

The Impact on Domestic Policy of the EU Code of Conduct on Arms Exports

The Czech Republic, the Netherlands
and Spain

SIPRI Policy Paper No. 21

Mark Bromley

sipri

Stockholm International Peace Research Institute

May 2008

© SIPRI, 2008

ISSN 1652-0432 (print)

ISSN 1653-7548 (online)

Printed in Sweden by
CM Gruppen, Bromma

Contents

<i>Contents</i>	<i>iii</i>
<i>Preface</i>	<i>iv</i>
<i>Abbreviations</i>	<i>v</i>
1. Introduction	1
2. EU engagement in arms export policies	5
The origins of the EU Code of Conduct	5
The development of the EU Code of Conduct since 1998	9
The impact on the framework of member states' arms export policies	11
The impact on the process of member states' arms export policies	12
The impact on the outcomes of member states' arms export policies	13
Box 2.1. Non-EU multilateral efforts in the field of arms export policies	6
3. Case study: the Czech Republic	17
The Czech Republic's engagement with the EU Code of Conduct	17
The impact on the framework of Czech arms export policy	19
The impact on the process of Czech arms export policy	21
The impact on the outcomes of Czech arms export policy	24
Box 3.1. Key Czech legislation on arms export controls	18
Table 3.1. Czech exports of military equipment, 1997–2006	24
4. Case study: the Netherlands	29
The Netherlands' engagement with the EU Code of Conduct	29
The impact on the framework of Dutch arms export policy	31
The impact on the process of Dutch arms export policy	32
The impact on the outcomes of Dutch arms export policy	34
Box 4.1. Key Dutch legislation on arms export controls	30
5. Case study: Spain	39
Spain's engagement with the EU Code of Conduct	39
The impact on the framework of Spanish arms export policy	39
The impact on the process of Spanish arms export policy	41
The impact on the outcomes of Spanish arms export policy	44
Box 5.1. Key Spanish legislation on arms export controls	40
Table 5.1. Spanish exports of military equipment, 1997–2006	44
6. Conclusions	48
Appendix A. The European Union Code of Conduct on Arms Exports	52
Appendix B. List of interviewees	56
About the author	58

Preface

In June 2008 the European Union Code of Conduct on Arms Exports will mark its 10th anniversary. During this period, the EU Code of Conduct has had an eventful and, at times, controversial history. While participation has expanded from 15 to 27 as EU membership has increased and big advances have been made in the field of information exchange, some have said that the Code's impact has been either too weak or too inconsistent. On the one hand, non-governmental organizations and parliamentarians have contested that the mechanism has done little to prevent transfers to human rights abusers and conflict hotspots. On the other, defence companies have complained that their respective national government is interpreting the Code more restrictively than others, and so placing them at a commercial disadvantage.

This Policy Paper examines the impact of the EU Code over its first 10 years via a close examination of three middle-ranking arms exporters: the Czech Republic, Spain and the Netherlands. The analysis therefore looks beyond the three biggest European arms exporters—France, Germany and the United Kingdom—which have been the main subjects of research in this area. The choice of countries allows examinations of the role of middle-ranking arms exporters in the evolution of the EU Code and of the consequent effect of the Code on these states' decisions to issue or deny arms export licences. The picture that emerges is of a dynamic agreement in which smaller member states have had a strong hand in pushing developments forward.

The author, Mark Bromley, gathered much of the evidence for how the Code of Conduct works in practice directly from the officials who implement it and the politicians and campaigners who monitor their decisions. His detailed study of the mechanisms of development and implementation of the Code of Conduct allows him to present recommendations for how it could be strengthened and made to function more effectively. In particular, the report emphasizes the need for increased information exchange and transparency and more harmonization in the role the EU Code criteria play in states' decision making in export licensing.

Thanks are due to the officials and experts who gave their time for interviews, to respond to questionnaires and to give feedback on different sections of the Policy Paper. Thanks are also due to Ian Anthony, Sibylle Bauer, Paul Cornish, Paul Holtom and Pieter Wezeman for their comments on earlier drafts and to David Cruickshank of the SIPRI Editorial and Publications Department for the editing. A generous grant from the European Foreign and Security Policy Studies programme, funded by Compagnia di San Paolo, Riksbankens Jubileumsfond and Volkswagen-Stiftung, supported this research.

Dr Bates Gill
Director, SIPRI
May 2008

Abbreviations

CFSP	Common Foreign and Security Policy
COARM	Working Group on Conventional Arms Exports
EC	European Community
EU	European Union
JIMDDU	Junta Interministerial Reguladora del Comercio Exterior de Material de Defensa y de Doble Uso (Inter-Ministerial Regulatory Board on External Trade in Defence and Dual-use Material)
MEA	Ministry of Economic Affairs
MFA	Ministry of Foreign Affairs
MITT	Ministry of Industry, Tourism and Trade
NATO	North Atlantic Treaty Organization
NGO	Non-governmental organizations
OSCE	Organization for Security and Co-operation in Europe
SALW	Small arms and light weapons
UN	United Nations
UNROCA	UN Register on Conventional Arms

1. Introduction

In the 17 years since the European Union (EU) first formulated common standards to be applied in arms export decision making, there has been a rapid expansion in the EU's role as a coordinator and generator of policy in an area that was previously the exclusive domain of national governments. Most relevant to this change has been the EU Code of Conduct on Arms Exports (EU Code of Conduct), which was adopted by the Council of the EU in June 1998 and will celebrate its 10th anniversary in June 2008.¹ The Code takes the form of a Council declaration—it contains political commitments but is not legally binding. Under the Code, EU member states commit themselves to set 'high common standards which should be regarded as the minimum for the management of, and restraint in, conventional arms transfers' and 'to reinforce cooperation and to promote convergence in the field of conventional arms exports' within the framework of the Common Foreign and Security Policy (CFSP). It lists eight criteria that member states agree to take into account when assessing applications for arms export licences. More importantly, the Code outlines reporting procedures and consultation mechanisms intended to ensure consistent interpretation of the criteria.

The EU Code of Conduct is the most important element of a wider range of agreements and mechanisms that form an EU agenda designed to harmonize national export policies and promote more responsible licensing of arms exports. Other elements include the 1998 and 2002 joint actions on small arms and light weapons (SALW), the 2003 Council common position on arms brokering and the various arms embargoes adopted under the CFSP.²

Despite this activity at the EU level, all aspects of the *implementation* of arms export policy remain firmly in the hands of member states. This raises the question of what impact the development and implementation of the EU Code of Conduct has had domestically. How are different member states influencing the development of the EU Code of Conduct? Is the EU Code of Conduct leading to more harmonized export policies, in line with the agreed minimum standards? How uniform has the EU Code of Conduct's impact been across the Union? How influential

¹ Council of the European Union, European Union Code of Conduct on Arms Exports, document 8675/2/98 Rev 2, Brussels, 5 June 1998, <http://consilium.europa.eu/cms3_fo/showPage.asp?id=408>. The Code is reproduced in appendix A.

² Council Joint Action of 17 December 1998 adopted by the Council on the basis of Article J.3 of the Treaty on European Union on the European Union's contribution to combating the destabilising accumulation and spread of small arms and light weapons (1999/34/CFSP), *Official Journal of the European Union*, L009 (15 Jan. 1999), pp. 1–5; Council Joint Action of 12 July 2002 on the European Union's contribution to combating the destabilising accumulation and spread of small arms and light weapons and repealing Joint Action 1999/34/CFSP (2002/589/CFSP), *Official Journal of the European Union*, L191 (19 July 2002), pp. 1–4; and Council Common Position 2003/468/CFSP of 23 June 2003 on the control of arms brokering, *Official Journal of the European Union*, L156 (25 June 2003), pp. 79–80. For a list of EU arms embargoes see EU Directorate-General for External Relations, 'Sanctions or restrictive measures in force (measures adopted in the framework of the CFSP)', Mar. 2008, <http://ec.europa.eu/external_relations/cfsp/sanctions/measures.htm>.

2 THE IMPACT OF THE EU CODE OF CONDUCT

is the EU Code of Conduct relative to other multilateral instruments in the field of arms export controls, such as the Wassenaar Arrangement?

The question of what impact the EU Code of Conduct is having at the national level has increased in importance in recent years. Debates on whether the EU arms embargo imposed on China in 1989 should be lifted have led to discussion of what technology EU member states are likely to transfer to China if the embargo is removed. This in turn raises the question of just how harmonized EU arms export policies have become since the EU Code of Conduct was adopted in 1998. Meanwhile, the European Commission is engaged in ongoing efforts to liberalize the intra-EU trade in military goods. Such efforts are predicated, at least implicitly, on the achievement of some level of harmonization of member states' arms export policies.

This study examines developments in three countries: the Czech Republic, the Netherlands and Spain. These countries have a number of similarities which make them useful case studies for an examination of the impact of the EU Code of Conduct on national arms export policies. All three have significant defence industries which rely, to a greater or lesser extent, on arms exports for their continued economic viability. At the same time, they are middle-ranking arms producers among the EU member states. Most previous studies have focused on the larger arms producers and exporters that were at the forefront of the development of the EU Code of Conduct, such as France, Germany and the United Kingdom.³

There are also significant differences between the Czech Republic, the Netherlands and Spain, which recommend them as subjects for closer investigation. They joined the EU at different times and have different historical and economic backgrounds and defence and foreign policy priorities. These differences translate into wide variances in the size and composition of their defence industries and arms export markets and in the attitudes of their governments and civil societies to the issue of arms exports. This study examines the nature of each state's interactions with the EU Code of Conduct and what role, if any, the country has played in influencing the Code's development over the past 10 years. In addition, this study examines developments in each state's arms export policy and analyses the extent to which these can be attributed to interaction with the EU Code of Conduct.

The term 'arms export policies' is used here to refer to policies that govern 'The dispatch of conventional weapons, weapon platforms and related equipment (that would normally be found on a military list of controlled goods) from one country to another'.⁴ Although a state's arms export policy covers other areas, this study focuses on decision making on the granting of export licences—references here to

³ E.g. Davis, I., SIPRI, *The Regulation of Arms and Dual-Use Exports: Germany, Sweden and the UK* (Oxford University Press: Oxford, 2002); Bauer, S., 'The Europeanisation of arms export policies and its impact on democratic accountability', Doctoral thesis, Université libre de Bruxelles and Freie Universität Berlin, May 2003; and Holm, K., 'Europeanising export controls: the impact of the European Union Code of Conduct on Arms Exports in Belgium, Germany and Italy', *European Security*, vol. 15, no. 2 (June 2006), pp. 213–34.

⁴ Davis (note 3), p. xiv.

‘arms export policy’ refer to the way in which decisions are made about whether or not to grant an arms export licence

A country’s arms export policy can be thought of as having three elements: framework, process and outcomes.⁵

1. The *framework* of a country’s arms export policy is the legal and regulatory framework governing arms exports. Among other factors, this includes: the list of goods subject to control; the criteria used for assessing whether a licence should be granted or refused; and blacklists of countries to which arms exports are automatically blocked.

2. The *process* of a country’s arms export policy refers to the process by which the government determines whether or not to grant an export licence. Among other factors, this includes: the involvement of various government departments in the decision-making process and the relative importance of their opinions; the role played by international information exchange processes and consultation mechanisms in the national assessment process;⁶ the level of parliamentary engagement in the licensing process; and the level of public and parliamentary transparency, that is, the amount of information that governments release about their arms exports, either to the parliament or the public at large.⁷

3. The *outcomes* of a country’s arms export policy refers to the types of arms the country exports and their destinations. In this study, policy outcomes are taken to consist of exports that result from a conscious decision on the part of the government. Illegal exports—where a company exports arms without a licence or where arms are diverted from the intended recipient—are considered to be an issue of export control rather than export policy.

This study examines the impact of the EU Code of Conduct on the framework, process and outcomes of the arms export policies of the Czech Republic, the Netherlands and Spain since 1998, while also assessing the causal role of other, non-EU related, factors. These other factors include: the defence-industrial policy of the exporting government;⁸ the pressure exerted by non-governmental organiza-

⁵ The conceptualization is based on that developed by Sibylle Bauer in Bauer (note 3), p. 4.

⁶ This includes both the EU Code of Conduct and other regimes such as the Wassenaar Arrangement and the Missile Technology Control Regime (see box 2.1 below)

⁷ Since the early 1990s an increasing number of national, regional and international transparency mechanisms in the field of arms exports have been developed. E.g. under the UN Register of Conventional Arms (UNROCA), established in 1991, states are invited to submit to a public register information on their imports and exports of certain categories of major conventional weapons. Meanwhile, an increasing number of governments, particularly in Europe, have responded to parliamentary and public pressure and begun publishing national reports on their arms exports. Links to these reports are available at <http://www.sipri.org/contents/armstrad/atlinks_gov.html>. Public and parliamentary transparency measures do not in and of themselves constitute part of the process of a country’s arms exports policy. However, the oversight and accountability that they provide can have an impact on future decision making. For this reason, this issue has been included under the category of ‘process’.

⁸ Arms exports are widely viewed as providing important benefits to the domestic defence industry. By increasing investment in research and development and extending production runs, arms

4 THE IMPACT OF THE EU CODE OF CONDUCT

tions (NGOs) and parliamentarians; industrial and political cooperation with friendly states;⁹ the internationalization of the defence production process;¹⁰ the government's wider foreign and security policy priorities; and the products produced by its defence industry and the international markets it has traditionally served.

Chapter 2 of this Policy Paper analyses the origins and development of the EU Code of Conduct. In addition, the chapter looks at the impact of the EU Code of Conduct on the framework, process and outcomes of member states' arms export policies across the EU, taking into consideration existing theoretical and empirical literature. Chapters 3, 4 and 5 take a more in-depth look at developments in the Czech Republic, the Netherlands and Spain, respectively. Chapter 5 presents the conclusions. The text of the EU Code of Conduct on Arms Exports is reproduced in appendix A.

The Policy Paper is partly based on semi-structured key-informant interviews with over 20 EU officials, government officials, parliamentarians, researchers and industry representatives in Brussels, Madrid, Prague and The Hague during the summer and autumn of 2007. The interviews aimed at gaining a deeper understanding of the issues from individuals with a direct role in the processes under investigation or a close knowledge of their workings. For a full list of interviewees, see appendix B.

exports are seen as a means of reducing the cost of domestic acquisitions and increasing the range and technological sophistication of equipment produced. Arms exports are also seen as an important means of supporting employment in the domestic defence industry. Such considerations can have a strong influence on all aspects of a state's arms export policy. See Cornish, P., *The Arms Trade and Europe* (Royal Institute for International Affairs: London, 1995).

⁹ Of particular relevance for EU exporters is the United States. Such is the size of the US military budget and the technological sophistication of its defence industry that entrance into the US market for sales and collaborative programmes is crucial for the long-term viability of European companies. However, this cooperation entails acceptance of strict US technology-transfer constraints in the form of end-use and retransfer restraints. See Neuman, S. G., 'Defence industries and global dependency', *Orbis*, vol. 50, no. 3 (summer 2006), pp. 429–51.

¹⁰ The growing internationalization of the global and, particularly, the European defence industries poses challenges for a government's ability to keep track of where technologies manufactured domestically eventually end up. In addition, the need to maintain relations with a powerful partner may also drive a country to allow the export of arms or related technologies to a destination of which it might otherwise disapprove.

2. EU engagement in arms export policies

EU member states are significant producers and exporters of arms and military equipment. According to SIPRI data, 32 of the 100 largest arms-producing companies in the world in 2005 had their headquarters in the EU, while between 2003 and 2007 EU member states accounted for 34 per cent of global exports of major conventional weapons.¹¹ Since the 1957 Treaty of Rome established the European Community (EC), arms exports, along with other defence- and security-related issues, have been largely exempt from EC and EU rules under Article 296.¹² EU member states have traditionally pursued widely divergent arms export policies and, with the exception of multilateral arms embargoes, have long been reluctant to give up any element of national control in this area.¹³ Nonetheless, since 1991–92 there has been a concerted effort to develop harmonized arms export policies on the part of EU member states. Other multilateral efforts in the field of arms export policies preceded and coincided with these EU developments (see box 2.1).

The origins of the EU Code of Conduct

The drive to harmonize European arms export policies was largely motivated by three factors. First, the consolidation and internationalization of the European defence industry during the 1990s provided a strong economic rationale for better coordinated export policies. Since the 1980s the European defence industry has gone through a period of consolidation that has seen the creation of a number of large companies with holdings and production facilities based in several countries. This situation gave rise to growing calls from industry for a greater coordination of arms export policies in order to facilitate cross-border cooperation and streamline export efforts; the EU became the primary vehicle for achieving this.¹⁴ Second, a growing emphasis on conflict prevention after the end of the cold war led to calls for foreign policies, including on arms exports, to be more ethical.¹⁵

¹¹ Sköns, E. and Surry, E., ‘Arms production’, *SIPRI Yearbook 2007: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2007), pp. 345–73; and SIPRI Arms Transfers Database, <<http://armstrade.sipri.org/>>. The SIPRI Arms Transfers Database is regularly updated; the information used in this Policy Paper is correct as at 31 Mar. 2007.

¹² The Treaty Establishing the European Economic Community was signed on 25 Mar. 1957 and entered into force on 1 Jan. 1958. The formal title was changed in 1992 to the Treaty Establishing the European Community. The original and current texts are available at <<http://eur-lex.europa.eu/en/treaties/index.htm>>. Article 296 of the current treaty was Article 223 of the original treaty.

¹³ See Davis (note 3), pp. 45.

¹⁴ See Bauer, S., ‘The EU Code of Conduct on Arms Exports: much accomplished, much to be done’, ed. K. Haglin, *Arms Trade: Final Report from the 2nd Ecumenical Conference in Gothenburg* (Christian Council of Sweden: Sundbyberg, 2007), pp. 32–33.

¹⁵ See Smith, K. E., ‘The EU, human rights and relations with third countries: “foreign policy” with an ethical dimension?’, eds K. E. Smith and M. Light, *Ethics and Foreign Policy* (Cambridge University Press: Cambridge, 2001), p. 187.

Box 2.1. Non-EU multilateral efforts in the field of arms export policies

The EU Code of Conduct is not the first effort to coordinate arms export policies or to develop common guidelines for export licensing by a group of states. In 1949 the Western allies formed the Coordinating Committee for Multilateral Export Controls (COCOM) to manage an embargo on transfers of arms and related technologies to the Eastern bloc. COCOM was disbanded in 1994. The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies was established in 1996 in an attempt to replicate some of the benefits of COCOM but on a broader and non-adversarial basis. It currently has 40 participating states, including Russia, the United States, most members of NATO and most former members of the Warsaw Treaty Organization.^a The Wassenaar Arrangement was designed to promote transparency and responsibility in transfers of arms and dual-use items in order to prevent ‘destabilising accumulations’.^b Participating states exchange information on their exports and discuss policies on particular regions or destinations. Other mechanisms cover exports of missiles (e.g. the Missile Technology Control Regime), nuclear technologies (e.g. the Nuclear Suppliers Group) and chemical and biological agents (e.g. the Australia Group).

The early and mid-1990s also saw the development of several sets of guidelines or principles on arms transfers by different state groupings. These included the 1991 Five-Powers Guidelines, the 1991 G7 Declaration on Conventional Arms Transfers and Nuclear, Biological And Chemical Non-Proliferation, the 1993 Conference on Security and Co-operation in Europe Principles and the 1996 UN Guidelines for International Arms Transfers.^c These principles and guidelines generally targeted transfers of arms that might contribute to destabilizing military build-ups, prolong or aggravate an armed conflict, or fall into the hands of international terrorists.

The number of multilateral export control mechanisms has grown in recent years and membership has increased. However, the lack of a cold war-style overarching security framework, coupled with the increased competitiveness of the international arms market, has made it harder to define agreed norms regarding what should be exported and where.^d The mechanisms that are in place lack agreed guiding principles and are prey to the strategic priorities of the larger powers, leading to concerns that they do little to constrain transfers that facilitate armed conflict or human rights abuses.^e Meanwhile, guidelines agreed within the United Nations and the Organization for Security and Co-operation in Europe lack enforcement mechanisms and interpretation has been left entirely at the discretion of individual states. Such concerns have played a significant role in the recent push for the development of an international arms trade treaty.^f

A number of agreements specifically designed to facilitate cross-border industrial cooperation also contain elements that relate to arms export policies. In a 1998 letter of intent (LoI), the defence ministers of France, Germany, Italy, Spain, Sweden and the United Kingdom stated their ‘desire to establish a co-operative framework to facilitate the restructuring of European defence industry’.^g Consequently, these six states negotiated the 2000 Framework Agreement which aims to facilitate transfers and defence cooperation between the signatory states.^h The agreement introduces simplified licensing procedures for transfers of components between the six states, via the creation of global project licences (GPLs), a significant step towards a common market for defence goods within that limited area. For exports to other countries, the states agreed a mechanism to negotiate common lists of countries eligible to receive certain arma-

ments.ⁱ The provisions attached to this mechanism generated fears of a ‘race to the bottom’, in which the country with the least restrictive export policies would be able to dictate the destinations of military goods exported by the six countries.^j Nonetheless, the tools created by the LoI are not being used as extensively as initially intended. For example, the UK issued one GPL in 2003 and none in 2004, 2005 or 2006.^k

^a As of Feb. 2008 the participants in the Wassenaar Arrangement were Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, South Korea, Latvia, Lithuania, Luxembourg, Malta, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Russia, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, the UK and the USA.

^b Wassenaar Arrangement, ‘Introduction’, <<http://www.wassenaar.org/introduction/>>.

^c Goldblat, J., International Peace Research Institute Oslo and SIPRI, *Arms Control: The New Guide to Negotiations and Agreements* (Sage Publications: London, 2002), pp. 241–46.

^d Smith, R. and Garcia-Alonso, M., ‘The economics of arms export controls’, ed. D. Joyner, *Non-Proliferation Export Controls: Origins, Challenges, and Proposals for Strengthening* (Ashgate: Aldershot, 2006).

^e Cooper, N., ‘What’s the point of arms transfer controls?’, *Contemporary Security Policy*, vol. 27, no. 1 (Apr. 2006).

^f See Holtom, P. and Wezeman S. T., ‘Towards an arms trade treaty?’, *SIPRI Yearbook 2007: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2007).

^g The Letter of Intent between 6 Defence Ministers on Measures to Facilitate the Restructuring of the European Defence Industry was signed on 6 July 1998. Its text is available at <<http://www.sipri.org/contents/expcon/loisign.html>>.

^h The Framework Agreement concerning Measures to Facilitate the Restructuring and Operation of the European Defence Industry was signed on 27 July 2000. Its text is available at <<http://www.sipri.org/contents/expcon/indrest02.html>>.

ⁱ Bauer, S., ‘The Europeanisation of arms export policies and its impact on democratic accountability’, Doctoral thesis, Université libre de Bruxelles and Freie Universität Berlin, May 2003, pp. 94–95.

^j Dunne, P. and Perlo-Freeman, S., ‘Bigger than the sum of its parts: components and the impact of a responsible arms control policy on the UK economy’, Report prepared for Oxfam, Mar. 2003, <<http://carecon.org.uk/Users/paul/>>.

^k British Foreign Office, Ministry of Defence, Department of Trade and Industry and Department for International Development, *United Kingdom Strategic Export Controls*, Annual reports 2003–2006, Cm 6173, 6646, 6882, 7141 (Stationery Office: London, 2004–2007).

Third, a series of scandals were uncovered during the 1980s and 1990s that implicated nearly all the major arms-producing countries in Europe. These scandals exposed the extent to which European arms manufacturers, often with the connivance of their governments, were able to bypass national regulations and transfer arms to embargoed countries or parties to a conflict. For example, the Bofors affair in the 1980s involved companies from across Europe falsifying end-user certificates and mislabelling consignments in order to supply munitions propellant and other military goods to both sides of the 1980–88 Iran–Iraq War.¹⁶ Such transfers came under even harsher scrutiny in the wake of the 1991 Gulf War, when the role played by European companies in Iraq’s arms build-up during the late 1980s

¹⁶ Pythian, M., ‘The illicit arms trade: cold war and post-cold war’, *Crime, Law and Social Change*, vol. 33, nos 1–2 (Mar. 2000), p. 9

8 THE IMPACT OF THE EU CODE OF CONDUCT

became apparent.¹⁷ These scandals drove calls for stricter and more transparent export licensing procedures and led directly to the enactment of new legislation in several European states. The governments of these states then sought to offset any potential loss of competitiveness by convincing other governments to support the adoption of stricter policies at the EU level.

In 1991 the Council of the EU established the Working Group on Conventional Arms Exports (COARM) to compare national practices in arms export policies and to discuss the potential for harmonization. In 1991 and 1992 the Council adopted common criteria on arms exports based on existing practices identified among EU member states. Seven criteria were agreed in 1991 that were linked to such considerations as human rights violations, regional stability and the risk that exports to one country might be diverted to another, undesirable, end-user.¹⁸ An eighth criterion, relating to economic development, was added in 1992.¹⁹ During 1997 work on a more operational and binding agreement started, and a joint British–French first draft of the code was circulated in January 1998.²⁰ The EU Code of Conduct on Arms Exports was formally adopted in June 1998. It consists of eight criteria on which export licensing decisions should be based, corresponding to the criteria agreed in 1991–92 but each elaborated by several sub-criteria (see appendix A).

Under the EU Code of Conduct, governments agree to exchange, in confidence, information on any application for an export licence that is denied, including the reasons for the refusal. If a member state is considering granting an export licence for a transaction which it believes might be ‘essentially identical’ to one that has previously been denied, then it is obliged to consult the state that previously issued the denial in order to clarify the situation. The consulting member state must notify all member states of its final decision and must explain the reason.

Member states also exchange information on their positive licence decisions, including licences granted and actual exports. The data on licences and exports are compiled in the publicly available Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports (EU Annual Report). Originally intended to be a confidential exchange of information, the EU Annual Report has been publicly accessible since 1999 following pressure from the European Parliament, NGOs and the 1999 Finnish Presidency of the Council.²¹ Government officials from EU member states also exchange information at regular COARM meetings, during which national licensing officials exchange views on individual recipient countries and discuss the implementation of the EU Code of Conduct criteria. Around six COARM meetings are held each year.

¹⁷ Cornish (note 8), p. 4.

¹⁸ European Council, Conclusions, DOC/91/2, Luxembourg, 29 June 1991, Annex VII, ‘Declaration on non-proliferation and arms exports’.

¹⁹ European Council, Presidency Conclusions, DOC/92/3, Lisbon, 27 June 1992, p. 14.

²⁰ Davis (note 3), pp. 101.

²¹ Bauer, S. and Bromley, M., *The European Union Code of Conduct on Arms Exports: Improving the Annual Report*, SIPRI Policy Paper no. 8 (SIPRI: Stockholm, Nov. 2004), p. 5. EU Annual Reports are available at <http://consilium.europa.eu/cms3_fo/showPage.asp?id=408>.

The development of the EU Code of Conduct since 1998

Since the EU Code of Conduct's creation, there have been ongoing efforts to improve its workings and increase its ability to harmonize member states' arms export policies. Examples include the following.

1. A common list of military equipment—the Common Military List—has been established that describes the equipment to which the EU Code of Conduct should be applied.²²

2. The amount of information on arms exports which states exchange with each other and publish in the EU Annual Report has greatly increased.

3. Member states have developed a regularly updated, publicly accessible, User's Guide to assist with the implementation of the Code.²³

4. Guidelines have been included in the User's Guide that clarify how each of the eight criteria of the EU Code of Conduct should be interpreted at the national level.

5. Text has been included in the User's Guide committing states to apply the criteria of the EU Code of Conduct to transit licences and licensed production deals.

6. Agreement has been reached at the working level on a revised EU Code of Conduct which will, inter alia, turn it into a Council common position.²⁴

A final draft of the revised EU Code of Conduct was agreed in 2005. However, final adoption of the text has foundered on the opposition of certain governments, particularly France, that are unwilling to sign off until a formal commitment is made to lift the EU arms embargo on China.²⁵ France's Presidency of the Council during the second half of 2008 may provide the best opportunity for an agreement to be reached on turning the EU Code of Conduct into a common position. The crackdown on demonstrators in Tibet in early 2008 has made it harder for a state to argue in favour of lifting the embargo on China. The link between taking this step and implementing the common position may thus be broken.

²² The most recent version is Common Military List of the European Union (2007/197/CFSP), adopted by the Council on 19 Mar. 2007, *Official Journal of the European Union*, L88 (29 Mar. 2007).

²³ The most recent version is Council of the European Union, 'User's Guide to the EU Code of Conduct on Arms Exports', document 7486/08, Brussels, 29 Feb. 2008, <http://consilium.europa.eu/cms3_fo/showPage.asp?id=408>.

²⁴ When the Council adopts a common position under the CFSP, member states are legally obliged to bring their national legislation and policies into line with it. However, common positions are not part of European law and are not subject to the jurisdiction of the European Court of Justice. On steps to revise and improve the EU Code of Conduct see Council of the European Union (note 23); Anthony, I. and Bauer, S., 'Transfer controls', *SIPRI Yearbook 2005: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2005), pp. 715–18; and Anders, H., 'The EU Code of Conduct on Arms Exports: the current state of play', Note d'Analyse, Groupe de recherche et d'information sur la paix et la sécurité (GRIP), 24 Oct. 2006, <<http://www.grip.org/bdg/g1058.html>>.

²⁵ Anthony, I. and Bauer, S., 'Controls on security-related international transfers', *SIPRI Yearbook 2007* (note 11), p. 653.

Developments in the workings and coverage of the EU Code of Conduct have been primarily driven by the Presidency of the Council. The state holding the presidency has taken the lead on proposing changes or additions, often based on its own domestic priorities. As one official put it, ‘each presidency has its own perspective’.²⁶ States take policies or positions developed at the national level, often under pressures generated by NGOs or parliaments, and seek to get those standards adopted across the EU. A recognition has emerged that, in the field of arms export policies, things need to be done at the EU level because ‘it makes no sense to have simply national policies’.²⁷

The European Parliament has no formal role in the development of the EU Code of Conduct, although it did play a role in its creation, and several members of the Parliament actively pushed for its adoption in the mid-1990s.²⁸ Since July 2000 the European Parliament’s Committee on Foreign Affairs has published regular responses to the EU Annual Report, including assessments of steps taken and recommendations for future action.²⁹ The reports have included recommendations for improvements in transparency, end-use monitoring and controls on arms brokering. The interaction between the Council and Parliament over the EU Code of Conduct has become more formalized in recent years. For example, the EU Annual Report now mentions dialogue with the European Parliament as an objective, a representative of the Parliament addresses COARM once during each six-month presidency, and the chair of COARM addresses the Parliament’s sub-committee on security and defence.³⁰ According to Gerrard Quille, engagement on the EU Code of Conduct has been ‘probably one of the best examples of the confidence-building process institutionally between the Parliament and the Council in that they could engage in an area of foreign policy on a concrete issue and have a meaningful exchange’.³¹

Since arms exports are a CFSP (i.e. ‘second pillar’), intergovernmental issue, the European Commission plays no role in the development or implementation of the

²⁶ Mattiussi, J., British Ministry of Defence official, formerly seconded to the European Commission, working inter alia on export controls and in that capacity the Commission representative to COARM, Interview with the author, 13 June 2007.

²⁷ Mattiussi (note 26).

²⁸ E.g. Resolution on the need for European controls on the export or transfer of arms, adopted by the European Parliament on 19 Jan. 1995, *Official Journal of the European Communities*, C43 (20 Feb. 1995); and Resolution on a European code of conduct on the export of arms, adopted by the European Parliament on 15 Jan. 1998, *Official Journal of the European Communities*, C34 (2 Feb. 1998). See also Bauer, S., ‘The role of parliaments in European arms export policy’ eds J. Mawdsley, M. Matinelli and E. Remacle, *Europe and the Global Arms Agenda: Security, Trade and Accountability*, BICC/DCAF Security Sector Governance and Conversion Studies (Nomos: Baden-Baden, 2004).

²⁹ E.g. European Parliament Committee on Foreign Affairs, Report on the Council’s Seventh and Eighth Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports (2006/2068(INI)), document A6-0439/2006, 30 Nov. 2006.

³⁰ Ninth Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports, *Official Journal of the European Union*, C253 (26 Oct. 2007), p. 3.

³¹ Quille, G., Policy Department (Security and Defence), Directorate-General for External Policies, European Parliament, Interview with the author, 13 June 2007.

EU Code of Conduct, although a representative of the Commission does attend COARM meetings. In December 2007 the Commission published a proposal for a directive aimed at streamlining export control regulations for intra-EU transfers of military equipment and services.³² The proposal envisages the creation of a simplified export licence mechanism to cover multiple shipments of military goods to another country within the EU, along similar lines to that laid down under the 1998 letter of intent (see box 2.1). Under the proposal, the exporting state would retain control over the destinations to which the goods could be re-exported and would be free to determine the list of goods covered by the mechanism. Prior to the release of the proposal, the member states had been lukewarm to the initiative, partly out of a concern that it would result in increased bureaucracy and partly out of an unwillingness to cede national control in this area.³³ Consultations between the Commission, the Parliament and the Council are to begin in April 2008. Regardless of the outcome, it seems clear that responsibility for export licensing will remain in the hands of EU member states.

The impact on the framework of member states' arms export policies

As described in chapter 1, the framework of a country's arms export policy is the legal and regulatory framework governing arms exports. The EU Code of Conduct does not lay down a model for how member states should alter their national legislation in order to fulfil the obligations it entails. A member state's only obligations are to apply the criteria of the Code when making decisions on issuing export licences and to implement the operative provisions relating to consultation and information exchange. How states do this, including whether or not they include a reference to the Code's criteria in their national legislation and what form that reference takes, is left to the member states to decide.

If the Code of Conduct becomes a Council common position, states will be legally obliged to implement the common position at the national level. However, the substance of what they are obliged to do will remain the same; that is, states will still be under no obligation to transform their national legislation, only, as now, to apply the criteria of the Code when making decisions on issuing export licences and to implement the operative provisions. Nonetheless, the adoption of a common position may prompt more member states to include stronger references to the EU Code of Conduct, its criteria and its operative provisions in their national legislation.

As it is, the EU Code of Conduct has already spilled over into national law, with several states including either a direct reference to the Code or its criteria in their national legislation. Under the EU Code of Conduct states are also politically obliged to ensure that their national legislation enables them to control the export

³² Commission of the European Communities, Proposal for a Directive of the European Parliament and of the Council on simplifying terms and conditions of transfers of defence-related products within the Community, document COM(2007) 765 final, Brussels, 5 Dec. 2007.

³³ Ninth Annual Report (note 30), p. 3.

of the goods on the EU Common Military List. The national control lists of all EU member states match the coverage, although not always the categorization, of the EU Common Military List. At first glance, this appears to be an area in which the EU Code of Conduct has had a strong impact on the arms export policies of EU member states. However, the EU Common Military List is drawn directly from the Wassenaar Arrangement's Munitions List, with changes in the Wassenaar list leading more or less automatically to changes in the EU list.³⁴

The EU Code of Conduct does not include a blacklist of countries to which arms exports are excluded. However, EU member states are politically bound to adhere to all EU arms embargoes. An EU arms embargo takes the form of a Council common position. A proposal, made by the Presidency of the Council or one of the EU member states, is examined and discussed by the relevant Council groups. Typically, this is the Council group responsible for relations with the third country concerned and, in all cases, the Foreign Relations Counsellors Working Group (RELEX) and the Committee of Permanent Representatives (COREPER).³⁵ Following the adoption of the Council common position, the text is published in the *Official Journal of the European Union*.³⁶ As of March 2008 there were autonomous EU embargoes against China, Iran, Myanmar, North Korea, Sudan, Uzbekistan and Zimbabwe.³⁷

The impact on the process of member states' arms export policies

As described in chapter 1, the process of a country's arms export policy refers to the process by which the government determines whether or not to grant an export licence. The EU Code of Conduct makes no reference to which government departments should be engaged in export licence decision making, the relative distribution of powers between those departments or the level of parliamentary engagement and oversight. The extent to which the EU Code of Conduct introduces new mechanisms of information exchange and consultation into the export licensing process is discussed above.

³⁴ The current version is Wassenaar Arrangement, Munitions List, WA-LIST (07) 2 Corr., 6 Dec. 2007, <<http://www.wassenaar.org/controllists/>>. With the exception of Cyprus, all EU member states also participate in the Wassenaar Arrangement and are therefore obliged to implement its Munitions List at the national level. Nonetheless, the Council is free to add additional items to the EU Common Military List which do not appear on the Wassenaar Arrangement Munitions List.

³⁵ RELEX examines institutional, legal and financial aspects of proposals made within the CFSP. It prepares the work of COREPER on Joint Actions and ensures inter-pillar consistency. COREPER, which consists of the member states' ambassadors to the EU, prepares the work of the Council.

³⁶ On EU arms embargoes see <http://ec.europa.eu/external_relations/cfsp/sanctions/>; and Shields, V., 'Verifying European Union arms embargoes', Verification Research, Training and Information Centre (VERTIC), 18 Apr. 2005, <<http://www.vertic.org/publications.html>>.

³⁷ The EU embargo on China was not adopted as a Council common position but as a Council declaration. See SIPRI Non-proliferation and Export Controls Project, 'The European Union arms embargo on China', <<http://www.sipri.org/contents/armstrad/contents/expcon/euchiemb.html>>. These embargoes are autonomous in the sense that they go further than existing UN sanctions. See EU Directorate-General for External Relations (note 2).

The EU Code of Conduct's reporting mechanisms, particularly the EU Annual Report, have had a significant impact on levels of public transparency in the field of arms export policies. Indeed, for several EU member states, the information available in the EU Annual Report is the most detailed information available on their arms exports. For the First Annual Report, published in 1999, states were asked to submit only the total value of exports licences granted and actual exports.³⁸ Since the Sixth Annual Report, published in 2004, states have been asked to submit, inter alia, data on the financial value of both arms export licences and actual arms exports, broken down by both destination and EU Common Military List category.³⁹ Aggregated data are also published on export licence denials per destination. For the Ninth Annual Report, published in 2007, 15 of the 25 member states submitted data for all categories requested, as compared to the Sixth Annual Report, when 5 out of 25 did so.⁴⁰

The development of the EU Code of Conduct has also contributed to the production of more, and more detailed, national reports by EU member states. As of March 2008, 19 of the 27 EU member states had published a national report at least once, compared with four of the 15 member states in January 1998.⁴¹ The EU Code of Conduct has created a political obligation for states to collect and report detailed information on arms exports according to a standardized format, something many governments had not done before. The Code has also helped to strengthen the norm of publishing detailed information on arms exports and has helped to make states more aware of transparency levels in other member states. The proposed revised Code will oblige all EU states to publish a national report on arms exports.⁴²

The impact on the outcomes of member states' arms export policies

As described in chapter 1, the outcomes of a country's arms export policy refers to the types of arms the country exports and their destinations. A number of studies have examined the EU's growing engagement in arms export policies and portrayed these developments as amounting to the 'Europeanization' of member states' arms export policy.⁴³ In this sense, Europeanization is generally understood

³⁸ Annual Report in conformity with Operative Provision 8 of the European Union Code of Conduct on Arms Exports, *Official Journal of the European Communities*, C315 (3 Nov. 1999).

³⁹ Sixth Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports, *Official Journal of the European Union*, C316 (21 Dec. 2004).

⁴⁰ Ninth Annual Report (note 30). Nevertheless, questions remain about the usefulness of financial values for assessing how states are interpreting and applying the criteria of the EU Code of Conduct. See Bauer and Bromley (note 21), pp. 32–34. Bulgaria and Romania (EU members from 1 Jan. 2007) submitted data to the Ninth Annual Report but they were not included since their EU membership began after the period covered by the report.

⁴¹ See <http://www.sipri.org/contents/armstrad/atlinks_gov.html> for links to all available national annual reports.

⁴² Anthony and Bauer (note 24), p. 717.

⁴³ See Hofhansel, C., 'The harmonization of EU export control policies', *Comparative Political Studies*, vol. 32, no. 2 (Apr. 1999); Schmitt, B., *A Common European Export Policy for Defence and*

as the process by which areas of domestic policymaking and implementation become increasingly subject to multi-level governance. Hence, according to Sibylle Bauer, in the context of arms export policies Europeanization manifests itself in the emergence of a multilayered arms export policy, where certain decision-making processes have been taken out of the national context and moved into the inter-governmental or supranational level. Hence, via the EU Code of Conduct, decisions that used to be made at the national level are now made at the inter-governmental level via the Council and the Council working groups.⁴⁴

The relevant literature contains several models that seek to account for how such processes of Europeanization have an impact on domestic policies. One approach emphasizes the level of compatibility between EU and domestic arrangements as the most important factor. According to this conception, changes in domestic policy are the product of the degree of ‘mismatch’ or ‘goodness of fit’ between policy models laid down by the EU and existing national practices.⁴⁵ A second approach emphasizes the way in which processes of Europeanization influence the ‘opportunity structures’ at the domestic level by redistributing power and resources.⁴⁶ A third approach focuses on socialization processes, asserting that change is a product of the extent to which forums of policy exchange and interaction created by the EU lead to new ways of thinking among officials and policy-makers.⁴⁷ A further approach seeks to break down the barriers between these different models by applying a hybrid of the three when accounting for the impact of Europeanization.⁴⁸

The structure and workings of the EU Code of Conduct provide parallels with these descriptions of how Europeanization affects domestic policymaking. The criteria and operative provisions of the Code provide, in varying degrees, either mismatch or goodness of fit with national policies. Meanwhile, by allowing the comparison of information on transfers with the Code’s provisions and with the exports

Dual-Use Items?, Occasional Papers no. 25 (Western European Union, Institute for Security Studies: Paris, May 2001); Bauer (note 3); and Bauer, S. and Remacle, E., ‘Theory and practice of multi-level foreign policy: the European Union’s policy in the field of arms export controls’, eds B. Tonra and T. Christiansen, *Rethinking European Union Foreign Policy* (Manchester University Press: Manchester, 2004).

⁴⁴ Bauer (note 3).

⁴⁵ Torreblanca, J. I., ‘Ideas, preferences and institutions: explaining the Europeanization of Spanish foreign policy’, Arena Working Paper Series no. 01/26, University of Oslo, 31 Oct. 2001; and Radaelli, C. M., ‘Europeanisation: solution or problem?’, *European Integration Online Papers*, vol. 8, no. 16 (6 Oct. 2004).

⁴⁶ Knill, C. and Lehmkuhl, D., ‘The national impact of European Union regulatory policy: three Europeanization mechanisms’, *European Journal of Political Research*, vol. 41, no. 2 (Mar. 2002), p. 258.

⁴⁷ Tonra, B., *The Europeanisation of National Foreign Policy: Dutch, Danish and Irish Foreign Policy in the European Union* (Ashgate: Aldershot, 2001), p. 11; and Checkel, J. T., ‘International institutions and socialization in Europe: introduction and framework’, *International Organization*, vol. 59, no. 4 (Oct. 2005), p. 802.

⁴⁸ Knill and Lehmkuhl (note 46), p. 276; and Börzel, T. A. and Risse, T., ‘Conceptualizing the domestic impact of Europe’, eds K. Featherstone and C. M. Radaelli, *The Politics of Europeanization* (Oxford University Press: Oxford, 2003), p. 58.

and licence denials of other EU member states, the Code can also be seen as empowering actors and bodies at the domestic level that favour more restrictive and responsible arms exports. Finally, the exchanges of data, mechanisms of consultation and regular meetings of member states in Brussels to discuss arms export policies in COARM provide a potential framework for processes of socialization.

Hence, based on the existing literature on Europeanization and current knowledge of the workings of the EU Code of Conduct, it is to be expected that the Code has had some impact on the arms export policy outcomes of EU member states during its lifetime. In particular, some level of harmonization of member states' arms export policies in line with minimum standards—the stated aim of the EU Code of Conduct—should be apparent.

There is, naturally, a large body of practical and theoretical literature that is sceptical of the EU's ability to influence states' arms export policies and that questions the extent to which the EU Code of Conduct has any potential to bring either harmonization or increased restrictiveness in this area. For example, from a structural realist perspective the EU is likely to have, at most, a negligible impact on the outcomes of member states arms export policies.⁴⁹ Depending on their political values, states may pursue ethical concerns and use bodies like the EU to pursue them, but they will never allow this to conflict with their core national interests.⁵⁰ In addition, while the stated aim of the EU Code of Conduct is the harmonization of arms export policies in line with agreed minimum standards, this may not be the main priority of EU member states.

Empirical assessments of whether the EU Code of Conduct has had an impact on policy outcomes draw similarly differing conclusions. Among NGOs and in academia, critical voices dominate. Several reports have highlighted examples of lax and conflicting interpretations of the Code's criteria by member states.⁵¹ Similarly, Neil Cooper concludes that the EU Code of Conduct amounts to little more than 'a form of weak regulatory tokenism—part of a broader process by which all but the most dubious of arms transfers (and sometimes not even those) are provided with a formal veneer of legitimacy'.⁵² Meanwhile, it is common practice among defence

⁴⁹ See Waltz, K. N., *Man, the State and War: A Theoretical Analysis* (Columbia University Press: New York, 1959). For a detailed structural realist analysis of key aspects of the Europeanization debate see Hyde-Price, A., "'Normative" power Europe: a realist critique', *Journal of European Public Policy*, vol. 13, no. 2 (Mar. 2006).

⁵⁰ Hyde-Price (note 49), p. 223.

⁵¹ See Crowley, M., 'Transfers to undesirable end users: loopholes in European arms controls', Paper presented at the International Conference on Public Transparency and Arms Trade, Nyköping, 5 May 2001, <<http://svenska-freds.se/transparency/>>; Amnesty International, 'Undermining global security: the European Union's arms exports', 1 Feb. 2004, <<http://www.amnesty.org/en/library/info/ACT30/003/2004/>>; and Mampaey, L., 'Commerce d'armement triangulaire Belgique–France–Tchad: limites et lacunes de la réglementation belge et européen' [Triangular arms trade Belgium–France–Chad: limits and loopholes in Belgian and European legislation], Note d'Analyse, Groupe de recherche et d'information sur la paix et la sécurité (GRIP), 14 Feb. 2008, <<http://www.grip.org/bdg/g0951.html>>.

⁵² Cooper, N., 'What's the point of arms transfer controls?', *Contemporary Security Policy*, vol. 27, no. 1 (Apr. 2006), p. 121.

industry representatives to complain that other governments are interpreting the EU Code of Conduct less strictly than their own, leading to a loss of competitive advantage.⁵³

A recent study based on data in the SIPRI Arms Transfers Database sought to examine whether or not the pattern of EU member states' arms exports had changed since the EU Code of Conduct was adopted in 1998 compared with the period prior to 1998.⁵⁴ In particular, the study examined exports to certain types of destinations that, broadly, were the targets of the norms laid down in the EU Code of Conduct, such as countries in conflict, countries where human rights abuses take place and low-income countries. The study found that, since the introduction of the EU Code of Conduct, there has been an overall reduction in exports from EU member states to countries in conflict and countries where human rights abuses take place and that this reduction was stronger than the overall global trend. However, the study found no overall reduction in exports to the other types of destination examined and little evidence of any increase in harmonization of EU member states' arms exports.

Similar studies have focused on exports of small arms and light weapons from the EU.⁵⁵ There is some statistical evidence that assisting member states in blocking exports of SALW that are likely to be diverted to the illegal market is one of the key ways in which the EU Code of Conduct is being used. Criterion 7 of the Code—which requires member states to refuse an export licence if there is 'a risk that the equipment will be diverted within the buyer country or re-exported under undesirable conditions'—is the most frequently used of the eight criteria. Across the EU in 2006, 167 export licence requests were denied under criterion 7; of these, 120 related to SALW.⁵⁶ However, the available assessments of the export of SALW during the lifetime of the EU Code of Conduct conclude that there has been no discernible decrease in transfers to destinations of concern.⁵⁷

⁵³ 'There are always going to be discrepancies in decision making between the national governments on export licence applications which they receive from their companies.' Salzmann, B., Exports Director of the Defence Manufacturer's Association and Secretary of the Export Group for Aerospace and Defence, Evidence before the British House of Commons Quadripartite Select Committee, 31 Jan. 2006, <<http://www.publications.parliament.uk/pa/cm200506/cmselect/cmquad/873/6013101.htm>>.

⁵⁴ Bromley, M. and Brzoska, M., 'Towards a common, restrictive EU arms export policy? The impact of the EU Code of Conduct on major conventional arms exports', *European Foreign Affairs Review* (forthcoming 2008).

⁵⁵ See Jackson, T., Marsh, N. and Thurin, A., 'The efficacy of EU export control measures concerning small arms and light weapons', United Nations Institute for Disarmament Research (UNIDER), *Small Arms and Light Weapons Transfers* (UNIDER: Geneva, 2005); and Trinchieri, L., *Is the 1998 Code of Conduct on Arms Exports Adequate to Support the EU's Promotion of Human Rights? Assessing the Effectiveness of Criterion 2 in Curbing the Exports of Small Arms to Third Countries*, *Hamburger Beiträge zur Friedensforschung und Sicherheitspolitik* no. 149 (Institut für Friedensforschung und Sicherheitspolitik: Hamburg, Jan. 2008).

⁵⁶ Ninth Annual Report (note 30).

⁵⁷ See Jackson, Marsh and Thurin (note 55); and Trinchieri (note 55).

3. Case study: the Czech Republic

The Czech Republic's engagement with the EU Code of Conduct

The Czech Republic was not a member of the European Union when the EU Code of Conduct on Arms Exports was agreed in June 1998. However, in the run-up to accession in May 2004, the EU played an active role in influencing the development of arms export policy in the Czech Republic, as it did with all acceding states.⁵⁸ From 1988, the European Community encouraged political reforms by its eastern neighbours in all areas, including arms export policies. This was achieved through trade and cooperation agreements, aid, association agreements and, finally, conditional offers of EU membership.⁵⁹ Heather Grabbe identifies five ways in which the EU used the accession process to promote changes in policy formulation and implementation among Central and Eastern European states. Three of these mechanisms—benchmarking and monitoring, provision of legislative and institutional templates, and advice and twinning—were employed by the EU in altering the arms export policies of acceding states prior to 2004.⁶⁰

Benchmarking and monitoring refers to the process whereby the EU ranked the overall progress of applicants and provided examples of best practice for the applicants to seek to emulate.⁶¹ During the process of accession, the issue of arms export policies and compliance with the EU Code of Conduct was frequently mentioned in accession reports, including those on the Czech Republic. For example, a 2003 European Commission assessment report said that the Czech Republic's implementation of the EU Code 'should be enhanced'.⁶²

The provision of legislative and institutional templates is probably the most important tool with respect to arms export policies. The 10 states that acceded to the EU in 2004, along with Bulgaria, Norway and Romania, signed up to the principles of the EU Code of Conduct shortly after the agreement's implementation in 1998.⁶³ All these states subsequently took steps to include references to the EU Code of Conduct's criteria in their export control legislation and to bring their policies into line with the Code. Such steps included harmonizing national control lists with the EU Common Military List. However, until they formally joined the EU,

⁵⁸ The 10 states that acceded to the EU in May 2004 are Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia.

⁵⁹ Smith (note 15), p. 187.

⁶⁰ Grabbe, H., 'How does Europeanization affect CEE governance? Conditionality, diffusion and diversity', *Journal of European Public Policy*, vol. 8, no. 6 (Dec. 2001), p. 1019.

⁶¹ Grabbe (note 60), p. 1022.

⁶² European Commission, 'Comprehensive monitoring report on the Czech Republic's preparations for membership', 2003, <http://ec.europa.eu/enlargement/archives/key_documents/reports_2003_en.htm>, p. 50.

⁶³ 'Non-EU members join bloc's arms code', Reuters, 3 Aug. 1998.

Box 3.1. Key Czech legislation on arms export controls**Federal Act no. 256/1990 of 4 May 1990 listing the import and export of certain objects and activities for which a foreign trading license is required**

Introduces administrative requirements for arms transfer controls, including requirements for licences for exports and imports

Parliamentary decision, 21 March 1991

Introduces a requirement for a general foreign trade licence, which all arms exporters must have prior to applying for specific arms export licences

Act no. 38/1994 of 15 February 1994 on foreign trade in military materials

Defines the procedures for issuing permits to engage in foreign trade in military equipment and conditions under which an export licence can be granted; also defines the roles played by the different government departments in the licensing process

Act no. 98/2000 of 4 April 2000 on the Implementation of International Sanctions to Maintain International Peace and Security

Changes the domestic procedures relating to international sanctions, enabling a faster response to United Nations Security Council and European Union arms embargoes

Act no. 310/2002 of 13 June 2002 amending [inter alia] Act no. 38/1994

Amends Act no. 38/1994, expanding the range of goods subject to control to include trade in electronics and deals implemented via the Internet or by fax

Act no. 357/2004 of 22 May 2004 amending Act no. 38/1994 etc.

Amends Act No. 38/1994, introducing controls on arms brokering in accordance with EU Council Common Position 2003/168/CFSP

Proposed law, 2008

In October 2004 the Czech National Security Council approved a set of draft proposals for amending Act no. 38/1994. In January 2005 the material was submitted to the Czech Government, which decided that the act should be amended. The purpose of the amendment is to adapt Czech export controls 'to the requirements of membership in the EU and [to make the system] more flexible and effective'. However, the process could not be finished prior to the June 2006 parliamentary elections. The current Czech Government intends to present the new version of the law during first six months of 2008.

Sources: Kiss, Y., SIPRI, *The Defence Industry in East-Central Europe: Restructuring and Conversion* (Oxford University Press: Oxford, 1997), p. 18; 'Czech Senate passes bill toughening control over arms trade', ČTK, Prague, 24 Apr. 2002; SIPRI Non-proliferation and Export Control Project, 'Czech Republic: General Sanctions Act', Mar. 2004, <<http://www.sipri.org/contents/expcon/embcze.html>>; Czech Ministry of Foreign Affairs, *Annual Report on Export Control of Military Equipment and Small Arms for Civilian Use in the Czech Republic in 2005* (Ministry of Foreign Affairs: Prague, 2006), pp. 4–5; Czech Ministry of Foreign Affairs, *Annual Report on Export Control of Military Equipment and Small Arms for Civilian Use in the Czech Republic in 2006* (Ministry of Foreign Affairs: Prague, 2007), p. 4. The texts of these laws as promulgated in *Sbírka Zákonů* are available at <<http://www.mvcr.cz/sbirka/>> (in Czech).

the acceding states did not apply the Code's operative provisions in relation to the exchange of information and the various consultation mechanisms.⁶⁴

Advice and twinning aimed at helping Central and Eastern European countries to adapt their administrative and democratic institutions to comply with EU membership requirements by learning from member state experiences. This could involve the organizing of meetings and seminars or the secondment of officials from EU member states to work in acceding countries' ministries. In the run-up to May 2004, member states engaged in efforts aimed at improving the export controls of the acceding states and bringing their legislation into line with the EU Code of Conduct.⁶⁵ Following the signing of the Treaty of Accession on 16 April 2003, all 10 acceding states acquired the status of 'active observers' to the EU Code of Conduct. Representatives from each of their governments participated at COARM meetings and took part in discussions, although without the right to participate in final decision making.

Following accession to the EU on 1 May 2004, representatives from the new member states became full participants at COARM meetings. They began to participate in the consultation mechanism on export licence denials and undercutting and to publicly report on export licences granted and actual exports.⁶⁶ The Czech Ministry of Foreign Affairs (MFA) has become a vocal supporter of the EU Code of Conduct and a keen advocate of its conversion into a Council common position. As one official in the ministry put it, the Czech Republic's aim is a 'legally binding instrument interpreted in the same manner by all member states'.⁶⁷ The Czech Government prides itself on being among the most advanced states in terms of implementing the EU Code of Conduct and abiding by its norms. In 2004 the Czech Deputy Foreign Minister, Jan Winkler, stated that the Czech Republic had 'altered the method of issuing licenses so that it respects in the best possible way the requirements of this code'.⁶⁸

The impact on the framework of Czech arms export policy

The key pieces of Czech legislation in the field of arms export controls are listed in box 3.1. The list of military goods subject to control matches the coverage but not the exact structure of the EU Common Military List. The 24 categories of the

⁶⁴ Schmitt, B. (ed.), *EU Enlargement and Armaments: Defence Industries and Markets of the Visegrad Countries*, Occasional Paper no. 54 (EU Institute for Security Studies: Paris, Sep. 2004), p. 13.

⁶⁵ E.g. on 27–28 May 2003 the Czech Republic hosted an informal meeting of experts from EU member states and candidate countries on arms export controls. Czech Ministry of Foreign Affairs, *Export Controls in the Czech Republic in 2003: Controls of Transfers of Military Equipment Production, Export and Import of Small Arms and Light Weapons* (Ministry of Foreign Affairs: Prague, 2004), p. 5.

⁶⁶ Schmitt (note 64), p. 13.

⁶⁷ Senior official, Czech Ministry of Foreign Affairs, Interview with author, 18 Sep. 2007.

⁶⁸ Baroch, P., 'Defense industry is criticizing the authorities for complicating the export of weapons', *Hospodarske Noviny*, 30 Aug. 2004, p. 2, Translation from Czech, World News Connection, National Technical Information Service (NTIS), US Department of Commerce.

Czech control list are laid down in Act no. 38/1994 and will be updated in the upcoming 2008 law.⁶⁹

During the cold war, there were no explicit criteria governing Czechoslovakia's arms export licence decision making. All decisions on defence and security policy—including arms transfers—were taken by the State Defence Council, composed of leading state and Communist Party representatives.⁷⁰ In January 1990 the foreign minister of Czechoslovakia's first post-Communist government, Jiří Dienstbier, announced that the country would immediately end all international arms exports.⁷¹ According to Yudit Kiss, the decision was driven by 'both the strong moral commitment of the new government and the need to adjust to the fall in demand that occurred in the late 1980s'.⁷² Opposition to these policies from Slovakia, where the bulk of the Czechoslovak arms industry was located, was one of the catalysts of the eventual break-up of Czechoslovakia on 1 January 1993.⁷³ However, as Czech domestic defence procurement continued to dwindle, foreign markets were again sought and in June 1993 the Czech Government announced that it was abandoning its restrictive policies.⁷⁴

Since the Czech government alligned itself with the EU Code of Conduct in 1998, licence applications have been assessed on a case-by-case basis against the eight criteria of the Code.⁷⁵ The Czech Republic observes all arms embargoes imposed by the EU, the Organization for Security and Co-operation in Europe (OSCE) and the United Nations.⁷⁶

EU-level processes, in particular the EU Code of Conduct, have clearly played an important role in guiding the development of Czech legislation on arms export controls. Act no. 357/2004 was submitted shortly after the Czech Republic acceded to the EU, with the express intention of harmonizing Czech legislation with EU requirements.⁷⁷ As a Czech Government spokeswoman put it, 'Changes were

⁶⁹ Czech Ministry of Foreign Affairs, *Annual Report on Export Control of Military Equipment and Small Arms for Civilian Use in the Czech Republic in 2006* (Ministry of Foreign Affairs: Prague, 2007), p. 4. Annual reports for 2001–2004 and 2006 are available at <<http://www.mzv.cz/wwwo/default.asp?ido=15135&idj=2&amb=1>>.

⁷⁰ Matousek, J., 'Czechoslovakia', ed. I. Anthony, SIPRI, *Arms Export Regulations* (Oxford University Press: Oxford, 1991), p. 53.

⁷¹ Whitney, C. R., 'Prague aide says country will end weapons exports', *International Herald Tribune*, 25 Jan. 1990, p. 7.

⁷² Kiss, Y., SIPRI, *The Defence Industry in East-Central Europe: Restructuring and Conversion* (Oxford University Press: Oxford, 1997), p. 20. The Czechoslovak Government may have been motivated by efforts to distance itself from the policies of the Communist government, which had been repeatedly criticized by the West for its arms exports during the cold war.

⁷³ Hilde, P. S., 'Slovak nationalism and the break-up of Czechoslovakia', *Europe-Asia Studies*, vol. 51, no. 4 (June 1999).

⁷⁴ McNally, B., 'Czechs revive arms industry, exports', *Defense News*, 21–27 June 1993, p. 1.

⁷⁵ Czech Ministry of Foreign Affairs (note 69), p. 8.

⁷⁶ Czech Ministry of Foreign Affairs (note 69), p. 19.

⁷⁷ 'Klaus signs law on tougher terms for arms transport', *Prague Daily Monitor*, 2 June 2005.

needed to bring Czech law into line with that of the European Union'.⁷⁸ However, many of the fundamental changes to Czech export control legislation were made before the country began the process of accession to the EU. In the early 1990s the strongest influence on developments in these areas were internal Czech political processes and the US Government, which encouraged reforms in export control mechanisms in Central and Eastern European states, offering access to Western technologies in return.⁷⁹ Much attention was also paid to strengthening Czech arms export regulations during the run-up to accession to the North Atlantic Treaty Organization (NATO) in 1999.⁸⁰ During this period NATO members put significant pressure on acceding states from Central and Eastern Europe to tighten up their export control mechanisms and to do more to block transfers to countries under UN arms embargoes and other sensitive destinations, particularly those that had the potential to be used against NATO forces.⁸¹ This pressure was particularly effective due to the anticipated benefits to the domestic defence industries of these countries that NATO membership was expected to bring, via increased access to foreign markets and increased spending on procurement.⁸²

The impact on the process of Czech arms export policy

In the Czech Republic, the Licensing Authority, attached to the Ministry of Industry and Trade, is responsible for authorizing export licences for arms and dual-use goods.⁸³ The ministries of Foreign Affairs, Interior and Defence are also involved in assessing each licence application. The Ministry of Foreign Affairs is responsible for assessing all licences from the perspective of Czech foreign policy interests and commitments, the Ministry of Interior from the perspective of 'security related questions' and the Ministry of Defence from the perspective of 'military security'.⁸⁴ Information on licence applications is shared via the US-designed 'Tracker system', which allows for the real-time sharing of information on licence applications. The opinion of each ministry involved is binding, giving each a strong say in Czech arms export policy. The MFA is responsible for compiling and publishing the annual report on arms exports (see below).

⁷⁸ 'Czech government stiffens arms sales restrictions', Agence France-Presse, 5 Jan. 2005, <<http://www.spacewar.com/2005/050105184814.b6hcvlre.html>>.

⁷⁹ Silverberg, D., 'Poles, Czechs, Hungarians may adopt Western export controls', *Defense News*, 14 May 1990, p. 6.

⁸⁰ See Bromley, M., 'The Europeanisation of arms export policy in the Czech Republic, Slovakia, and Poland', *European Security*, vol. 16, no. 2 (June 2007), p. 217.

⁸¹ Ringer, E., 'A roadblock to NATO?', *Warsaw Voice*, 28 May 1995.

⁸² Tůma, M., *Relics of Cold War: Defence Transformation in the Czech Republic*, SIPRI Policy Paper no. 14 (SIPRI: Stockholm, Sep. 2006).

⁸³ Czech Ministry of Foreign Affairs, *Annual Report on Export Control of Military Equipment and Small Arms for Civilian Use in the Czech Republic in 2005* (Ministry of Foreign Affairs: Prague, 2006), pp. 4–5.

⁸⁴ Czech Ministry of Foreign Affairs (note 83), pp. 4–5

The strong voice afforded to the MFA in the licensing process is welcomed in the NGO sector. According to Eva Dobrovolná, Press Officer with Amnesty International Czech Republic, the Czech MFA is aware of many of the concerns of NGOs about the risks associated with arms exports, since they are under a greater obligation to consider the situation in the country of destination.⁸⁵

The level of parliamentary engagement in Czech arms export policy has traditionally been minimal. Until 2004 parliamentary oversight was limited to occasional public statements by members of the Chamber of Deputies (the lower house of the Czech Parliament) in relation to specific deals and there had been no parliamentary debates on either the national reports on arms exports or arms export policy in general.⁸⁶ However, a parliamentary subcommittee on export controls, the Subcommittee on the Control of Exports of Military Equipment and External Economic Relations of the Chamber Foreign Affairs Committee, was created in 2005. Following the June 2006 parliamentary elections, it is now a subcommittee of the Chamber Defence Committee.⁸⁷ Available information on the work of this subcommittee is limited. According to Dobrovolná, results have been poor and no discernible outcomes have emerged to date.⁸⁸

The level of public transparency in Czech arms export policy has increased significantly since 1998. Prior to 1998 publicly available information was limited to submissions to the UN Register on Conventional Arms (UNROCA) and occasional press statements giving basic information on the total value of exports and the names of certain key recipients.⁸⁹ In November 2000 the Czech National Security Council adopted a resolution instructing the relevant ministries to produce an annual report with detailed information on imports and exports of small arms and light weapons.⁹⁰ These reports have included information on the number of SALW produced and exported, but give no information on which weapons were exported to which country. In 2003 the Czech MFA indicated that it was willing to go further and produce a more detailed report that would cover all exports of military equipment, but other ministries were reportedly less enthusiastic about the pro-

⁸⁵ Dobrovolná, E., Press Officer, Amnesty International Czech Republic, Interview with the author, 18 Sep. 2007.

⁸⁶ Pospíšil, F., *Corruption in Arms Trade* (Transparency International Czech Republic: Prague, 2004).

⁸⁷ Czech Ministry of Foreign Affairs (note 69), p. 6.

⁸⁸ Dobrovolná (note 85).

⁸⁹ E.g. in Mar. 1997 the Czech Trade and Industry Minister, Vladimír Dlouhý, announced that Czech arms exports in 1996 amounted to \$117 million, a fall of 24% compared with 1995. Dlouhy also stated that Tunisia, India, Poland and Slovakia were among the most important customers. ČTK, 'A reduced volume of exports and imports', *Lidove Noviny*, 5 Mar. 1997, p. 12, Translation from Czech, World News Connection, NTIS.

⁹⁰ Czech National Security Council, Resolution no. 138, 20 Nov. 2000, available at <<http://www.vlada.cz/scripts/detail.php?id=18515>> (in Czech). See also Czech Ministry of Foreign Affairs, 'Report on the Czech Republic's approach to international negotiations concerning small arms and light weapons, exports and imports of small arms and light weapons and the numbers of small arms and light weapons in the possession of arms permit and arms licence holders in the Czech Republic in the year 2001', 2002, <http://www.mzv.cz/_dokumenty/eindex.html>, p. 2.

posál.⁹¹ The first Czech national report on arms exports was published in late 2004, making the Czech Republic the first state among the 10 that acceded to the EU that year to publish such a report.⁹² Subsequent editions have increased the amount of information included, providing information on licence denials and the type of end-user. The Czech Republic also submits data to the EU Annual Report on export licences granted and actual exports, broken down by both destination and EU Common Military List category.

Although the Czech Republic began publishing its reports on SALW before its entry into the EU, it is clear that EU membership, and the requirements of the EU Code of Conduct, have been the most significant force driving increases in arms exports transparency. According to one official of the Czech MFA, 'EU membership was the inspiration'.⁹³ Increases in transparency have also been driven by domestic pressures, particularly from NGOs calling for greater governmental openness in this area. The Working Group on Arms Trade Control, founded in June 2003, has pushed hard for increased transparency in Czech arms exports.⁹⁴ However, to a large extent the NGOs have been able to achieve progress in this field by highlighting the commitments made under the EU Code of Conduct and by citing the standards in other EU member states.

Engagement with the EU Code of Conduct has had a strong impact on transparency in arms exports among the 12 states that have joined the EU since 2004.⁹⁵ For the Seventh EU Annual Report, published in December 2005, all 10 states that joined the EU in 2004 submitted financial data on either the value of licences granted or the value of national exports, disaggregated by EU Common Military List category and by country of destination.⁹⁶ This was only the second year in which these states were asked to submit data to the EU Annual Report and the first year in which they were obliged to do so.⁹⁷ However, while the impact of EU membership on arms exports transparency has been positive, it has not been uni-

⁹¹ In Oct. 2003 an MFA spokesperson said that, while the MFA was in favour of producing a report, 'the Industry Ministry objects and says that this is not yet compatible with our legislation'. Zeman, M., 'Activists criticize arms exports: Transparency International says Czech Republic violates EU Code', *Lidove Noviny*, 7 Oct. 2003, Translation from Czech, World News Connection, NTIS.

⁹² The report covered imports and exports during 2003 and gave the financial value of transfers, broken down by destination and 8 weapon categories. Czech Ministry of Foreign Affairs (note 65).

⁹³ Senior official, Czech Ministry of Foreign Affairs (note 67).

⁹⁴ The Working Group on Arms Trade Control was managed by a coalition of Czech NGOs: Amnesty International, People in Need Foundation and Transparency International. See <<http://www.transparency.cz/index.php?lan=uk&id=545>>.

⁹⁵ In addition to the 10 states that joined the EU in 2004 (see note 58), Bulgaria and Romania joined in Jan. 2007.

⁹⁶ Seventh Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports, *Official Journal of the European Union*, C328 (23 Dec. 2005).

⁹⁷ The Sixth Annual Report, released in 2004, covers export licences issued and actual exports in 2003. The states that joined the EU in 2004 were therefore not obliged to submit data, but they were invited to submit figures for 2003 if they were available—8 of them did. Sixth Annual Report (note 39),

Table 3.1. Czech exports of military equipment, 1997–2006

Figures are in € m. at current prices (unadjusted for inflation).

Year	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Exports	161	92	90	87	61	77	83	90	88	93

Source: Czech Ministry of Foreign Affairs, *Annual Report on Export Control of Military Equipment and Small Arms for Civilian Use in the Czech Republic in 2006* (Ministry of Foreign Affairs: Prague, 2007), p. 43.

form. The decision to publish a national report on arms exports, and the amount of information to include, remains at the national level. By March 2008, six of the 12 states that have joined the EU since 2004 had published a national report on arms exports.⁹⁸ Of these states, the Czech Republic has gone further than most, for example, by providing information on denials and the type of end-user. Hence, while the EU Code of Conduct may promote transparency and contains minimum standards, the decision on how far to go beyond the minimum requirements remains at the national level.

The impact on the outcomes of Czech arms export policy

According to the SIPRI Arms Transfers Database, the Czech Republic was the 19th biggest exporter of major conventional weapons in Europe over the period 1998–2007.⁹⁹ It has fallen to 26th place for the shorter period 2003–2007. According to Czech Government data, the country exported €921 million of military equipment over the period 1997–2006. Since falling to €61 million in 2001 the value of Czech arms exports has seen more or less consistent year-on-year increases (see table 3.1). According to the Czech MFA, during 2006, 43 per cent of the value of licences issued was for exports to states in Asia, 28 per cent was for EU member states, 9 per cent was for North America, 8 per cent was for Africa, 6 per cent was for non-EU Europe, 5 per cent was for the Middle East and 1 per cent was for Latin America.¹⁰⁰

During the cold war, Czechoslovakia was the second largest armaments manufacturer in the Warsaw Treaty Organization and for the period 1981–90 it was the world's seventh biggest arms exporter.¹⁰¹ The disruption caused by the collapse of the Warsaw Treaty Organization left Czechoslovakia with a production overcapacity. Since then, the industry in the Czech Republic has experienced some recovery, partly due to the increases in military spending required by NATO membership and to the offset agreements that accompanied large-scale acquisitions

⁹⁸ These countries are Bulgaria, the Czech Republic, Estonia, Romania, Slovakia and Slovenia.

⁹⁹ SIPRI Arms Transfers Database (note 11).

¹⁰⁰ Czech Ministry of Foreign Affairs (note 69), p. 26.

¹⁰¹ SIPRI Arms Transfers Database (note 11).

of military equipment from Europe and the United States.¹⁰² Even so, the Czech Republic has struggled to maintain its levels of arms exports and has failed to repeat the successes achieved during the cold war. In recent years Czech arms exports have mainly focused on five areas: small arms and light weapons, military trucks, military aircraft, military electronics, and surplus Czech military goods.

The Czech SALW industry shrunk dramatically during the 1990s, although a number of companies—including Sellier & Bellot and Poličské strojírný—have survived, supported by state orders, government assistance and foreign demand in both the civil and military markets.¹⁰³ However, the majority of Czech SALW exports in recent years have consisted of surplus Czech military equipment (see below).

Military trucks manufactured by Tatra make up a significant part of Czech arms exports. In 2007 Tatra announced a 22 per cent increase in total sales, to 4.5 billion koruna (€154 million) during 2006. Military sales accounted for 30 per cent of total sales.¹⁰⁴

During the cold war period, the Czech-based AERO Vodochody was a significant producer and exporter of military aircraft, such as the L-29 trainer aircraft and the L-39 trainer or combat aircraft. Between 1960 and 1991 the company exported more than 5787 aircraft,¹⁰⁵ but AERO Vodochody's sales plummeted following the collapse of the Soviet Union. In recent years the majority of the company's exports have consisted of refurbishment and upgrade work on aircraft supplied during the cold war—in 2006 transfers of aircraft spare parts and related upgrade work accounted for 29 per cent of Czech arms sales.¹⁰⁶ Important recent deals include a September 2002 agreement covering the refurbishment of 25 L-39 aircraft for Thailand.¹⁰⁷

Among the most important companies in the military electronics sector is Era, manufacturer of passive electronic surveillance systems, including the Vera system which can monitor up to 200 individual targets simultaneously. Important deals in recent years include a 2005 agreement to sell one Vera radar to the USA for evaluation purposes and a July 2005 agreement, valued at 100 million koruna (€3 million) to sell one Vera radar to Estonia.¹⁰⁸

Sales of surplus equipment have formed a significant proportion of Czech arms exports in recent years. Indeed, most Czech sales of military equipment since the break-up of the Soviet Union have been of second-hand goods made available following the downsizing of the Czech military. During the Communist era the

¹⁰² Schmitt (note 64).

¹⁰³ Kiss, Y., *Small Arms and Light Weapons Production in Eastern, Central, and Southeast Europe*, Occasional Paper no. 13 (Small Arms Survey: Geneva, Oct. 2004), p. 13.

¹⁰⁴ Anderson, G., 'Tatra announces 22% sales boost', *Jane's Defence Industry*, July 2007, p. 13.

¹⁰⁵ SIPRI Arms Transfers Database (note 11).

¹⁰⁶ ČTK, 'Czech arms exports in 2006 highest in 9 years—press', *Prague Daily Monitor*, 4 May 2007.

¹⁰⁷ *Air Forces Monthly*, Dec. 2005, p. 23.

¹⁰⁸ 'Estonia buys VERA-E system', *Jane's Defence Weekly*, 6 July 2007, p. 4.

Czechoslovak military consisted of 197 000 troops, compared with 23 000 in 2008.¹⁰⁹ Following reforms in 2003, the Czech armed forces declared as surplus 300 tanks, 1200 armoured vehicles, 100 aircraft and helicopters, and several tonnes of small arms and ammunition.¹¹⁰ Nonetheless, according to Richard Hlavatý, Managing Director of the Association of the Defence Industry of the Czech Republic (Asociace obranneho prumyslu, AOP), remaining stockpiles of second-hand Czech weaponry will be completely exhausted in one or two years.¹¹¹ Estimating the impact that this will have on Czech military sales is difficult, since official data do not distinguish between sales of second-hand and newly manufactured goods. Important deals in recent years include an April 2007 agreement covering the sale of seven second-hand P-18 and P-19 air-defence radars to Mozambique for €0.7 million;¹¹² an April 2007 decision to donate six Mi-17 and six Mi-24 helicopters to Afghanistan;¹¹³ a February 2007 decision to donate 20 000 Mod 58 sub-machine guns and 650 light machine guns, worth 30 million koruna (€1 million), to Afghanistan;¹¹⁴ and a 2005 agreement covering the sale of 30 D-30 122-mm artillery pieces and 55 T-72 tanks to Georgia.¹¹⁵

A number of commentators have criticized the lack of government support for the Czech arms industry. In 2000 the National Armaments Office was created to clarify the relationship between the government and industry. However, its precise responsibilities and mission remain poorly defined.¹¹⁶ According to one defence industry analyst, government support for the Czech defence-related industry does not involve any kind of financial commitment.¹¹⁷

During the late 1990s and 2000s, NGO groups criticized the Czech Republic for permitting sales which, although legal, did not conform with the spirit of the EU

¹⁰⁹ International Institute for Strategic Studies (IISS), *The Military Balance 1988–1989* (IISS: London, 1988), p. 47; and International Institute for Strategic Studies, *The Military Balance 2008* (Routledge: Abingdon, 2008), p. 114.

¹¹⁰ 'Czech military plans to sell thousands of weapons, ammunition abroad', ČTK, 8 Feb. 2006.

¹¹¹ Hlavatý, R., Managing Director, Association of the Defence Industry of the Czech Republic (Asociace obranneho prumyslu, AOP), Interview with the author, 19 Sep. 2007.

¹¹² Karniol, R., 'Mozambique buys surplus Czech radars', *Jane's Defence Weekly*, 25 Apr. 2007, p. 15.

¹¹³ ČTK, 'Afghan military to get Czech helicopters in fall', *Prague Daily Monitor*, 29 Aug. 2007. Before being handed over to Afghanistan the aircraft will undergo several hundred million koruna worth of refurbishment and upgrade work at the LOM Praha state aircraft repair works in Prague (100 million koruna = €3.6 million). This cost will be covered by NATO. 'Go-ahead for Czech Mi-17/24 donation to Afghanistan', *Air Forces Monthly*, June 2007, p. 10.

¹¹⁴ Holdanowicz, G., 'ANAAC receives boost', *Jane's Defence Weekly*, 9 May 2007, p. 39.

¹¹⁵ UN Register on Conventional Arms, <<http://disarmament.un.org/cab/register.html>>; and Fio- renza, N., 'In search of acceptance', *Jane's Defence Weekly*, 10 May 2006, p. 44. The sales to Georgia provoked criticism from the Russian Government, which claimed that the weapons could be used to target peacekeepers based in the breakaway Georgian regions of Abkhazia and South Ossetia. 'Moscow concerned, as NATO states deliver arms to Georgia', *Civil Georgia*, 13 Sep. 2005, <<http://www.civil.ge/eng/article.php?id=10736>>; and Darling, D., 'Serbian Government reins in arms exporters', Forecast International, Market Alert News Center, 13 Oct. 2006.

¹¹⁶ Tůma (note 82), p. 45.

¹¹⁷ Fučík, J., Independent defence industry analyst, Interview with the author, 19 Sep. 2007.

Code of Conduct. In September 1999 the Czech Government agreed to export T-54 and T-55 main battle tanks to Yemen. Poland had previously halted a shipment to Yemen of 20 T-55 tanks after determining that an earlier shipment of 20 T-55 tanks had been diverted to Sudan.¹¹⁸ In 2002 the Czech Republic permitted the sale of 20 L-39 Albatross light combat aircraft to Yemen despite its record as a conduit of arms to embargoed states.¹¹⁹ Responding to criticism over the deal, a Czech Government official ignored the criteria of the EU Code of Conduct, arguing that as long as Yemen was not subject to an arms embargo it was a legitimate recipient of arms.¹²⁰

In the run-up to EU accession in May 2004 and in the years since, there have been signs of increased restraint in the export of arms from the Czech Republic. In 2004 the Czech Government revealed that it had rejected an application to export pistols to Colombia despite the fact that Czech firms had sold arms to that country between 1999 and 2002.¹²¹ In 2005 the Czech Government revealed that it had blocked exports to Iraq and Namibia following concerns that the weapons might be diverted to different end-users.¹²² In 2006 the Czech Government issued 36 licence denials covering exports to Azerbaijan, Bulgaria, Colombia, the Democratic Republic of the Congo, Georgia, Guinea, Jordan, Senegal, Serbia, Sri Lanka, Syria, Thailand, Uganda, Venezuela and Viet Nam.¹²³

The Czech defence industry has been a vocal critic of what it sees as an overly restrictive policy, which it argues is having a detrimental effect on Czech arms exports.¹²⁴ In the view of Hlavatý, the Czech Government was far more rigid in its interpretation of the EU Code of Conduct than neighbouring countries.¹²⁵ The question of whether to grant or deny export licences has been a reported source of inter-ministerial dispute within the Czech Government. A 2003 study reported that ‘various officials state that there is a heated debate and general lack of agreement about the kinds of end-users and destinations that are appropriate for Czech arms exports’.¹²⁶

The EU Code of Conduct is the most important international mechanism in terms of informing day-to-day decision making on export licensing.¹²⁷ Indeed, the

¹¹⁸ Blanche, E., ‘Czech Republic to sell upgraded MBTs to Yemen’, *Jane’s Defence Weekly*, 29 Sep. 1999, p. 18.

¹¹⁹ Farnam, A., ‘Iraq buying arms in East Europe’s black markets’, *Christian Science Monitor*, 11 Sep. 2002.

¹²⁰ Human Rights Watch, ‘Arms trade, human rights, and European Union enlargement: the record of candidate countries’, Briefing paper, 8 Oct. 2002, <http://www.hrw.org/backgrounder/arms/eu_briefing.htm>.

¹²¹ Kononczuk, P., ‘Defense firms protest restraints’, *Prague Post*, 2 Sep. 2004.

¹²² Tylova, K., ‘Czech Foreign Ministry report on arms exports in 2004 shows growing sales to EU’, *Lidove Noviny*, 23 Dec. 2005, Translation from Czech, World News Connection, NTIS.

¹²³ Czech Ministry of Foreign Affairs (note 69), p. 7.

¹²⁴ Baroch (note 68).

¹²⁵ Hlavatý (note 111).

¹²⁶ Grillot, S. R., *Monitoring the Implementation of Small Arms Control: Central and Eastern Europe*, Eurasia Series no. 1 (International Alert: London, 2003), pp. 16–17.

¹²⁷ Senior official, Czech Ministry of Foreign Affairs (note 67).

Czech MFA is keen to strengthen the role that the denial system plays in Czech licensing decisions. According to one MFA official, the ministry is willing to contemplate the insertion of a clause related to denials into a new law.¹²⁸

There is also evidence that non-EU pressures have played a significant role in guiding arms export policy outcomes in a number of key instances. For example, the USA has also exerted strong pressure on the Czech Republic in relation to specific arms deals. In 2004 Era reached an agreement for the sale of 10 Vera radars to China. However, the sale was blocked by the Czech Government due to US opposition.¹²⁹ In August 2006 it was reported that the US Government had successfully persuaded the Czech Government to block a proposed transfer of L-159 trainer aircraft to Venezuela, something it was able to affect due to the presence of US produced subsystems in the aircraft.¹³⁰ Finally, despite the Czech Republic's strong engagement with the EU Code of Conduct, it is still clear that Czech export markets often differ from those of other EU member states, particularly West European countries. In 2005 the Czech Republic accounted for more than half of all EU exports of military equipment to Mali (100 per cent of EU exports), Nigeria (100 per cent), Syria (100 per cent), Sri Lanka (83.3 per cent), Viet Nam (77.1 per cent), Georgia (74.4 per cent), Lebanon (71.6 per cent), Azerbaijan (67.5 per cent), Kazakhstan (62.2 per cent), Afghanistan (60.4 per cent) and Ukraine (54 per cent).¹³¹ In many cases these are countries which purchased Czech aircraft and military equipment during the cold war. The Czech Republic has been unwilling to block licences for spare parts and refurbishment work to these states, a position which is similar to that of other EU member states. According to one official in the MFA, 'Our exporters are bound by agreements—between them and the respective country—which says they are responsible for maintaining the fleet.'¹³²

¹²⁸ Senior official, Czech Ministry of Foreign Affairs (note 67).

¹²⁹ Gertz, B., 'Radar sale to China stopped', *Washington Times*, 26 May 2004. According to media reports, the US Government also succeeded in persuading the Czech Government to block transfers of Vera radars to Pakistan and Viet Nam. Kellner, T., 'Radar detected', *Forbes*, 15 Nov. 2004, p. 64.

¹³⁰ 'Aero blocked from selling to Venezuela', *International Air Letter*, 15 Aug. 2006, p. 5.

¹³¹ Czech Ministry of Foreign Affairs (note 69), p. 11.

¹³² Lazarová, D., 'Czech arms exports under fire from Amnesty International', Radio Prague, 29 Aug. 2007, <<http://www.radio.cz/en/article/94910/>>.

4. Case study: the Netherlands

The Netherlands' engagement with the EU Code of Conduct

The Netherlands was among the first states to push for the development of an EU-level mechanism for coordinating member states' arms export policies. In a 1991 statement, the Dutch Government claimed that the 'policy of caution' that it was pursuing in arms exports was being undermined by the lack of such a mechanism.¹³³ It noted that 'the virtual absence of international co-ordination . . . limits the impact of such caution . . . given that other countries are all too often prepared to supply what is required'.¹³⁴ The Netherlands raised the question of improving coordination of European Community arms export policies at the ministerial meeting on European Political Cooperation (EPC) on 19 February 1991.¹³⁵ During the first half of 1991 proposals relating to the harmonization of arms export policies were also made by France, Germany, Luxembourg and the United Kingdom. Together with the Dutch proposal, these helped to pave the way for the adoption by the Council of common criteria on arms exports in 1991–92.¹³⁶ During the Dutch Presidency of the Council from January to June 1997, the Netherlands also raised the issue of expanding the criteria which had been established in 1991–92 and developing systems of information sharing. However, it was only when France and the United Kingdom began to actively support the idea that real progress was made, leading to the adoption of the EU Code of Conduct on Arms Exports in June 1998.¹³⁷

Since the introduction of the EU Code of Conduct, the Netherlands has been among the agreement's keenest supporters and has played a significant role in driving forward improvements, particularly in the fields of public transparency and intergovernmental information sharing. During the Dutch Presidency of the Council from July to December 2004, the Netherlands sponsored an academic study focused on improving the collection and submission of data to the EU Annual Report.¹³⁸ Meanwhile, the Sixth Annual Report, published in December 2004, contained one of the most significant expansions in the coverage of the report's statistical annexes.¹³⁹ For the first five annual reports, states had agreed to submit data on the financial value of licences and exports. For the Sixth Annual Report, member states agreed that 'breakdowns of licences and actual exports by [EU Common] Military List category (if available) should also be included in the

¹³³ Dutch Government, 'Dutch arms export policy', Statement, 1 May 1991, reproduced in ed. Anthony (note 70), pp. 119–20.

¹³⁴ Dutch Government (note 133), p. 119.

¹³⁵ Dutch Government (note 133), p. 120. EPC was the precursor to the CFSP.

¹³⁶ Davis (note 3), pp. 53–54; European Council (note 18); and European Council (note 19).

¹³⁷ Davis (note 3), pp. 100–101.

¹³⁸ Bauer and Bromley (note 21).

¹³⁹ Sixth Annual Report (note 39).

Box 4.1. Key Dutch legislation on arms export controls**Economic Offences Act of 22 June 1950**

Contains the punitive measures that are applied in case of infringements of the other laws in the area of export controls

Import and Export Act of 5 July 1962

Permits the issuing of administrative regulations that tie any or all foreign trade (not just arms exports) to licences; the regulations must further the interests of the international legal order and the security and economic needs of the Netherlands

Strategic Goods Import and Export Order of 26 April 1963

Gives the Ministry of Economic Affairs the right to issue or deny export licences for strategic goods; many subsequent pieces of secondary legislation have amended this decree

Sanctions Act 1977 of 15 February 1980

Gives the government the powers needed to enforce United Nations arms embargoes

Financial Involvement Concerning Strategic Goods Order of 24 October 1996

Based on the 1994 External Financial Relations Act; regulates the control of brokering

Amendment to the Import and Export Act of 2001

Permits the classification and assessment system of the arms export policy to be extended in certain cases to the transit of military goods across the Netherlands

Sources: Dutch Ministry of Economic Affairs, 'Export policy and legislation on strategic goods in the Netherlands', 10 Mar. 2004, <<http://www.ez.nl/content.jsp?objectid=147848>>; and Colijn, K. and Rusman, P., 'The Netherlands', ed. I. Anthony, SIPRI, *Arms Export Regulations* (Oxford University Press: Oxford, 1991), p. 110. The texts of these laws are available at <<http://wetten.overheid.nl/>> (in Dutch).

report'.¹⁴⁰ According to Raül Romeva, the rapporteur for the European Parliament's reports on the Fifth, Sixth, Seventh and Eighth Annual Reports, in terms of transparency the 2004 Dutch Presidency was a 'positive step forward'.¹⁴¹ The first request for a European Parliament representative to address COARM was made during the Dutch Presidency.¹⁴² Since then, the Netherlands has played a leading role in developing guidelines for denial notifications in the User's Guide to the EU Code of Conduct and the proposed development of a 'toolbox' for transfers to destinations that have previously been subject to an EU arms embargo.¹⁴³

¹⁴⁰ Working Party on Conventional Arms Exports (COARM), Operational conclusions of the meeting of 22 June 2004.

¹⁴¹ Romeva, R., Spanish Member of the European Parliament (the Greens–European Free Alliance group and Iniciativa per Catalunya Verds), Interview with the author, 12 June 2007.

¹⁴² Romeva (note 141).

¹⁴³ Provó Kluit, H., Arms Control and Arms Export Policy Division, Dutch Ministry of Foreign Affairs, Interview with the author, 14 June 2007. Under the toolbox, member states would exchange information on export licences granted to the previously embargoed destination every 3 months. The information would specify the quantity and type of military equipment, the end-use, and the end-user. The mechanism has yet to be formally agreed and the discussions appear to be stalled. See Anthony and Bauer (note 24), pp. 715–18.

The motives for the Netherlands' promotion of increased transparency are two-fold. First, it wants to bring other member states up to Dutch standards of practice. Second, the Netherlands wants to use the consequent increased volume of information provided via the EU Code of Conduct to better inform Dutch export licensing decisions.

The impact on the framework of Dutch arms export policy

The key pieces of Dutch legislation in the field of arms export controls are listed in box 4.1. The list of military goods subject to control is based on the Wassenaar Arrangement Munitions List.¹⁴⁴ Each revision of the Wassenaar list leads to an adaptation of the Dutch list.¹⁴⁵

Specific criteria for evaluating export licences on a case-by-case basis were first formulated in 1975 by a Centre–Left coalition government, building on existing practices over the preceding decade.¹⁴⁶ The 1975 policy stated that no arms would be exported to countries under UN embargo and that there would be a careful scrutiny of licence applications for exports to sensitive destinations, especially if the recipient is involved in an armed conflict or where arms are to be used to repress the population.¹⁴⁷ Since their introduction in 1991 and 1992, licence applications have been assessed on a case-by-case basis against the eight common criteria of the EU.¹⁴⁸

An example of how engagement with the EU Code of Conduct has had an impact is in relation to the so-called ninth criterion of Dutch export law, under which the recipient state's record of engagement with the UN Register on Conventional Arms could be taken as grounds for denying an export licence. The Dutch Government has sought to have this criterion adopted at the EU level. However, while the User's Guide now includes a reference to UNROCA in its guidelines for the interpretation of criterion 6,¹⁴⁹ the Dutch Government has not convinced the other EU member states to add a ninth criterion to the Code. In response the Netherlands has altered its own policy. Participation in UNROCA is now one 'element of our analysis but no longer a sole grounds for denial'.¹⁵⁰ According to Hajo Provó Kluit of the Arms Control and Arms Export Policy Division of the Dutch

¹⁴⁴ Wassenaar Arrangement (note 34).

¹⁴⁵ Dutch ministries of Economic Affairs (MEA) and Foreign Affairs (MFA), *Het Nederlandse wapenexportbeleid in 2006* [Dutch export policy in 2006] (MEA and MFA: The Hague, Sep. 2007), <<http://www.ez.nl/content.jsp?objectid=153447>>, translated into English as Dutch MEA and MFA, *Annual Report on The Netherlands Arms Export Policy 2006* (MEA and MFA: The Hague, Sep. 2007), <<http://www.ez.nl/content.jsp?objectid=154335>>, p. 11.

¹⁴⁶ Coljin, K. and Rusman, P., 'Dutch arms export policies 1963–1988', Paper contributed to the Symposium on Transparency in International Arms Transfers, Initiatives of Governments and Possible Multilateral Actions, Florence, Italy, 25–28 Apr. 1990.

¹⁴⁷ Coljin, K. and Rusman, P., 'The Netherlands', ed. Anthony (note 70), p. 112.

¹⁴⁸ Dutch ministries of Economic Affairs and Foreign Affairs (note 145), pp. 4–5.

¹⁴⁹ Provó Kluit (note 143); and Council of the European Union (note 23), p. 80.

¹⁵⁰ Provó Kluit (note 143).

Ministry of Foreign Affairs, ‘That was probably the major change in our national policy . . . we were out of line with the rest of Europe and [changed our policy]’.¹⁵¹

The Netherlands observes all EU, OSCE and UN arms embargoes.¹⁵² The Netherlands occasionally applies policies towards particular destinations that are more restrictive than certain other European states. For example, the Dutch Government maintains stricter controls on arms exports to Taiwan than certain other EU member states.¹⁵³ Since delivering two submarines to Taiwan in the late 1980s, the Netherlands has maintained a policy whereby ‘no weapons are to be sold to Taiwan or to third parties for resale to Taiwan’.¹⁵⁴ In the wake of the nuclear weapon tests by India and Pakistan in 1998, the Netherlands imposed a ban on arms exports to both countries.¹⁵⁵ In this case, the example of other member states played an indirect role in the decision to gradually slacken the export ban. In letters to the Dutch Parliament in 2000 and 2003, the government cited the fact that other European governments had failed to follow the Netherlands’ lead on banning exports to India and Pakistan as a reason for changing its own policy.¹⁵⁶ According to George Bontenbal of the Export Control Unit of the Dutch Ministry of Economic Affairs (MEA), ‘From our point of view we had to [nuance] the “no more arms for India and Pakistan” [policy]. We felt that talking to our EU partners—exchanging our policy towards India and Pakistan—helped us to be able to get this nuance we needed.’¹⁵⁷ The bans were lifted in 2003, although the Netherlands maintained that its policy on exports to India and Pakistan remained more restrictive than those of most other EU member states.¹⁵⁸

The impact on the process of Dutch arms export policy

The ministries of Economic Affairs and Foreign Affairs are jointly charged with the implementation of the 1962 Import and Export Act. Applications for the export of military goods to EU and NATO member states (other than Bulgaria, Cyprus, Romania and Turkey) and to Australia, Japan, New Zealand and Switzerland are

¹⁵¹ Provó Kluit (note 143).

¹⁵² Dutch ministries of Economic Affairs and Foreign Affairs (note 145), p. 10.

¹⁵³ E.g. France supplied 60 Mirage 2000 aircraft and MICA air-to-air missiles to Taiwan during the 1990s. SIPRI Arms Transfers Database (note 11).

¹⁵⁴ de Bruin, F., Spokesman, Dutch Ministry of Foreign Affairs, quoted in Pomfret, J. and Mufson, S., ‘Submarines to Taipei opposed by Europeans’, *International Herald Tribune*, 26 Apr. 2001, p. 4.

¹⁵⁵ Dutch ministries of Foreign Affairs and Economic Affairs, ‘India en Pakistan; opnieuw in werking stellen wapenexportbeleid’ [India and Pakistan; reimposing the weapon export policy], Letter to the Second Chamber of the Dutch Parliament, The Hague, 12 Dec. 2000.

¹⁵⁶ Dutch ministries of Foreign Affairs and Economic Affairs (note 155); and de Hoop Scheffer, J. G., Dutch Minister of Foreign Affairs, ‘Wapenexport: export van strategische goederen naar India en Pakistan’ [Weapon export: export of strategic goods to India and Pakistan], Letter to the President of the Second Chamber of the Dutch Parliament, The Hague, 7 July 2003, available at <<http://www.indianet.nl/br030707.html>>.

¹⁵⁷ Bontenbal, G., Export Control Unit, Dutch Ministry of Economic Affairs, Interview with the author, 14 June 2007.

¹⁵⁸ de Hoop Scheffer (note 156).

processed by the MEA. Applications for export to all other countries are also submitted to the MFA, whose advice ‘plays an essential role’ in the assessment of all applications. For export applications to developing countries, the MFA consults the minister for development cooperation.¹⁵⁹

The Dutch Government has submitted biannual reports to the Dutch Parliament since 1997. These submissions are followed by a general consultation between the parliament and the government. During the private session of the consultation the parliament can request further information on specific deals.¹⁶⁰ In addition, the parliament receives prior confidential notification from the government of exports of surplus Dutch weapon systems.¹⁶¹ The parliament can give its opinion on each deal, although the government makes the final decision.¹⁶²

The level of public transparency in Dutch arms export policy is among the highest in Europe. The MEA has produced an annual report on arms export licences since 1998. The decision to publish a national report was directly influenced by the example of the Swedish Government, which has published national reports since 1985.¹⁶³ The first Dutch report emulated the Swedish report and matched its systems of classification. However, in subsequent years, Dutch reporting has developed and improved to the extent that in several key areas the Netherlands is now the most transparent country in Europe in terms of arms export policy. For example, the Dutch report includes detailed information on instances where a licence application has been denied, including the intended recipient, the type of equipment and the reason for the denial. In November 2004 the Netherlands began publishing monthly online reports detailing all approvals of export and transit licences for arms and dual-use goods. The information provided includes a description of the goods, their value, the type of licence involved, and the countries of origin and final destination.¹⁶⁴

Pressure from the parliament and from civil society has been the most important factor driving these developments, with the former playing the more decisive role. Civil society groups provide information to parliamentarians, who in turn have the power to effect change at the governmental level.¹⁶⁵ One aspect of transparency where the Netherlands has followed rather than led its European partners is in the provision of data on actual exports of military equipment. Until 2006, the Netherlands did not provide data on actual exports, either to the EU Annual Report or in its own national reports. While data on arms exports had been collected from customs figures and company reporting, the Dutch Government felt that these data

¹⁵⁹ Dutch ministries of Economic Affairs and Foreign Affairs (note 145), pp. 3–4.

¹⁶⁰ Dutch Ministry of Economic Affairs (MEA), *The Netherlands Arms Export Policy in 1997* (MEA: The Hague, 1998), <<http://www.ez.nl/content.jsp?objectid=147887>>, p. 3.

¹⁶¹ Dutch ministries of Economic Affairs and Foreign Affairs (note 145), p. 4.

¹⁶² Mariani, B. and Urquhart, A., *Transparency and Accountability in European Arms Export Controls: Towards Common Standards and Best Practice* (Saferworld: London, Dec. 2000), p. 20.

¹⁶³ Bontenbal (note 157).

¹⁶⁴ The monthly reports are available from the website of the Dutch Ministry of Economic Affairs at <<http://www.ez.nl/content.jsp?objectid=149938>>.

¹⁶⁵ Bontenbal (note 157).

were not accurate enough for public reporting purposes.¹⁶⁶ However, for the Eighth Annual Report, published in October 2006, the Netherlands did submit data on arms exports.¹⁶⁷

The impact on the outcomes of Dutch arms export policy

According to the SIPRI Arms Transfers Database, the Netherlands was the sixth biggest exporter of major conventional weapons in Europe during the period 1998–2007.¹⁶⁸ This position has remained unchanged for the shorter period 2003–2007. In 2006 the value of Dutch arms exports rose to €808 million, compared with €682 million in 2005.¹⁶⁹ According to official government data, during 2006, 28 per cent of the value of licences issued was for exports to states in Asia, 27 per cent was for EU member states, 26 per cent was for Latin America, 8 per cent was for North America, 4 per cent was for non-EU Europe and 2 per cent was for the Middle East.¹⁷⁰ There are no official government data on the value of Dutch arms exports prior to 2005, only data on the value of arms export licences granted.

One of the biggest changes in the Dutch arms industry in the past 10 years has been the disappearance of all SALW and ammunition production. The Dutch SALW and ammunition industry was the source of most of the Netherlands' more politically sensitive exports during the 1980s and 1990s and was involved in a number of high-profile scandals, including the supplying of arms to both Iran and Iraq in the 1980s. Eurometaal, the largest Dutch ammunition manufacturer, closed in April 2002. According to the company, the closure was motivated by the decline in the demand for military ammunition. Muiden Chemie International (MCI), a company producing ammunition propellants, went bankrupt in 1990 and was acquired by the British company Royal Ordnance. In 2003, Royal Ordnance (then RO Defence, a subsidiary of BAE Systems) announced the closure of MCI.¹⁷¹ In recent years, the majority of Dutch arms exports has consisted of radar and fire-control systems, components and sub-systems, ships, and surplus military stocks.¹⁷²

Sales of radar and fire-control systems, particularly by Thales Nederland, make up a significant share of Dutch arms exports. Important deals in recent years include: a June 2006 agreement, valued at €190 million, covering the sale of radars and other electronic systems for eight patrol ships being sold by Spain's Navantia

¹⁶⁶ Bauer and Bromley (note 21), p. 55.

¹⁶⁷ Eighth Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports, *Official Journal of the European Union*, C250 (16 Oct. 2006).

¹⁶⁸ SIPRI Arms Transfers Database (note 11).

¹⁶⁹ Eighth Annual Report (note 167); and Ninth Annual Report (note 30).

¹⁷⁰ Dutch ministries of Economic Affairs and Foreign Affairs (note 145), pp. 29–31.

¹⁷¹ Weidacher, R., *Behind a Veil of Secrecy: Military Small Arms and Light Weapons Production in Western Europe*, Occasional Paper 16 (Small Arms Survey: Geneva, Nov. 2005), p. 59.

¹⁷² Dutch ministries of Economic Affairs and Foreign Affairs (note 145), p. 7

to Venezuela;¹⁷³ a March 2006 agreement, valued at €82 million, covering the sale of 13 sets of Sirius naval infrared search and track (IRST) systems to Canada;¹⁷⁴ and a July 2004 agreement covering the sale by Thales Nederland of three Goalkeeper close-in weapon systems (CIWS) for installation on KDX-III class destroyers being manufactured by South Korea.¹⁷⁵

The Dutch shipbuilding industry struggled to secure export orders in the 1980s and 1990s.¹⁷⁶ Important deals in recent years include agreements signed in January 2004 and June 2005, valued at €800 million, covering the sale of four corvettes to Indonesia,¹⁷⁷ and a February 2008 agreement, valued at €800 million, covering the sale of three corvettes to Morocco.¹⁷⁸

A number of Dutch companies derive a significant part of their export sales from providing components and sub-systems for foreign weapon systems, including the US-built F-16 and F-35 combat aircraft and the Apache attack helicopter. By late 2006 more than 70 Dutch companies were involved in the F-35 programme and had received orders totalling €548 million.¹⁷⁹

Sales of surplus military stocks have formed a significant proportion of Dutch arms exports since the end of the cold war as the Dutch armed forces have gone through progressive cut-back and force reduction processes. In 2005 more than half of the total financial value of Dutch arms exports came from sales of surplus military stocks.¹⁸⁰ The Netherlands has sold €1 billion worth of surplus equipment to EU countries since 2003.¹⁸¹ There are signs that the trend will continue as the Dutch Government seeks to generate the revenues necessary to maintain and upgrade its military forces. According to recent plans, the Dutch Ministry of Defence plans to sell off 18 of its 90 operational F-16 aircraft, 12 of its 36 Krauss-Maffei Wegmann PzH 2000 self-propelled 155-mm howitzers, and 28 of its 88 Leopard 2A6 main battle tanks.¹⁸² Important deals in recent years include: an April 2007 agreement covering the sale of six F-16B MLU combat aircraft to

¹⁷³ Janssen Lok, J., 'Thales deal helps thaw Dutch-Venezuelan relations', *Jane's Defence Weekly*, 19 July 2007, p. 43.

¹⁷⁴ Janssen Lok, J. and Hobson, H., 'Canadians and Dutch to order Sirius sensor', *Jane's Defence Weekly*, 1 Mar. 2006, p. 8.

¹⁷⁵ 'Thales contract for three goalkeepers', *Asian Defence Journal*, July/Aug 2004, p. 60.

¹⁷⁶ 'Marokkaanse order opsteker voor Nederlandse marinescheepsbouw' [Moroccan order boosts Dutch shipbuilding], *Technisch Weekblad*, 16 Feb. 2008.

¹⁷⁷ Agence France-Presse, 'Dutch warship sales to Indonesia violate EU code', *Jakarta Post*, 3 June 2005; 'Indonesia doubles up on corvette buy', *Jane's Defence Weekly*, 25 May 2005; and Scott, R., 'Indonesian corvette starts sea trials', *Jane's Defence Weekly*, 11 Apr. 2007, p. 5.

¹⁷⁸ Janssen Lok, J., 'Morocco's Dutch frigate order is confirmed', *Aviation Week and Space Technology*, 8 Feb. 2008.

¹⁷⁹ Stork Fokker, 'More than 70 Dutch companies already involved in development of F-35 lightning II (JSF)', Press release, 8 Sep. 2006, <<http://www.stork.com/eCache/DEF/11/795.html>>.

¹⁸⁰ Dutch ministries of Economic Affairs and Foreign Affairs (note 145), p. 15.

¹⁸¹ 'Dutch sell MLRS to Finland', *Defence News*, 12 Mar. 2007, p. 42.

¹⁸² De Vreij, H., 'Dutch defence ministry plans selling spree', *Jane's Defence Weekly*, 1 Aug. 2007, p. 13.

Jordan;¹⁸³ an April 2007 agreement covering the sale of 100 Leopard 2 tanks to Canada;¹⁸⁴ a January 2006 agreement, valued at €30 million, covering the sale of M270 multiple-launch rocket systems (MLRS) to Finland;¹⁸⁵ a December 2005 agreement covering the sale of two M class frigates to Belgium;¹⁸⁶ and a December 2005 agreement, valued at €72 million, covering the sale of 18 F-16A MLU and F-16B MLU combat aircraft to Chile.¹⁸⁷

The Dutch defence industry has frequently complained that the level of government support it receives is insufficient, compared with other EU states. In May 2003 Arno Peels, president and chief executive officer of Thales Nederland, stated that 'The distance between government and industry is rather big and there is hardly any political support for export.' Peels argued that budget cuts, and the government's preference for buying off the shelf rather than engaging in national or international development programmes, also posed a significant threat to the Dutch defence industry.¹⁸⁸ At the same time, the Netherlands is engaged in a number of international programmes, including the F-35 aircraft and the NH-90 transport helicopter, and continues to procure naval and electronic warfare systems domestically.¹⁸⁹ Nonetheless, large sections of the Dutch defence industry are dependent on foreign exports: 45 per cent of Dutch defence production is exported.¹⁹⁰

Questions have been raised over the extent to which Netherlands arms export criteria are circumvented or ignored in the export of components destined for integration and re-export to a third country. The issue arose in the 1980s in the case of exports of components for F-16 aircraft to the United States. At the time, the Dutch MFA argued that, since it was not possible to know the ultimate destination of the aircraft at the time of shipment, Dutch firms need not concern themselves with the issue of final destinations when applying for licences.¹⁹¹ While upholding its national standards in export controls, the Dutch Government is also keen to maintain technological, economic and political ties with key allies. In particular, participation in US defence programmes is of crucial importance to Dutch industry.¹⁹²

¹⁸³ 'Sale of RNLA F-16s to Jordan finalised', *Air Forces Monthly*, July 2007, p. 30.

¹⁸⁴ Pugliese, D., 'Canada to lease, buy Leopard tanks', *Defence News*, 16 Apr. 2007.

¹⁸⁵ Finnish Defence Command, 'Arméns tunga raketartilleripjäser nådde Finland' [The army's heavy rocket artillery reaches Finland], Press release, 22 Feb. 2007, <<http://www.forsvarsmakten.fi/paesikunta/tiedotteet/2773.dsp>>.

¹⁸⁶ Dutch Ministry of Defence, 'Verkoop fregatten aan België' [Frigate sale to Belgium], News release, 21 Dec. 2005, <http://www.mindef.nl/actueel/nieuws/2005/12/20051221_fregatten.aspx>.

¹⁸⁷ 'F-16 pour Santiago', *Air & Cosmos*, 23 Dec. 2005, p. 62.

¹⁸⁸ Janssen Lok, J., 'Dutch industry in danger of withering away', *Jane's Defence Weekly*, 7 May 2003, p. 20.

¹⁸⁹ Thales, 'Royal Netherlands Navy selects Thales's integrated mast', Press release, 20 Dec. 2007, <<http://www.thalesonline.com/naval/Press-Room/>>.

¹⁹⁰ Dutch ministries of Economic Affairs and Foreign Affairs (note 145), p. 8

¹⁹¹ Colijn and Rusman (note 147), p. 117.

¹⁹² According to Sjoerd Vollebregt, chief executive officer of Stork, 'Participation by small and medium-size enterprises in the JSF programme is essential for Dutch aerospace knowledge, for manufacturing industry and for Stork'. Stork Fokker (note 179).

Such collaborations would be put in jeopardy if the Dutch Government began denying licences for exports to the USA out of concern that the final destination of the goods might not conform with its own export criteria. This issue has arisen in other EU member states, in particular the UK, where the debate also focused on sales of F-16 components to the USA.¹⁹³ Following a British proposal, guidelines on how to handle exports of components destined for incorporation into products for re-export were included in the User's Guide to the EU Code of Conduct in 2005. In such situations, 'Member States shall fully apply the Code of Conduct'. However, member states may also consider a range of other factors, including 'the importance of their defence and security relationship with that country'.¹⁹⁴

The Dutch defence industry regularly complains about the strictness of Dutch export licence decision making. In May 2003 Arno Peels claimed that the government was applying European defence export licence regulations 'more strictly than other EU members . . . Our competitiveness is being eroded'.¹⁹⁵ In 2005 the Dutch Government commissioned a study examining whether Dutch export policies were indeed more restrictive than those of other EU member states.¹⁹⁶ The study, based on interviews with Dutch industry representatives, had mixed results. It found that the Netherlands was more restrictive than other EU states in some cases, while in others it was more lenient. However, there was broad agreement that Dutch policy had not resulted in any significant loss of business.¹⁹⁷

Perhaps the most controversial Dutch arms export in recent years has been the sale of corvettes to Indonesia, which drew sharp criticism from some quarters. In June 2005 the European Parliament's rapporteur on military exports, Raúl Romeva, noted that the sales 'clearly' violated the EU Code of Conduct and that similar vessels had been used in coastal assaults during the conflict in Aceh province, Indonesia, in 2003. He also noted the waste of resources that the sale entailed, particularly in light of the recent devastation wrought by the Indian Ocean tsunami of December 2004.¹⁹⁸ At the time the deal was being negotiated, a number of members of the Dutch Parliament questioned the wisdom of allowing the sale to go through.¹⁹⁹

¹⁹³ Control Arms Campaign, 'Arms trade: new report reveals major loophole in British arms export controls', Press release, 24 Feb. 2003, <http://www.controlarms.org/latest_news/export_loop_holes_250204.htm>.

¹⁹⁴ Council of the European Union (note 23), p. 20.

¹⁹⁵ Janssen Lok (note 188).

¹⁹⁶ Dutch ministries of Economic Affairs (MEA) and Foreign Affairs (MFA), *Het Nederlandse wapenexportbeleid in 2005* [Dutch export policy in 2005] (MEA and MFA: The Hague, June 2006), <<http://www.ez.nl/content.jsp?objectid=147591>>, translated into English as Dutch MEA and MFA, *Annual Report on The Netherlands Arms Export Policy 2005* (MEA and MFA: The Hague, June 2006), <<http://www.ez.nl/content.jsp?objectid=150555>>, p. 8.

¹⁹⁷ Prince, Y. M. and Overweel, M. J., *Zicht op de economische effecten van het Nederlandse exportcontrolebeleid* [Overview of the economic impact of the Netherlands export control policy] (EIM: Zoetermeer, 25 Apr. 2005), <<http://www.ez.nl/content.jsp?objectid=106638>>.

¹⁹⁸ Agence France-Presse (note 177).

¹⁹⁹ 'Dutch shipyard wins controversial order for Indonesian frigates', Radio Netherlands, 1 Dec. 2003.

Prior to the adoption of the EU Code of Conduct, there were concerns among Dutch NGOs and parliamentarians that it would lead to a reduction in the restraint shown by Dutch export licensing policy. In particular, there were fears that the government would face pressure to adopt a more permissive line on transfers to certain states and regions.²⁰⁰ In practice, concrete examples of such changes in policy are hard to find. In 2004 the Dutch Government announced the sale of a batch of armoured personnel carriers to Egypt, despite the fact that it had refused seven export licences to Egypt between 1999 and 2003. In a written answer to a parliamentary question on the issue, the Dutch Government stated that five of the seven refusals had been lifted ‘In the framework of a general re-evaluation of national “denials” which has been conducted by the EU member states for the first time since 1998’.²⁰¹

In terms of direct impact on the outcomes of day-to-day licensing decisions, Dutch officials stress that the EU Code of Conduct does not have a strong impact. As Provó Kluit put it, ‘if you focus the question on whether Dutch policy has become more permissive, then I’d say “no, it has had no effect whatsoever”’.²⁰² Where the EU Code is of use is in the exchange of licence denials, which provides information to improve Dutch officials’ own assessments.²⁰³ This real-time information makes the EU Code of Conduct far more useful than the Wassenaar Arrangement, at least when it comes to making individual assessments on whether to grant or deny a licence. As Bontenbal put it, ‘If you discuss which ways you should go about export controls—the procedures, the measures you should be taking—I think a lot is also done within Wassenaar. If you talk about actually implementing your export policy and assessing licence applications, then it’s the EU [which is more important].’²⁰⁴ Factors which contribute to the greater utility of the EU Code of Conduct include the smaller number of states involved, the reduced range of political opinions, the more detailed nature of the discussions, and the increased frequency of the meetings.²⁰⁵ This value was particularly strong in situations in which the Dutch Government might consider making a political statement by issuing or denying an export licence. For example, if the Dutch Government were considering denying an export licence to a country following a military coup there, it would look more closely at what other EU states were doing before issuing the denial. As Bontenbal put it, ‘It helps us to put our policy into perspective’.²⁰⁶

²⁰⁰ Slijper, F., Senior researcher on arms transfers and arms export policy, *Campagne tegen Wapenhandel* (Campaign against the arms trade), Interview with the author, 14 June 2007.

²⁰¹ Bot, B., Dutch Minister for Foreign Affairs, Answer to question no. 146, Dutch Parliament, Second Chamber, Session 2004–2005, 12 Oct. 2004 (author’s translation).

²⁰² Provó Kluit (note 143).

²⁰³ Provó Kluit (note 143).

²⁰⁴ Bontenbal (note 157).

²⁰⁵ Provó Kluit (note 143); and Bontenbal (note 157).

²⁰⁶ Bontenbal (note 157).

5. Case study: Spain

Spain's engagement with the EU Code of Conduct

Spain worked with the other EU members in drawing up the Code of Conduct on Arms Exports in the 1990s. Since the adoption of the Code in 1998, Spain has held the Presidency of the Council once—from 1 January 2002 to 31 June 2002. During this presidency, the Spanish Government sought to raise one main issue with regard to the EU Code: its applicability to transit licences. At the time, Spain already had controls on transit licences and was keen to establish common rules at the EU level on how they should be issued.²⁰⁷ Spain proposed, and the other member states agreed, that the EU Code of Conduct should be applied when issuing such licences.²⁰⁸

Also during the Spanish Presidency, the United Kingdom put forward proposals on the applicability of the EU Code of Conduct to licensed production agreements. The member states agreed that, when considering licence applications for such activities, 'account will be taken of the potential use of the finished product in the country of production and of the risk that the finished product might be diverted or exported to an undesirable end-user'.²⁰⁹ Spain did not have a formal reference to licensed production agreements in its national legislation in 2002, although such activities were covered by its export licensing process. However, as with transit licences, Spain was keen to establish common practices at the EU-level in the field of licensed production.²¹⁰

The impact on the framework of Spanish arms export policy

The key pieces of Spanish legislation in the field of arms export controls are listed in box 5.1. Spain's list of military goods subject to control is updated on an annual basis, taking into account changes in the relevant international lists such as the Wassenaar Arrangement Munitions List and the EU Common Military List.²¹¹

²⁰⁷ Deputy Director General for Foreign Trade in Defence Materials and Dual-use Goods and Technologies, Spanish Ministry of Industry, Tourism and Trade, Interview with the author, 24 Sep. 2007.

²⁰⁸ Deputy Director General (note 207); and Fourth Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports, *Official Journal of the European Communities*, C319 (19 Dec. 2002), p. 3.

²⁰⁹ Fourth Annual Report (note 208), p. 3.

²¹⁰ Deputy Director General (note 207).

²¹¹ Spanish Ministry of Industry, Tourism and Trade (MITT), *Estadísticas Españolas de exportación de material de defensa, de otro material y de productos y tecnologías de doble uso, año 2006* [Spanish statistics on the export of defence material, other material and dual-use technology, 2006] (MITT: Madrid, 2007), translated into English as Spanish MITT, *Spanish Export Statistics Regarding Defence Material, Other Material and Dual-use Items and Technologies, 2006* (MITT: Madrid, 2007), p. 8.

Box 5.1. Key Spanish legislation on arms export controls**Organic Law 3/1992 of 30 April 1992 defining cases of smuggling in connection with the export of defence material and dual-use material**

Introduced administrative crimes and infractions in connection with the smuggling of defence and dual-use material

Royal Decree 1782/2004 of 30 July 2004 approving the Regulations on the control of foreign trade in defence materials, other materials and dual-use technology

Creates a mechanism to control brokering activities. Includes a ‘catch-all clause’ for arms exports

Law 53/2007 of 28 December 2007 on the control of foreign trade in defence and dual-use material

Repeals Organic Law 3/1992; transforms the regulations in Royal Decree 1782/2004 into a law; imposes new requirements concerning the information that companies are obliged to submit with their licence applications; includes hunting and sporting firearms in the export regulations; contains specific references to licensed production overseas and introduces controls on items which could be used for capital punishment or torture; makes references to the criteria of the EU Code of Conduct and the criteria of the 2000 Organization for Security and Co-operation in Europe Document on Small Arms and Light Weapons; states Spain’s support for an arms trade treaty and the international initiatives on cluster munitions

Sources: Spanish Ministry of Industry, Tourism and Trade (MITT), *Spanish Export Statistics Regarding Defence Material, Other Material and Dual-use Items and Technologies, 2006* (MITT: Madrid, 2007), pp. 5–9. The texts of these laws are available at <http://noticias.juridicas.com/base_datos/> (in Spanish).

Specific criteria for evaluating export licences on a case-by-case basis were laid down in 1988. Export licences were prohibited in cases where arms exports are inconsistent with international agreements which Spain has signed or where the national security of Spain or an ally would be undermined. References are also made to restricting sales to countries at war or where human rights violations are carried out.²¹² Since their introduction in 1991–92, licence applications have been assessed on a case-by-case basis against the eight common criteria of the EU. Spain observes all arms embargoes instituted by the EU, the OSCE and the UN.²¹³

According to an official of the Spanish Ministry of Industry, Tourism and Trade (MITT), over the past 10 years Spain has ‘tried to adjust this legislation to the main advances . . . in international forums and especially under the European Union Code of Conduct’.²¹⁴ Indeed, several of the clauses included in the 2007 law (see box 5.1) appear to have been taken directly from EU-level agreements. These include a specific reference to licensed production agreements (Article 1), which had not previously been included in the Spanish legislation but was mentioned in

²¹² Loose-Weintraub, E., ‘Spain’, ed. Anthony (note 70), p. 144.

²¹³ Spanish Ministry of Industry, Tourism and Trade (note 211), p. 12.

²¹⁴ Deputy Director General (note 207).

the EU Annual Report following the British proposal of 2002 discussed above. There is also clear evidence of the influence of other international forums in the development of Spanish legislation on export controls. For example, the extension of controls over exports of small arms in the 2007 law (Article 3) was made in response to the 2001 UN firearms protocol.²¹⁵

Domestic pressure, mainly from Spanish NGOs and parliamentary groups, has also played an important role in the development of Spain's legislation on export controls.²¹⁶ The drafting of the 2007 law was initiated in December 2005 when the Congress of Deputies (the lower house of the Spanish Parliament) approved an agreement urging the Spanish Government to submit, within a year, a draft arms trade law 'based on the strict enforcement and scrupulous interpretation of the criteria laid down in the European Union Code of Conduct on Arms Exports'.²¹⁷ The tabling of the agreement originated in an initiative supported by three NGOs—Amnistía Internacional (Amnesty International Spain), Intermón Oxfam and Greenpeace Spain.²¹⁸ This followed a pattern established in the early 1990s when Spanish NGOs launched a similar initiative—the *Secretos que matan* ('killing secrets') campaign on transparency and parliamentary control in the arms trade—which led to a parliamentary agreement in March 1997 (see below).²¹⁹ The success of these NGO-led campaigns has invariably coincided with periods when the government has lacked a parliamentary majority and so has been forced to seek agreements with the other parties in parliament. This allows smaller groupings, often sympathetic to the issues raised by NGOs, to include additional items in the legislative programme.²²⁰

The impact on the process of Spanish arms export policy

In Spain, the Secretariat General for External Trade, attached to the Ministry of Industry, Tourism and Trade, is responsible for authorizing export licence appli-

²¹⁵ Spanish Ministry of Industry, Tourism and Trade (note 211), p. 7. The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime was adopted by the UN General Assembly on 31 May 2001 in Resolution A/RES/55/255, 8 June 2001.

²¹⁶ According to Carles Campuzano i Canadés, 'in the Spanish case, civil society pressure, with the campaigns for arms control, has been very relevant in the construction of Spanish politics in this area'; civil society 'has provoked the advances'. Campuzano i Canadés, C., Member of the Spanish Congress of Deputies, Spokesman of Grup Parlamentari Català–Convergència i Unió in the International Cooperation Committee, Interview with the author, 25 Sep. 2007.

²¹⁷ The plenary-session agreement taken at the Congress of Deputies on 13 Dec. 2005 is reproduced in English in Spanish Ministry of Industry Tourism and Trade (note 211), p. 41; see also pp. 1, 7.

²¹⁸ Amnistía Internacional, Greenpeace and Intermón Oxfam, *Comercio de armas en España: una ley con agujeros* (Amnistía Internacional, Greenpeace, and Intermón Oxfam: Madrid, Feb. 2007), <<http://www.greenpeace.org/espana/reports/comercio-de-armas-en-espa-a-u/>>, pp. 7–8.

²¹⁹ Fisas, V., *El lobby feroz: las ONG ante el comercio de armas y el desarme* [The ferocious lobby: NGOs taking on the arms trade and disarmament] (Icaria: Barcelona, 1998).

²²⁰ Campuzano i Canadés (note 216).

cations for arms and dual-use goods. Four other ministries are also involved in the process of granting and denying export licences: the ministries of Foreign Affairs and Cooperation, the Interior, Defence, and Economy and Finance (via the Customs Department). The Inter-Ministerial Regulatory Board on External Trade in Defence and Dual-use Material (Junta Interministerial Reguladora del Comercio Exterior de Material de Defensa y de Doble Uso, JIMDDU), which consists of representatives of these five ministries, meets each month to discuss licence applications and to grant or withhold approval. The JIMDDU reaches decisions by consensus, with each of the five ministries having the right to veto an export licence application. The Secretariat General for External Trade processes all the information submitted to the JIMDDU and issues the final decision based on the recommendations of the inter-ministry body.²²¹

As in other EU member states, NGOs and parliamentarians have argued that the position of the MITT within the licensing mechanism gives it a disproportionate influence over the decision-making process. This means that decision making is weighed in favour of economic considerations at the expense of issues such as conflict and human rights.²²² According to Raül Romeva, these latter issues are more towards the forefront of thinking within foreign affairs ministries ‘because they are the ones who are facing the consequences of this’.²²³ The composition of the JIMDDU and the role of the MITT are not altered by the 2007 law and this is not something that NGOs have highlighted in their campaigning. According to Ricardo Magán of Intermón Oxfam, NGOs had to choose issues on which to focus campaigning efforts; other issues were considered more relevant in terms of achieving increased transparency in and control of Spanish arms transfers.²²⁴

A parliamentary agreement of March 1997 called for the government to report regularly on arms exports to the parliament.²²⁵ Since 1997 the Secretary of State for Tourism and Trade, a minister in the MITT, has made an annual presentation on Spain’s arms export policy to the Defence Committee of the Congress of Deputies. Improvement in parliamentary oversight was one of the key demands made by NGOs and parliamentary groups during the drafting of the 2007 law,²²⁶ and parliamentary engagement has indeed been further strengthened by the law: Article 16 creates a new obligation for the government to respond in writing to any recommendations made by the Defence Committee. This mechanism closely matches systems of parliamentary engagement in other EU member states, particularly the UK. The 1997 agreement also called on the government to produce annual reports on arms exports and to submit six-monthly reports to the parliament. The first pub-

²²¹ Spanish Ministry of Industry Tourism and Trade (note 211), p. 9.

²²² Magán, R., *Armas bajo Control* (Control arms) Campaign Coordinator, Intermón Oxfam, Interview with the author, 25 Sep. 2007.

²²³ Romeva (note 141).

²²⁴ Magán (note 222).

²²⁵ Mariani and Urquhart (note 162), p. 23. The plenary-session agreement taken at the Congress of Deputies on 18 Mar. 1997 is reproduced in English in Spanish Ministry of Industry Tourism and Trade (note 211), p. 39.

²²⁶ Amnistía Internacional, Greenpeace and Intermón Oxfam (note 218).

licly available report on arms exports was published in February 1998; it provides information on the financial value of Spanish arms exports from 1991 to 1996, broken down by country of destination.²²⁷ Since 1998 the amount of information provided in the Spanish national report has increased. Information on arms exported has been disaggregated; first by six categories of weapon systems and, later, by the 22 categories of the EU Common Military List. Information on arms export licences continues to include only the number of licences granted and their financial value, broken down by destination. The number of denials circulated to EU member state governments has been published in the Spanish national report since 1999. The type of equipment whose export was denied and the Code criteria used to justify the refusal have been published since 2001. However, no information is given on the planned destinations and the information on the type of equipment is not very detailed.²²⁸

The Spanish Parliament, backed by NGOs, pushed for further improvements in the quality and quantity of information in the Spanish national report in the parliamentary agreements of 2001 and 2005.²²⁹ The 2005 agreement urged improvements in the reporting mechanism in line with ‘the best practices of other European Union countries’. Under the 2007 law (Article 16), the Spanish Government is now legally obliged to provide an annual report on arms exports containing certain prescribed categories of information. Although the act had not come into force at the time of the publication of the annual report for 2006, several of the improvements in reporting were implemented. These include providing information on the end-user of the goods exported and a separate table giving information on donations of second-hand goods and licensed production agreements.²³⁰

Developments in both parliamentary engagement and transparency in Spain show evidence of the impact of engagement with the EU Code of Conduct. One of the tools used by Spanish parliamentarians and NGOs to press for change in these areas has been to highlight perceived examples of best practice in other EU member states, via seminars and written reports.²³¹ Changes in Spanish practices have often been closely modelled on developments elsewhere. In the field of public

²²⁷ Spanish Sub-directorate General of External Trade in Defence and Dual-use Material, ‘Exportaciones de material de defensa por países de destino. período 1991–1996’ [Exports of defence material by countries of destination, 1991–1996], *Boletín Económico de Información Comercial Española*, no. 2566 (2–15 Feb. 1998).

²²⁸ Spain’s annual reports on defence exports are available at <http://www.comercio.es/comercio/bienvenido/Comercio+Exterior/Informacion+sectorial/Material+de+Defensa+y+de+Doble+Uso/pagPublicaciones__en_.htm>.

²²⁹ The plenary-session agreement taken at the Congress of Deputies on 11 Dec. 2001 is reproduced in English in Spanish Ministry of Industry Tourism and Trade (note 211), p. 40. See note 217 for the 2005 agreement.

²³⁰ Spanish Ministry of Industry Tourism and Trade (note 211), pp. 47–48, 49. None of the entries listed in the latter table refer to licensed production agreements, so it is not possible to judge the detail of information that will be provided under this category.

²³¹ Amnistía Internacional, Greenpeace and Intermón Oxfam (note 218); and Meneses, R., ‘La futura ley española sobre comercio de armas, a debate’ [The debate on the future Spanish law on the arms trade], *El Mundo*, 25 Apr. 2006, p. 14.

Table 5.1. Spanish exports of military equipment, 1997–2006

Figures are in € m. at current prices (unadjusted for inflation).

Year	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Exports	572	164	141	138	231	275	383	406	419	845

Sources: Spanish Secretary of State for Tourism and Trade, ‘Estadísticas españolas de exportación de material de defensa y de doble uso en 2003’, *Boletín Económico de Información Comercial Española*, no. 2827 (13–19 Dec. 2004), p. 8; and Spanish Ministry of Industry, Tourism and Trade (MITT), *Spanish Export Statistics Regarding Defence Material, Other Material and Dual-use Items and Technologies, 2006* (MITT: Madrid, 2007), p. 10.

transparency, evidence can also be found of practices being taken directly from the EU level. In particular, the adoption of the 22 categories of the EU Common Military List as the basis for reporting on arms exports followed similar changes in the structure of the EU Annual Report. However, while the practices of other European countries may act as a source of examples of best practice, it is the pressure exerted at the domestic level which has driven developments.²³²

The impact on the outcomes of Spanish arms export policy

According to the SIPRI Arms Transfers Database, Spain was the 12th biggest exporter of major conventional weapons in Europe during the period 1998–2007.²³³ It has risen to 11th place for the shorter period 2003–2007. According to official Spanish Government data, Spain exported €3.6 billion of military equipment during the period 1997–2006 (see table 5.1). Since falling to €138 million in 2000 the value of Spanish arms exports has seen consistent year-on-year increases. According to official government data, 55 per cent of the value of licences issued in 2006 was for EU member states, 19 per cent was for Latin America, 5 per cent was for North America, 2 per cent was for Africa and 1 per cent was for non-EU Europe.²³⁴

In recent years Spanish arms exports have been largely centred around four main sectors: shipbuilding, aerospace, radar systems and land systems. The production and export of small arms and light weapons have fallen dramatically over the past 10 years after many of the companies involved in production went bankrupt in the 1990s. Today, General Dynamics Santa Bárbara Sistemas is the only Spanish company producing military-style small arms.²³⁵

Spain’s state-owned naval shipbuilding and systems group, Navantia, was created in 2005 by the demerging of the naval and commercial activities of Izar.

²³² Campuzano i Canadés (note 216).

²³³ SIPRI Arms Transfers Database (note 11).

²³⁴ Spanish Ministry of Industry, Tourism and Trade (note 211), pp. 43–44.

²³⁵ Weidacher (note 171), p. 63.

Since its creation, Navantia has built up an order backlog worth €5 billion, partly because of an increase in exports.²³⁶ About half of Spain's reported arms sales in 2006 were carried out by Navantia.²³⁷ Important deals in recent years include: a June 2007 decision by Australia to select Navantia designs for its new generation of air warfare destroyers and amphibious ships;²³⁸ a June 2005 agreement, valued at €1.2 billion, for the sale of four offshore patrol vessels and four corvettes to Venezuela;²³⁹ and a June 2000 agreement, valued at €2.67 billion, for the sale of four F-130 Fridtjof Nansen class frigates to Norway.²⁴⁰ Navantia has also co-produced the Scorpene submarine with France's DCN and exported it to Chile, India and Malaysia.²⁴¹

Spain is also a significant player in the aerospace industry, principally via the activities of EADS CASA and its sales of the CN-235 medium transport and maritime patrol aircraft, the C-295 stretched version of the CN-235 and the C-212 light transport aircraft. Sales of aircraft formed the second largest category of Spain's defence sales in 2006, totalling €123 million.²⁴² Significant deals in recent years include: an October 2007 agreement covering the sale of the C-295 aircraft to Chile;²⁴³ an August 2006 agreement, valued at €204 million, covering the sale of up to 50 C-212 aircraft to Brazil;²⁴⁴ an August 2006 agreement covering the sale of three ex-Spanish Air Force C-212 aircraft to Bolivia;²⁴⁵ an April 2006 agreement, valued at €238 million, covering the sale of 12 C-295 aircraft to Portugal;²⁴⁶ and a July 2005 agreement, valued at €238 million, covering the sale of 12 C-295 aircraft to Brazil.²⁴⁷ In October 2006 EADS CASA was forced to abandon its plans to sell 10 C-295 and two CN-235 aircraft to Venezuela because of a refusal by the USA to approve the transfer of US-built technology used in the aircraft.²⁴⁸

²³⁶ Anderson, G. et al., 'Export hub', *Jane's Defence Weekly*, 6 Dec. 2006, p. 16.

²³⁷ Ing, D., 'Spain announces record defence export sales', *Jane's Defence Weekly*, 6 June 2007, p. 19.

²³⁸ Kerr, J., 'Australia selects Spanish AWD and LHD designs', *Jane's Defence Weekly*, 27 June 2007, p. 16.

²³⁹ Agüera, M., 'Spain draws fire for sale of material to Venezuela', *Defense News*, 25 Apr. 2005, p. 13.

²⁴⁰ Anderson et al. (note 236).

²⁴¹ Scott, R., 'DCN, Navantia face split over submarine designs', *Jane's Defence Weekly*, 8 Nov. 2006, p. 23. DCN is now known as DCNS.

²⁴² Spanish Ministry of Industry, Tourism and Trade (note 211), p. 11.

²⁴³ EADS, 'The Chilean Navy purchases EADS CASA C-295 aircraft', Press release, 18 Oct. 2007, <http://www.eads.net/1024/en/investor/News_and_Events/news_ir/2007.html>.

²⁴⁴ Wastnage, J., 'Brazil orders 50 C-212 transports from EADS Casa, to replace Bandeirantes', *Flight Global*, 23 Aug. 2006.

²⁴⁵ Baranuskas, T., 'Bolivian military to get three C-212 transports', Forecast International Government & Industry Group, 28 Aug. 2006.

²⁴⁶ 'Portuguese Air Force orders C-295', *Air Forces Monthly*, Apr. 2006, p. 8.

²⁴⁷ Kemp, D., 'Brazil maritime, transport aircraft deals finalised', *Jane's Defence Weekly*, 4 May 2005, p. 7.

²⁴⁸ Kemp, D., 'Spain abandons aircraft deal with Venezuela', *Jane's Defence Weekly*, 25 Oct. 2006, p. 6.

The Spanish company Indra manufactures and exports a number of land- and sea-based radar systems. In 2006 electronic equipment accounted for €91.4 million of Spanish arms exports.²⁴⁹ Important deals in recent years include: a January 2007 agreement, valued at €19 million, covering the sale of three 3D Lanza radars to Uruguay;²⁵⁰ and a September 2004 agreement, valued at €18 million, covering the sale of a S763 Lanza radar to Portugal.²⁵¹

Spain's principal manufacturer of land based systems is Santa Bárbara Sistemas, which was purchased by the US-based company General Dynamics in 2001. Since then the company has been involved in a number of export projects, principally involving the co-production of the Leopard tank and its own Pizarro armoured vehicle and 155/52 APU SBT howitzer.²⁵² Significant deals in recent years include a December 2005 agreement, valued at €13.5 million, covering the sale of 15 155/52 APU SBT howitzers to Colombia.²⁵³

Sections of the Spanish defence industry, particularly EADS CASA and Indra, have benefited from their involvement in several international European programmes such as the Eurofighter Typhoon multi-role combat aircraft, the A400M transport aircraft, and the Iris-T and Meteor missiles. EADS CASA's Military Air Systems unit is expected to earn around €6 billion from its involvement in the Eurofighter programme.²⁵⁴ According to Spanish Government figures, 18 per cent of Spanish arms exports in 2006 was related to cooperative programmes.²⁵⁵

Increases in Spain's foreign military sales have not been matched by increases in the Spanish military budget or the Ministry of Defence's outlays on domestic procurement.²⁵⁶ This could lead to the Spanish defence industry becoming reliant on exports in order to support its increased production capacity. The Spanish Government is often directly involved in the negotiation of major arms export deals. For example, the sales of ships and aircraft to Venezuela were negotiated by the Spanish Defence Minister, José Bono, and the deal was signed by the Prime Minister, José Luis Rodríguez Zapatero, during a state visit to Caracas.²⁵⁷

According to an official of the Spanish Ministry of Industry, Tourism and Trade, the most important change in the Spanish Government's attitude regarding arms exports over the past 10 years has involved the treatment of SALW. This period has seen a 'radical change' in the treatment of SALW export licence applications,

²⁴⁹ Ing (note 237).

²⁵⁰ Ing, D., 'Uruguay is Indra's first Latin American customer for Lanza', *Jane's Defence Weekly*, 24 Jan. 2001, p. 31.

²⁵¹ Ing, D., 'Spain's Indra wins Portuguese radar contract', *Jane's Defense Weekly*, 29 Sep. 2004, p. 34.

²⁵² Anderson et al. (note 236).

²⁵³ Francés, R., 'Cuatro obuses 155/52 salieron este mes rumbo a Colombia' [Four artillery pieces 155/52 left this month for Colombia], *La Nueva España*, 29 Nov. 2007.

²⁵⁴ Anderson et al. (note 236).

²⁵⁵ Spanish Ministry of Industry, Tourism and Trade (note 211), p. 49.

²⁵⁶ Anderson et al. (note 236).

²⁵⁷ Agüera (note 239).

with much closer scrutiny and an increased tendency to deny licences.²⁵⁸ The three export licence denials issued by Spain in 2006 all related to transfers of SALW.²⁵⁹ Spanish NGOs and parliamentarians continue to highlight transfers which they believe to be in contravention of the criteria laid down in the EU Code of Conduct. Licences granted for sales to Colombia, Israel and Morocco have been pointed to as being of particular concern.²⁶⁰

Spanish officials believe that the EU Code of Conduct is the most important international agreements that plays a role in decision making on whether to grant or deny an export licence. According to an official of the MITT, 'The EU Code of Conduct has . . . 90 per cent [of the] main role in the Spanish export control mechanism'. The eight criteria of the EU Code of Conduct and the denials database are both consulted when export licences are being considered and Spain has never approved an export licence application that is 'essentially identical' to one previously denied by another member state.²⁶¹ Nonetheless, officials are wary of ascribing any causal role to the EU Code of Conduct in the overall developments in either Spanish export markets or the government's treatment of certain types of equipment or destinations. Rather, the officials describe a model in which the EU Code of Conduct is a mechanism that enables government officials to enact preferences already developed at the national level. According to an official of the MITT, the EU Code of Conduct was 'one part of the global explanation that led the Spanish authorities to strengthen our legislation with regards to small arms and light weapons' while 'the denials in the Code of Conduct system also help us to . . . have a minimum risk that an export could be diverted to an undesired end-user or destination'.²⁶² Hence, when it comes to arms export policy outcomes, the EU Code of Conduct is primarily seen as a tool to facilitate the implementation of policies, rather than a source of policies.

²⁵⁸ Deputy Director General (note 207).

²⁵⁹ Spanish Ministry of Industry, Tourism and Trade (note 211), p. 12.

²⁶⁰ Amnistía Internacional, Greenpeace and Intermón Oxfam (note 218), p. 12.

²⁶¹ Deputy Director General (note 207).

²⁶² Deputy Director General (note 207).

6. Conclusions

As the EU Code of Conduct on Arms Exports approaches its 10th anniversary it is an opportune time to assess its development. By examining the Czech Republic, the Netherlands and Spain—three middle-ranking arms exporting countries that have been overlooked in previous studies of the EU Code—this Policy Paper allows a fresh look to be taken at how the Code of Conduct has developed, why it has developed in this way, what impact it has had on member states' arms export policies and how its functioning can be improved.

The examples of the Netherlands and Spain demonstrate how even mid-level arms exporters have been able to use their presidencies of the EU Council to push for changes in the Code of Conduct. In both cases, the state focused on areas where it felt that its practice was ahead of that of other member states and should be adopted across the EU. During its 2004 presidency the Dutch Government sought to increase the level of transparency and information sharing in order to bring other member states up to Dutch standards of practice and, consequently, to increase the volume of information provided via the EU Code of Conduct to inform Dutch export licensing decisions. Spain, which felt that its practices in the field of transit licences were stricter than those elsewhere in the EU, used its 2002 presidency to have those practices adopted across the EU to create a level playing field for its industry. These examples demonstrate the process that has kept the EU Code of Conduct evolving and improving. Raül Romeva describes this process as the 'calling for the best practices' policy.²⁶³ It can be seen as a natural reflection of the fact that states with a transparent or responsible system want other member states to have similar standards and will use the EU Code of Conduct to achieve this goal.²⁶⁴

The strongest evidence of the EU Code of Conduct's impact can be found in the processes of member states' arms export policies, and in particular in increases in parliamentary accountability. In the three countries studied here, no evidence could be found of any impact on the division of responsibilities between government ministries. This is unsurprising given that it is not mentioned in the EU Code of Conduct and no EU member state has sought to raise it. Indeed, no member state would welcome this level of intrusion into its arms export licensing processes. Nonetheless, if states fail to discuss this issue it could become a barrier to further harmonization of export policy. The effects of Europeanizing processes of socialization can only have an impact if the officials being socialized have a real say in the national decision-making processes. Reaching common agreement on which government ministries have a say in export licensing decisions and correlating this more effectively with attendance at COARM meetings would increase the effectiveness of the EU Code of Conduct. However, as noted above, this level of

²⁶³ Romeva (note 141).

²⁶⁴ Romeva (note 141).

intrusion into the process of arms export licensing is something which member states have never sought to raise or discuss.

There is indirect evidence that the EU Code of Conduct has had an impact on levels of parliamentary accountability, even though this is not an area with which it deals directly. In both the Czech Republic and Spain there has been an increase in the level of parliamentary oversight of arms export policy since 1998. There is clear evidence that Spanish NGOs and parliamentary groups have used the examples of other EU member states to push for domestic change in this area. The EU Code of Conduct facilitates this process of benchmarking: via the Code, states have agreed to the principles of harmonization and policy coordination and have thereby legitimized the notion that lessons can be learned from the experiences and practices of other member states. Meanwhile, the Code's reporting mechanisms and the discussion of arms export policies at the EU level have made it easier to find out what the practices are in other EU member states.

Transparency has increased in all three countries since the EU Code of Conduct was adopted in 1998. In the case of the Netherlands, where levels of transparency have been consistently higher than in other member states, this is mainly attributable to domestic pressures. However, in the cases of the Czech Republic and Spain, the increases have been largely a result of interaction with the EU Code of Conduct. The EU Code has provided new reporting requirements with which member states have to comply. In addition, it has led to increased transparency by altering opportunity structures at the domestic level by enabling certain ministries and officials to push forward their agendas. This is particularly apparent in the Czech Republic, where the shift in power caused by EU requirements has enabled more transparency-minded ministries to overcome the objections of other ministries. In the case of Spain, change has been driven by NGOs and parliamentarians using the examples of other states. Across the EU, Europeanization has increased the amount of available information about arms exports, one of the central foundations of an open and accountable arms export policy. This is particularly interesting since the EU Code of Conduct was never intended to act as a tool to promote national transparency. However, through the pressures exerted by NGOs and parliamentarians the EU Code of Conduct has become, first, a transparency mechanism in its own right and, second, a tool with which to promote further transparency increases at the domestic level.

The impact of the EU Code of Conduct on policy outcomes is naturally hard to measure. In all three countries studied, government officials insist that the Code had not forced any changes in domestic decision making about what and where arms should be exported. In fact, despite the EU Code of Conduct's stated aim being the achievement of more harmonized arms export policies in line with agreed minimum standards, this is not something that the officials believe has been achieved nor is it something that they prioritize for the future. Wider economic and political factors, both domestic and international, have played a far more decisive role in determining where and when arms have been exported. Such findings should give pause to those who expect the EU Code of Conduct to result in true

harmonization of arms export policy outcomes. The Commission's proposals on intra-EU transfers may inadvertently throw a sharper light on the issue of harmonization of arms export policy outcomes. According to the proposal, when issuing multi-shipment licences for intra-EU transfers, the exporting state will specify the non-EU states to which the goods can be re-exported. Currently, many EU members are aware that there are different standards across the EU with regards to certain destinations but are unwilling to disrupt trade by applying their own standards to re-export cases. If states start to issue multi-shipment licences, and their details become public, it could open up the debate about levels of arms export policy harmonization.

If states do wish to increase the level of harmonization in arms export policy outcomes, one crucial development would be to improve the quality and quantity of the data that EU member states exchange on their arms export licences and arms exports—this would allow states to obtain a clearer picture of how other states are interpreting the EU Code criteria. While member states currently exchange detailed information on their denials of arms export licences, the shared information on licences approved and exports carried out remains limited to that available in the EU Annual Report—financial values broken down by Common Military List categories. This allows only a limited understanding of how states are interpreting the Code's criteria. Meanwhile, several states continue to have problems in making full submissions to the Annual Report because of problems with their data collection methods. In 2007, the number of states making full data submissions fell from 17 to 15. In order for the data on export licences and actual exports to effectively contribute to an understanding of how the Code is implemented at the national level, states need to exchange descriptions of the goods licensed for export and actually exported as well as the number of items involved and a description of the end-user.

Stalled discussions over the development of a 'toolbox' which would increase the amount of information that member states share on transfers to countries that have recently emerged from an EU arms embargo represent a tacit acknowledgement of the deficiencies of the current system and the need for more detailed exchanges of information. These discussions need to be restarted and the agreed mechanism expanded to cover not just states that have been subject to an arms embargo, but all non-EU and non-NATO states.

What officials do stress is the EU Code of Conduct's value in informing and strengthening national decision making. For example, officials argue that having access to decisions made by other EU member states has helped to support their licensing decisions in debates with other government departments, industry, parliamentarians and NGOs. In addition, the information provided via the EU Code of Conduct has improved the implementation of policy preferences formed at the national level or agreed in other (non-EU) international forums. In particular, although the Code was devised as a tool for harmonizing European export controls in general, officials stress its usefulness in providing guidance on certain types of exports, specifically of small arms and light weapons, and identifying potential risks of diversion. As noted above, there is some evidence that assisting member

states in blocking exports of SALW that are likely to be diverted is one of the key ways in which the EU Code of Conduct is being used; however, there seems to have been no corresponding decrease in transfers of SALW to destinations of concern since 1998.²⁶⁵ The EU Code can operate as an effective means of identifying potential diversion risks because of the amount and detail of information that states exchange coupled with the trust and coordination built up over the years.

Looking ahead, one challenge for the EU will be to spread the benefits of the EU Code of Conduct to a wider audience. EU member states are engaged in ongoing efforts to have the principles of the EU Code adopted by the countries neighbouring the EU. This aim has been mainly pursued via workshops and outreach seminars. However, if the benefits of the EU Code of Conduct are to be spread effectively the mechanisms for information exchange and consultation need to be expanded. These efforts have been slow so far due to concerns about commercial confidentiality and lack of trust—concerns that had to be met and overcome when the EU Code of Conduct was first proposed in the 1990s.

Another challenge facing the future development of the EU Code of Conduct could be to maintain the same level of dynamism in its evolution under the new rules of the 2007 Treaty of Lisbon, if and when it comes into force.²⁶⁶ The key mechanism for the development of the EU Code of Conduct since 1998 has been the state holding the Presidency of the Council proposing the adoption across the EU of a particular domestic policy preference. While the Treaty of Lisbon preserves the rotating presidency, meetings to discuss foreign affairs will be chaired by the High Representative for Foreign Affairs and Security Policy. It is unclear how this will affect the chairing of bodies such as COARM. If the rotation of COARM presidencies is abolished, the mechanism which has driven much of the EU Code's development may stall.

As the EU Annual Report increases the level of transparency in arms export licensing and as the number of guidelines and clarifications in the User's Guide multiplies, the appetite of NGOs and parliamentarians for developing the EU Code of Conduct shows no sign of diminishing. Making progress with such complex issues as arms brokering, licensed production and end-use monitoring—all of which have been placed on the EU Code of Conduct's agenda in recent years—will require engaged member states that are both willing and able to propose the adoption at the EU level of their domestic preferences and practices. It will also require a willingness on the part of all EU member states to accept these new standards and apply them fully and consistently at the domestic level. This process would also be assisted by increased efforts to improve coordination of the EU-wide processes of parliamentary and civil society scrutiny that have helped to drive and monitor developments in the EU Code of Conduct during its lifetime.

²⁶⁵ See Jackson, Marsh and Thurin (note 55); and Trinchieri (note 55).

²⁶⁶ The Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community was signed on 13 Dec. 2007. Its text is available at <http://europa.eu/lisbon_treaty/>.

Appendix A. The European Union Code of Conduct on Arms Exports

Adopted in Brussels on 8 June 1998

THE COUNCIL OF THE EUROPEAN UNION,

BUILDING on the Common Criteria agreed at the Luxembourg and Lisbon European Councils in 1991 and 1992,

RECOGNIZING the special responsibility of arms exporting states,

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 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,

WISHING within the framework of the Common Foreign and Security Policy (CFSP) to reinforce cooperation and to promote convergence in the field of conventional arms exports,

NOTING complementary measures taken against illicit transfers, in the form of the EU Programme for Preventing and Combating Illicit Trafficking in Conventional Arms,

ACKNOWLEDGING the wish of Member States to maintain a defence industry as part of their industrial base as well as their defence effort,

RECOGNIZING that States have a right to transfer the means of self-defence, consistent with the right of self-defence recognized by the UN Charter,

HAS DRAWN UP the following Code of Conduct together with Operative Provisions:

CRITERION ONE: Respect for the international commitments of Member States, in particular the sanctions decreed by the UN Security Council and those decreed by the Community, agreements on non-proliferation and other subjects, as well as other international obligations

An export licence should be refused if approval would be inconsistent with, inter alia:

(a) the international obligations of Member States and their commitments to enforce UN, OSCE and EU arms embargoes;

(b) the international obligations of Member States under the Nuclear Non-Proliferation Treaty, the Biological and Toxin Weapons Convention and the Chemical Weapons Convention;

(c) the commitments of Member States in the framework of the Australia Group, the Missile Technology Control Regime, the Nuclear Suppliers Group and the Wassenaar Arrangement;

(d) the commitment of Member States not to export any form of anti-personnel landmine.

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 estab-

lished 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. In line with paragraph 1 of the Operative Provisions of this Code, the nature of the equipment will be considered carefully, particularly if it is intended for internal security purposes. 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.

CRITERION THREE: The internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts

Member States will not allow exports which would provoke or prolong armed conflicts or aggravate existing tensions or conflicts in the country of final destination.

CRITERION FOUR: Preservation of regional peace, security and stability

Member States will not issue an export licence if there is a clear risk that the intended recipient would use the proposed export aggressively against another country or to assert by force a territorial claim.

When considering these risks, Member States will take into account inter alia:

(a) the existence or likelihood of armed conflict between the recipient and another country;

(b) a claim against the territory of a neighbouring country which the recipient has in the past tried or threatened to pursue by means of force;

(c) whether the equipment would be likely to be used other than for the legitimate national security and defence of the recipient;

(d) the need not to affect adversely regional stability in any significant way.

CRITERION FIVE: 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

Member States will take into account:

(a) the potential effect of the proposed export on their defence and security interests and those of friends, allies and other Member States, while recognizing that this factor cannot affect consideration of the criteria on respect for human rights and on regional peace, security and stability;

(b) the risk of use of the goods concerned against their forces or those of friends, allies or other Member States;

(c) the risk of reverse engineering or unintended technology transfer.

CRITERION SIX: The behaviour of the buyer country with regard to the international community, as regards in particular its attitude to terrorism, the nature of its alliances and respect for international law

Member States will take into account inter alia the record of the buyer country with regard to:

(a) its support or encouragement of terrorism and international organized crime;

(b) its compliance with its international commitments, in particular on the non-use

of force, including under international humanitarian law applicable to international and non-international conflicts;

(c) its commitment to non-proliferation and other areas of arms control and disarmament, in particular the signature, ratification and implementation of relevant arms control and disarmament conventions referred to in point (b) of Criterion One.

CRITERION SEVEN: The existence of a risk that the equipment will be diverted within the buyer country or re-exported under undesirable conditions

In assessing the impact of the proposed export on the importing country and the risk that exported goods might be diverted to an undesirable end-user, the following will be considered:

(a) the legitimate defence and domestic security interests of the recipient country, including any involvement in UN or other peace-keeping activity;

(b) the technical capability of the recipient country to use the equipment;

(c) the capability of the recipient country to exert effective export controls;

(d) the risk of the arms being re-exported or diverted to terrorist organizations (anti-terrorist equipment would need particularly careful consideration in this context).

CRITERION EIGHT: 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.

OPERATIVE PROVISIONS

1. Each Member State will assess export licence applications for military equipment made to it on a case-by-case basis against the provisions of the Code of Conduct.

2. The Code of Conduct will not infringe on the right of Member States to operate more restrictive national policies.

3. Member States will circulate through diplomatic channels details of licences refused in accordance with the Code of Conduct for military equipment together with an explanation of why the licence has been refused. The details to be notified are set out in the form of a draft pro-forma set out in the Annex hereto. Before any Member State grants a licence which has been denied by another Member State or States for an essentially identical transaction within the last three years, it will first consult the Member State or States which issued the denial(s). If following consultations, the Member State nevertheless decides to grant a licence, it will notify the Member State or States issuing the denial(s), giving a detailed explanation of its reasoning.

The decision to transfer or deny the transfer of any item of military equipment will remain at the national discretion of each Member State. A denial of a licence is understood to take place when the Member State has refused to authorize the actual sale or physical export of the item of military equipment concerned, where a sale would otherwise have come about, or the conclusion of the relevant contract. For these purposes, 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.

4. Member States will keep such denials and consultations confidential and not use them for commercial advantage.

5. Member States will work for the early adoption of a common list of military equipment covered by the Code of Conduct, based on similar national and international lists. Until then, the Code of Conduct will operate on the basis of national control lists incorporating where appropriate elements from relevant international lists.

6. The criteria in the Code of Conduct and the consultation procedure provided for by paragraph 3 of these Operative Provisions will also apply to dual-use goods as specified in Annex 1 to Council Decision 94/942/CFSP (1), where there are grounds for believing that the end-user of such goods will be the armed forces or internal security forces or similar entities in the recipient country.

7. In order to maximize the efficiency of the Code of Conduct, Member States will work within the framework of the CFSP to reinforce their cooperation and to promote their convergence in the field of conventional arms exports.

8. Each Member State will circulate to other Member States in confidence an annual report on its defence exports and on its implementation of the Code of Conduct. These reports will be discussed at an annual meeting held within the framework of the CFSP. The meeting will also review the operation of the Code of Conduct, identify any improvements which need to be made and submit to the Council a consolidated report, based on contributions from Member States.

9. Member States will, as appropriate, assess jointly through the CFSP framework the situation of potential or actual recipients of arms exports from Member States, in the light of the principles and criteria of the Code of Conduct.

10. It is recognized that Member States, where appropriate, may also take into account the effect of proposed exports on

their economic, social, commercial and industrial interests, but that these factors will not affect the application of the above criteria.

11. Member States will use their best endeavours to encourage other arms exporting states to subscribe to the principles of the Code of Conduct.

12. The Code of Conduct and Operative Provisions will replace any previous elaboration of the 1991 and 1992 Common Criteria.

ANNEX: Details to be notified

..... [name of Member State] has the honour to inform partners of the following denial under the EU Code of Conduct:

Destination country:

Short description of equipment, including quantity and where appropriate, technical specifications:

Proposed consignee:

Proposed end-user (if different):

Reason for refusal:

Date of denial:

Source: Council of the European Union, European Union Code of Conduct on Arms Exports, document 8675/2/98 Rev 2, Brussels, 5 June 1998, <http://consilium.europa.eu/cms3_fo/showPage.asp?id=408>.

Appendix B. List of interviewees

- George Bontenbal, Export Control Unit, Dutch Ministry of Economic Affairs, The Hague (face-to-face interview, 14 June 2007)
- Jan Cappelle, Researcher, International Peace Information Service (IPIS), Antwerp (written response to questionnaire and phone interview, 29 May 2007)
- Alberto Caramés Boada, Researcher, Escola de Cultura de Pau, Barcelona (written response to questionnaire, 27 August 2007)
- Carles Campuzano i Canadés, Member of the Spanish Congress of Deputies, Spokesman of Grup Parlamentari Català–Convergència i Unió in the International Cooperation Committee (face-to-face interview, 25 September 2007)
- Geert Castryck, Researcher, Flemish Peace Institute, Brussels (face-to-face interview, 13 June 2007)
- Rosemary Chabanski, Office of the Personal Representative on Non-proliferation of Weapons of Mass Destruction of the High Representative for CFSP, Council of the European Union, Brussels (face-to-face interview, 13 June 2007)
- Sara Depauw, Researcher, Flemish Peace Institute, Brussels (face-to-face interview, 13 June 2007)
- Eva Dobrovolná, Press Officer, Amnesty International Czech Republic, Prague (face-to-face interview, 18 September 2007)
- Josef Fučík, Independent defence industry analyst, Prague (face-to-face interview, 19 September 2007)
- Mabel González Bustelo, Disarmament campaigner, Greenpeace Spain, Madrid (written response to questionnaire, 2 October 2007)
- Ernst Guelcher, Researcher on peace, disarmament and conflict prevention, Greens–European Free Alliance group, European Parliament, Brussels (face-to-face interview, 13 June 2007)
- Richard Hlavatý, Managing Director, Association of the Defence Industry of the Czech Republic (Asociace obranneho prumyslu, AOP), Prague (face-to-face interview, 19 September 2007)
- Roy Isbister, Team Leader, Small Arms and Transfer Controls, Saferworld, London (phone interview, 21 June 2007)
- Ricardo Magán, Armas bajo Control (Control arms) Campaign Coordinator, Inter-món Oxfam, Madrid (face-to-face interview, 25 September 2007)
- John Mattiussi, British Ministry of Defence, London, formerly seconded to the European Commission, working inter alia on export controls and in that capacity the Commission representative to COARM (face-to-face interview, 13 June 2007)

- Hajo Provó Kluit, Arms Control and Arms Export Policy Division, Dutch Ministry of Foreign Affairs, The Hague (face-to-face interview, 14 June 2007)
- Gerrard Quille, Policy Department (Security and Defence), Directorate-General for External Policies, European Parliament, Brussels (face-to-face interview, 13 June 2007)
- Raül Romeva, Spanish Member of the European Parliament (the Greens–European Free Alliance group and Iniciativa per Catalunya Verds) and rapporteur for the European Parliament’s reports on the Fifth, Sixth, Seventh and Eighth EU Annual Reports (face-to-face interview, 12 June 2007)
- Frank Slijper, Senior researcher on arms transfers and arms export policy, Campaigne tegen Wapenhandel (Campaign against the arms trade), Utrecht (face-to-face interview, 14 June 2007)
- Louise Uvenfeldt, Senior Officer, Industry and Market Directorate, European Defence Agency, Brussels (face-to-face interview, 13 June 2007)
- An Vranckx, Professor, Conflict Research Group, University of Ghent, formerly Researcher, International Peace Information Service (IPIS), Antwerp (written response to questionnaire and phone interview, 29 May 2007)
- Deputy Director General for Foreign Trade in Defence Materials and Dual-use Goods and Technologies, Spanish Ministry of Industry, Tourism and Trade, Madrid (face-to-face interview, 24 September 2007)
- Senior official, Czech Ministry of Foreign Affairs, Prague (face-to-face interview, 18 September 2007)
- Senior official, Spanish Ministry of Foreign Affairs and Cooperation, Madrid (face-to-face interview, 25 September 2007)

About the author

Mark Bromley (United Kingdom) is a Research Associate with the SIPRI Arms Transfers Project, where his research focuses on European arms exports, European arms export controls and South American arms acquisitions. Previously, he was a Policy Analyst for the British American Security Information Council (BASIC). His publications include *The European Union Code of Conduct on Arms Exports: Improving the Annual Report*, SIPRI Policy Paper no. 8 (Nov. 2004, co-author), 'The Europeanisation of arms export policy in the Czech Republic, Slovakia, and Poland', *European Security* (June 2007), and 'Towards a common, restrictive EU arms export policy? The impact of the EU Code of Conduct on major conventional arms exports', *European Foreign Affairs Review* (forthcoming 2008, co-author).