

DECISIONS

COUNCIL DECISION (CFSP) 2015/2309

of 10 December 2015

on the promotion of effective arms export controls

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 26(2) and 31(1) thereof,

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

Whereas:

- (1) The European Security Strategy adopted by Heads of State and Government on 12 December 2003 outlines five key challenges to be addressed by the Union: terrorism, the proliferation of weapons of mass destruction, regional conflicts, state failure, and organised crime. The consequences of the uncontrolled circulation of conventional weapons are central to four of those five challenges. That strategy underlines the importance of export controls in containing weapons proliferation.
- (2) On 5 June 1998, the Union adopted a politically binding Code of Conduct on Arms Exports, setting common criteria for the regulation of the legal trade in conventional weapons.
- (3) The EU Strategy to combat illicit accumulation and trafficking of small arms and light weapons (SALW) and their ammunition, adopted by the European Council on 15 and 16 December 2005, provides that the Union, at regional and international levels, supports the strengthening of export controls and the promotion of the criteria of the Code of Conduct on Arms Exports by, inter alia, helping non-EU countries to draft relevant domestic legislation and promoting measures to improve transparency.
- (4) The Code of Conduct on Arms Exports was replaced on 8 December 2008 by Council Common Position 2008/944/CFSP ⁽¹⁾, which is legally binding and establishes eight criteria against which applications for export of conventional arms are to be assessed. It also includes a notification and consultation mechanism for arms exports denials, and transparency measures such as the yearly publication of an EU Annual Report on arms exports. A number of non-EU countries have aligned themselves with Common Position 2008/944/CFSP.
- (5) Article 11 of Common Position 2008/944/CFSP states that Member States are to use their best endeavours to encourage other States which export military technology or equipment to apply the criteria of that Common Position.
- (6) The Arms Trade Treaty (ATT) was adopted by the UN General Assembly on 2 April 2013 and entered into force on 24 December 2014. The ATT aims to strengthen transparency and responsibility in arms trade. As with Common Position 2008/944/CFSP, the ATT lays down a number of risk assessment criteria against which arms exports have to be assessed. The Union concretely supports the effective implementation and universalisation of the ATT via its dedicated programme adopted under Council Decision 2013/768/CFSP ⁽²⁾. That programme assists a number of non-EU countries, upon their request, in strengthening their arms transfer control systems in line with the requirements of the ATT.
- (7) It is therefore important to ensure complementarity between outreach and assistance activities provided for in this Decision and those provided for in Decision 2013/768/CFSP. Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Serbia, Montenegro, Kosovo *, Algeria, Egypt, Libya, Morocco, Tunisia,

⁽¹⁾ Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment (OJ L 335, 13.12.2008, p. 99).

⁽²⁾ Council Decision 2013/768/CFSP of 16 December 2013 on EU activities in support of the implementation of the Arms Trade Treaty, in the framework of the European Security Strategy (OJ L 341, 18.12.2013, p. 56).

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244(1999) and the ICJ Opinion on the Kosovo Declaration of Independence.

Armenia, Azerbaijan, Belarus, Georgia, Republic of Moldova, Ukraine, Benin, Burkina Faso, Cap Verde, Cote d'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo, Mauritania, Cameroon, Chad and China have been identified as beneficiaries under this Decision. Where relevant, beneficiaries identified by this Decision which have not taken any step towards signature of, and accession to, the ATT should be encouraged to do so via the activities carried out under this Decision. Likewise, where relevant, beneficiaries that have signed the ATT but not yet ratified it should be encouraged to ratify it. If implemented successfully, this Decision could therefore also operate as a gateway towards enhanced ATT-related assistance under Decision 2013/768/CFSP.

- (8) Union activities promoting effective and transparent arms export controls have developed since 2008 pursuant to Council Joint Action 2008/230/CFSP ⁽¹⁾ and Council Decisions 2009/1012/CFSP ⁽²⁾ and 2012/711/CFSP ⁽³⁾. Those activities have notably supported further regional cooperation, enhanced transparency and greater responsibility in line with the principles of Common Position 2008/944/CFSP and the risk assessment criteria enshrined therein. The activities in question have traditionally addressed third countries of the eastern and southern neighbourhoods of the Union.
- (9) In recent years, the Union has also provided assistance to improve export controls of dual-use goods in non-EU countries, in the framework of projects undertaken under Union financial instruments other than the Common Foreign and Security Policy (CFSP) budget. Those efforts have been furthered under the Centres of Excellence Initiative. Coordination with those activities relevant to dual use export controls should be ensured.
- (10) The German Federal Office for Economic Affairs and Export Control ('BAFA') has been entrusted by the Council with the technical implementation of Decisions 2009/1012/CFSP and 2012/711/CFSP. It has successfully completed the organisation of all activities provided for in those Decisions. BAFA is also the implementing agency for projects supporting the effective implementation of the Arms Trade Treaty under Decision 2013/768/CFSP. Against this background, the selection of BAFA as the implementing agency for Union activities under this Decision is justified by its proven experience, qualifications and necessary expertise over the full range of relevant Union arms export control activities. Selecting BAFA will facilitate the identification of synergies between the ATT outreach programme and the activities under this Decision,

HAS ADOPTED THIS DECISION:

Article 1

1. For the purpose of promoting peace and security, and in line with the European Security Strategy, the Union shall pursue the following objectives:
- (a) to promote effective controls on arms exports by non-EU countries in accordance with the principles set out in Common Position 2008/944/CFSP and in the Arms Trade Treaty, and seek, where appropriate, complementarity and synergies with Union assistance projects in the field of export controls on dual-use goods;
 - (b) to support non-EU countries' efforts at domestic and regional levels in order to render trade in conventional weapons more responsible and transparent.
2. The Union shall pursue the objectives referred to in paragraph 1 through the following project activities:
- (a) further promoting, among non-EU countries, the criteria and principles set out in Common Position 2008/944/CFSP and in the Arms Trade Treaty, based on the achievements reached through the implementation of Decisions 2012/711/CFSP and 2009/1012/CFSP and of Joint Action 2008/230/CFSP;
 - (b) assisting non-EU countries in drafting, updating, and implementing, as appropriate, relevant legislative and administrative measures which aim to establish an effective system of conventional arms export controls;

⁽¹⁾ Council Joint Action 2008/230/CFSP of 17 March 2008 on support for EU activities in order to promote the control of arms exports and the principles and criteria of the EU Code of Conduct on Arms Exports among third countries (OJ L 75, 18.3.2008, p. 81).

⁽²⁾ Council Decision 2009/1012/CFSP of 22 December 2009 on support for EU activities in order to promote the control of arms exports and the principles and criteria of Common Position 2008/944/CFSP among third countries (OJ L 348, 29.12.2009, p. 16).

⁽³⁾ Council Decision 2012/711/CFSP of 19 November 2012 on support for Union activities in order to promote, among third countries, the control of arms exports and the principles and criteria of Common Position 2008/944/CFSP (OJ L 321, 20.11.2012, p. 62).

- (c) assisting beneficiaries in the training of licensing and enforcement officers to ensure adequate implementation and enforcement of arms export controls;
- (d) promoting transparency and responsibility in international arms trade, including through support to national and regional measures promoting transparency and appropriate scrutiny in the exports of conventional weapons;
- (e) encouraging those beneficiaries which have not taken any steps towards signature of, and accession to, the ATT to join the ATT and to encourage signatories to ratify it;
- (f) promoting further consideration of the risk of arms diversion and its mitigation, both from the importing and exporting perspectives.

A detailed description of the project activities referred to in this paragraph is set out in the Annex.

Article 2

1. The High Representative of the Union for Foreign Affairs and Security Policy (the 'High Representative') shall be responsible for the implementation of this Decision.
2. The technical implementation of the project activities referred to in Article 1(2) shall be carried out by BAFA.
3. BAFA shall perform its tasks under the responsibility of the High Representative. For that purpose, the High Representative shall enter into the necessary arrangements with BAFA.

Article 3

1. The financial reference amount for the implementation of the project activities referred to in Article 1(2) shall be EUR 999 000.
2. The expenditure financed by the amount set out in paragraph 1 shall be managed in accordance with the procedures and rules applicable to the Union's budget.
3. The Commission shall supervise the proper management of the financial reference amount referred to in paragraph 1. For that purpose, it shall conclude a financing agreement with BAFA. The agreement shall stipulate that BAFA is to ensure that the visibility of the Union's contribution is appropriate to its size.
4. The Commission shall endeavour to conclude the financing agreement referred to in paragraph 3 as soon as possible after the entry into force of this Decision. It shall inform the Council of any difficulties in that process and of the date of conclusion of the financing agreement.

Article 4

The High Representative shall report to the Council on the implementation of this Decision on the basis of regular reports prepared by BAFA. Those reports shall form the basis for the evaluation carried out by the Council. The Commission shall report on the financial aspects of the implementation of the project activities referred to in Article 1(2).

Article 5

This Decision shall enter into force on the date of its adoption.

It shall expire 30 months after the date of conclusion of the financing agreement referred to in Article 3(3), or 6 months after the date of its adoption if no financing agreement has been concluded within that period.

Done at Brussels, 10 December 2015.

For the Council
The President
F. BAUSCH

ANNEX

PROJECT ACTIVITIES REFERRED TO IN ARTICLE 1(2)

1. OBJECTIVES

The objectives of this Decision are to promote improved controls on arms transfers and to support efforts, at domestic and regional levels, to render international trade in conventional weapons more responsible and transparent. Where relevant, they should include the promotion of the principles and criteria set out in Common Position 2008/944/CFSP and in the Arms Trade Treaty. Those objectives should be pursued in seeking, where appropriate, complementarity and synergies with the Union's assistance projects in the field of export controls on dual-use goods.

In order to achieve the abovementioned objectives, the Union should continue to promote the standards of Common Position 2008/944/CFSP, building on the achievements reached through the implementation of Decisions 2012/711/CFSP, 2009/1012/CFSP and Joint Action 2008/230/CFSP. For that purpose, assistance should be provided to beneficiaries to draft, update and implement, as appropriate, relevant legislative and administrative measures supporting an effective system of conventional arms transfer controls. Support should also be provided regarding the assessment and mitigation of the risk of arms diversion.

Support should also be given to the training of licensing and enforcement officers responsible for the implementation and enforcement of arms transfer controls, and to national and regional measures promoting transparency and appropriate scrutiny over exports of conventional weapons. Furthermore, contacts with the private sector and compliance with relevant national legal and administrative provisions that regulate the transfer of arms should be promoted.

2. SELECTION OF THE IMPLEMENTING AGENCY

The implementation of this Decision is entrusted to BAFA. BAFA will, where appropriate, partner with Member States' export control agencies, relevant regional and international organisations, think tanks, research institutes and NGOs.

BAFA has top-ranking experience in the provision of export control assistance and outreach activities. It has developed such experience in all the relevant fields of strategic export control, addressing the CBRN-related, dual-use goods and arms areas. Through those programmes and activities, BAFA has gained in-depth knowledge of the export control systems of most of the beneficiaries covered by this Decision.

With regard to arms export control assistance and outreach, BAFA successfully completed the implementation of Decisions 2009/1012/CFSP and 2012/711/CFSP. BAFA is also in charge of the technical implementation of the ATT implementation support programme established by Decision 2013/768/CFSP.

The overall effect is that BAFA is uniquely placed to identify the strengths and weaknesses in the export control systems of the beneficiaries of the activities provided for in this Decision. It is thus most able to facilitate synergies between the various arms export control assistance and outreach programmes and to avoid unnecessary duplication.

3. COORDINATION WITH OTHER UNION ASSISTANCE PROJECTS IN THE FIELD OF EXPORT CONTROLS

Based on the experience of previous Union outreach activities in the field of exports controls covering both dual-use goods and conventional arms, synergy and complementarity should be sought. To that end, the activities referred to in points 4.2.1 to 4.2.3 should be carried out, where appropriate, in conjunction with other activities on dual-use goods export controls, financed through Union financial instruments other than CFSP budget. In particular, back-to-back events should be explored. This should be done in full respect of the legal and financial limitations set for the use of relevant Union financial instruments.

4. DESCRIPTION OF PROJECT ACTIVITIES

4.1. **Project objectives**

The main objective is to provide technical assistance to a number of beneficiaries which have demonstrated their willingness to develop their standards and practices regarding arms export control. To do so, the activities to be undertaken will pay attention to the status of the beneficiaries, in particular regarding:

- the possible membership of, or membership application for, international export control regimes relating to the transfer of conventional arms and dual-use goods and technologies,
- the candidatures for membership of the Union and whether the beneficiaries are official candidates or potential candidates,
- the position regarding the ATT.

Where the beneficiaries addressed are only signatory to the ATT, the activities should — where feasible — seek to better ascertain the obstacles to ratification, in particular when those obstacles are of a technical nature and related to gaps or needs in implementation capacities. Where relevant, possible Union support under Decision 2013/768/CFSP should be promoted. Where the beneficiaries addressed have taken no steps towards signature and ratification of, and accession to, the ATT, the activities should promote accession to the ATT, possibly with the support of other beneficiaries that have ratified the ATT.

Another complementary objective is to sensitise a number of beneficiaries to arms diversion risk-assessment and arms diversion mitigation, both from the exporting and importing perspectives. Activities driven by this complementary objective will notably enable to relate arms transfer controls to other projects that aim at preventing arms diversion such as physical security and stockpile management (PSSM) activities and activities supporting the traceability of arms and ammunition.

4.2. **Project description**

4.2.1. *Regional workshops*

The project will take the form of up to six 2-day workshops, providing training in relevant areas of conventional arms export controls.

Participants in the workshop (up to 30) would include government, licensing and enforcement officials of the beneficiaries covered. Representatives from parliaments, and industry and civil society representatives may also be invited, as appropriate.

Training will be given by experts from Member States' national administrations, including former officials, representatives of countries that have aligned themselves with Common Position 2008/944/CFSP, representatives of the private sector and civil society.

The workshops may take place in a location to be determined by the High Representative in consultation with the Council Working Party on Conventional Arms Exports (COARM).

The regional workshops will be organised as follows:

- (a) up to two workshops in South Eastern Europe;
- (b) up to two workshops for the Eastern European and Caucasian countries of the European Neighbourhood Policy;
- (c) up to two workshops for the North African Mediterranean countries of the European Neighbourhood Policy.

This regional breakdown of two workshops per region may not be achieved if circumstances are not propitious, for example if the number of participants is unexpectedly too low, if there is no serious offer to host by any beneficiary of the region, or if there is duplication with other activities of other outreach providers. In such a case of non-implementation in one or two regions, the number of workshops in the other region(s) could be increased accordingly within the global ceiling of six workshops.

4.2.2. *Study visits*

The project will take the form of up to six 2-day study visits of government, licensing and enforcement officials to the relevant authorities of Member States. Study visits should cover at least three beneficiaries and include at least one beneficiary that has not ratified the ATT.

4.2.3. *Individual assistance to beneficiaries*

The project will take the form of up to 30 days of workshops, preferably *in situ*, for individual beneficiaries in which government, licensing and enforcement officials will participate. Depending on the exact needs and availability of the beneficiaries' and EU Member States' experts, the overall 30 days available will be allocated with a minimum 2-day format up to a maximum 5-day one.

Expertise will be shared by experts from Member States' national administrations (including former officials), representatives of countries that have aligned themselves with Common Position 2008/944/CFSP, or representatives of the private sector and civil society.

Those individual assistance workshops will be mainly held upon request of the beneficiaries. They are meant to address specific issues or specific needs raised by the beneficiary, for instance in the margins of a regional workshop or during regular contacts with Union experts and with the implementing agency.

4.2.4. *Application of control lists*

The implementing agency shall set up a pool of technical experts in the application of export control lists. The experts shall be selected from the largest possible array of Member States.

An amount of 100 working hours (based on the standard expert fees set out in point 5) will be available to assign requests on the application of control lists tabled by the relevant authorities of the beneficiaries to the experts (subject to their availability). The implementing agency will develop templates for such requests, with due consideration for the informal nature of the rating opinion and to the issue of confidentiality.

4.2.5. *Final assessment event*

In order to provide a final evaluation of the activities under this Decision a 2-day event will be organised in Brussels with the joint participation of beneficiaries and Member States, if possible back-to-back with a COARM meeting.

Up to two representatives (government, licensing and enforcement officials) of each beneficiary referred to in point 6.1 will be invited.

4.2.6. *Arms diversion-related activities*

This project will take the form of two workshops for Western African and Sahel countries and China as follows:

- one 2-day initial 'kick off' workshop for up to two representatives of the beneficiaries,
- one 2-day final workshop for up to three representatives of the beneficiaries.

The workshops should take place in the Western African and Sahel countries.

5. EXPERTS FEES

Experts fees are made available for activities under 4.2.2 to 4.2.4. Regarding activities under 4.2.4, experts fees will be broken down hourly depending on the actual time (measured in hours) spent on commodity identification requests. A maximum of 100 expert fees (800 hours) is expected.

6. BENEFICIARIES

6.1. Beneficiaries of activities under 4.2.1 to 4.2.5

- (i) South Eastern European (Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Montenegro, Serbia and Kosovo*);
- (ii) North African Mediterranean countries of the European Neighbourhood Policy (Algeria, Egypt, Libya, Morocco and Tunisia);
- (iii) Eastern European and Caucasian countries of the European Neighbourhood Policy (Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine).

6.2. Beneficiaries of activities under 4.2.6

ECOWAS countries (Benin, Burkina Faso, Cap Verde, Cote d'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo), Mauritania, Cameroon, Chad and China.

6.3. Amendment to the scope of beneficiaries

The COARM Working Party may, upon a proposal from the High Representative, decide to modify the list of beneficiaries based on an appropriate justification.

7. PROJECTS RESULTS AND IMPLEMENTATION INDICATORS

In addition to the final assessment event referred to in 4.2.5, the assessment of the results of the project will take into account the following:

7.1. Individual assessment of beneficiaries

Upon completion of the activities, the implementing agency shall provide the EEAS and the Commission with a progress report on each of the beneficiaries referred to in 6.1. That report will be prepared in liaison with the EU Delegations concerned and will recap the activities that took place over the duration of the Decision. The report will also assess the beneficiary's capacities devoted to arms transfer controls. Where the beneficiary is party to the ATT, the assessment will cover how the capacities in place enable the implementation of the ATT.

7.2. Impact assessment and implementation indicators

The impact of activities provided for by this Decision should be technically assessed upon their completion for the beneficiaries referred to in 6.1. The impact assessment will be carried out by the High Representative, in cooperation with COARM and, as appropriate, with the EU Delegations concerned, as well as with other relevant stakeholders.

For that purpose, the following indicators will be used:

- whether relevant internal regulations on arms transfer controls are in place and whether/to which extent they meet the provisions of Common Position 2008/944/CFSP, inter alia, application of the assessment criteria, implementation of the EU common military list, reporting,

- where available, information on enforcement cases,
- whether the beneficiaries are able to report arms exports and/or imports, taking into account, inter alia, the UN register, ATT annual reporting, national reports,
- whether the beneficiary has or intends to officially align itself with Common Position 2008/944/CFSP.

The individual assessment reports under 7.1 should refer to those implementation indicators, as appropriate.

8. PROMOTING THE USE OF THE EU OUTREACH WEB PORTAL

The web portal foreseen in Decision 2012/711/CFSP has been developed as an EU-owned resource (<https://export-control.jrc.ec.europa.eu>). It operates as a joint platform for all the EU outreach programmes (dual-use, arms, ATT). The activities listed under 4.2.1 to 4.2.5 shall raise the awareness of the EU outreach web portal and promote its use. Participants in outreach activities should be informed on the web portal's private section that offers permanent access to resources, documents and contacts. Likewise, use of the web portal should be promoted to other officials who could not directly participate in assistance and outreach activities.

9. EU VISIBILITY

The implementing agency shall take all appropriate measures to publicise the fact that the action is funded by the European Union. Such measures will be implemented in accordance with the Communication and visibility manual for EU external actions published by the European Commission. The agency will thus ensure the visibility of the Union contribution with appropriate branding and publicity, highlighting the role of the Union and raising awareness of the reasons for the Decision as well as Union support for the Decision and the results of that support. Material produced by the project will prominently display the Union flag in accordance with Union relevant guidelines.

Given that planned activities vary greatly in scope and character, a range of promotional tools will be used, including: traditional media, website, social media, informational and promotional materials including infographics, leaflets, newsletters, press releases and others as appropriate. Publications, public events, procured under the project will be branded accordingly.

10. DURATION

The total estimated duration of the project will be 24 months.

11. REPORTING

The implementing agency shall prepare quarterly regular reports, including after the completion of each of the activities. The reports shall be submitted to the High Representative no later than 6 weeks after the completion of relevant activities.

12. ESTIMATED TOTAL COST OF THE PROJECT AND UNION FINANCIAL CONTRIBUTION

The total estimated cost of the project is EUR 1 110 000 with co-financing from Germany. The total estimated cost of the EU financed project is EUR 999 000.
