹³ OJ L 200, 7.8.2018, p. 30.

¹⁴ OJ L 30, 31.1.2019, p. 1.

of human rights¹⁵,

- having regard to its previous resolutions on arms exports and the implementation of the Common Position, in particular those of 14 November 2018¹⁶, 13 September 2017¹⁷ and 17 December 2015¹⁸,
 - having regard to its recommendation of 28 March 2019 to the Council and the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy concerning the proposal of the High Representative of the Union for Foreign Affairs and Security Policy, with the support of the Commission, to the Council for a Council Decision establishing a European Peace Facility¹⁹,
 - having regard to its resolutions on the humanitarian situation in Yemen of 25 February 2016²⁰, 15 June 2017²¹ and 30 November 2017²²,
 - having regard to its resolution of 27 February 2014 on the use of armed drones²³,
 - having regard to the workshop entitled ‘The implementation of the EU arms export control system’ held at the meeting of its Subcommittee on Security and Defence on 12 April 2017,
 - having regard to the study entitled ‘Recommendations for a transparent and detailed reporting system on arms exports within the EU and to third countries’ commissioned by its Subcommittee on Security and Defence,
 - having regard to Rule 54 of its Rules of Procedure,
 - having regard to the report of the Committee on Foreign Affairs (A9-0000/2020),
- A. whereas the latest SIPRI figures²⁴ show that arms exports from the EU-28 amounted to some 26 % of the global total in 2015-2019, making the EU-28 collectively the second largest arms supplier in the world after the USA (36 %) and followed by Russia (21 %);

The 20th and 21st annual reports

1. Welcomes the publication of the 20th and 21st annual reports; deplores the late publication of information about exports during 2017 and 2018;
2. Notes that ten Member States made full submissions to the 20th annual report, and

¹⁵ A/HRC/35/8.

¹⁶ Texts adopted, P8_TA(2018)0451.

¹⁷ OJ C 337, 20.9.2018, p. 63.

¹⁸ OJ C 399, 24.11.2017, p. 178.

¹⁹ Texts adopted, P8_TA(2019)0330.

²⁰ OJ C 35, 31.1.2018, p. 142.

²¹ OJ C 331, 18.9.2018, p. 146.

²² OJ C 356, 4.10.2018, p. 104.

²³ OJ C 285, 29.8.2017, p. 110.

²⁴ Stockholm International Peace Research Institute (SIPRI), fact sheet of March 2020 entitled 'Trends in international arms transfers, 2019'.

eleven to the 21st; deplores the fact that two of the main exporting countries – Germany and the UK – did not make full submissions;

3. Deplores the fact that Member States use very different information in order to generate data on the value of licences, which renders the annual report considerably less usable as a comparative data set and serves to diminish its transparency and accountability before citizens and parliaments; urges France, in particular, to refrain from submitting data on the value of licences at pre-contract stage and broad values for global licences, which undermines the comparability of the report;
4. Notes that the countries of the Middle East and North Africa, a region of several armed conflicts, remain the foremost regional destination for exports according to the last two annual reports; is concerned that this regional focus undermines the Common Foreign and Security Policy (CFSP) and specific EU action aimed at regional peace and stability;
5. Recalls that the EU has been implementing a number of arms embargoes²⁵;

The Council's review of the Common Position

6. Welcomes the Council's intention to increase convergence and transparency – the main objectives of its last review of the Common Position;
7. Points out that Council Decision (CFSP) 2019/1560 and the relevant conclusions of 16 September 2019 have the potential to ensure that EU citizens are furnished with better information about the strategic choices made by their governments in an area which directly affects their security and their countries' adherence to values and norms;
8. Notes with concern the growing divergences between the arms export policies and practices of the Member States and the failure to introduce new instruments to promote convergence towards the strict application of EU rules in this area;
9. Supports the Council's decision to introduce a clear reporting deadline for national submissions; welcomes the steps taken towards the online approach and encourages the further development of the latter;

The increasing cooperation between Member States in arms production

10. Notes that since the adoption of the legally binding Common Position in 2008, an increasing number of weapon systems produced in Europe are made up of components from multiple countries and involve bi- or multilateral cooperation for technological, industrial and political reasons;
11. Notes an increase in the transfer of knowledge and technology, which allows third countries to undertake licensed production of European military technology;
12. Notes that most Member States have not outlined a policy regulating the transfer of weapons components to another Member State which would ensure that any export to

²⁵ <https://www.sanctionsmap.eu/#!/main?checked=>

third countries from the Member State of assembly is consistent with the export policy of the Member State providing the components; regards this as particularly problematic in the context of the increasing divergences between licensing practices across the EU; observes that Directive 2009/43/EC on intra-Community transfers has proven ill-equipped to achieve the stated goal of setting high common standards for exports to third countries;

13. Observes a trend whereby the diverging export policies of the Member States are increasingly considered as obstacles to cooperation projects, which is giving rise to a multitude of bilateral and specific agreements on weapon systems that allow for exports to third countries based on the least restrictive standards, rather than a joint, EU-wide approach;
14. Stresses that bilateral and multilateral agreements may further reduce convergence at EU level and that the failure to regulate exports uniformly between the Member States and the lack of convergence in export decisions to third countries have a negative impact on human rights and international law, generate market distortions, and hinder industrial strategic planning, economies of scale and a level playing field;

The Europeanisation of cooperation on arms production

15. Notes that EU funds such as the Preparatory Action on Defence Research (PADR), the European Defence Industrial Development Programme (EDIDP) and the European Defence Fund (EDF), initiatives such as the Permanent Structured Cooperation (PESCO), the Coordinated Annual Review on Defence (CARD) and the European Peace Facility (EPF), legislation such as the intra-Community transfers and defence procurement directives of 2009, and the creation of administrative capacities such as the Commission Directorate-General for Defence Industry and Space (DG DEFIS) are heralding an increasing Europeanisation of arms production and capability development;
16. Underlines the fact that the interinstitutional agreement on the establishment of the EDF authorises the Commission to assess whether the transfer of ownership or the granting of an exclusive licence of EDF-co-funded military technology contravenes the security and defence interests of the EU and its Member States or the objectives of the fund as set out in Article 3 of the proposed regulation; notes that this new legislation establishes a specific type of control function for the Commission with regard to a specific category of exports of military technology to third countries;
17. Notes that under the EPF, Member States and the European External Action Service (EEAS) will work on creating an EU-level system for arms transfers to third countries;

Implementing the Common Position in the light of Europeanised arms production

18. Notes that the lack of convergence of national arms export policies and decision-making is becoming increasingly untenable in the context of the prevailing Europeanisation of arms production and the stated ambitions and plans to increase this further;
19. Believes that the Europeanisation of arms production needs to go hand in hand with increased transparency; believes that there is still room for improvement in this area,

particularly as regards the quality and uniformity of the data submitted by Member States; calls on the Working Party on Conventional Arms Exports (COARM):

- a) to add the following additional categories in a revised reporting template in order to implement the recent September 2019 Council conclusions: the exact type of weapon and the quantity exported, denomination of the munitions, the lot size and the specific end-user, revoked licences, and the value and duration of contracts regarding post-delivery services such as training and maintenance;
 - b) to disaggregate data with regard to denial information so as to facilitate the scrutiny of specific shipments or Member States;
 - c) to clarify definitions such as licensed value and actual exports so as to facilitate the comparability of data between Member States;
20. Welcomes the decision to transform the annual report into an interactive and searchable online database and expects it to be up and running before publication of the export data for 2019; calls on the EEAS to inform Parliament about the precise date on which this database will go online; urges COARM to choose a solution that enables data to be exported in a structured format;
21. Calls on COARM to work towards amending Article 7 of the Common Position, by calling for an improved exchange of ‘relevant information, including information on denial notifications and arms export policies’ and other ‘measures to further increase convergence’; stresses the need, to this end:
- a) to systematically discuss individual licence requests within COARM, where the receiving destination or recipient has been identified as a risk by one or several Member States or the EEAS; calls on Member States to provide a justification if they decide to grant exports to such destinations;
 - b) to follow the example of the UK in this regard by publishing risk assessments in the annual reports;
 - c) to undertake a joint assessment of country situations or potential export recipients in the light of the principles and criteria of the Common Position within the framework of the CFSP and in consultation with external stakeholders, including Parliament;
22. Believes that the EU institutions should organise peer reviews with a view to encouraging authorities to share best practices on the collection and processing of data, fostering a better understanding of different national approaches, identifying differences as regards the interpretation of the eight criteria, and discussing ways to improve harmonisation;
23. Strongly believes that a much higher level of convergence as regards the strict application of the criteria will strengthen human rights, international law and the CFSP, and bolster the EU’s strategic security interests and strategic autonomy;
24. Stresses that effective end-use controls are crucial for a responsible export policy and

for lowering the risk of diversion in particular; calls on the Council, the Member States, the EEAS and the Commission to set up a large-scale training and capacity-building programme for national and EU officials on arms export controls; stresses the need to use EU funding to ensure that sufficient staff resources are available at national and EU levels and at delegations and embassies in importing countries for the purposes of implementing viable end-use controls; calls on the EEAS and COARM to report on iTrace any identified diversion of EU-origin goods as part of the annual report;

25. Believes that the increasing Europeanisation of arms production, the recent Council conclusions on convergence in arms exports and the establishment of the EPF should be complemented by a mechanism for EU-level monitoring and control based on strict compliance with the eight criteria;
26. Considers that regular consultations with national parliaments, arms export control authorities, industry associations and civil society are central to meaningful transparency; calls on COARM to enhance dialogue with civil society and consultations with Parliament and arms export control authorities; encourages 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;
27. 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, the governments and parliaments of the Member States, the Secretary-General of NATO, and the Secretary-General of the United Nations.