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General Secretariat

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**LIMITE**

**CONOP**

**COARM**

**CFSP/PESC**

### WORKING PAPER

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#### **CONTRIBUTION**

From:	RO Delegation
To:	Working Party on Conventional Arms Exports
N° prev. doc.:	WK 8850/2020, WK 8850/2020 REV1
Subject:	Romanian comments on the revised draft Council Decision on end-use control for SALW

Please find attached the Romanian comments on the revised draft Council Decision on end-use control for SALW in view of our discussion on 5 October.

**COUNCIL DECISION (CFSP) 2020/XXX**

**of dd/mm/2020**

**Defining a common approach to end-use and end user controls in the context of the export of small arms and light weapons and their ammunition.**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty of the European Union, and in particular Article 29 thereof,

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

- (1) In its Conclusions of 16 September 2019 on the review of Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment, the Council proposes a Decision on end-user certificates for the export of small arms and light weapons and their ammunition.
- (2) Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment as amended by Council Decision (CFSP) 2019/1560 of 16 September 2019<sup>1</sup> ('Council Common Position 2008/944/CFSP') states in its Article 5 that export licences are granted only on the basis of reliable prior knowledge of end-use in the country of final destination. This generally requires a thoroughly checked end-user certificate or appropriate documentation and/or some form of official authorisation issued by the country of final destination.
- (3) A common EU-wide approach to end-use control for small arms and light weapons and their ammunition will diminish the risk of diversion, create a level playing field and increase clarity regarding relevant requirements for the defence industry and its clients.
- (4) The updated User's Guide to Council Common Position 2008/944/CFSP, endorsed by the Council on 16 September 2019, provides best practices in the area of end-user certificates.
- (5) In the EU Strategy against illicit firearms, small arms & light weapons (SALW) and their ammunition, adopted on 19 November 2018, the Council commits to consider a decision on end-user certificates SALW exports, taking account of the OSCE's work in this regard<sup>2</sup>.
- (6) Council Decision (CFSP) 2020/979 of 7 July 2020<sup>3</sup> supports the development of an internationally recognised system for the validation of arms and ammunition

<sup>1</sup> Council Decision (CFSP) 2019/1560 of 16 September 2019 amending Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment (OJ L 239, 17.9.2019, p. 16–18).

<sup>2</sup> OSCE Document on Small Arms and Light Weapons (FSC.DOC/1/00, 24 November 2000) and OSCE Document on standard elements of end-user certificates and verification procedures for SALW exports (FSC.DOC/5/04, 17 November 2004).

<sup>3</sup> Council Decision (CFSP) 2020/979 of 7 July 2020 in support of the development of an internationally recognised system for the validation of arms and ammunition management according to open international standards (OJ L 218, 8.7.2020, p. 1–9).

management that would allow independent validation/certification of compliance with open international standards on the safe and secure management of national small arms and ammunition stockpiles.

- (7) The Council Conclusions on an EU position on combatting the illicit trade in small arms and light weapons, in light of the Third Review Conference to review the implementation of the UN Programme of Action on SALW, as adopted by the Council on 28 May 2018, call for the promotion of the application of end-user agreements in the context of the control of small arms and light weapons exports.
- (8) In the UN Programme of Action to prevent, combat and eradicate the illicit trade in small arms and light weapons in all its aspects (PoA), as adopted by the UN General Assembly on 20 July 2001, States commit to put in place and implement adequate laws, regulations and administrative procedures to ensure the effective control over the export and transit of small arms and light weapons, including the use of authenticated end-user certificates and effective legal and enforcement measures<sup>4</sup>.
- (9) The Arms Trade Treaty, adopted by the UN General Assembly on 2 April 2013, states that the exporting State Party seeks to prevent the diversion of the transfer of conventional arms by, where appropriate: examining parties involved in the export, requiring additional documentation, certificates, assurances, not authorizing the export or other appropriate measures (Art. 11, § 2).
- (10) The UN 2030 Agenda for Sustainable Development affirms that combating the illicit trade in small arms and light weapons is necessary for the achievement of many sustainable development goals, including those relating to peace, justice and strong institutions, poverty reduction, economic growth, health, gender equality and safe cities. Therefore, in Sustainable Development Goal 16.4, all States have committed to significantly reducing illicit financial and arms flows.
- (11) In the Agenda for Disarmament 'Securing our Common Future', which was presented on 24 May 2018, the UN Secretary-General called for addressing the excessive accumulation of conventional arms and the illicit trade in conventional arms.
- (12) Unauthorised re-export remains a source of diversion of small arms and light weapons and their ammunition into the illicit market.
- (13) End-use certificates are an important element in establishing effective end use controls and to minimise the risk of undesirable diversion. However, they are not a substitute for an ~~pre-ex-~~ ante full assessment of risk, taken on a case by case basis when deciding whether to grant a licence or not.

## HAS ADOPTED THIS DECISION:

### Article 1

The purpose of this Decision is to help prevent the diversion of small arms and light weapons (SALW) and their ammunition to unintended end-users or end-uses, by ~~agreeing on common elements for end-use certificates~~ defining a common approach to end use and end-user controls in the context of the implementation of the EU's common rules governing control of exports of military technology and equipment.

<sup>4</sup> A/CONF.192/15 II. §12.

**Commented [IM1]:** RO prefers the previous language, 'defining a common approach...'. This would be in line with the title and would reflect better the purpose of the CD, which does not refer only to what elements should be included in an EUC, but rather shows Member States' commitment to work towards convergence of their approach to end use/r controls.

## Article 2

This Decision shall apply to permanent exports of small arms and light weapons and their components, accessories and ammunition, as defined in the Annex.

## Article 3

For the purposes of this Decision, the following definitions apply:

(1) ‘end-user’ means the final consignee and owner of the exported goods known at the time of the export license application, according to the contractual terms of the transaction.

(2) ‘export’ means any departure of goods from the customs territory of the Union, including the departure of goods that requires a customs declaration and the departure of goods after their storage in a free zone within the meaning of Regulation (EU) No 952/2013 of the European Parliament and of the Council.

(3) ‘exporter’ means any natural or legal person or partnership established in the Union, who submits or on whose behalf an export license application is submitted, that is to say the person who, at the time when the application is accepted, holds the contract with the consignee in the third country and has the power for determining the sending of the item out of the customs territory of the Union. If no such contract has been concluded or if the holder of that contract does not act on its own behalf, the exporter means the person, entity or body who has the necessary power for determining the sending of the goods out of the customs territory of the Union.

## Article 4

Authorisation by a Member State of the export of goods as defined in Article 2 shall require a thoroughly checked end-user certificate or appropriate [or similar] documentation signed by the end-user prior to the authorisation of the export.

**Commented [IM2]:** In line with BE proposal. RO agrees with this language. The rest of the articles should be amended accordingly.

## Article 5

The following are essential elements to the end-user agreements certificate referred to in article 4:

**Commented [IM3]:** The same terminology as in Art. 4.

### 1. Identification:

- i. Details of the exporter (at least name, address, business name and if available company registration number);
- ii. Details of the end-user (at least name, address, business name and if available company registration number). In case of an export to a private company that resells the goods on the local market, the company will be regarded as the end-user. This does not prevent Member States from evaluating licence applications that concern exports to resellers differently from licence applications concerning exports to actual end-users;
- iii. Country of final destination;
- iv. A description of the goods, and if available, reference to the contract number or to the order number referenced in the contract;
- v. When applicable, quantity and/or value of the goods intended for export;

- vi. Signature, name and title of the end-user and - if deemed necessary - competent government authority in the country of final destination;
- vii. Where applicable, certification by the relevant government authorities, according to national practice. The certification must include the date, name, title and original signature of authorizing official;
- viii. The date of issue of the end-user ~~agreement~~certificate;
- ix. When applicable, a unique identifying number ~~or contract number~~ relating to the end-user ~~agreement~~certificate;
- x. Indication of the intended end-use of the goods;
- xi. Where appropriate, details of broker (at least name, address, business name and if available company registration number).
2. Commitments by the end-user, through its signature of the end-user ~~agreement~~certificate, with regard to the goods covered by the end-user ~~agreement~~certificate:
- i. that the goods will not be used for purposes other than the declared use; and,
- ii. that any re-export of the goods outside of the importing country, or transfer of custody within the importing country is prohibited; or, that any re-export of the goods is limited to a list of countries identified in the end-user ~~agreement~~certificate, or that any transfer of custody within the importing country is limited to a list or category of entities identified in the end-user ~~agreement~~certificate; or, that any re-export of the goods outside of the importing country, or transfer of custody within the importing country must be subject to a prior written approval of the authorities of the exporting Member State ~~or that any re-export of the goods must happen under the authority of the export control authorities of the country of the end-user.~~

**Commented [IM4]:** The contract number is also referenced in point iv.

**Commented [IM5]:**  
RO understands SE rationale and we agree that we cannot predetermine and/or influence what military goods ought to fall under other states' export control. However, we believe that this clause should be read in a different light, i.e. as a re-export clause. There are situations when Member States can decide to transfer the responsibility of approving the re-export to the authorities of the importing country. This clause is usually included in the international import certificates (IICs), which, according to the existing practices, can be accepted from trusted partners, especially for the export of components. This is a recognized clause and it is included in the OSCE Document on standard elements of end-user certificates and verification procedures for SALW exports (FSC.DOC/5/04, 17 November 2004), as follows:  
"1. The following standard elements will be included in an end-user certificate (EUC) provided prior to approval of an export licence for SALW (...):  
- Assurances that re-export of imported SALW, can take place only after receiving a written authorization from the exporting country unless the exporting country decides to transfer that authority to the export licensing authorities of the importing country."  
Therefore, instead of deleting the text from this CD, as proposed by SE, RO strongly favours moving it to point ii., as a possible re-export clause. This way, it won't be mandatory to have it included in an EUC, but it will allow Member States to use it, when deemed appropriate.

## Article 6

Member States will consider requiring the inclusion of the following optional elements in the end-user ~~agreement~~certificate referred to in article 4.

1. Commitment by the end-user for mandatory notification of the exporting Member State in case of loss or theft of the goods covered by the end-user ~~agreement~~certificate;
2. Commitment by the end-user to confirm delivery after reception of the goods covered by the end-user ~~agreement~~certificate, including their exact quantity;
3. Commitment by the end-user to allow post-shipment on-site verification of the exported goods by representatives of the exporting Member State, including modalities for the verification visits;
4. Assurances by the end-user that demonstrate his capacity for safe and secure weapons and ammunition management, including his capacity for safe and secure management of the stockpiles where the goods will be stored;
5. Commitment by the end-user on decommissioning of surplus military equipment:
  - i. 'New for old': commitment by the end-user that the old goods that will be replaced by the imported goods covered by the end-user ~~agreement~~certificate, will be destroyed; and/or

- ii. 'Destruction after decommissioning': commitment by the end-user that the imported goods covered by the end-user ~~agreement certificate~~ will be destroyed after decommissioning.

#### Article 7

Member States shall hold records of the issued end-user ~~agreements certificate~~ referred to in article 4 in accordance with national law and practice.

#### Article 8

Where deemed necessary, Member States shall verify the authenticity of the signature of the end-user on the end-user ~~agreement certificate~~. In case of doubts regarding the authenticity of the document, Member States should verify e.g. via diplomatic means.

#### Article 9

In case a Member State identifies a fraud with, a falsification of, or a violation of an end-user ~~agreement certificate~~, it ~~will~~ is encouraged to share this information with the other Member States via the COARM online system.

**Commented [IM6]:** RO reiterates its proposal to replace 'will' with 'is encouraged to'. This language was also preferred by SE.

#### Article 10

~~When applicable,~~ Member States ~~shall on request~~ are encouraged to share samples of their ~~formats for end-user agreement certificate~~ formats via the COARM online system, ~~if available.~~

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#### Article 11

This Decision shall enter into force on ...

Done at Brussels, dd/mm/2020.

For the Council  
The President

#### ANNEX

This Council Decision shall apply to the below mentioned categories of military equipment, insofar as these categories are included in categories ML1, ML2, ML3 and ML4 of the Common Military List of the European Union.

These categories do not prejudice any future internationally agreed definition of small arms and light weapons (SALW) and may be subject to further clarification, and may be reviewed in the light of any such future internationally agreed definition.

Categories of military equipment to which this Council Decision applies:

(a) small arms:

- assault rifles;
- semi-automatic rifles and carbines specially designed for military use;
- revolvers and self-loading pistols specially designed for military use;
- light machine guns;
- sub-machine guns, including machine pistols;

(b) light weapons:

- heavy machine guns;
- cannons, howitzers and mortars of less than 100 mm calibre;
- grenade launchers;
- recoilless guns;
- shoulder-fired rockets and other anti-tank and air defence systems that fire projectiles, including MANPADS, all on condition they are man- or crew portable;

(c) components, specially designed for the items listed above;

(d) accessories (such as night scopes, sound suppressors, etc.), specially designed for the items listed above;

(e) ammunitions designed to be fired by the items listed above.

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