

The European Union Code of Conduct on Arms Exports

Improving the Annual Report

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Preface

Since 2001, the issues of terrorism and of the proliferation of mass destruction technologies have risen high on the international agenda. One obvious way to curb both is to shut off the supply of dangerous materials to unauthorized, or unreliable, users at source. In the past few years, this realization has prompted both a series of efforts to tighten up existing multilateral export control mechanisms, and the exploration of more novel approaches to ‘supply-side’ restraint. The urgency of political and popular concern about weapons of mass destruction (WMD) has made the control of conventional weapons and technologies something of a Cinderella in this debate. In actuality, however, the use by terrorists of conventional or even purely civilian instruments has proved able to cause large-scale suffering and disruption: and conventional weapons remain the prime motor of the vast majority of armed conflicts around the globe. While hampering economic development and contributing to the abuse of human rights, these conflicts may also stoke the motives for proliferation of WMD.

A uniquely developed model for the control of conventional military exports is the Code of Conduct on Arms Exports introduced by the European Union (EU) as a political commitment in 1998, and now applicable to the EU’s enlarged membership of 25 nations. Apart from establishing common criteria for the approval of exports, it has built-in transparency provisions—notably the publication of an Annual Report—that allow civil society as well as the official community to monitor individual states’ performance. There are signs that it has created something like a virtuous circle of pressure for improvements of policy formulation and enforcement, both within the EU and among states preparing themselves for accession.

This Policy Paper presents the findings of a study on the Code of Conduct carried out by researchers from two different SIPRI project teams during 2004, with the kind support of the Netherlands Ministry of Foreign Affairs. It focuses on the practicalities of data collection on exports covered by the EU Code in different member states, and on the rationale for and the impact of the type of data published in the EU’s Annual Report according to Operative Provision 8 of the Code. It identifies a number of policy and practical issues that deserve consideration in the interests of perfecting the system, and which could be taken to heart both by the EU itself—currently preparing its first major internal review of the Code and its first report on the enlarged EU’s performance—and by proponents of export control elsewhere.

The authors would like to thank the many government officials who responded to their detailed survey on national data collection and reporting methods. The authors were also much helped by the opportunity to discuss their draft with, and incorporate comments by, EU national representatives at a seminar facilitated by the Netherlands Presidency of the EU at Brussels in October 2004. The conclusions in this Policy Paper remain, however, SIPRI's own. Thanks are due to the authors themselves, the Netherlands sponsors of the project and SIPRI editor Andy Mash for making this publication possible.

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Acronyms

CFSP	Common Foreign and Security Policy
CN	Combined Nomenclature
COARM	Working Party on Conventional Arms Exports
DASA	Defence Analytical Services Agency
GPL	Global project licence
MANPADS	Man-portable air defence systems
NGO	Non-governmental organization
OIEL	Open individual export licence
OSCE	Organization for Security and Co-operation in Europe
SALW	Small arms and light weapons
SIEL	Standard individual export licences
UNDP	United Nations Development Programme
UNROCA	United Nations Register of Conventional Arms

1. Introduction

The 1998 European Union Code of Conduct on Arms Exports is a political agreement designed to set common standards across the EU for the export of military equipment.¹ Under its provisions, all EU member states have agreed to apply a standard set of criteria to assess applications for licences for the export of military equipment. Member states have also agreed to share information, and in certain cases consult in advance, on their arms export licensing decisions. One of the main tools for assessing how states interpret and apply the EU Code of Conduct is the Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports,² which has been published in the autumn of each year since 1999. The aim of the Annual Report is to enable member governments, parliaments and civil society to understand how the EU Code is being interpreted at the national level by each EU member state. The report describes how the EU Code has been implemented, discusses future measures to improve implementation and provides statistical data for the previous calendar year on licences granted for the export of military equipment, actual arms exports and denials of export licences.³

This Policy Paper analyses: (a) the types of information submitted for the Annual Report; (b) how member states collect the data which they submit; and (c) how methodologies could be altered to improve the accuracy, comprehensiveness and comparability of the data. The findings in this report are based on a detailed survey of the data collection and reporting practices of the 25 EU member states.⁴

This chapter describes the history of the EU Code of Conduct and examines the data which states are requested to submit and the data which are actually submit-

¹ Council of the European Union, European Union Code of Conduct on Arms Exports, document 8675/2/98 Rev 2, Brussels, 5 June 1998, available at URL <http://ue.eu.int/cms3_fo/showPage.asp?id=408&lang=en&mode=g>. See also appendix B in this volume and the SIPRI Non-proliferation and Export Controls Project Internet site at URL <<http://www.sipri.org/contents/expcon/euconventional.html>>.

² The First Annual Report was produced in Sep. 1999. Council of the European Union, 'First Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports', *Official Journal of the European Communities*, C315 (3 Nov. 1999). This and 4 subsequent reports—*Official Journal of the European Communities*, C379 (29 Dec. 2000), C351 (11 Dec. 2001) and C319 (19 Dec. 2002), and *Official Journal of the European Union*, C320 (31 Dec. 2003)—are available at URL <http://ue.eu.int/cms3_fo/showPage.asp?id=408&lang=en&mode=g> and on the SIPRI Non-proliferation and Export Controls Project Internet site (note 1). The reports provide data for the calendar year prior to their publication and discuss policy decisions taken in the year of publication.

³ Council of the European Union, 'Fifth Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports', *Official Journal of the European Union*, C320 (31 Dec. 2003), p. 15.

⁴ Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia joined the EU on 1 May 2004. The future reporting plans of these states were surveyed for this Policy Paper.

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ted. Chapter 2 discusses the purpose of the Annual Report and the types of information that are necessary to enable governments, legislatures and civil societies in EU member states and elsewhere to make informed judgements about how the EU Code is being interpreted at the national level. In this context, the Policy Paper assesses the relative usefulness of financial data submitted on export licences and on actual arms exports and of the information made available on denials issued. Chapter 2 also takes a wider perspective in examining the overall usefulness of financial data and whether there are other types of information that could make possible a more informed assessment of the implementation of the EU Code by member states.

Chapter 3 examines the methodologies used by EU member states to collect the data submitted for the Annual Report. In particular, it focuses on how states collect data on export licences and actual arms exports and addresses the question of whether states could start to collect more complete and comparable data. Chapter 4 provides a set of recommendations on how the Annual Report and national data collection methods could be improved. Appendix A presents detailed data on EU member states' national data collection and data reporting methodologies, and appendix B presents the text of the EU Code of Conduct.

The EU Code of Conduct on Arms Exports

The EU Code of Conduct on Arms Exports was adopted in June 1998. Its adoption should be seen against the background of an industrial restructuring process that had transnationalized arms production. In addition, changes in the international environment, particularly the end of the cold war, were crucial for the emergence of European approaches to export controls. During the cold war, association with either of the two superpower blocs and their interests was an overriding criterion for decision making on arms exports. The end of the cold war opened the way for other considerations. Economic factors, such as enhancing competitiveness, began to play a stronger role in shaping arms export policies. A key factor in reaching agreement on the EU Code of Conduct was that stronger competition, in the face of shrinking domestic and export markets, had increased the possibility that denial of an export licence to one supplier would be undermined by a supplier in another EU member state agreeing to provide a denied party with essentially the same item—a so-called undercut.

At the same time, a number of factors were pushing governments to consider greater constraint and more restrictive arms export policies. The invasion of Kuwait by Iraq in August 1990 and the subsequent involvement of many European states in the 1991 Gulf War to expel the Iraqi forces underlined the fact that arms exports could have a negative impact on regional stability and security and might be used against the armed forces of the supplier states or their allies. The armed conflicts that broke out in south-eastern Europe and in Africa led governments to consider the relationship between arms exports and issues of economic development, human rights and conflict prevention.

A third factor contributing to better coordination of export policies was the creation of a single market for civilian and, with some restrictions, for dual-use goods at a time when some distinctions between military and non-military goods and technologies were becoming blurred by technology development.

Currently, the EU Code of Conduct is a Council Declaration, which contains political commitments but is not legally binding. The Code of Conduct consists of three parts: (a) a preamble, which outlines its aims and underlying principles; (b) export guidelines, in the form of eight criteria; and (c) operative provisions. The *preamble* refers to the goals of harmonization and enhanced information exchange among EU member states. Member states intend to set ‘high common standards which should be regarded as the minimum for the management of, and restraint in, conventional arms transfers’ and ‘within the framework of the CFSP [Common Foreign and Security Policy] to reinforce cooperation and to promote convergence in the field of conventional arms exports’. They also commit themselves to ‘strengthen the exchange of relevant information with a view to achieving greater transparency’.

The *export guidelines* in the EU Code of Conduct set out eight criteria on which export licensing decisions should be based. These are linked to such considerations as human rights violations, regional stability and the risk that exports to one country might be diverted to another end-user that would not qualify as a recipient under the criteria. The criteria correspond to those agreed by the then 12 European Community members in 1991–92 but are each elaborated by means of several sub-criteria. The criteria can be divided into two categories. One category outlines conditions under which the denial of licences is obligatory. This is the case for: (a) an export that contradicts international commitments, such as a United Nations embargo or a treaty (criterion 1); (b) the existence of ‘a clear risk that the proposed export might be used for internal repression’ (criterion 2a); (c) an export which would ‘provoke or prolong armed conflicts or aggravate existing tensions or conflicts in the country of final destination’ (criterion 3); and (d) the existence of a clear risk that the export would be used ‘aggressively against another country or to assert by force a territorial claim’ (criterion 4). While there is agreement on the definition of criterion 1, the wording of criteria 2a, 3 and 4 leaves substantial scope for interpretation.

The other four criteria must be taken into consideration but their interpretation and the conclusions drawn are left to the discretion of the exporting country. Member states make case-by-case decisions on the basis of national policies, taking into account: (a) the ‘national security of member states as well as that of friendly and allied countries’ (criterion 5); (b) the ‘behaviour of the recipient country with regard to the international community’ (criterion 6); (c) ‘the risk that the equipment be diverted within the buyer country or re-exported under undesirable conditions’ (criterion 7), including ‘the risk of the arms being re-exported or diverted to terrorist organisations’ (criterion 7d); and (d) the ‘compatibility of arms exports with the technical and economic capacity of the recipient country’ (criterion 8).

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For arms exports to ‘countries where serious violations of human rights have been established by the competent bodies of the UN, the Council of Europe or by the EU . . . special caution and vigilance in issuing licences, on a case-by-case basis and taking account of the nature of the equipment’ are to be exercised (criterion 2b).

In the context of criterion 4, the following sub-criteria must be taken into account: (a) ‘the existence or likelihood of armed conflict between the recipient and another country’ (criterion 4a); (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’ (criterion 4b); (c) ‘whether the equipment would be likely to be used other than for the legitimate national security and defence of the recipient’ (criterion 4c); and (d) ‘the need not to affect adversely regional stability in any significant way’ (criterion 4d).

The *operative provisions* outline reporting procedures as well as intergovernmental denial notification and consultation mechanisms in cases where governments hold different views when applying the EU Code criteria to a licence application. These mechanisms aim to ensure consistent interpretation of the criteria and thus prevent undercutting. The EU Code of Conduct obliges governments to circulate detailed information on export denials to other EU member states, including the reason for the refusal. If another member state intends to grant an export licence for an ‘essentially identical transaction’, it must first consult the EU member state(s) that previously denied such an export to explain the reasoning for its intention to grant a licence. Where an export licence has already been granted, the consulted government(s) must be informed and the undercut justified.

Since the adoption of the EU Code of Conduct, a distinct European dimension to arms export policy has emerged which revolves around the EU Code but extends far beyond its original scope. The development of what might be called an EU Code of Conduct regime has been achieved through a process of dialogue, negotiation and review based on practical experience, as national governments have increasingly felt comfortable discussing arms export control in an EU context and have gained more confidence in the EU Code as a policy tool.

The EU Code of Conduct provides for an annual review of the document. Thus far, although the EU Code regime has developed considerably, the document itself has not changed. A number of changes to the operative provisions of the EU Code are expected as the result of a major review of the code in 2004. The transformation of the EU Code into an EU Common Position was discussed during the 2004 review.

Reporting on the EU Code of Conduct

Each year, member states are required to submit a report on their national implementation of the EU Code of Conduct. Operative Provision 8 provides that ‘each EU Member State will circulate to other EU Partners in confidence an Annual Report on its defence exports and on its implementation of the EU Code. These

reports will be discussed at an annual meeting held within the framework of the CFSP'.⁵ Since 1999, a consolidated version of these national reports has been publicly available, despite the fact that there is no obligation in the EU Code to publish such a report. The agreement to publish a consolidated report can be attributed to successful pressure from the European Parliament and non-governmental organizations (NGOs) as well as the insistence of the 1999 Finnish EU Presidency.

The quantity of statistical data in the Annual Report according to Operative Provision 8 of the EU Code of Conduct on Arms Exports has increased over the five reporting years, and the quality of the data has also improved. The First and Second Annual Reports provided only the total value of either licences granted or deliveries made along with the total number of denials issued, the number of bilateral consultations initiated and the number of consultation requests received. This made it difficult to draw meaningful conclusions about states' export policies. The Third Annual Report disaggregates data by region.

The Third Annual Report also called for the harmonization of national annual reports on the application of the EU Code.⁶ Harmonization of reporting was also declared a priority of the 2002 Spanish and Danish EU Presidencies and led to a considerable increase in the volume of export data in the Fourth Annual Report, as well as increases in the level of detail and comparability of the data. EU member states agreed to interpret the original reporting provision in such a way as to allow future Annual Reports to 'provide data, broken down by recipient country, on the number and value of licences granted and the value of arms exports (if available)'.⁷ As a result, whereas the statistical tables make up just one page of the First Annual Report, the Fourth Annual Report contains over 30 pages of data.

For the Sixth Annual Report, which will be published in December 2004, member states have agreed that 'breakdowns of licences and actual exports by Military List category (if available) should also be included in the report'.⁸ Data will be disaggregated by EU Common Military List categories and a separate section will be devoted to each recipient country.⁹ The report is likely to be almost 200 pages long.

⁵ Council of the European Union (note 3), p. 15.

⁶ Council of the European Union, 'Third Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports', *Official Journal of the European Communities*, C351 (11 Dec. 2001). See note 2.

⁷ Council of the European Union (note 3), p. 15.

⁸ Working Party on Conventional Arms Exports (COARM), Operational conclusions of the meeting of 22 June 2004. COARM was established in 1991 by the Council of the European Union under the responsibility of its Political Committee. COARM is instructed to make recommendations to the Council in the field of conventional arms exports in the framework of the CFSP. The aim of COARM is to harmonize the arms export policies of the member states with regard to third countries and to promote transparency in the field of arms exports. COARM processes the Annual Report on the implementation of the EU Code of Conduct made up of submissions by EU member states and presents the annual consolidated report to the Council.

⁹ 'Common list of equipment covered by the Code of Conduct' (EU Common List), *Official Journal of the European Communities*, C19 (8 July 2000), pp. 1–9. The EU Common List was adopted on 13 June 2000. Under the framework of the EU's Common Foreign and Security Policy, member

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Although states have agreed in principle to provide data on both export licences and actual arms exports disaggregated by destination, data submissions have been less than complete. In the Third, Fourth and Fifth Annual Reports only five member states consistently reported on both export licences and actual arms exports.¹⁰ In the Fifth Annual Report only 8 of the then 15 EU member states submitted both sets of data. The reasons for states' failures to produce complete submissions include: (a) the use of incompatible data classification systems; (b) an unwillingness to place additional burdens on industry or licensing authorities; and (c) concerns about commercial confidentiality.¹¹ EU member states have acknowledged that this is a problem which needs to be resolved. The Fifth Annual Report notes 'the inability by some states to provide data on both licences granted and actual exports'.¹²

There are also problems with the compatibility and comparability of the data that states submit. As regards export licences, several states operate from lists of military equipment that differ from the EU Common Military List. This raises questions about whether comparisons between the different national submissions can be meaningful. The use of national lists that differ significantly from the EU Common Military List also makes it more difficult for states to submit data on export licences disaggregated by the categories set out in the EU list.

These problems are especially acute for data on the value of actual arms exports. Several states make use of data provided by their national customs authorities to calculate a figure for the value of their actual arms exports. However, it is questionable whether this method can produce accurate data on the export of military equipment, mainly because the categories in the Combined Nomenclature (CN) coding system, used by customs authorities throughout the EU, record technical capacity and characteristics rather than details of the end-user.¹³ Moreover, the coding system classifications do not match those of the EU Common Military List, raising questions of comparability with licence data and other states' submissions. The use of customs data makes the production of arms exports data disaggregated by EU Common Military List categories all but impossible.

The Fifth Annual Report acknowledges the problem posed by incompatible data submissions, noting that statistics 'are compiled differently by each Member State' and that 'no uniform standard is used'. 'Consequently, owing to current procedures in the area of export controls or data protection legislation, not all countries have

states have made a political commitment to ensure that their national legislation enables them to control the export of all the goods on the EU Common List. On 17 Nov. 2003 the list was revised and updated and the Council adopted the Common Military List of the European Union. Council of the European Union, 'Common Military List of the European Union (equipment covered by the European Union Code of Conduct on Arms Exports)', 2003, *Official Journal of the European Union*, C314 (23 Dec. 2003), pp. 1–26.

¹⁰ These countries are Belgium, Finland, Italy, Luxembourg and Sweden.

¹¹ For an elaboration of the obstacles to reporting see chapter 2.

¹² Council of the European Union (note 3), section 2.

¹³ The CN coding system is discussed further in chapter 3.

been able to submit the same information.’¹⁴ The lack of consistency, both in the data sets submitted and in the methodologies used to compile the data, could become more acute after the accession of 10 new EU member states in May 2004. For the Sixth Annual Report these 10 states have been ‘invited to submit figures for 2003 (if such figures are available)’.¹⁵

With regard to the quality of data presented in the Annual Report, a number of errors have been detected. For example, the Fourth Annual Report contains internal discrepancies which call into question the reliability of the data.¹⁶ There have been fewer discrepancies in the past four years but their continued presence underlines the importance of scrutinizing the report before making it public.

Different levels of transparency in EU member states and the absence of standardized reporting requirements have led to inconsistencies in the Annual Report. States have different systems for compiling export data and different laws and traditions governing the type and format of information, and the level of detail, provided on a national basis. This makes it difficult to compare statistics across the EU and has led to inconsistencies in successive Annual Reports. In spite of the exponential increase in data, the statistical annex to the Annual Report still falls short of making EU member states’ export policies fully transparent. In particular, whether the data that states are required to submit are sufficient to allow a full and complete evaluation of a state’s interpretation of the EU Code of Conduct is still open to question.

Information available to national governments to enable them to assess their counterparts’ implementation of the EU Code is not limited to the Annual Report. Governments also receive the confidential submissions to the Working Party on Conventional Arms Exports (COARM) from national governments as well as informal information exchanges at the bilateral level and within COARM. In addition, governments, parliaments and civil society have access to the national annual reports on arms exports published by most EU member states.

The focus of this Policy Paper is on the data contained in the Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports. This is because the data collected for this purpose highlight the fundamental challenges of data collection and reporting. Moreover, the Annual Report is a result of efforts to produce comparable data and is therefore the starting point for a harmonized set of reporting requirements.

¹⁴ Council of the European Union (note 3), p. 24.

¹⁵ COARM (note 8). See also note 4.

¹⁶ E.g., the figures for individual recipient countries in North Africa do not add up to the total value given for licences granted for arms exports to the region.

2. The purpose of data collection and reporting

This chapter focuses on the types of information on export licences and actual arms exports that are required in order to make an accurate assessment of how governments interpret and implement the EU Code of Conduct. It examines: (a) the relative merits of data on export licences and on actual arms exports; (b) the utility of financial data; (c) the types of additional data that are required to improve the accuracy of such assessments; and (d) how the implementation of the operative provisions contained in the EU Code can be evaluated.

Potential obstacles to changing reporting practices in order to increase transparency are also discussed. The chapter raises the question of who should conduct assessments of the implementation of the EU Code of Conduct, making a case for public transparency, and evaluates the impact of the EU Code on national transparency.

Reporting on the implementation of the EU Code of Conduct

Many types of information could be collected about a state's arms transfers. These include the financial value of the exports, the method of payment, the condition of the weapons, their destination, the type of end-user, and whether any restrictions have been placed on their resale. Box 2.1 lists the types of information that could be collected. A number of different mechanisms exist for public reporting and intergovernmental information exchange in relation to arms transfers. The types of information that are most important differ according to the purpose of the reporting mechanism.

For example, in December 1991 the United Nations General Assembly established the UN Register of Conventional Arms (UNROCA) 'to prevent excessive and destabilizing accumulations of arms'. States were invited to report annually on their imports and exports of certain types of conventional weapon.¹⁷

The Wassenaar Arrangement was established in July 1996 to promote 'transparency and greater responsibility in transfers of conventional arms and dual-use

¹⁷ UN General Assembly Resolution 46/36L, 6 Dec. 1991. A database containing the data reported to the UN and other UN information on the UNROCA are available at URL <<http://disarmament.un.org/cab/register.html>>. The weapons on which data are requested are divided into 7 categories: battle tanks, armoured combat vehicles, large-calibre artillery systems, combat aircraft, attack helicopters, warships, and missiles and missile launchers. For an analysis of the UNROCA and the limits of its effectiveness in influencing actual security processes see Wezeman, S. T., *The Future of the United Register of Conventional Arms*, SIPRI Policy Paper no. 4 (SIPRI: Stockholm, Aug. 2003), available at URL <<http://editors.sipri.se/recpubs.html>>.

goods and technologies, thus preventing destabilising accumulations'.¹⁸ The 33 participants of the Wassenaar Arrangement exchange information in confidence on the export of seven categories of major conventional weapon to non-participating states. In 2003 states also agreed to exchange information on transfers of small arms and light weapons (SALW) and man-portable air defence systems (MANPADS).¹⁹

A number of trade associations and government agencies produce reports that contain assessments of the economic importance of arms exports. For example, in Sweden the Association of Swedish Defence Industries (Försvarsindustrieföreningen, FIF) produces an annual report which gives the financial value of Sweden's exports of 'military equipment and other equipment, services and software to military users'.²⁰

In order to make an assessment of the types of information that are most suitable for inclusion in the Annual Report it is necessary to understand the purpose of the report. The EU Code of Conduct has different implications for different countries and is implemented in different ways, depending on: (a) national export policy; (b) industrial interests; (c) the structure of arms exports; (d) how decision making on licensing is structured, usually involving different ministries;²¹ (e) legal secrecy provisions; and (f) the status of the EU Code in domestic export control legislation. First and foremost, the Annual Report should allow for informed conclusions to be made about how the criteria and operative provisions of the EU Code are interpreted at the national level. When considering the relevance of different types of information for assessing the implementation of the EU Code, the detail, quantity, quality and comparability (over time and between countries) of information must be taken into account. In addition, it is important to examine what types of data answer what types of questions and, thus, what conclusions can be drawn from the information provided about national implementation of the criteria and operative provisions of the EU Code.

¹⁸ Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, Guidelines & Procedures, including the Initial Elements (as amended and updated in December 2003 and July 2004), Wassenaar Arrangement Secretariat, Vienna, July 2004, URL <http://www.wassenaar.org/2003Plenary/initial_elements2003.htm>. The participating states of the Wassenaar Arrangement are: Argentina, Australia, Austria, Belgium, Bulgaria, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, South Korea, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Russia, Slovakia, Spain, Sweden, Switzerland, Turkey, Ukraine, the United Kingdom and the United States.

¹⁹ Anthony, I. and Bauer S., 'Transfer controls and destruction programmes', *SIPRI Yearbook 2004: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2004), pp. 744–47.

²⁰ See the Internet site of Försvarsindustrieföreningen, URL <<http://www.defind.se/indexeng.htm>>.

²¹ In the case of Belgium, since 2003, this has also involved different regional governments.

Box 2.1. Types of information on arms exports

Information on licences granted (export, transit and brokering)

Recipient (recipient country and recipient within the country)

Description of equipment (equipment category according to control list, type, model, age and number of items)

Financing arrangements (price, offsets, direct and indirect subsidies, export credits, etc.)

Conditions attached (e.g., clauses in the export contract, such as prohibition of re-export or specification of end-use or end-user)

Licensing information (type of licence and date of licence issuance)

Producing company or companies involved (including producers of components)

Information on licences denied (export, transit and brokering)

Recipient (recipient country and recipient within the country)

Description of equipment (equipment category according to control list, type, model, age and number of items)

Financing arrangements proposed (price, offsets, direct and indirect subsidies, export credits, etc.)

Licensing information proposed (type of licence and date of licence refusal)

Supplier company or companies involved (including producers of components)

Information on actual arms exports, transit and brokering

Recipient (recipient country and recipient within the country)

Description of equipment (equipment category according to control list type, model, age and number of items)

Financing arrangements agreed (price, offsets, direct and indirect subsidies, export credits, etc.)

Conditions attached (e.g., clauses in the export contract, such as prohibition of re-export or specification of end-use or end-user)

Type and date of licence

Supplier company or companies involved (including producers of components) and location of brokers, if applicable

Information on enforcement actions

Cases dealt with by judicial authorities

Other relevant information (such as individual names of denied parties or parties subject to administrative sanctions)

Source: Adapted from Bauer, S., 'The Europeanisation of arms export policies and its impact on democratic accountability', Unpublished PhD Thesis, Université libre de Bruxelles and Freie Universität Berlin, May 2003.

Comparing the utility of data on export licences and actual arms exports

Export licences record the types of equipment exported, their destination and the value of items licensed for export during a calendar year. They are a useful tool for measuring a state's compliance with the criteria laid down in the EU Code. Several of the states surveyed for this study, particularly those that did not collect data on the value of actual arms exports, stressed the importance of data on the value of export licences granted. It was argued that, while a case could be made for making collection and reporting of data on the value of export licences compulsory, the same was not true for data on actual arms exports. Moreover, licence data reflect current or recent policy choices.²²

Nevertheless, there are certain limitations to using export licence data as a tool for measuring states' compliance with the EU Code of Conduct criteria. For instance, in the United Kingdom, military equipment exported under government-to-government agreements does not require an export licence.²³ Therefore, no information on such arms exports is included in the licence data submitted to the EU. However, since 2003 equipment transferred under these agreements has been listed in the British annual report on strategic export controls.²⁴

In addition, the UK issues 'open licences' that do not specify the value of goods to be exported. In such cases, the number of open licences issued is recorded but, because no values are assigned, no financial data can be recorded. The use of open licences raises questions about whether data submitted to the EU accurately reflect the arms export policies of certain states and about the comparability of national data on arms export licences. In contrast, Germany only issues licences that specify the value of goods to be exported. In cases where multiple shipments are required, Germany issues collective export licences (*Sammelausfuhrgenehmigungen* or SAG licences). SAG licences specify a maximum value that should cover what is needed for a project for as long as the licence is valid. However, Germany does not submit data on SAG licences for the Annual Report.

The use of open licences is set to increase with the introduction of global project licences (GPLs) by France, Germany, Italy, Spain, Sweden and the UK under the 2000 Framework Agreement Concerning Measures to Facilitate the Restructuring and Operation of the European Defence Industry.²⁵ Certain of these states,

²² The same could also be argued for the French practice of publishing details of orders and 'negotiating licences' (see appendix A), which reflect policy choices in an even more timely manner.

²³ The main British government-to-government agreements are the 'Al Yamamah deals' with Saudi Arabia for the sale of Hawk and Tornado aircraft and minehunters, along with associated weapons, equipment, training and facilities, which were signed in 1986 and 1988. Together, the 2 deals represent the largest arms export agreement in British history.

²⁴ British Foreign and Commonwealth Office, Ministry of Defence, Department of Trade and Industry and Department for International Development, *United Kingdom Strategic Export Controls: Annual Report 2003* (Stationery Office: London, June 2004), p. 18.

²⁵ The Framework Agreement is available at URL <<http://projects.sipri.se/expcon/loi/indrest02.htm>>. On the agreement see Davis, I., SIPRI, *The Regulation of Arms and Dual-Use Exports by*

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such as Italy and the UK, have indicated that they intend to issue GPLs in the form of open licences that do not specify a financial value. Other states, including Sweden, have yet to determine whether they will assign values to their GPLs.

The use of open licences creates problems of double counting because items can be moved across borders several times during the course of a major collaborative project. Some EU member states classify such cases as temporary exports and exclude them from data reported to the EU. Components might also be counted once as an intra-Community transfer to a cooperation partner and again as part of the final export of the completed weapon system—thus inflating the total value of exports attributed to the EU as a whole.

The use of government-to-government agreements and open licences raises questions about how accurately data on the financial value of export licences reflect states' compliance with the criteria of the EU Code of Conduct. In both cases, items that national governments have agreed to transfer either do not appear in export licence data or appear without any financial data indicating the value of goods licensed for export.

On the other hand, if open licences were revoked by an EU member state and replaced with individual licences in order to allow greater scrutiny by licensing officials, this would lead to an increase in the number of individual export licences issued for exports to a given country or end-user. This could be misinterpreted as a shift to a more liberal policy.

Data on actual arms exports are thus a more accurate reflection of what is being transferred: (a) because of the exemption of government-to-government agreements from the licensing requirement and therefore from licence data; (b) because complex transnational production structures increasingly involve open licences and numerous shipments of components and sub-systems; and (c) because licences issued do not always result in exports, or at least not to the full financial value stated. A fuller understanding of how states interpret and implement the EU Code of Conduct therefore requires data both on licences granted and on actual exports.

Enhancing the usefulness of financial data

The breakdown of the financial value of export licences and/or of actual arms exports by recipient country permits an initial interpretation to be made of the implementation of certain criteria, since some countries do not export to certain recipients at all, while others authorize substantial arms exports to some recipients. However, as noted above, financial data, particularly on export licences, can produce a distorted picture of states' implementation of the EU Code of Conduct.

It would therefore be valuable to report data in a form that allows a comparison of monetary values over time, taking into account changes in exchange rates and inflation. This could be achieved through the creation of a calendar year data set

expressed as a single, constant value, for example, in the form of a Euro-denominated time series calculated using an agreed base year.²⁶ Ideally, the series would take account of the effects of direct and indirect subsidies, export credits and offset agreements—none of which is reflected in any currently available official data. Financing arrangements are rarely made public and creating this data set would involve many challenges. The fact that the value of a transfer may or may not include support services and the costs associated with integrating equipment into a country's armed forces further limits comparability. Finally, used or surplus weapons that are given away or sold at very low prices may complicate the interpretation of data on financial values submitted for the Annual Report, since the value of these items may not reflect their capability.

The breakdown of financial data into detailed equipment categories would facilitate the effective evaluation of data and the assessment of outcomes and processes against the regulatory framework and official government policy. Breaking the information down in this way would enable a higher level of detail to be derived from statistical data. In the absence of such a breakdown it is difficult to draw conclusions. For example, a monetary value could refer to the export of one vehicle or 1000 machine guns. Similarly, figures presented on arms exports to a given region do not allow for conclusions to be drawn about individual recipient countries.

The value of additional types of information and categories of data

Currently, EU member states are asked to submit data on the value of export licences and the value of actual arms exports. However, conclusions based on purely financial data need to be placed in the context of the types of weapons for which licences have been granted and the types of weapons delivered (e.g., de-mining equipment and tanks tend to be evaluated very differently using the same criteria). Financial data are most relevant for criterion 8—‘whether the proposed export would seriously hamper the sustainable development of the recipient country’—which has been the criterion invoked least in the past five years. This illustrates a paradox of EU reporting: the type of information most commonly reported is the least relevant for an evaluation of the implementation of the EU Code of Conduct.²⁷ In order for EU member states to fully evaluate the implementation of the Code, additional types of information are needed. Over and above purely financial data, a description of the weapons to be exported and their number,

²⁶ On the problems resulting from measuring arms transfers in money values see Hagelin, B. and Wezeman, S. T., ‘Sources and methods for arms transfers data’, *SIPRI Yearbook 2004: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2004), p. 540.

²⁷ Even in cases determined under criterion 8, it is necessary to have additional information on the type of financing arrangements agreed between the exporter and the recipient, e.g., the period of time allowed for the recipient country to pay for the items and whether export credit guarantees and offsets are included.

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the type of end-user,²⁸ and the final destination of goods which are to be re-exported by the recipient country would enable a more informed and accurate assessment of states' interpretations of the EU Code. This would complement other, more informal, information exchanges, which take place closer to the time of decision making.²⁹

A description of the weapons licensed for export and of those exported would help to develop an understanding of the way in which, for example, criterion 2—which makes an explicit link between the type of equipment and a clear risk of human rights abuses—is interpreted. The characteristics of the equipment and the identity of the specific end-user would be critical factors for assessing the degree of risk. Similarly, information on the type of equipment, along with a breakdown of the information by destination, would be critical for an evaluation of whether certain deliveries could aggravate an armed conflict or disturb regional stability.

However, this type of information might be considered commercially sensitive if provided in conjunction with monetary values since unit prices could be derived from it by potential competitors and customers. If a choice had to be made between financial values, on the one hand, and quantitative and qualitative information about the equipment, on the other, the latter would clearly provide greater insights into the implementation of the EU Code.

The fact that data presented in the Annual Reports do not specify the type of end-user can cause confusion when the data are used to assess states' compliance with the EU Code criteria. For example, in 2002 the UK granted an open licence for the export of a wide range of goods to several countries, including Tajikistan and Uzbekistan. The goods were in fact intended for the US Government, for use in support of US military operations overseas.³⁰ Data on export licences and actual exports that only specify the geographic location of the end-user cannot reflect the possibility that the items are not for the armed forces of that country, but rather for another state's armed forces or forces under the command of an international organization which are based in that country. Specifying the type of end-user would reflect the changed rationale for export controls since the end of the cold war, which has shifted from a territorial focus to a stronger end-user focus.

Because of the internationalization of arms production structures in the form of multinational projects and transnational firms, the export of components for a weapon system which is to be exported to a third country forms a sizeable proportion of the global arms market. For instance, British Tornado aircraft for export to Saudi Arabia were fitted with German guns and Swedish equipment, and the

²⁸ E.g., the end-user might be part of the armed forces, a security organization or the police, a defence company, or part of an international organization based in the country to which the goods are being exported.

²⁹ During their regular meetings as COARM, national licensing officials exchange their views on individual recipient countries.

³⁰ British House of Commons Defence, Foreign Affairs, International Development, and Trade and Industry Select Committees, *Strategic Export Controls: Annual Report for 2002, Licensing Policy and Parliamentary Scrutiny* (Stationery Office: London, 18 May 2004), p. 12.

French Leclerc tank exported to the United Arab Emirates was equipped with an engine produced in Germany.³¹ In 1999 a submission to a British Parliamentary Select Committee by the British Defence Manufacturers Association noted that ‘a considerable proportion of defence export contracts won each year have been for sub-systems, components, spares, etc., and there are very few major Western high-technology programmes which do not have some level of British subcontractor participation’.³² Such indirect exports continue to increase with the ongoing consolidation of the defence industry.³³

There have been growing concerns that EU member states do not apply the criteria of the EU Code of Conduct rigidly when making an assessment of the suitability of the final recipient of a completed system. According to criterion 7 of the EU Code states must consider the possibility that ‘equipment will be diverted within the buyer country or re-exported under undesirable conditions’. However, there is evidence that a number of EU member states evaluate indirect exports only in terms of the suitability of the ‘incorporating’ state and do not make an assessment of the suitability of the end-user.

For example, on 8 July 2002 the British Foreign Secretary announced new guidelines for assessing licence applications for goods destined to be incorporated in defence equipment in a second country and re-exported to a third country. In addition to the criteria set out in British legislation and the EU Code, licence applications must also be assessed in the light of a range of additional criteria, including ‘the importance of the UK’s defence and security relationship with the incorporating country’. Under the new guidelines head-up display (HUD) units were exported to the United States for incorporation in F-16 aircraft scheduled for delivery to Israel in 2003.³⁴ Moreover, in 2000 Denmark decided that, in the case of exports to EU and NATO member states that formed part of bilateral or multilateral cooperation projects, there would be no requirement for a recipient country to seek Danish consent to the re-export of components for non-lethal defence equipment—either as components or incorporated into a finished product.³⁵

Denial notifications and consultation mechanisms

EU member states’ reporting on the reasons for refusing to export arms to specific recipient countries provides an aggregate assessment of the interpretation of certain

³¹ ‘Engine orders for MTU from France, Germany and Denmark’, *Defence Systems Daily*, 16 Apr. 1999, URL <<http://www.defence-data.com>>.

³² United Kingdom Parliament, Select Committee on Trade and Industry Minutes of Evidence, ‘Memorandum submitted by the Defence Manufacturers Association’, URL <<http://www.parliament.the-stationery-office.co.uk/pa/cm199900/cmselect/cmtrdind/52/91109a07.htm>>.

³³ See Bauer, S., ‘The Europeanisation of arms export policies and its impact on democratic accountability’, Unpublished PhD Thesis, Université libre de Bruxelles and Freie Universität Berlin, May 2003, p. 208.

³⁴ British House of Commons, *Parliamentary Debates (Hansard)*, 8 July 2002.

³⁵ Amsted, A., Danish Ministry of Justice, Communication with the authors, 28 Oct. 2004.

criteria. However, the fact that the reasons for refusing an export are rarely broken down by importing and exporting country makes it difficult to discern the national application of the criteria in specific cases. According to the Fifth Annual Report, 68 consultations were initiated during reporting year 2002, but only 48 were 'received' (i.e., reported by consulted states). The fact that there was a substantial discrepancy between the number of consultations received and the number initiated illustrates that differences persist in member states' perceptions of what constitutes a consultation.

The denial notification mechanism has been formalized with the decision to establish a central database of notifications at the Council Secretariat in Brussels. EU member states do not, however, share information on consultations and undercuts and the Annual Report does not provide information on the outcome of inter-governmental consultations on undercuts. According to the British Government, there are '15 or so undercuts per year across the board' and in 2003 the UK undercut other member states five times.³⁶ According to the original provisions of the EU Code of Conduct, information on undercuts is available only to the state(s) that originally issued a relevant denial. In the Second Annual Report, member states agreed 'to share, to the extent compatible with national considerations and on a confidential basis, information on the undercut decision not only (as specified in the operative provisions) with the state responsible for the relevant denial, but, in the context of COARM deliberations, with all member states'.³⁷ However, there has been no agreement on multilateral *consultations* on an intended undercut.

Withholding the results of intergovernmental consultations on potential undercuts from the scrutiny of fellow EU member states precludes an evaluation of the effectiveness of the mechanism, that is, whether the EU Code has prevented undercutting. Nor is the extent to which member states have fully complied with the operative provisions known. At the same time, only limited conclusions can be drawn from the number of undercuts because countries have different production structures and export policies and therefore do not receive applications for essentially identical products. In addition, exporters may be deterred from submitting applications to certain countries when it is clear that a denial would be the result.

Potential obstacles to data collection and reporting

A range of official arguments has been employed to justify the types of data that are collected and reported, as opposed to other data which theoretically could be collected and reported. One argument which is frequently invoked is *commercial*

³⁶ British House of Commons, Quadripartite Committee on Strategic Export Controls, 'Minutes of evidence', 25 Feb. 2004, URL <<http://www.publications.parliament.uk/pa/cm200304/cmselect/cm/dfence/uc390-i/uc39002.htm>>.

³⁷ Council of the European Union, 'Second Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports', *Official Journal of the European Communities*, C379 (29 Dec. 2000).

confidentiality. Commercial confidentiality can be underpinned by legal constraints but need not, in many cases, justify the withholding of information after a deal has been concluded. Privacy laws are intended to ensure that commercial information, such as pricing policies, conditions attached to a proposed deal and details of the product to be sold, are not disclosed to competitors. This is of particular importance while a deal is being negotiated but companies usually publish such information once a contract has been signed and the required export licence has been issued. Details of the contract, such as the financial value and any offset agreements, are often available on company Internet sites or in defence journals.

The attitude of an arms recipient to transparency is often an obstacle to reporting and disclosure. For national security reasons, recipient governments may not want to reveal details of their military capacities and armed readiness. The recipient government may wish to withhold information in order to prevent domestic debate over national security policy or to avoid civilian efforts to control the military. For national security reasons, recipients may seek to hide detailed information about military capacities from potential or current enemies or rivals on the basis that deterrence could be undermined if such information was publicly available. Since the majority of armed conflicts are intra-state rather than interstate, there are also concerns about the impact of transparency on national security when information is made available to rebel groups and other non-state actors.

Data confidentiality on national security grounds is less credible where an exchange of information already takes place between governments (e.g., within the Organization for Security and Co-operation in Europe, OSCE, or the Wassenaar Arrangement) without public disclosure. Such differentiation of the ‘need to know’ may in some cases be inconsistent.

Reference is often made to the *non-availability of information*. Data collection methods originate in specific political and historical contexts but are not necessarily adapted as political situations evolve. Data gathering systems can and should be adapted to current requirements. Making information available is a question of prioritizing transparency over other considerations. Resistance to changing data-collection procedures and reporting systems can indicate a need for additional financial or personnel resources on the part of governments or industry, or merely a resistance to change as such. Some arguments may be repeated without testing their validity or application to certain types of information. In many cases, attitudes to transparency and the degree of disclosure have changed. This demonstrates either that the arguments presented as reasons for confidentiality were not valid or that arguments in favour of transparency have gained political weight and proved more persuasive over time. The latter may have been assisted by public debate and pressure.

Accountability

There are two aspects of accountability: (a) accountability between governments, where reporting should give confidence that partners are implementing the EU

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Code of Conduct in good faith—and the information provided must fulfil this requirement; and (b) accountability between a government and its national parliamentary structures and civil society—where reporting should create confidence that a government is acting in ways consistent with national laws and policies as well as international law, multilateral agreements and international undertakings.

Accountability between governments

Currently, EU member states submit national reports on their implementation of the EU Code to other member state governments. The relevant information on the value of export licences, actual arms exports and denials is extracted for inclusion in the Annual Report. In many cases, the information in national submissions is more detailed than the information published in the Annual Report. Governments of countries such as Finland and Spain publish their submissions to the EU, either within their national reports or separately. States circulate denial notifications, and in some cases the results of bilateral consultations, at the intergovernmental level in order to assess how others are interpreting and implementing the EU Code criteria and its operative provisions.

A compendium of decisions (the COARM *acquis*) taken since 1998 has been incorporated in the Annual Report since 2002—establishing what could be called the political equivalent of case law. While these decisions cannot be legally enforced, intergovernmental accountability through peer pressure and the threat of repercussions can serve as an effective enforcement mechanism. National parliaments and the general public can also use such documented positions to make governments accountable.

Accountability between governments and national parliaments and civil society

A high level of transparency enables civil society and parliaments to monitor and evaluate how legislation and policy are implemented and the extent to which national and international commitments are being respected. Information allows interested parties to participate in the shaping of a national debate in an informed way. The implementation of the EU Code of Conduct is only one element of a national arms export policy and, to fulfil the purposes of reporting to national bodies and domestic public opinion, a broader set of available, reliable, comparable, comprehensive and disaggregated data would be required.

Data should be current and easily accessible, for example, on the Internet in a commonly spoken language. The longer it takes for data to be released, the less likely it is that decision makers can be held accountable for actions taken while in public office. Clarity of presentation is also important, since relevant data can be hidden among irrelevant information and an information overload can partly offset an increase in transparency.

In addition to the types of information listed in Box 2.1, data on the basis on which arms export licensing decisions are taken and on the procedures used to make such decisions would give a complete picture of a country's arms export

policy. The basis for decision making includes: (a) legally binding regulations (national laws and regulations, EU regulations and international treaties); and (b) politically binding guidelines (national and regional guidelines such as the EU Code of Conduct and international guidelines). The procedures for decision making include: (a) national procedures (the institutional set-up and the policy, licensing and enforcement procedures); (b) European procedures such as the implementation of the EU Code of Conduct's information, consultation and reporting procedures; and (c) international procedures, such as information exchange within the Wassenaar regime, the OSCE and the UNROCA.

The impact of the EU Code of Conduct on transparency and national reporting

In addition to promoting accountability, reporting under the EU Code can serve as a model of transparency through national and regional reporting to other countries and regions. It can also raise levels of transparency in new EU member states and states which aspire to membership since the reporting requirements are part of the COARM *acquis*.

The EU Code of Conduct has increased transparency in arms export policy, processes and decisions in the EU—most notably through the introduction of the public reporting system. Reporting can take a number of different forms: institutionalized and systematic; ad hoc, real-time, monthly, quarterly, annually, and so on; printed copies or electronic versions on the Internet; translations into various languages; and sub-national, national, regional and international, in terms of scope. At present, the EU Code of Conduct Annual Reports are institutionalized, published annually and available on the Internet in all the official EU languages. The degree of availability is therefore high. However, the data are published up to two years after the issuance of licences, which reduces their value.

The EU Code of Conduct reporting system has introduced a crucial element of accountability, making intergovernmental negotiation, consultation and decision-making processes more transparent by documenting decisions, unresolved issues and future agenda items and by making them available to parliaments and the public. This makes it more difficult for governments to backtrack from established and documented positions—even where such positions are not formally set out in the text of the EU Code of Conduct.

While EU and national reporting systems originated within their own distinct political contexts, these processes influence each other and have become mutually reinforcing. With regard to the impact of the EU Code on national reporting, the transparency drive has particularly affected countries with a low degree of transparency at the national level and little or no parliamentary or NGO pressure for increased openness. In other countries, additional elements have been made transparent or availability increased. Many countries added reporting categories not previously included in national reports. Currently, the EU and national reporting systems complement each other. Each member state includes at least one unique element in its national annual report. This has created a useful dynamic for

improvement in collective standards, since states tend to be unwilling to fall back from their own levels of ‘best practice’.

The establishment of a distinct and institutionalized European dimension to arms export policy has thus become a driver of transparency in multiple ways. Direct comparison with and exposure to different practices, for example, in meetings of COARM, have exerted peer pressure on government representatives. For instance, Sweden is a country that considers transparency to be an element of its self-image and national identity and therefore feels pressure to further increase transparency when other governments do so.

References to other countries’ practices in order to justify both transparency and secrecy have increased. This comes in the wake of increased exposure to and examination of other models. Transparency becomes acceptable ‘if everybody does it’, as is demonstrated by the EU Code of Conduct Annual Reports and the UNROCA, since this reduces the potential for competitive disadvantage. This reconfirms that commercial confidentiality and business interests are key and arguably the most important motivations for secrecy. Pioneering efforts make it easier for other governments to follow and may even put pressure on them to do so. This so-called beauty contest has led to a transparency dynamic in the EU, where all countries now submit national data in the framework of the EU Code of Conduct, and most countries also publish national reports, albeit of varying degrees of usefulness. Reporting structures set up to ensure compliance with Code of Conduct procedures are also used for national reporting purposes. As a result of export policy cooperation within the CFSP, there are strong incentives for each succeeding EU Presidency to adapt its level of national transparency to European transparency efforts in order to increase coherence and credibility with third countries.

The emergence of a European dimension to arms export policy making has also created new opportunities for civil society actors and parliaments to hold their governments accountable and to inform public debate on particular issues. At the same time, the increasing transnationalization of arms production in Europe, and dispersal of export policy decisions regarding such collaborative products, has been an impediment to transparency. The increased complexity of decision making leads to an increase in the number of pieces to be assembled in order for observers to complete the puzzle. Intergovernmental agreements on arms exports make decision-making processes more complex and make it even more difficult to evaluate the implementation of export criteria. Because of the room for interpretation that exists in the EU Code and differing national export policies, only highly transparent decision-making processes can enable parliaments and the public to monitor the implementation of the EU Code of Conduct. This is especially true in the cases of the supply of components and sub-systems and of cooperation projects.

3. National practices of data collection and reporting

This chapter examines the collection and reporting of data on the financial value of arms export licences and actual arms exports. It briefly describes examples of national practice from across the EU in order to learn how best to collect and submit comparable export licence data disaggregated by both destination and EU Common Military List category. The chapter also examines information on actual arms exports collected by national customs authorities and information submitted by defence companies. It compares the different methodologies employed by EU member states and assesses the overall applicability of each approach to the collection of comparable data on actual arms exports disaggregated by destination and by EU Common Military List category. Finally, the chapter discusses national examples of the collection and reporting of the additional categories of data identified in chapter 2, such as the type and quantity of items licensed and exported, the type of end-user, and the final destination of goods destined for re-export.

The collection of financial data on arms export licences

The collection of data on the value of licences granted for the export of military equipment is a far more straightforward process than the collection of data on the value of actual arms exports. Because it is the government itself that issues the licence it is a relatively simple process for it to record the destination and value of the military equipment licensed for export. The actual agency responsible for issuing licences, and thus the agency responsible for collecting the data on their value, varies between EU member states. In the Czech Republic, data on the value of licences granted for the export of military equipment are collected by the Ministry of Industry and Trade. In Denmark, such data are collected by the Ministry of Justice.³⁸ In Sweden, data are collected by the National Inspectorate of Strategic Products.³⁹ In the countries surveyed, the ability to collect and report data on export licences is not affected by the type of government agency responsible for collecting such data. The process of issuing a licence and recording its value is essentially the same in all cases. A company applies for a licence for the export of a controlled item for which a value is assigned. Licences are valid for a particular period of time and for a given number of items. In all cases the figure reported refers to the value of licences issued during the calendar year in question.

³⁸ Fischer, P., Danish Ministry for Foreign Affairs, Communication with the authors, 21 Apr. 2004.

³⁹ Agerlid, L., Swedish Ministry for Foreign Affairs, Communication with the authors, 14 June 2004.

In certain cases states have provided data that do not reflect the value of export licences granted for the export of military equipment. For instance, British data on the value of export licences are taken from the United Kingdom Strategic Export Controls Annual Report.⁴⁰ The figures for the value of arms export licences granted in the British annual report combine the value of the export licences granted for goods on the UK military list with the value of licences granted for dual-use goods. Consequently, the figure submitted to the EU has in the past included the value of licences for both categories of goods. This problem is in the process of being rectified and the data in the Sixth Annual Report will refer only to licences granted for UK military list items.⁴¹ Moreover, France submitted a figure of €11.4 billion for the Fifth Annual Report as the value of its export licences granted in 2002.⁴² In reality, the figure represented the value of ‘agrément préalable’ (agreements in advance, or negotiating licences) rather than the value of licences issued.⁴³

Coverage, categorization and updating of national lists

The control lists that states operate from when issuing arms export licences largely determine the coverage and disaggregation of export licence data. If states are to submit comparable data disaggregated in the same way, it is useful if they operate from lists with the same coverage and categorization. In addition, states need to have legislation in place allowing national lists to be easily and regularly updated in line with changes at the EU level.

As noted above, on 13 June 2000 the Council of the European Union adopted the Common List of Military Equipment covered by the EU Code of Conduct on Arms Exports (the EU Common List) in accordance with Operative Provision 5 of the EU Code.⁴⁴ The list is based on, but does not match exactly, the Wassenaar Arrangement Munitions List and employs the same numbering system. At the same time, EU member states agreed that ‘future amendment of the Wassenaar Arrangement Munitions List will not automatically entail amendment of the EU Common List’.⁴⁵ On 17 November 2003 the Council adopted a revised version, called the Common Military List of the European Union (EU Common Military List).⁴⁶ The updated list reduced the number of categories from 23 to 22 and revised several definitions. The EU Common Military List is currently identical to the Wassenaar Arrangement Munitions List. Under the framework of the EU’s CFSP, member states have made a political commitment to ensure that their national legislation enables them to control the export of all the goods on the EU

⁴⁰ British Foreign and Commonwealth Office (note 24).

⁴¹ Zebedee, G., British Foreign and Commonwealth Office, Interview with the authors, 22 June 2004.

⁴² Council of the European Union (note 3), p. 33.

⁴³ Private communication with the authors, 21 June 2004.

⁴⁴ ‘Common list of equipment covered by the Code of Conduct’ (note 9).

⁴⁵ Council of the European Union (note 3), p. 7.

⁴⁶ Council of the European Union (note 9).

Common Military List. However, states are neither legally nor politically obliged to structure their national control lists in the same way, but merely to ensure that all items on the EU Common Military List are covered.

In all the countries surveyed for this report, states' national lists take into account the overall coverage, if not the categorization, of the EU Common Military List: that is, states' national lists cover all the items on the EU list but do not necessarily disaggregate them in the same way. In only a few countries, such as Finland, Malta and the Netherlands, does the coverage of the national list match the EU Common Military List exactly. In several cases national lists contain additional categories of equipment which are not on the EU Common Military List, such as police, security and paramilitary items.⁴⁷ These additional items make little difference to the overall comparability of the data submitted and should not be discouraged in the light of recognized gaps in the coverage of the EU Code of Conduct. For instance, security equipment such as electro-shock weapons and chemical irritants, and 'less lethal' kinetic-impact weapons such as rubber bullets, do not appear on the EU Common Military List.⁴⁸ The Fourth Annual Report identifies as one of the nine priority measures for the further development of the EU Code of Conduct 'pressing for definitive adoption of a system for controlling exports of non-military security and police equipment'.⁴⁹ However, discussions about adopting a list of equipment are still ongoing. In December 2002 the Commission presented a draft Council Regulation on trade in equipment related to torture and capital punishment, which proposes to ban the import and export of controlled equipment that could be used exclusively for torture or capital punishment.⁵⁰ In addition, the regulation would introduce a licensing system for equipment that also has legitimate uses. While agreement on the principle of a ban on torture equipment has been secured, a number of issues remain unresolved, including legal questions, the role of the European Commission and the types of equipment to be listed.

⁴⁷ E.g., the Spanish national list includes an additional code covering 'paramilitary policing and security items'. Spanish Ministry of Economy, 'El comercio exterior de material de defensa y de doble uso, del año 2002' [Exports of defence and dual-use matériel 2002], *Boletín Económico de Información Comercial Española*, no. 2780 (5 Oct. 2003), URL <<http://www.mcx.es/sgcomex/mddu>>. The Hungarian national list includes 2 additional codes covering 'instruments of coercion and crime surveillance' and 'secret-service devices'. See URL <<http://www.mkeh.hu/tev/fegyverek/fegyverekenglish.html>>. The British national list includes a number of additional codes, including 1 covering 'security and paramilitary police "goods"'. British Foreign and Commonwealth Office (note 24).

⁴⁸ Saferworld, *Taking Control: The Case for a More Effective European Union Code of Conduct on Arms Exports*, a report by European Union non-governmental organisations (Saferworld: London, Sep. 2004), p. 13, URL <<http://www.saferworld.org.uk>>.

⁴⁹ Council of the European Union, 'Fourth Annual Report according to Operative Provision 8 of the European Code of Conduct on Arms Exports', *Official Journal of the European Communities*, C319 (19 Dec. 2002), p. 7.

⁵⁰ European Commission, 'Proposal for a Council Regulation concerning trade in certain equipment and products which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment', COM 707 final (30 Dec. 2002).

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For the Sixth Annual Report, member states agreed that ‘breakdowns of licences and actual arms exports by EU Common Military List category (if available) should also be included in the report’.⁵¹ A number of states whose national lists do not match the categorization of the EU list were unable to submit these data. This was the case for Sweden, whose Military Equipment Classification List contains 37 categories,⁵² and Italy, whose national list covers the same items as those on the EU list but is structured differently. Of the states that responded to the survey, eight collect data on the value of export licences disaggregated by the categories of the EU Common Military List and submitted such data for inclusion in the Sixth Annual Report.⁵³ Of the states that supplied export licence data disaggregated by destination for the Sixth Annual Report some provided data on the total value of licences issued broken down by Common Military List categories while others provided the value of exports by destination broken down by its categories.

The EU list is not fixed. In order for states to continue to submit comparable disaggregated data, legislation is needed to allow their national lists to be updated in line with changes at the EU level. National practices differ from country to country regarding the ease with which national control lists can be updated. Several states have yet to take into account the changes enacted with the introduction of the EU Common Military List. In other countries, provisions already exist to allow national lists to be updated when changes occur. In Finland and the UK, legislation allows for national lists to be updated quickly and easily when changes are made to the EU list. In Sweden, responsibility for updating the national control list rests with the Cabinet. In practice, the Swedish list is updated in line with changes to the EU list.⁵⁴ In Spain, the national control list is currently updated by royal decree. However, under new legislation to be enacted Spain’s list will be updated by ministerial order, allowing for more automatic changes.⁵⁵

The collection of data on actual arms exports using customs statistics

A fuller understanding of a state’s application of the criteria of the EU Code of Conduct requires data both on arms export licences and on actual arms exports.

⁵¹ COARM (note 8).

⁵² Under the 1992 Swedish Military Equipment Act, military equipment is divided into 2 categories: Military Equipment for Combat Purposes; and Other Military Equipment. The Military Equipment Ordinance contains provisions specifying the types of equipment that are assigned to the 2 categories. The 1st category consists of destructive equipment, including sights and firing control equipment. The 2nd category consists of parts and components for military equipment for combat purposes and equipment that is not directly destructive in a combat situation. Swedish Ministry for Foreign Affairs, ‘Strategic export controls in 2003: military equipment and dual-use goods’, 11 Mar. 2004, p. 9, URL <<http://www.isp.se/pdf/s0304eng.pdf>>.

⁵³ These states are Austria, Denmark, Finland, Germany, Ireland, Malta, Slovakia and the UK.

⁵⁴ Tjäder, T., Swedish National Inspectorate of Strategic Products, Communication with the authors, 17 July 2004.

⁵⁵ Muro, R., Spanish Ministry of Industry, Tourism and Trade, Communication with the authors, 19 July 2004.

States that collect data on actual arms exports are broadly divided between those that make use of data provided by national customs authorities and those that rely on information provided by the exporting companies. Each of these approaches is discussed in more detail below. In each case the different methodologies employed by member states are examined. In addition, the ability of each system to generate complete and comparable arms exports data for the Annual Report is assessed.

Of the states that submit data for the Annual Report on the value of their actual arms exports, Germany, Italy, Spain and the UK base their submissions on information provided by national customs authorities. In all cases, customs authorities are able to identify exports of military equipment via the CN coding system, which consists of over 10 500 eight-digit codes and is used by EU member states to describe traded goods for statistical and tariff purposes. These eight-digit codes are created using the internationally agreed ‘Harmonized System’ of six-digit codes supplemented by two additional characters agreed at the EU level.⁵⁶ In the UK, data on the value of arms exports are collected by the department responsible for customs and excise duties. Information is collected on the weight, value and destination of an item.⁵⁷ In all cases the exporting companies perform the identification and coding of the exported items.

Austria is currently developing an electronic processing system that will allow the Federal Ministry of Economics and Labour to receive statistics from the national customs authorities on the export of military equipment not covered by the 1977 Austrian War Material Regulation.⁵⁸

While customs statistics might appear to be an attractive method for collecting complete and comparable data on actual exports of military equipment—statistics either are collected or could be collected by all EU member states using a standard methodology—there are several problems associated with their use. First, there are questions regarding their coverage: for example, the ability of customs procedures to capture data on items such as aircraft engines and electronics, which could be for either civilian or military application, and on intangible technology transfers, which do not involve the transfer of physical items. Second, there are specific problems relating to the categorization of customs data—particularly the incompatibility of such data with the categories of the EU Common Military List. Third, there may be additional problems relating to the ability to identify and exclude temporary arms exports and the collection of data on intra-EU trade.⁵⁹

⁵⁶ National Statistics, *Review of Ministry of Defence Finance and Economic Statistics*, Quality Review Series no. 32 (Defence Analytical Services Agency: Bristol, 2004), pp. 64–65, available at URL <http://www.statistics.gov.uk/methods_quality_review/other.asp>.

⁵⁷ Oxford Economic Forecasting, ‘The economic impact of UK defence exports’, Defence Industries Council, Unpublished report, June 2004, p. 71.

⁵⁸ Ikić-Böhm, A., Austrian Ministry of Foreign Affairs, Communication with the authors, 24 June 2004. See also appendix A in this volume.

⁵⁹ Temporary exports are goods which are exported but later returned in an unaltered state. This includes items for use in sales exhibitions or for testing and evaluation. It does not include items leased by or on loan to a foreign government or international organization.

A number of British studies have examined the problems raised by the coverage of customs statistics and their utility for providing data on actual exports of military equipment. For instance, a 2004 report noted that the CN system used to code arms exports is not designed with the aim of collecting statistics on the export of military equipment.⁶⁰ The coding system is based on the type of item rather than its final use. This means that items which can only be used for military purposes, such as combat aircraft and tanks, can be identified without much difficulty, but also that items which could be for civilian or military use, such as rifles, helicopters, radios and electronics, are more difficult to identify.⁶¹ These problems were exacerbated in 1993 when the CN codes were changed from a nine-digit system to the eight-digit system used today. The reduction in detail meant that a number of codes that had previously been used to identify military equipment were lost. In particular, codes relating to military radio and radar apparatus, optical equipment and military simulators other than those for ground flight training were deleted.⁶²

In the UK, companies must identify their items for export as either 'civil' or 'other than civil', which helps to identify exports of military equipment. However, for reasons connected with the treatment of duties payable, it is impossible to be confident that items identified as 'civil' are definitely not military or that items defined as 'other than civil' are definitely military.⁶³

The British annual report states that British figures on actual arms exports 'provide an indication of the level of trade with individual countries identified under EC Codes, rather than a record of all exports of licensable goods during the period'.⁶⁴ A possible indication of the gaps in the coverage of customs data is provided by an alternative survey of British arms exports carried out annually by the Defence Analytical Services Agency (DASA).⁶⁵ The DASA report supplements the figures supplied by customs and excise with data on aerospace equipment and services supplied by the Society of British Aerospace Companies.⁶⁶ The differences are considerable. The 2003 DASA Report valued British arms exports in 2002 at £4120 million (c. €6550 million), compared with the customs and excise figure of £942 million (c. €1500 million).⁶⁷ However, the DASA survey uses a definition of military equipment that is different from that of the EU Common Military List and includes data on both goods and services. Such services are likely to include train-

⁶⁰ Oxford Economic Forecasting (note 57), p. 71.

⁶¹ National Statistics (note 56), pp. 64–65.

⁶² Defence Analytical Services Agency, 'Statistics of exports and imports of defence equipment and of defence balance of payments invisible transactions', *Defence Statistics Bulletin*, no. 4 (July 1994), URL <<http://www.dasa.mod.uk/publications/pubsindex.html>>.

⁶³ Belfield, I., British Customs and Excise official, Interview with the authors, 26 July 2004.

⁶⁴ British Foreign and Commonwealth Office (note 24), p. 20.

⁶⁵ British Ministry of Defence, Defence Analytical Services Agency (DASA), *UK Defence Statistics 2003* (Stationery Office: Norwich, 2003), URL <<http://www.dasa.mod.uk/natstats/ukds/2003/ukds.html>>.

⁶⁶ British Ministry of Defence (note 65), p. 27.

⁶⁷ British Ministry of Defence (note 65), p. 27.

ing, project management, computer programming and general consultancy advice, none of which appears on the EU Common Military List.⁶⁸ It is therefore difficult to use the DASA survey to draw any firm conclusions about whether customs and excise statistics can capture data on the export of items covered by the EU list.⁶⁹

Alongside the issue of how well customs statistics capture data on the export of military equipment is the problem of how well such data are categorized. The CN coding system bears no relation to the categories in the EU Common Military List. It is therefore not possible to produce data disaggregated by EU Common Military List categories using customs statistics. Finland collects data on the value of actual arms exports using returns from industry and compares these figures with data collected by the national customs authorities. Data on the financial value of exports collected by the customs authorities are regarded as unsuitable for direct comparison with arms export values obtained from industry.⁷⁰ There may also be an additional problem with regard to how customs data treat temporary arms exports. It is not possible to separate temporary arms exports from permanent arms exports using Finnish customs data.⁷¹ However, exports for return in an unaltered state are excluded from British customs and excise trade statistics.⁷²

Finally, it is also questionable whether customs data capture trade within the EU. With the introduction of the single market on 1 January 2003, all customs formalities with regard to trade within the EU were abolished. Customs declarations and CN codes are therefore not required for trade within the EU. The Netherlands highlights this problem, noting that ‘exporters are not obliged to declare goods to customs if these goods are transferred to another EU Member State. Military goods are not excluded from this arrangement’.⁷³ However, the UK, which bases its actual arms exports figures on customs data, is able to collect information on intra-EU trade using Intrastat—the statistical collection system set up for compiling statistics on the trading of goods between member states which was introduced after the introduction of the single market. The system operates across the EU but is implemented at the national level. Companies must provide details of intra-EU trade, including CN codes, but only if their trade in goods within the EU exceeds a

⁶⁸ Oxford Economic Forecasting (note 57), p. 71.

⁶⁹ A recent review of the DASA data attempted to account for the difference between the customs and excise figure and the DASA figure by expanding the number of codes that export data were drawn from. The survey included values taken from 22 additional codes that could contain some military elements but had previously been excluded because it was likely that they included civilian equipment. The additional aggregate sums amounted to around £300 million (*c.* €480 million)—well below the difference of £3178 million (*c.* €5050 million) between the 2 data sets for 2002. This could be seen as a further indication that the bulk of the DASA additions are not made up of exports of military equipment but probably consist of services not covered by the EU Common List. See National Statistics (note 56), pp. 64–65.

⁷⁰ Ruutu, O., Finnish Ministry of Defence, Interview with the authors, 22 June 2004.

⁷¹ Ruutu, O., Finnish Ministry of Defence, Communication with the authors, 2 Aug. 2004.

⁷² National Statistics (note 56), pp. 64–65, 70.

⁷³ Kampman, G., Dutch Ministry of Foreign Affairs, Communication with the authors, 19 Aug. 2004.

certain annual threshold. In the UK this threshold is currently £221 000 (c. €327 000).⁷⁴

Data on actual arms exports provided by industry

A number of EU member states—including Austria, the Czech Republic, Finland, France, Hungary, Lithuania, Slovenia, Spain and Sweden—compile data on actual arms exports from reports submitted by exporting companies. The frequency of reporting and the type of data collected vary from country to country. For instance, in Finland companies report quarterly on the licence number, destination, value and customs code of their exports of military equipment. Companies are also obliged to provide a description of the goods exported. In Sweden, companies submit details annually on all invoices issued for the export of goods on the Swedish Military Equipment Classification List. In Hungary, companies submit monthly data on the value of goods exported under each export licence they have been issued.

In all the countries surveyed where industry data are used, with the exception of France, companies are legally obliged to report on their arms exports. In Hungary companies have been required to submit monthly reports since 1991 while in Finland reporting is an obligation based on the 1997 Decree on the Export and Transit of Defence Matériel.⁷⁵

The use of information supplied by industry alleviates many of the problems of coverage and categorization associated with the use of customs statistics. By asking companies to report on the value of arms exported under licence, states can ensure that their data on actual arms exports refer to the same items as their data on arms export licences granted. Furthermore, if the list of items for which export licences are issued matches the EU Common Military List, then the coverage of the data on actual arms exports will match the EU list.

The use of information provided by industry also removes the problems associated with the categorization of data that arise with the use of customs data. Because companies are reporting back on the value of arms exports made under export licences issued, it is a relatively easy process to disaggregate those values by the categories under which they were issued. Of the countries that responded to the survey, Austria, Finland, Malta, and Slovenia submitted data on actual arms exports disaggregated by EU Common Military List categories for the Sixth Annual Report. In Finland, Malta, and Slovenia the national lists match the categorization of the EU Common Military List, and data on actual arms exports are collected from information submitted by defence companies. In Sweden, data on the value of actual arms exports are collected using information submitted by

⁷⁴ British Customs and Excise, Statistical Analysis of Trade Unit, 'UK tradeinfo: quick guide to Intrastat', 24 Sep. 2004, URL <<http://www.uktradeinfo.com/index.cfm?task=quick>>.

⁷⁵ In accordance with Government Decree 108/1997. Ruutu (note 71).

industry, and the data are disaggregated by the 37 categories of the Swedish Military Equipment Classification List.⁷⁶

Hence, the use of information provided by industry allows for financial data to be disaggregated by EU Common Military List categories. In contrast, countries that use customs data are only able to provide financial data disaggregated by destination. Nonetheless, a number of questions remain about the accuracy of the information provided by industry. First, the extent to which the data can be cross-checked to ensure its accuracy is unclear. Governments rely on information provided by industry and, either through negligence or deliberate distortion, this may not always be accurate. However, the question of the reliability of information provided by industry also applies to customs statistics since it is the companies themselves that supply the CN code for the exported item and only in a small number of cases will the customs authorities verify its accuracy. Second, it remains unclear whether companies report on the value of the items exported or on the value of the contract associated with the item exported. If the latter is the case, this could lead to inconsistencies between the data reported by different countries and to questions about whether the coverage of the data matches the coverage of the EU Common Military List. Third, in order for additional countries to begin to collect data on actual arms exports based on information provided by industry, new legislation is likely to be needed to compel companies to collect and submit the data. For instance, Denmark does not collect data on the value of actual exports of military equipment and the collection of such data using information from industry would require changes to the Danish export licensing system. Exporters must return their licences once they have been used. However, the information provided in this way does not make it possible to calculate the value of goods exported annually.⁷⁷

The collection and reporting of additional types of information

As noted in chapter 2, additional types of information over and above purely financial data are required in order to obtain a better understanding of how states interpret and implement the EU Code of Conduct. Information on the number and type of items licensed and exported, the type of end-user and the final destination of goods destined for re-export are of particular importance.

A number of states already collect information on the type and number of items licensed for export. The German annual report lists the German Export Control List category and gives a description of goods licensed for export to each country.⁷⁸ The Finnish annual report lists the EU Common Military List categories of goods

⁷⁶ Swedish Ministry for Foreign Affairs, 'Strategic export controls in 2003: military equipment and dual-use goods', 11 Mar. 2004, p. 9, URL <<http://www.isp.se/pdf/s0304eng.pdf>>.

⁷⁷ Fischer (note 38).

⁷⁸ Government of the Federal Republic of Germany, 'Rüstungsexportbericht 2002' [Military equipment export report 2002], Berlin, 17 Dec. 2003, URL <<http://www.bmwa.bund.de/Navigation/Service/Englisch/publications.page=html>>.

licensed for export to each country along with the number of items and their weight. The British annual report gives a description of all goods licensed for export.⁷⁹ The Italian annual report lists the type, value and quantity of goods licensed for export broken down by exporting company and,⁸⁰ while this information is not broken down by recipient country, such data can generally be derived using the financial values per recipient country, which are available in the report, together with other data available from public sources.

With regard to methodologies, the same points made above about the collection of financial data on arms export licences also apply to the provision of information on the number of items and their description. For instance, if states are to provide comparable quantitative data disaggregated by category, they will have to be operating from national lists that match the categories of the EU list.

With regard to actual arms exports, all EU member states report to the UNROCA, which has reporting procedures for exports and imports of agreed categories of major conventional weapons. The reports to the UN Register include the numbers of each item transferred in a particular calendar year. In addition, in accordance with the 2000 OSCE Document on Small Arms and Light Weapons,⁸¹ all EU member states submit information on the import and export of SALW to and from other OSCE states. The first reporting took place in 2002 and the information is compiled at the OSCE Conflict Prevention Centre. While most OSCE member states reply but keep their submissions secret from the general public, several, including the Czech Republic, Germany and Spain, chose to make their reports public.⁸² Moreover, EU member states that participate in the Wassenaar Arrangement also collect and exchange, on a confidential basis, data on exports of seven categories of major conventional weapon, SALW and MANPADS to non-participating states.

As with financial values, data provided by industry have a number of advantages over customs statistics when it comes to the collection of information on the number and type of actual arms exports. The level of detail provided by the CN coding system is limited. Data are provided on the value and weight of the goods exported but not on the type of equipment or the number of units. Information provided by industry can include the quantity and a description of the goods exported.

Belgium and Denmark already specify the type of recipient, such as military, police or industry, in the export licence data in their national annual reports. How-

⁷⁹ British Foreign and Commonwealth Office (note 24), p. 20.

⁸⁰ Italian Chamber of Deputies, 'Relazione sulle operazioni autorizzate e svolte per il controllo dell'esportazione, importazione e transito dei materiali di armamento nonché dell'esportazione e del transito dei prodotti ad alta tecnologia, anno 2002' [Report on operations authorized and carried out concerning the control of export, import and transit of weapons matériel as well as the export and transit of high-technology products, 2002], Rome, 27 Mar. 2003, URL <<http://www.camera.it>>.

⁸¹ Organization for Security and Co-operation in Europe, Document on Small Arms and Light Weapons, FSC.DOC/1/00, 24 Nov. 2000, URL <http://www.osce.org/documents/sg/2000/11/673_en.pdf>. See also Hagelin, B. *et al.*, 'International arms transfers', *SIPRI Yearbook 2003: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2003), pp. 463–64.

⁸² Hagelin *et al.* (note 81), p. 463.

ever, the Belgian and Danish reports use different categorizations. The British Quadripartite Parliamentary Select Committee on Strategic Export Controls has recommended that the UK publish information on the type of end-user in the British annual report. At the same time, although the information is not generally published, a number of states collect data on the final destination of goods destined for re-export to third countries—raising the possibility that these data could be presented in future Annual Reports. Denmark, France and Germany collect these data and Finland, Sweden and the UK collect such data ‘when available’. In the case of Italy, the data are collected only when the first destination of the goods is not an EU or a NATO state.

This raises the question of how such data would be presented in the Annual Report. Currently, indirect arms exports are reflected neither in the Annual Report nor in national reporting, even in cases where a re-export licence has been issued. An exception to the focus on direct arms exports in national reporting is French reporting practice, which records only the French contribution in the figure for deliveries. Moreover, the final destination of French components, rather than the country integrating French components into another product for export, is recorded in export figures.⁸³ Meanwhile, the British Government has identified licences for the export of goods destined for incorporation and re-export in its national report for the first time—although the ultimate destination is not given.⁸⁴ Generally, EU member states report the export of components by first-country destination, precluding any conclusions about the final destination of the finished product.⁸⁵ Hence, current reporting does not permit conclusions to be drawn about a consistent application of the EU Code of Conduct criteria to direct and indirect arms exports.

⁸³ French Ministry of Defence (MOD), *Rapport au parlement sur les exportations d’armement de la France en 2001* [Parliamentary report on French arms exports 2001] (MOD: Paris, June 2003), pp. 55–56.

⁸⁴ British Foreign and Commonwealth Office, ‘Strategic export controls report 2004: second quarterly report’, URL <<http://www.fco.gov.uk/Files/kfile/strategicexportcontrols2004aprjunreport.pdf>>.

⁸⁵ Bauer (note 33), p. 209.

4. Recommendations

In the Fifth Annual Report the ‘continuation of the process of harmonization of national reports in order to produce clearer, more transparent summary tables’ was made the first ‘priority guideline for the near future’. This study recommends five short-term steps to improve the utility of existing data.

1. EU member states should agree common reporting requirements by, for example, requiring the submission of financial values of both licences and arms exports, broken down by EU Military List Category and sub-category, for each destination country and by requiring the type of recipient to be specified.

2. EU member states could enhance the utility, comparability and accuracy of financial data on arms export licences by: (a) making the structure and contents of national lists compatible with the EU Common Military List and introducing (semi-)automatic updating procedures; (b) harmonizing reporting on open licences; and (c) harmonizing reporting on goods destined for re-export.

3. It would be possible to improve the utility, accuracy, comprehensiveness and comparability of customs data by: (a) requiring licensing authorities to provide customs authorities with details of licences issued, thereby better enabling them to identify exports of military equipment; and (b) examining ways to reform customs codes to better enable the identification of arms exports and to make the customs classification more compatible with the EU Common Military List (e.g., by creating specific sub-category for EU Common Military List items).

4. It would be possible to improve the utility, accuracy, comprehensiveness and comparability of data provided by industry by introducing a legal obligation for industry to report on their arms exports at the national level. Such a reporting obligation would include: (a) a description of the items, including their EU Common Military List category, and their quantity; (b) the name and address of the exporter and the consignee; (c) the end-use and end-user of the goods; (d) details of the final destination of the items; and (e) details of the type of recipient.

5. EU member states should move towards the use of industry data, which would be more accurate and more comparable, through a COARM decision to collect industry data across the EU. To this end, it would be useful to further examine, perhaps through a seminar involving industry, governments and NGOs, the mechanisms for improving the collection and compatibility of industry data and to discuss methodologies for collecting industry data and explore best practice.

Two further recommendations have the more ambitious aim of shifting the focus of the Annual Report away from financial data and towards information on the type and number of items licensed for export and exported. In the long term, new information would have to be collected and reported in order to match the types of data provided with the stated purpose of the Annual Report.

6. Information should be provided by EU member states on the quantity and EU Common Military List category of goods licensed for export and on actual exports along with an accompanying description of the items disaggregated by recipient country. Information should also be provided on the type of end-user and the final destination of goods destined for re-export to a third country.

7. If such a level of detail is thought to be excessive for all destinations, states could examine the possibility of producing a ‘two tiered’ report. Information on exports to EU member states could be limited to the financial value broken down by EU Common Military List category of the goods, while exports to all other countries could include the additional categories listed above. This would follow the logic of the Code of Conduct and of current efforts to facilitate ‘intra-Community transfers’ and to focus attention on extra-Community exports. Alternatively, states could produce national annual reports with an agreed set of reporting criteria. The additional information on the type of equipment exported could be reported at the national level while the Annual Report would be reserved for the more limited information on financial values.

Appendix A. Country data

The information presented in this appendix is based on responses to a questionnaire that was sent to all EU member states in 2004. The appendix presents detailed information on states' collection and reporting of financial data on export licences for the Annual Report according to Operative Provision 8 of the EU Code of Conduct on Arms Exports. For each member state, the appendix gives details of the government agency responsible for collecting the data and the differences between the national control list used and the EU Common Military List. Information is provided on states' collection and reporting of data on actual exports using either customs statistics or information provided by industry. Information is also provided on instances where states produce national annual reports containing additional information on arms export licences or actual exports over and above their financial value disaggregated by recipient country. The data are summarised in tables A1–A3.

Austria

Collecting and reporting data on arms export licences

Data collection. The Austrian Ministry of the Interior and the Federal Ministry of Economics and Labour are jointly responsible for collecting data on the value of licences granted for the export of military equipment. The Ministry of the Interior collects data on licences for the export of war material as defined in the Austrian War Material Regulation, while the Federal Ministry of Economics and Labour collects data on licences for all other military equipment.⁸⁶

Together, the Austrian War Material Regulation and the Ministry of Economics and Labour's list of military equipment other than war material match the coverage of the EU Common Military List. The Austrian list is being updated in order to adapt it to the wording of the EU Common Military List.⁸⁷ Data are collected on temporary and permanent arms exports and disaggregated by recipient country.

Data reporting. In previous years, Austria has only submitted data for the Annual Report on the value of licences granted for permanent exports of weapons other than war material, disaggregated by recipient country. For the Sixth Annual Report Austria submitted data on the value of licences granted for both war material and non-war material items disaggregated by recipient country. Austria also

⁸⁶ Under the 1977 Federal Act on the Export, Import and Transit of War Material, the Ministry of the Interior is the licensing authority for war material as defined in the Austrian War Material Regulation and also collects data on its value. Under the 1995 Austrian Foreign Trade Act, the Federal Ministry of Economics and Labour is the licensing authority for military equipment not covered by the regulation and also collects data on its value.

⁸⁷ Ikić-Böhm (note 58).

submitted data on the value of non-war material items disaggregated by EU Common Military List category.⁸⁸

Collecting and reporting data on actual arms exports using customs statistics

Austria does not currently submit data on actual arms exports based on customs statistics for the Annual Report. The Austrian Federal Ministry of Economics and Labour is developing an electronic processing system to enable statistics provided by the customs authorities to be used to collect data on actual exports of military equipment not covered by the War Material Regulation. The system will connect the Federal Ministry of Economics and Labour with the Austrian customs service. This will allow the customs service to receive information on which licences were issued and provide the Federal Ministry of Economics and Labour with data on the export of military equipment not covered by the War Material Regulation.⁸⁹

Collecting and reporting data on actual arms exports using information provided by industry

Data collection. The Austrian Ministry of the Interior is responsible for collecting data on the value of actual exports of items covered by the Austrian War Material Regulation based on information provided by industry. Under Austrian law, exporting companies are obliged to inform the Ministry of Interior of the nature and size of a licensed export of war material as well as the date on which it took place. Data are collected on permanent and temporary arms exports and disaggregated by recipient country.⁹⁰

Data reporting. Austria submitted data on the value of actual arms exports for the first time for the Fifth Annual Report. The data covered permanent exports of items covered by the Austrian war material list disaggregated by recipient country. For the Sixth Annual Report Austria submitted data on the value of actual exports of war material and non-war material items disaggregated by recipient country. Austria also submitted data on the value of non-war material items disaggregated by EU Common Military List category.⁹¹

The Czech Republic

Collecting and reporting data on arms export licences

Data collection. The Czech Licensing Office of the Ministry of Industry and Trade is responsible for collecting data on the value of licences granted for the export of military equipment. The list of military equipment for which export licence data are collected matches the coverage but not the categorization of the EU Common Military List. The Czech list will be updated in 2005 to bring it in line with the EU

⁸⁸ Ikc-Böhm, A., Austrian Ministry of Foreign Affairs, Communication with the authors, 13 Oct. 2004.

⁸⁹ Ikc-Böhm (note 58).

⁹⁰ Ikc-Böhm (note 58).

⁹¹ Ikc-Böhm (note 88).

Table A1. Submissions of data for the Annual Report according to Operative Provision 8 of the EU Code of Conduct on Arms Exports, 1999–2004

	1999	2000	2001	2002	2003	2004
<i>Austria</i>						
Data on export licences issued	x ^a	x ^a	x ^a	x ^a	x ^a	x ^a
Customs data on actual arms exports						
Industry data on actual arms exports					x ^b	x ^b
<i>The Czech Republic</i>						
Data on export licences issued	..	..	..	..	..	x
Customs data on actual arms exports	..	..	..	..	..
Industry data on actual arms exports	..	..	..	..	..	x
<i>Denmark</i>						
Data on export licences issued			x ^c	x	x	x
Customs data on actual arms exports						
Industry data on actual arms exports						
<i>Finland</i>						
Data on export licences issued			x	x	x	x
Customs data on actual arms exports						
Industry data on actual arms exports	x	x	x	x	x	x
<i>France</i>						
Data on export licences issued		x ^d	x ^d		x ^d	x ^d
Customs data on actual arms exports						
Industry data on actual arms exports	x		x	x		
<i>Germany</i>						
Data on export licences issued	x	x	x	x	x	x
Customs data on actual arms exports						
Industry data on actual arms exports			x ^e	x ^e		
<i>Hungary</i>						
Data on export licences issued	..	..	..	..	..	x
Customs data on actual arms exports	..	..	..	..	..
Industry data on actual arms exports	..	..	..	..	..	x
<i>Ireland</i>						
Data on export licences issued	x	x ^f	x	x	x	x
Customs data on actual arms exports						
Industry data on actual arms exports						
<i>Italy</i>						
Data on export licences issued	x	x	x	x	x	x
Customs data on actual arms exports			x	x	x	x
Industry data on actual arms exports						
<i>Lithuania</i>						
Data on export licences issued	..	..	..	..	..	..
Customs data on actual arms exports	..	..	..	..	..	..
Industry data on actual arms exports	..	..	..	..	..	..

	1999	2000	2001	2002	2003	2004
<i>Luxembourg</i>						
Data on export licences issued	x	x	x	x	x	x
Customs data on actual arms exports						
Industry data on actual arms exports			x	x	x	x
<i>Malta</i>						
Data on export licences issued	..	..	..	..	..	x
Customs data on actual arms exports	..	..	..	..	..
Industry data on actual arms exports	..	..	..	..	..	x
<i>The Netherlands</i>						
Data on export licences issued	x	x	x	x	x ^f	x
Customs data on actual arms exports						
Industry data on actual arms exports						
<i>Slovakia</i>						
Data on export licences issued	..	..	..	..	..	x
Customs data on actual arms exports	..	..	..	..	..
Industry data on actual arms exports	..	..	..	..	..
<i>Slovenia</i>						
Data on export licences issued	..	..	..	..	..	x
Customs data on actual arms exports	..	..	..	..	..
Industry data on actual arms exports	..	..	..	..	..	x
<i>Spain</i>						
Data on export licences issued	x			x	x	x
Customs data on actual arms exports						
Industry data on actual arms exports		x	x	x	x	x
<i>Sweden</i>						
Data on export licences issued		x	x	x	x	x
Customs data on actual arms exports						
Industry data on actual arms exports	x	x	x	x	x	x
<i>The United Kingdom</i>						
Data on export licences issued				x	x	x
Customs data on actual arms exports		x	x	x	x	x
Industry data on actual arms exports						

.. Not a member of the EU at the time the data were collected.

^a The figure submitted does not include items covered by the Austrian War Material Regulation.

^b The figure submitted only includes items covered by the Austrian War Material Regulation.

^c This figure is incorrectly labelled as the value of actual exports.

^d The figure submitted refers to the value of negotiating licences.

^e The figure submitted only includes 'war material' as defined in the German War Weapons List.

^f This figure is incorrectly labelled as the value of actual exports.

Common Military List.⁹² Data are collected on temporary and permanent exports and disaggregated by recipient country and eight categories of military equipment (weapons, ammunition, vehicles, aircraft, electronics, collector use, services and 'others').

Data reporting. The Czech Republic submitted data on the value of export licences granted for permanent and temporary exports disaggregated by recipient country for the Sixth Annual Report. The Czech Republic is expected to publish by early 2005 an annual report on arms exports policy containing information on the licences granted for the export of military equipment.⁹³

Collecting and reporting data on actual arms exports using customs statistics

The Czech Republic did not submit data on actual arms exports based on customs statistics for the Sixth Annual Report.

Collecting and reporting data on actual arms exports using information provided by industry

Data collection. The Czech Republic Ministry of Finance and Central Customs Directorate are responsible for collecting data on the value of actual arms exports based on reporting by Czech defence companies holding export licences. Since 1994 Czech companies have been required by law to provide quarterly reports on their use of export licences. Companies are obliged to submit information on the value of goods exported and, if applicable, on the number of items exported. Data are collected on permanent and temporary arms exports and are disaggregated according to recipient country and eight categories of military equipment (weapons, ammunition, vehicles, aircraft, electronics, collector use, services and 'others').⁹⁴

Data reporting. The Czech Republic submitted data for the Sixth Annual Report on the value of permanent and temporary exports disaggregated by recipient country. The Czech Republic is expected to publish by early 2005 an annual report on arms exports policy containing information on the licences granted for the export of military equipment.⁹⁵ The Czech Republic has published an annual report on imports, exports and possession of SALW since 2002.⁹⁶

⁹² Kožišek, R., Czech Ministry of Industry and Trade, Communication with the authors, 2 Sep. 2004.

⁹³ Kaiser, P., Czech Ministry of Foreign Affairs, Communication with the authors, 26 Oct. 2004.

⁹⁴ Kožišek (note 92).

⁹⁵ Kaiser (note 93).

⁹⁶ Czech Ministry of Foreign Affairs, 'Information about the Czech Republic's approach to international negotiations on the issue of small arms and light weapons and about the volume of production, exports, and imports and the numbers of weapons among holders of arms permits and licences in the Czech Republic in 2002', URL <<http://www.czechembassy.org/www/mzv/default.asp>>.

Denmark

Collecting and reporting data on arms export licences

Data collection. The Danish Ministry of Justice is responsible for collecting data on the value of licences granted for the export of military equipment. The categories of goods for which export licences are required are listed in the 2004 Consolidated Weapons and Explosives Act. The Danish control list includes five broad categories of weapon and defence equipment that cover all the items on the EU Common Military List. The Danish control list includes additional categories of items not covered by the EU Common Military list, including air guns, certain antique guns and industrial (kiln) guns.⁹⁷

Data are collected on both temporary and permanent arms exports and are disaggregated by recipient country. Data are also disaggregated by EU Common Military List category and by type of recipient (defence, security, industry and ‘other’) and are collected on the final destination of goods destined for re-export.⁹⁸

Data reporting. In previous years, Denmark has submitted data for the Annual Report on the value of licences granted for permanent and temporary arms exports disaggregated by recipient country. For the Sixth Annual Report Denmark disaggregated these data by EU Common Military List category. Denmark produces a national annual report with information on the value of export licences granted, disaggregated by recipient country, EU Common Military List category and type of recipient (defence, security, industry and ‘other’).⁹⁹

Collecting and reporting data on actual arms exports using customs statistics

Denmark does not submit data on actual arms exports based on customs statistics for the Annual Report.

Collecting and reporting data on actual arms exports using information provided by industry

Denmark does not submit data on actual arms exports based on information provided by industry for the Annual Report.¹⁰⁰

Finland

Collecting data on arms export licences

Data collection. The Finnish Ministry of Defence is responsible for collecting data on the value of licences granted for the export of military equipment. The Ministry

⁹⁷ Arnsted, A., Danish Ministry of Justice, Communication with the authors, 28 Oct. 2004.

⁹⁸ Arnsted (note 97).

⁹⁹ Danish Ministry for Foreign Affairs, ‘Udførsel af Våben og industriprodukter med dobbelt anvendelse fra Danmark 2003’ [Exports of weapons and dual-use industrial products from Denmark 2003], Apr. 2004, URL <<http://www.um.dk/da/menu/Udenrigspolitik/FredSikkerhedOgInternationalRetsorden/NedrustningIkkespredningOgEksportkontrol/Eksportkontrol/Udfoerselsrapporter/>>.

¹⁰⁰ Fischer (note 38).

of the Interior collects data on the value of licences granted for the export of civilian firearms. The list of military equipment for which export licence data are collected matches the EU Common Military List and is automatically updated when the EU list is updated. Data are collected on both temporary and permanent arms exports and disaggregated by recipient country. Data are also disaggregated by EU Common Military List category and sub-category. When available, data are collected on the final destination of goods destined for re-export to third countries.¹⁰¹

Data reporting. In previous years, Finland has submitted data for the Annual Report on the value of licences granted for permanent arms exports disaggregated by recipient country. For the Sixth Annual Report Finland disaggregated these data by EU Common Military List category. Finland produces a national annual report giving the EU Common Military List category of goods licensed for export to each country along with the number of items and their weight.¹⁰²

Collecting data on actual arms exports using customs statistics

Finland does not submit data on the value of actual arms exports based on customs statistics for the Annual Report.

Collecting data on actual arms exports using information provided by industry

Data collection. The Finnish Ministry of Defence is responsible for collecting data on the value of actual arms exports based on information provided by industry. Companies are obliged to report quarterly giving the licence number, recipient country, value and customs code of their exports of military equipment and to provide a description of the goods exported.¹⁰³ Data are collected on permanent exports and disaggregated by recipient country and seven categories of defence equipment.

Data reporting. In previous years, Finland has submitted data for the Annual Report on the value of permanent arms exports disaggregated by recipient country. For the Sixth Annual Report, Finland disaggregated these data by EU Common Military List category.¹⁰⁴ Finland's annual report also lists the category and value of items exported to each country.

France

Collecting and reporting data on arms export licences

Data collection. The Délégation générale pour l'armement (DGA) at the Ministry of Defence is responsible for collecting data on the value of licences granted for the export of military equipment. France operates a system of agréments préal-

¹⁰¹ Ruutu, O., Finnish Ministry of Defence, Communication with the authors, 27 May 2004.

¹⁰² Finnish Ministry of Defence, 'Annual report according to the EU Code of Code of Conduct on Arms Exports: national report of Finland 2002', URL <http://www.defmin.fi/index.phtml/page_id/293/topmenu_id/5/menu_id/293/this_topmenu/75/lang/3/fs/12>.

¹⁰³ In accordance with Government Decree 108/1997. Ruutu (note 71).

¹⁰⁴ Ruutu (note 101).

ables, or negotiating licences. These must be obtained each time a company plans to transfer equipment, either for trial or exhibition abroad or when negotiating a contract with a customer, or to transfer licences or documentation.¹⁰⁵

France also issues arms export licences (autorisations d'exportation de matériels de guerre). These are issued for exports that have already received an negotiating licence and are valid for one year. If a temporary export is involved the licence gives a maximum period for which the equipment can remain abroad.¹⁰⁶

France collects data on the values attached to negotiating licences. Data are collected on agreements issued for transfers of war materials and related materials. The range of goods covered was set out in November 1991 by an Executive Order and includes war materials and items incorporated into war materials such as components, parts and accessories, special tooling, and some arms and ammunition.

The items covered include all goods on the EU Common Military List. Data are collected on negotiating licences granted for permanent arms exports and disaggregated according to recipient country. Data are also disaggregated by EU Common Military List category. In addition, data are collected on the final destination of goods destined for re-export to countries outside the EU. France also collects data on orders (prises de commandes) based on contracts which were signed and entered into force during the year in question. Companies are obliged to submit these contracts to the Defence Ministry in order to obtain an export permit. However, where foreign components are used, only the French contribution is recorded for data collection purposes.

Data reporting. In previous years, France has submitted data for the Annual Report on the value of negotiating licences disaggregated according to recipient country. For the Sixth Annual Report France disaggregated these data by EU Common Military List category. France produces a national annual report which lists the value of negotiating licences broken down by EU list category for each recipient country. The French annual report also lists the number and type of SALW licensed for export and their recipient country.

Collecting and reporting data on actual arms exports using customs statistics

Data collection. The French Customs Department is responsible for collecting data on the value of actual exports of military equipment based on customs statistics. Data are collected on permanent arms exports and disaggregated according to recipient country. The identification of defence exports is based on the French Customs Nomenclature codes that exporters use to identify their exports. In contrast to data collected from submissions by industry, French customs statistics do not cover services associated with the shipment of equipment. As a result, the figures collected from industry submissions for the period 1990–2000 are around 30 per cent higher than the figures collected by the customs authorities. The French

¹⁰⁵ French Ministry of Defence (note 83), p. 34.

¹⁰⁶ French Ministry of Defence (note 83), p. 30.

CN codes are in the process of being revised to improve the quality of data they produce.¹⁰⁷

Data reporting. The data collected by the French customs authorities do not form the basis of the French submission for the Annual Report.

Collecting and reporting data on actual arms exports using information provided by industry

Data collection. The French Ministry of Defence is responsible for the collection of data on deliveries and the value of exports of military equipment based on information submitted by defence companies. Data collection is based on a questionnaire sent twice annually to manufacturers. However, there is no legal obligation for companies to report their deliveries to the Ministry of Defence. Data are collected on the total value of shipments of equipment for military operations invoiced in a given year. Data are collected on both the export of equipment and the provision of services, regardless of whether the services are related to the sale of equipment. When calculating the value of French exports the Ministry of Defence includes only the French share of a particular export. This is based on the French research and development contribution. The share manufactured by cooperating parties or subsidiaries based outside France is not included. In the case of equipment exported to a foreign manufacturer to be integrated in a system that is then re-exported, the Ministry of Defence records the export as an export to the country of final destination. Data are collected on permanent and temporary exports and disaggregated by recipient country and EU Common Military List category.¹⁰⁸

Data reporting. As in previous years, France did not submit data to the Sixth Annual Report on the value of actual arms exports based on information provided by industry. The French annual report to parliament lists the value of arms exports broken down by EU Common Military List category for each recipient country. The French annual report also lists the number and type of SALW exported and their recipient country.

Germany

Collecting and reporting data on arms export licences

Data collection. The German Federal Office of Economics and Export Control, a sub-agency of the Ministry of Economics and Labour, is responsible for collecting data on the value of licences granted for the export of military equipment. The list of military equipment for which export licence data are collected is the Ausfuhrliste (German Export Control List).¹⁰⁹ The only difference between the German

¹⁰⁷ French Ministry of Defence (note 83), p. 54.

¹⁰⁸ French Ministry of Defence (note 83), p. 53.

¹⁰⁹ Government of the Federal Republic of Germany (note 78), p. 56.

list and the EU Common Military List is the inclusion of an additional code covering ‘security and paramilitary equipment’. The German list is usually updated annually, in line with changes to the Wassenaar Arrangement Munitions List.¹¹⁰

Data are collected on temporary and permanent arms exports and disaggregated by recipient country. Data are also disaggregated by EU Common Military List category and sub-category. Where applicable, data are collected on the number of equipment units. Data are also collected on the final destination of goods destined for re-export to third countries.¹¹¹

Under the 2000 Framework Agreement, Germany will begin issuing Global Project Licences that refer to multiple shipments of specified goods to specified destinations. Germany intends that these Global Project Licences should be issued in the form of SAG licences, making it possible for data on their value to be collected.¹¹²

Data reporting. In previous years, Germany submitted data for the Annual Report on the value of individual licences granted for permanent and temporary arms exports disaggregated by recipient country. For the Sixth Annual Report, Germany disaggregated these data by EU Common Military List category.¹¹³ Germany produces a national annual report which gives the EU Common Military List category and a description of items licensed for export to each country.¹¹⁴ The percentage value per control list category is also provided, unless the name of the exporting company could be derived from the information.¹¹⁵ The German annual report also contains information on the EU Common Military List category and the value of licences granted for the export of small arms.

Collecting and reporting data based on customs statistics

Data collection. The German Federal Statistical Office (Statistisches Bundesamt Deutschland) is responsible for collecting data on the value of actual arms exports based on information provided by the customs service and the licensing authority. Data on actual arms exports are only collected for ‘war weapons’, as defined by the German War Weapon List.¹¹⁶ The war weapon list focuses on those military items that can be regarded as a war weapon or a weapon system. For instance, components are not included except in particular cases, such as certain engines for military aircraft. Data are collected on permanent and temporary arms exports and disag-

¹¹⁰ Wegner, C., German Federal Ministry of Economics and Labour, Communication with the authors, 28 July 2004.

¹¹¹ Wegner (note 110).

¹¹² Wegner (note 110). See also note 26.

¹¹³ Wegner (note 110).

¹¹⁴ Government of the Federal Republic of Germany (note 78).

¹¹⁵ ‘The outline is complete where disclosure has not been restricted by law. In particular, the names of the respective exporters cannot be released owing to the legal protection afforded [to] business and industrial secrets under Section 30 of the Law on Administrative Procedures.’ Government of the Federal Republic of Germany (note 78), p. 12.

¹¹⁶ Government of the Federal Republic of Germany (note 78).

gregated by recipient country. If applicable, data are also collected on the number of equipment units.¹¹⁷

Data reporting. Germany did not submit data on the value of actual arms exports for the Fifth Annual Report. However, for the Sixth Annual Report Germany submitted data on the value of permanent and temporary exports of war weapon list items disaggregated by recipient country.¹¹⁸

Collecting and reporting data on actual arms exports using information provided by industry

Germany does not submit data on the value of actual arms exports based on information provided by industry for the Annual Report.

Hungary

Collecting and reporting data on arms export licences

Data collection. The Department of Conventional Arms Trade Control in the Hungarian Trade Licensing Office is responsible for collecting data on the value of licences granted for the export of military equipment. The list of military equipment for which data are collected covers all items on the EU Common Military List. The only difference between the Hungarian list and the EU list is the inclusion of two additional codes covering ‘instruments of coercion and crime surveillance’ and ‘secret-service devices’.¹¹⁹ Data are collected on permanent arms exports and disaggregated by recipient country.¹²⁰

Data reporting. Hungary submitted data on the value of licences granted for permanent exports of military equipment disaggregated by recipient country for the Sixth Annual Report. Under Government decree 16/2004 Hungary submits an annual report to parliament detailing Hungarian arms exports.¹²¹

Collecting and reporting data on actual arms exports using customs statistics

Hungary does not submit data on actual arms exports based on customs statistics for the Annual Report.

Collecting data on actual arms exports using information provided by industry

Data collection. The Department of Conventional Arms Trade Control in the Hungarian Trade Licensing Office is responsible for collecting data on the value of actual arms exports based on reporting by Hungarian defence companies. Since

¹¹⁷ Wegner (note 110).

¹¹⁸ Wegner, C., Federal Ministry of Economics and Labour, Communication with the authors, 7 Oct. 2004.

¹¹⁹ See the Internet site of the Hungarian Department of Conventional Arms Trade Control, URL <<http://www.mkeh.hu/tev/fegyverek/fegyverekenglish.html>>.

¹²⁰ Vezér, Z., Department of Conventional Arms Trade Control, Hungarian Trade Licensing Office, Communication with the authors, 18 June 2004.

¹²¹ Vezér, Z., Department of Conventional Arms Trade Control, Hungarian Trade Licensing Office, Communication with the authors, 12 Oct. 2004.

1991, Hungarian companies have been required by law to report monthly on the value of their exports of military goods. Companies are obliged to report on the value of goods exported under each arms export licence issued.¹²² Data are collected on permanent arms exports and disaggregated by recipient country.¹²³

Data reporting. For the Sixth Annual Report Hungary submitted data on the value of permanent arms exports disaggregated by recipient country. Under Government decree 16/2004 Hungary submits an annual report to parliament detailing Hungarian arms exports.¹²⁴

Ireland

Collecting and reporting data on arms export licences

Data collection. The Irish Department of Enterprise, Trade and Employment is responsible for collecting data on the value of licences granted for the export of military equipment.¹²⁵ The list of military equipment for which export licence data are collected is set out in the 2000 Control of Exports Order.¹²⁶ The only difference between the Irish list and the EU Common List is the presence in the Irish list of a category covering security and paramilitary equipment. The Irish list is being updated to include changes made by the adoption of the EU Common Military List. Data are collected on both temporary and permanent arms exports and disaggregated by recipient country and EU Common Military List category.¹²⁷

Data reporting. In previous years, Ireland has submitted data for the Annual Report on the value of licences granted for permanent and temporary arms exports, disaggregated by recipient country. For the Sixth Annual Report Ireland disaggregated these data by EU Common Military List categories.¹²⁸ Ireland publishes data on the number, category and destination of export licences issued annually.¹²⁹

Collecting and reporting data on actual arms exports using customs statistics

Ireland does not submit data on actual arms exports based on customs statistics for the Annual Report.

¹²² ‘Government decree 48/1991 (III.27) on the exportation, importation and re-exportation of military goods and services’, superseded by ‘Government decree 16/2004 (II.6) on the licensing of export, import, transfer and transit of military equipment and technical services’, which came into force on 1 May 2004. The provisions on the submission of data by companies were carried over without significant change. For more information see URL <<http://www.mkeh.hu/tev/fegyverek/fegyverekenglish.html>>.

¹²³ Vezér (note 120).

¹²⁴ Vezér (note 121).

¹²⁵ Healy, T., Irish Department of Foreign Affairs, Communication with the authors, 20 July 2004.

¹²⁶ Control of Exports Order 2000, Statutory Instrument no. 300 of 2000, URL <<http://www.entemp.ie/publications/trade/2000/controlofexports.pdf>>.

¹²⁷ Healy (note 125).

¹²⁸ Healy (note 125).

¹²⁹ See Irish Department of Enterprise Trade and Employment, ‘Military export licence statistics’, URL <<http://www.entemp.ie/trade/export/ml2002.htm>>.

Table A2. Export licence data submitted by Austria, the Czech Republic, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Lithuania, Luxembourg, Malta, the Netherlands, Slovakia, Slovenia, Spain, Sweden and the United Kingdom for the Sixth Annual Report

	Aus.	CR.	Den.	Fin.	Fra.	Ger.	Hun.	Ire.	Italy	Lith.	Lux.	Malta	Neth.	Slvk.	Slvn.	Spain	Swe.	UK
National list matches categorization of EU CML	No	No ^a	Yes	Yes	No	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	No ^b	Yes	Yes	No	Yes
Issues open licences	No	No	No	No	No	No	No	No	No ^c	No	No	No	No	No	No	No	No	Yes
Records final destination of goods destined for re-export	No	No	Yes	Yes ^d	Yes	Yes	No	Yes ^e	No	No	No	No	Yes ^d	No	No	No	Yes ^d	Yes ^d
Submitted export licence data to past Annual Reports	Yes	..	Yes	Yes	Yes ^f	Yes	..	Yes	Yes	..	Yes	..	Yes	..	..	Yes	Yes	Yes
Submitted export licence data to the Sixth Annual Report	Yes	Yes	Yes	Yes	Yes ^f	Yes	Yes	Yes	Yes	No	Yes ^g	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Export licence data disaggregated by EU CML category	Yes ^h	No	Yes	Yes	Yes ^f	Yes	No	Yes	No	..	..^g	Yes	Yes	Yes	No	No	No	Yes
Licence data on permanent exports only	Yes	No	No	Yes	Yes	No	Yes	No	No	..	..^g	No	Yes	No	No	No	No	No
Licence data includes temporary and permanent exports	No	Yes	Yes	No	No	Yes	No	Yes	Yes	..	..^g	Yes	No	Yes	Yes	Yes	Yes	Yes
Publishes a national annual report with information on export licences	No	No ⁱ	Yes ^j	Yes ^k	Yes ^l	Yes ^m	No	Yes ⁿ	Yes ^o	No	No	No	Yes ^p	No	No	Yes ^q	Yes ^r	Yes ^s

.. = Not applicable; EU CML = European Union Common Military List.

^a The Czech national list is being updated to match the categories in the EU Common Military List.

^b The Slovak national list is being updated to match the categories in the EU Common Military List.

^c Italy will issue open licences under the 2000 Framework Agreement.

^d When the information is available.

^e Except where the initial recipient is an EU or a NATO country.

^f The figure submitted refers to the value of negotiating licences.

- ^g Luxembourg submitted a nil return because no licences were granted in 2003.
- ^h For military equipment not covered by the Austrian War Material Regulation.
- ⁱ The Czech Republic will publish an annual report by early 2005 giving information on licences granted for the export of military equipment.
- ^j The Danish annual report contains licence data disaggregated by type of recipient and EU Common Military List category.
- ^k The Finnish annual report gives the category of goods licensed for export to each country as well as the number of items and their weight.
- ^l The French annual report gives the number and type of small arms and light weapons licensed for export and their destination.
- ^m The German annual report gives the EU Common Military List category and a description of the items licensed for export and the value of licences granted for the export of small arms and light weapons.
- ⁿ The Irish annual report gives the number of licences issued by their EU Common Military List category and destination.
- ^o The Italian annual report gives the type, value and quantity of items licensed for export certified by exporting company.
- ^p The Dutch annual report gives the category of items licensed for export to each country.
- ^q The Spanish annual report gives the number, type and destination of small arms and light weapons licensed for export.
- ^r The Swedish annual report gives the Swedish Military Equipment Classification category for items licensed for export to each destination.
- ^s The British annual report gives a description of items licensed for export to each destination.

Collecting and reporting data on actual arms exports using information provided by industry

Data collection. To date, Ireland has not collected data on the value of actual exports of military equipment based on information provided by industry. However, one of the recommendations of a recent review of its export control system is that Ireland should collect and publish regular data on the aggregate value of licensed military exports.¹³⁰

Data reporting. Ireland does not submit data on actual arms exports based on information provided by industry for the Annual Report. However, it expects to make such data available for the Seventh Annual Report.¹³¹

Italy*Collecting and reporting data on arms export licences*

Data collection. The Italian Arms Export Licensing Unit in the Ministry of Foreign Affairs is responsible for collecting data on the value of licences granted for the export of military equipment. The list of military equipment for which data are collected is the Italian List of Armament Material.¹³² The Italian national list, which matches the content but not the structure of both the Wassenaar Arrangement list and the EU Common Military List, is updated every four to five years.

Data are collected on both temporary and permanent arms exports and disaggregated by recipient country. Where applicable, data are also collected on the number of equipment units.¹³³ Data are collected on the final destination of goods destined for re-export except in cases where the initial recipient is an EU or a NATO country.¹³⁴ Currently, Italy only issues licences that specify the value of goods to be exported. Under the 2000 Framework Agreement, Italy will begin issuing Global Project Licences that refer to multiple shipments of specified goods to specified destinations.¹³⁵

Data reporting. As in previous years, Italy submitted data for the Sixth Annual Report on the value of licences granted for permanent and temporary arms exports, disaggregated by recipient country.¹³⁶ Italy also produces a national annual report which lists the type, value and quantity of goods licensed for export disaggregated by exporting company.¹³⁷

¹³⁰ Coughlan, C., Irish Department of Enterprise Trade and Employment, Communication with the authors, 12 Oct. 2004.

¹³¹ Coughlan (note 130).

¹³² 'Italian List of Armament Material', *Gazzetta Ufficiale*, no. 171 (25 July 2003), URL <<http://gazette.comune.jesi.an.it/2003/171/8.htm>>.

¹³³ Padula, E., Italian Ministry of Foreign Affairs, Communication with the authors, 7 July 2004.

¹³⁴ In such cases an assurance is required that any re-export of the goods will be made according to the national legislation of the exporting country.

¹³⁵ Padula (note 133).

¹³⁶ Padula (note 133).

¹³⁷ Italian Chamber of Deputies (note 80).

Collecting and reporting data on actual arms exports using customs statistics

Data collection. The Italian customs agency is responsible for collecting data on the value of actual arms exports based on customs statistics. Data are collected on both temporary and permanent arms exports, disaggregated by recipient country, and on the final destination of goods destined for re-export except in cases where the initial recipient is an EU or a NATO country.¹³⁸

Data reporting. As in previous years, Italy submitted data for the Sixth Annual Report on the value of permanent and temporary actual arms exports disaggregated by recipient country.

Collecting and reporting data on actual arms exports using information provided by industry

Italy does not submit data on actual arms exports based on information provided by industry for the Annual Report.

Lithuania*Collecting and reporting data on arms export licences*

Data collection. The Lithuanian Ministry of Economy is responsible for collecting data on the value of licences granted for the export of military equipment. The list of military equipment for which data are collected is based on the EU Common Military List. Data are collected on permanent arms exports and disaggregated by recipient country.¹³⁹

Data reporting. For the Sixth Annual Report Lithuania did not submit data on the value of export licences granted.¹⁴⁰

Collecting and reporting data on actual arms exports using customs statistics

Lithuania did not submit data on actual arms exports based on customs statistics for the Sixth Annual Report.

Collecting and reporting data on actual arms exports using information provided by industry

Data collection. The Lithuanian Ministry of Economy is responsible for collecting data on the value of actual arms exports based on information provided by industry. Lithuania recently introduced new rules governing the export, import, transit and brokering of military equipment. Under these rules companies will be obliged

¹³⁸ In such cases an assurance is required that any re-export of the goods will be made according to the national legislation of the exporting country.

¹³⁹ Jablonskas, R., Lithuanian Ministry of Foreign Affairs, Communication with the authors, 22 July 2004.

¹⁴⁰ Private communication with the authors, 8 Nov. 2004.

to submit data to the Ministry of Economy on the value of imports and exports of military equipment.¹⁴¹

Data reporting. Lithuania did not submit data on actual arms exports based on information provided by industry for the Sixth Annual Report. However, it is expected that such data will be made available for future reports.¹⁴²

Luxembourg

Collecting data on arms export licences

Data collection. The Luxembourg Ministry of Foreign Affairs is responsible for collecting data on the value of licences granted for the export of military equipment. The list of military equipment for which data are collected is set out in the national control list. The only difference between the Luxembourg national control list and the EU Common Military List is the inclusion of hunting and sporting arms, ammunition and accessories in the Luxembourg list. Data are collected on both temporary and permanent arms exports and disaggregated by recipient country and EU Common Military List category.¹⁴³

Data reporting. In previous years, Luxembourg has submitted data for the Annual Report on the value of licences granted for permanent and temporary arms exports, disaggregated by recipient country. Luxembourg submitted a nil return for the Sixth Annual Report because no licences were granted for the export of military equipment in 2003.¹⁴⁴

Collecting and reporting data on actual arms exports using customs statistics

Luxembourg does not submit data on actual exports of military equipment based on customs statistics for the Annual Report.

Collecting and reporting data on actual arms exports using information provided by industry

Data collection. The Luxembourg Ministry of Foreign Affairs is responsible for collecting data on the value of actual exports of military equipment based on information submitted by industry. Data are collected using information collected from the licences issued and from licences returned by companies after the exports have taken place. Data are collected on both temporary and permanent arms exports and disaggregated by recipient country and EU Common Military List category.¹⁴⁵

Data reporting. In previous years, Luxembourg has submitted data to the EU on the value of permanent and temporary arms exports, disaggregated by recipient

¹⁴¹ Jablonskas (note 139).

¹⁴² Jablonskas (note 139).

¹⁴³ Paulus, A., Luxembourg Ministry of Foreign Affairs, Communication with the authors, 6 Sep. 2004.

¹⁴⁴ Paulus (note 143).

¹⁴⁵ Paulus (note 143).

country. Luxembourg submitted a nil return for the Sixth Annual Report because no exports of military equipment took place in 2003.¹⁴⁶

Malta

Collecting and reporting data on arms export licences

Data collection. The Maltese Trade Services Directorate is responsible for collecting data on the value of licences granted for the export of military equipment. The list of military equipment for which data are collected is identical to the EU Common Military List and is updated when the EU list is updated. Data are collected on both temporary and permanent arms exports and disaggregated by recipient country and by EU Common Military List category and sub-category. Where applicable, information is collected on the number of equipment units.¹⁴⁷

Data reporting. For the Sixth Annual Report Malta submitted data on the value of licences granted for temporary and permanent arms exports disaggregated by recipient country and EU Common Military List category.¹⁴⁸

Collecting data on actual arms exports using customs statistics

Malta does not submit data on actual exports of military equipment based on customs statistics for the Annual Report.

Collecting and reporting data on actual arms exports using information provided by industry

Data collection. The Maltese Trade Services Directorate is responsible for collecting data on the value of actual arms exports based on information provided on licence applications. Data collection is based on the assumption that all goods licensed for export are subsequently exported.¹⁴⁹ Data are collected on both temporary and permanent arms exports and disaggregated by recipient country and by EU Common Military List category and sub-category. Where applicable information is collected on the number of equipment units.¹⁵⁰

Data reporting. For the Sixth Annual Report Malta submitted data on the value of permanent and temporary arms exports disaggregated by recipient country and by EU Common Military List category.

¹⁴⁶ Paulus (note 143).

¹⁴⁷ Valentino, M., Maltese Ministry of Foreign Affairs, Communication with the authors, 6 Sep. 2004.

¹⁴⁸ Valentino (note 147).

¹⁴⁹ Valentino (note 147).

¹⁵⁰ Valentino (note 147).

Table A3. Data on actual exports submitted by Austria, the Czech Republic, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Lithuania, Luxembourg, Malta, the Netherlands, Slovakia, Slovenia, Spain, Sweden and the United Kingdom for the Sixth Annual Report

	Aus.	CR.	Den.	Fin.	Fra.	Ger.	Hun.	Ire.	Italy	Lith.	Lux.	Malta	Neth.	Slvk.	Slvn.	Spain	Swe.	UK
Data submitted to Sixth Annual Report based on customs statistics	No	No	No	No	No	Yes ^a	No	No	Yes	No	No	No	No	No	No	Yes	No	Yes
Data submitted to Sixth Annual Report based on industry information	Yes	Yes	No	Yes	No	No	Yes	No	No	No	Yes	Yes	No	No	Yes	No ^b	Yes	No
Submitted data on actual exports to past Annual Reports	Yes	..	No	Yes	Yes ^c	Yes ^d	..	No	Yes	..	Yes	..	No	..	..	Yes	Yes	Yes
Submitted data on actual exports to the Sixth Annual Report	Yes	Yes	No	Yes	No	Yes ^e	Yes	No	Yes	No ^e	Yes ^f	Yes	No	No	Yes	Yes	Yes	Yes
Data submitted on actual exports disaggregated by EU CML category	Yes ^g	No	..	Yes	..	No	No	..	No	..	..^f	Yes	..	..	Yes	No	No	No
Data submitted on actual exports includes only permanent exports	Yes	No	..	Yes	..	No	Yes	..	No	..	..^f	No	..	..	No	Yes	Yes	Yes
Data submitted on actual exports also includes temporary exports	No	Yes	..	No	..	Yes	No	..	Yes	..	..^f	Yes	..	..	Yes	No	No	No
Publishes a national annual report with information on actual exports	No	No ^h	No	Yes ⁱ	Yes ^j	Yes	No	No	Yes	No	No	No	No	No	No	Yes ^k	Yes ^l	Yes ^m

.. = Not applicable; EU CML = European Union Common Military List.

^a The figure submitted refers to the value of 'war material'.

^b Data on actual exports will be made available for future EU Annual Reports based on information provided by industry.

^c For the First, Third and Fourth Annual Reports.

^d For the Third and Fourth Annual Reports.

^e Lithuania will submit data on actual exports based on information provided by industry for future Annual Reports.

^f Luxembourg submitted a nil return because no exports took place in 2003.

^g For items covered by the Austrian War Material Regulation.

^h The Czech Republic publishes an annual report on the export, import and possession of small arms and light weapons and will publish an annual report giving information on actual exports of military equipment by early 2005.

- i* The Finnish annual report lists the category and value of items exported to each country.
- j* The French annual report lists the number and type of small arms and light weapons and their destination.
- k* The Spanish annual report lists the number, type and destination of small arms and light weapons exported.
- l* The Swedish annual report lists the Swedish Military Equipment Classification category of items exported to each destination.
- m* The British annual report lists the category and number of small arms and light weapons exported as well as goods exported under government-to-government agreements and in the form of military aid.

The Netherlands

Collecting and reporting data on arms export licences

Data collection. The Licensing Agency of the Tax and Customs Department of the Ministry of Finance (Centrale Dienst voor In en Uitvoer, CDIU) is responsible for collecting data on the value of licences granted for the export of military equipment. The list of military equipment for which export licence data are collected matches the Wassenaar Arrangement Munitions List. The list is updated when the Wassenaar list is updated.¹⁵¹

Data are collected on both temporary and permanent arms exports and disaggregated by recipient country and EU Common Military List category and sub-category. Data are also disaggregated by a national list of 20 categories split between ‘arms and ammunition’ and ‘other military goods’. Where information is available to the exporting company, data are collected on the final destination of goods to be re-exported.¹⁵² The data include the value of licences granted for the export of rifles and pistols for sporting or hunting purposes, as well as of items that will accompany the owner at all times while abroad for an extended period.¹⁵³

Data reporting. In previous years, the Netherlands has submitted data for the Annual Report on the value of licences granted for permanent arms exports, disaggregated by recipient country. For the Sixth Annual Report the Netherlands also submitted data on the number of licences granted disaggregated by recipient country and EU Common Military List category.¹⁵⁴ The Netherlands expects to submit data on the value of licences granted disaggregated by recipient country and EU Common Military List category for future Annual Reports.

The Netherlands produces a national annual report that includes the category of items licensed for export to each country according to a list of 20 categories split between ‘arms and ammunition’ and ‘other military goods’.¹⁵⁵

Collecting data on actual arms exports using customs statistics

Data collection. The CDIU is responsible for collecting data on the value of actual Dutch exports of military equipment based on customs statistics.

Data reporting. The Netherlands does not consider the data collected on actual exports of military equipment to be reliable and does not submit these data for the Annual Report. Customs data are deemed unreliable largely because exporters are

¹⁵¹ Netherlands Ministry of Economic Affairs, ‘Jaarrapport Nederlands wapenexportbeleid 2002’ [Annual report on the Netherlands arms export policy, 2002], Sep. 2003, URL <<http://www.ez.nl/content.jsp?objectid=18461>>, p. 9.

¹⁵² Kampman, G., Dutch Ministry of Foreign Affairs, Communication with the authors, 19 Aug. 2004.

¹⁵³ Netherlands Ministry of Economic Affairs (note 151).

¹⁵⁴ Kampman (note 152).

¹⁵⁵ Netherlands Ministry of Economic Affairs (note 151).

not obliged to declare goods transferred to another EU member state and these data cannot therefore be captured.¹⁵⁶

Collecting data on actual arms exports using information provided by industry

Data collection. The CDIU is responsible for collecting data on the value of actual exports of military equipment based on information supplied by industry.¹⁵⁷

Data reporting. Dutch companies must return their licences once they have been used. However, the information provided in this way does not make it possible to calculate the value of goods exported annually.¹⁵⁸

Slovakia

Collecting and reporting data on arms export licences

Data collection. The Ministry of Economy is responsible for collecting data on the value of licences granted for the export of military equipment. Slovakia is currently in the process of updating its national control list to bring it in line with the EU Common Military List. Slovakia's list matches the coverage but not the classification of the EU Common Military List and is updated by decrees issued by the Ministry of Economy.¹⁵⁹ Data are collected on both temporary and permanent exports and disaggregated according to recipient country and EU Common Military List category and sub-category. Where applicable, data are also collected on the number of equipment units.¹⁶⁰

Data reporting. For the Sixth Annual Report Slovakia submitted data on the value of licences granted for permanent and temporary exports disaggregated by recipient country and EU Common Military List category.

Collecting and reporting data on actual arms exports using customs statistics

Slovakia did not submit data on actual arms exports based on customs statistics for the Sixth Annual Report.

Collecting and reporting data on actual arms exports using information provided by industry

Data collection. The Ministry of the Economy is responsible for collecting data on the value of actual arms exports based on information provided by industry. Slovak companies are required by law to submit quarterly reports on their use of export licences. Companies are obliged to submit information on the type and value of

¹⁵⁶ Kampman (note 152).

¹⁵⁷ Kampman (note 152).

¹⁵⁸ Kampman (note 152).

¹⁵⁹ The list of military equipment for which export licence data are collected is set out in Ministry of Economy Decree no. 1/2003.

¹⁶⁰ Mrugova, G., Ministry of Foreign Affairs, Communication with the authors, 5 Aug. 2004.

their exports. Data are collected on both temporary and permanent exports and disaggregated by recipient country and EU Common Military List category and sub-category. Where applicable, data are also collected on the number of equipment units.¹⁶¹

Data reporting. Slovakia did not submit data on actual arms exports based on information provided by industry for the Sixth Annual Report. However, it is expected that such data will be made available for future reports.

Slovenia

Collecting and reporting data on arms export licences

Data collection. The Slovenian Ministry of Defence is responsible for collecting data on the value of licences granted for the export of military equipment. The list of military equipment for which data are collected is set out in the Decree on Permits and Consents for the Trade in and Production of Military Weapons and Equipment.¹⁶² The list matches the EU Common Military List but contains two additional categories covering ‘security and special operative technology and equipment’ and ‘personal, group and other equipment for military purposes’. The list is updated as necessary to take account of changes to the EU list. Data are collected on both temporary and permanent arms exports and disaggregated by recipient country and EU Common Military List category. Where applicable, data are collected on the number of equipment units.¹⁶³

Data reporting. For the Sixth Annual Report, Slovenia submitted data on the value of export licences granted for permanent and temporary arms exports disaggregated by recipient country and EU Common Military List category.¹⁶⁴

Collecting and reporting data on actual arms exports using customs statistics

Data reporting. Slovenia did not submit data on actual arms exports based on customs statistics for the Sixth Annual Report.¹⁶⁵

Collecting and reporting data on actual arms exports using information provided by industry

Data collection. The Slovenian Ministry of Defence is responsible for collecting data on the value of actual arms exports based on information submitted by industry. Companies are legally obliged to submit a written report on the type, value and quantity of all exports of military equipment within eight days of the date of

¹⁶¹ Mrugova, G., Ministry of Foreign Affairs, Communication with the authors, 8 Oct. 2004.

¹⁶² Decree on Permits and Consents for the Trade in and Production of Military Weapons and Equipment, available at URL <http://www.sipri.org/contents/expcon/slovenia_decree.pdf>.

¹⁶³ Bračkovič, A., Slovenian Ministry of Foreign Affairs, Communication with the authors, 17 Aug. 2004.

¹⁶⁴ Bračkovič (note 163).

¹⁶⁵ Jenman, B., Slovenian Ministry of Foreign Affairs, Communication with the authors, 4 Oct. 2004.

export.¹⁶⁶ Data are collected on both temporary and permanent arms exports and disaggregated by recipient country and EU Common Military List category.¹⁶⁷

Data reporting. For the Sixth Annual Report, Slovenia submitted data on the value of permanent and temporary arms exports disaggregated by recipient country and EU Common Military List category.¹⁶⁸

Spain

Collecting and reporting data on arms export licences

Data collection. The Spanish Secretary General for Foreign Trade is responsible for collecting data on the value of licences granted for the export of military equipment.¹⁶⁹ The Spanish Customs Department receives information on the value of licences granted from the Secretary General of Foreign Trade. This Department checks the information against data submitted by defence companies every six months.

The list of military equipment for which data are collected is set out by royal decree. The only difference between the Spanish control list and the EU Common Military List is the inclusion in the Spanish list of an additional code covering paramilitary, policing and security items. The Spanish list is currently updated by royal decree. However, under Spanish legislation which entered into force on 1 October 2004, the list will now be updated by ministerial order—allowing for more automatic changes.¹⁷⁰

Data are collected on licences granted for both permanent and temporary arms exports and are disaggregated by recipient country and by the 23 categories of the Spanish control list.¹⁷¹

Data reporting. As in previous years, Spain submitted data for the Sixth Annual Report on the value of licences granted for permanent arms exports, disaggregated by recipient country. Spain produces a national annual report which lists the number and type of SALW licensed for export and their destination.¹⁷²

Collecting and reporting data on actual arms exports using customs statistics

Data collection. The Spanish Customs Department is responsible for collecting data on the value of actual exports of military equipment based on customs statis-

¹⁶⁶ Jenman (note 165).

¹⁶⁷ Bračkovič (note 163).

¹⁶⁸ Bračkovič (note 163).

¹⁶⁹ Muro, R., Spanish Ministry of Industry, Tourism and Trade, Communication with the authors, 29 June 2004.

¹⁷⁰ Muro (note 169).

¹⁷¹ Muro (note 169).

¹⁷² Spanish Ministry of Economy (note 47).

tics. Data are collected on permanent arms exports and disaggregated by recipient country.¹⁷³

Data reporting. As in previous years, Spain submitted data for the Sixth Annual Report on the value of permanent arms exports, disaggregated by recipient country.¹⁷⁴ The Spanish annual report lists the value of arms exported disaggregated by the 23 categories of defence material as well as the number and type of SALW exported and their destination.¹⁷⁵

Collecting and reporting data on actual arms exports using information provided by industry

Spain does not currently submit data on actual arms exports for the Annual Report based on information provided by industry. However, under the new legislation Spanish companies are obliged to submit monthly reports on the type and value of their exports of military equipment. Data are collected on permanent arms exports and are disaggregated both by recipient country and the 23 categories of the Spanish control list. The information provided by industry will be checked against the information provided by the Spanish customs authorities and will form the basis of future submissions for the Annual Report.¹⁷⁶

Sweden

Collecting and reporting data on arms export licences

Data collection. The Swedish National Inspectorate of Strategic Products (Inspektionen för Strategiska Produkter, ISP) is responsible for collecting data on the value of licences granted for the export of military equipment.¹⁷⁷ Export licence data are collected for military equipment on the Swedish Military Equipment Classification List, which contains 37 categories split between ‘military equipment for combat purposes’ and ‘other military equipment’.¹⁷⁸ The list matches the coverage but not the categorization of the EU Common Military List. There are also additional categories for helmets, military bridges and steel plates. The Swedish list is updated on an ad hoc basis in line with changes to the EU Common Military List.¹⁷⁹

Data are collected on both temporary and permanent arms exports and are disaggregated by recipient country and by Swedish Military Equipment Classification

¹⁷³ Muro, R., Spanish Ministry of Industry, Tourism and Trade, Communication with the authors, 8 Oct. 2004.

¹⁷⁴ Muro, R., Spanish Ministry of Industry, Tourism and Trade, Communication with the authors, 2 Sep. 2004.

¹⁷⁵ Spanish Ministry of Economy (note 47).

¹⁷⁶ Muro (note 174).

¹⁷⁷ Agerlid, L., Swedish Ministry for Foreign Affairs, Communication with the authors, 14 June 2004.

¹⁷⁸ Swedish Ministry for Foreign Affairs, ‘Strategic export controls in 2003: military equipment and dual-use goods’, 11 Mar. 2004, p. 9, URL <<http://www.isp.se/pdf/s0304eng.pdf>>.

¹⁷⁹ Tjäder, T., Swedish National Inspectorate of Strategic Products, Interview with the authors, 14 July 2004.

categories. When available, data are collected on the final destination of goods destined for re-export to third countries.

Currently, Sweden only issues licences that specify the value of goods to be exported. Under the 2000 Framework Agreement, Sweden will begin issuing Global Project Licences that refer to multiple shipments of specified goods to specified destinations. Discussions on how to collect data on these licences are continuing.¹⁸⁰

Data reporting. As in previous years, Sweden submitted data for the Sixth Annual Report on the value of licences granted for permanent arms exports, disaggregated by recipient country. Sweden produces an annual report which lists the Swedish Military Equipment Classification categories of goods licensed for export to each country.¹⁸¹

Collecting and reporting data on actual arms exports using customs statistics

Sweden does not submit data on actual exports of military equipment based on customs statistics for the Annual Report.

Collecting and reporting data on actual arms exports using information provided by industry

Data collection. The ISP is responsible for collecting data on the value of actual exports of military equipment, based on information provided by industry.¹⁸² Since 1984 Swedish companies have been required by law to report on the value of their exports of military goods.¹⁸³ Companies are obliged to submit, by the end of January each year, data on all invoices issued in the previous calendar year for the export of goods on the Swedish Military Equipment Classification List. Data are collected on permanent arms exports and are disaggregated by recipient country and by Swedish Military Equipment Classification categories.¹⁸⁴

Data reporting. As in previous years, Sweden submitted data for the Sixth Annual Report on the value of permanent arms exports, disaggregated by recipient country. The Swedish annual report also lists the Swedish Military Equipment Classification categories of goods exported to each country.¹⁸⁵

¹⁸⁰ Tjäder (note 179).

¹⁸¹ Swedish Ministry for Foreign Affairs (note 178).

¹⁸² Agerlid (note 177).

¹⁸³ Under Swedish Act AFS 1983:1034 and Ordinance 1983:1036, Swedish companies are obliged to report on all deliveries, both foreign and domestic, of military equipment. Initially, companies were obliged to produce quarterly reports. Reports are now required either annually or every 6 months.

¹⁸⁴ Tjäder (note 179).

¹⁸⁵ Swedish Ministry for Foreign Affairs (note 178).

The United Kingdom

Collecting and reporting data on arms export licences

Data collection. The British Department of Trade and Industry is responsible for collecting data on the value of licences granted for the export of military equipment. The list of military equipment for which export licence data are collected is based on the EU Common Military List and is updated in line with changes to the EU list. The British national list includes a number of additional codes, including one covering ‘security and paramilitary police “goods”’.¹⁸⁶

Data are collected on both temporary and permanent arms exports and are disaggregated by recipient country and by EU Common Military List category. When available, data are collected on the final destination of goods to be re-exported.

In addition to Standard Individual Export Licences (SIELs), which refer to shipments of specified items to a specified recipient, the British Government also issues Open Individual Export Licences (OIELs), which refer to multiple shipments of specified goods to specified destinations.¹⁸⁷ It is not possible to collect data on the values of goods to be exported under OIELs. In 2003, 7145 SIELs were issued and 542 OIELs were either issued or amended.¹⁸⁸ Under the 2000 Framework Agreement, the UK has begun to issue Global Project Licences that also refer to multiple shipments of specified goods to specified destinations and do not specify the value of goods to be exported.¹⁸⁹

The UK also exports military equipment under government-to-government agreements, which do not require an export licence. It is not possible to include these exports in the licence data submitted for the Annual Report.

Data reporting. In previous years, the UK has submitted data for the Annual Report on the value of licences granted for permanent and temporary arms exports, disaggregated by recipient country. For the Sixth Annual Report the UK disaggregated these data by EU Common Military List category.¹⁹⁰ The British annual report includes a description of goods licensed for export using open licences.

Collecting and reporting data on actual arms exports using customs statistics

Data collection. The British customs and excise authorities are responsible for collecting data on the value of actual exports of military equipment based on customs statistics. Customs declarations submitted by exporters are used to collect data on

¹⁸⁶ British National Controls, ‘Schedule referred to in Article 2 of the Export of Goods (Control) Order 1994’, Schedule 1, Prohibited goods, 13 Aug. 2003, URL <<http://www.dti.gov.uk/export.control/pdfs/militarylist13082003.pdf>>.

¹⁸⁷ British Foreign and Commonwealth Office (note 24), p. 11.

¹⁸⁸ British Foreign and Commonwealth Office (note 24), p. 12.

¹⁸⁹ ‘The GPLs will operate on a similar basis to UK Open Individual Export Licences, and applications for GPLs will be assessed against the Consolidated Criteria in the UK, and against the EU Code of Conduct in other Framework Partner countries. One licence was issued in 2003 to France.’ British Foreign and Commonwealth Office (note 24), p. 14.

¹⁹⁰ Zebedee (note 41).

arms exports to countries outside the EU. The Intrastat system is used to collect data on exports to EU countries.¹⁹¹ The identification of arms exports is based on the CN coding system. Data are collected on permanent arms exports and disaggregated by recipient country. Because CN codes are used, data are not disaggregated by EU Common Military List categories. Data are also collected on exports of SALW.¹⁹²

Data reporting. As in previous years, the UK submitted data for the Sixth Annual Report on the value of permanent arms exports disaggregated by recipient country.¹⁹³ The British annual report also includes data on the number of small arms exported and information on goods exported under government-to-government agreements and in the form of military aid.¹⁹⁴

Collecting and reporting data on actual arms exports using information provided by industry

The UK does not submit data for the Annual Report on actual exports of military equipment based on information provided by industry.

¹⁹¹ British Customs and Excise (note 74), p. 18.

¹⁹² British Foreign and Commonwealth Office (note 24), p. 18.

¹⁹³ British Customs and Excise (note 74), p. 70.

¹⁹⁴ British Foreign and Commonwealth Office (note 24), pp. 23–24.

Appendix B. 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,

Recognising 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 EU 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 CFSP to reinforce their cooperation and to promote their convergence in the field of conventional arms exports,

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

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

Recognising that states have a right to transfer the means of self-defence, consistent with the right of self-defence recognised by the UN Charter,

Have adopted the following Code of Conduct and operative provisions:

CRITERION ONE

Respect for the international commitments of EU member states, in particular the sanctions decreed by the UN Security Coun-

cil 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. their commitments in the frameworks of the Australia Group, the Missile Technology Control Regime, the Nuclear Suppliers Group and the Wassenaar Arrangement;

d. their commitment 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 established 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 operative paragraph 1 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, EU 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 recognising that this factor cannot affect consideration of the criteria on respect of 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 to 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 organised 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 sub-paragraph 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 peacekeeping 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 organisations (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 EU 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. This Code will not infringe on the right of Member States to operate more restrictive national policies.

3. EU 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 at Annex A. 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 authorise 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. EU Member States will keep such denials and consultations confidential and not use them for commercial advantage.

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

6. The criteria in this Code and the consultation procedure provided for by paragraph 2 of the operative provisions will also apply to dual-use goods as specified in Annex 1 of Council Decision 94/942/CFSP as amended, 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 maximise the efficiency of this Code, EU 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 EU Member State will circulate to other EU Partners in confidence an annual report on its defence exports and on its implementation of the Code. 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, identify any improvements which need to be made and submit to the Council a consolidated report, based on contributions from Member States.

9. EU Member States will, as appropriate, assess jointly through the

CFSP framework the situation of potential or actual recipients of arms exports from EU Member States, in the light of the principles and criteria of the Code of Conduct.

10. It is recognised 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. EU Member States will use their best endeavours to encourage other arms exporting states to subscribe to the principles of this Code of Conduct.

12. This Code of Conduct and the operative provisions will replace any previous

elaboration of the 1991 and 1992 Common Criteria.

...

Source: Council of the European Union, European Union Code of Conduct on Arms Exports, document 8675/2/98 Rev 2, Brussels, 5 June 1998.

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