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Proposal for a

COUNCIL DECISION

**authorising Member States to ratify, in the interests of the European Union, the Arms
Trade Treaty**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1 Introduction

UN Resolution 61/89, adopted in 2006, initiated the process for developing a Treaty to regulate the international trade in conventional weapons, the so-called Arms Trade Treaty (ATT). The objective was to achieve a legally binding Treaty making the legal trade in conventional arms more responsible, by setting high common international standards on imports, exports and transfers.

Intensive preparatory work was carried out during 2007 and 2009, followed by a First United Nations Conference on the ATT held in New York from 2 to 27 July 2012. Although the Conference failed to reach a consensus, it delivered a first draft text.

At the last UN Conference, held in March 2013, this draft Treaty was revised, but still no consensus could be reached with three States rejecting the Chairs' proposal. The Treaty was finally adopted by qualified majority on 2 April 2013. The majority of UN Members agreed on 3 June 2013 as a designated date for opening the signature of the Treaty.

1.2 EU Competence

In accordance with the rules on external competence as laid down in Article 3 of the Treaty on the Functioning of the European Union (TFEU), the ATT includes matters that fall under exclusive competence of the Union.

The ATT provides, inter alia, for measures (such as import and export controls), which fall within the scope of the Union's Common Commercial Policy. In this domain, ATT addresses areas of Union law where the degree of regulation has already reached an advanced stage. Moreover, the following EU-secondary legislation related to the internal market is also of relevance: a) Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community, b) Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons, c) Regulation (EU) No 258/2012 of the European Parliament and of the Council of 14 March 2012 implementing Article 10 of the United Nations' Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against Transnational Organised Crime (UN Firearms Protocol), and establishing export authorisation, and import and transit measures for firearms, their parts and components and ammunition.

As the ATT includes matters of exclusive EU competence, Member States are not in a position to decide autonomously on the signature and ratification of the Treaty. They can only do it, in the interest of the Union, after authorisation by the Council upon a proposal by the Commission.

1.3 Details and Scope of the ATT

The purpose of the ATT is to contribute to international and regional peace, security and stability by regulating the international trade in conventional arms and eradicating the illicit arms trade. The ATT creates standards for transfers of conventional weapons and requires State Parties to review all arms exports to ensure conventional arms and munitions will not be used inter alia in Human Rights abuses, terrorism and violations of humanitarian law.

The ATT provides for the assessment of arms transfers and measures to prevent the diversion of conventional arms from the importing and exporting States. In addition, it enhances transparency in arms trading by requiring record keeping and reporting to the Secretariat and other State Parties. The provisions of the ATT cover conventional arms of the following categories: battle tanks, armoured combat vehicles, large-calibre artillery systems, combat aircraft, attack helicopters, warships, missiles and missile launchers and small arms and light weapons. The Treaty also covers the related ammunition/ munitions and parts and components.

1.4 Implications for the *acquis* of the Union

The ATT may affect or alter the scope of common rules adopted by the European Union. As a result, the Council has established, in the Annex to its Decision .../2013 authorising the Commission to negotiate the ATT on those matters falling under the exclusive competence of the Union, the following negotiating directives:

- (1) The Arms Trade Treaty shall not contain any provision preventing Member States to apply:
 - (a) Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons, as amended;
 - (b) Council Directive 93/15/EEC of 5 April 1993 on the harmonization of the provisions relating to the placing on the market and supervision of explosives for civil uses, as amended;
 - (c) Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community, as amended.
- (2) The Arms Trade Treaty shall contain no provision restricting the free movement of goods, persons, services and capital within the Union's internal market, unless the restriction is specifically justified by Articles 36, 45(3), 52(1), 65, or 346 TFEU.
- (3) Any measures provided in the Treaty which restrict exports or imports from/into the Union, or transit through the territory of the Union shall be compatible with any applicable provisions of Union law, including in particular:
 - (a) Council Regulation (EC) No 260/2009 of 26 February 2009, on the common rules for imports;
 - (b) Council Regulation (EC) No 1061/2009, of 19 October 2009, establishing common rules for exports;
 - (c) Regulation (EU) No 258/2012 of the European Parliament and of the Council of 14 March 2012 implementing Article 10 of the United Nations' Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against Transnational Organised Crime (UN Firearms Protocol), and establishing export authorisation, and import and transit measures for firearms, their parts and components and ammunition and
 - (d) Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community, as amended.

These various European Union legal acts are part of the *acquis* and it is therefore essential that they are not put in question by the adoption of the ATT. In the absence of a RIO clause in

the Treaty, it is particularly important to ensure that the internal market legislation has been safeguarded.

Accordingly, a detailed analysis was made, in line with the Council negotiating directives on these questions, that concluded that the provisions of the ATT (Articles 6, 7, 9, 26) ensure that the ATT is compatible with the *acquis*. In any case, any potential problem of compatibility could be addressed through article 26 (1). This article foresees that the implementation of the Treaty shall not prejudice obligations undertaken by States Parties with regard to existing or future international agreements, to which they are parties, where those obligations are consistent with this Treaty.

The European Union cannot become a party to the ATT, as the current text includes only State Parties. However, the ATT allows for amendments at a later stage and the European Union may become an ATT party subject to a three quarters majority vote of the State Parties.

1.5 Ratifying the Treaty

The European Union as such cannot ratify the ATT. However, as the ATT falls partly within the exclusive competence of the Union and partly within the competence of the Member States, it is necessary that the Union institutions and the Member States take all the measures to cooperate in ratifying the ATT and to ensure the implementation of the commitments resulting from that Treaty.

In view of the intention of the Member States to sign the ATT on June 3, 2013, the Commission gave priority to the preparation and adoption of a Council Decision authorising Member States to sign the ATT with respect to those matters falling under the exclusive competence of the Union. On the basis of a Commission's proposal, the Council adopted such a decision on 27 May 2013, which implies that upon signature of the ATT a Member State may declare that it will provisionally apply Article 6 and Article 7 of the ATT pending its entry into force. Such ability to declare provisional application remains valid at the ratification stage for those EU Member States that have not declared provisional application when signing the ATT. As a next step, in order to support the rapid implementation of the ATT, the Commission proposes now a Council Decision authorising Member States to ratify the Treaty with respect to those matters falling under the exclusive competence of the Union. This decision requires the consent of the European Parliament before it can be adopted by the Council.

1.6 Conclusion

It is vital to fill the gap of the unregulated trade of conventional arms at an international level and to assist the development of peace-building and humanitarian efforts. The ATT, by establishing common legally binding standards for the import, export and transfer of conventional arms, makes the arms trade more responsible and transparent, an objective shared by the European Parliament, the Council and the Commission. It has the potential to reinforce international peace and security at global level. The illegal, or poorly regulated, trade in conventional arms costs lives – more than 740,000 men, women and children die each year as a result of armed violence. The swift entry into force of the ATT is thus of utmost importance and it is therefore important for Member States to ratify the Treaty as soon as possible.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

Not applicable.

3. LEGAL ELEMENTS OF THE PROPOSAL

Article 1

Due to the impossibility of the EU to become party to the Treaty, the Article authorises Member States to ratify the current Treaty with respect to those matters falling under the exclusive competence of the Union.

Article 2

The purpose of the decision is to authorise the Member States with respect to those matters falling under the exclusive competence of the Union, to be bound by the Treaty and so the decision is addressed to them.

4. BUDGETARY IMPLICATION

None

Proposal for a

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 and 207(3) in conjunction with Article 218(6)(a)(v) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament¹

Whereas:

- (1) On 11 March 2013 the Council authorised the Commission to negotiate the Arms Trade Treaty in the framework of the United Nations on those matters coming under the exclusive competence of the Union.
- (2) On 2 April 2013 the General Assembly of the United Nations adopted the text of the Arms Trade Treaty². The General Assembly also requested the Secretary-General, as depositary of the Treaty, to open it for signature on 3 June 2013 and called upon all States to consider signing and, thereafter, according to their respective constitutional processes, becoming parties to the Treaty at the earliest possible date.
- (3) The object of this Treaty is to establish the highest possible common international standards for regulating or improving the regulation of the international trade in conventional arms and to prevent and eradicate illicit trade in conventional arms and prevent their diversion. Member States expressed their satisfaction for the outcome of the negotiations and their willingness to urgently proceed to the signature and ratification of the Treaty.
- (4) Some of the provisions of the Treaty concern matters that fall under the exclusive competence of the Union because they are within the scope of the Common Commercial Policy or affect the Internal Market rules for the transfer of conventional arms and explosives.
- (5) The European Union cannot sign and ratify the Treaty, as only States can be parties thereto.
- (6) On the 27 May 2013, a Decision authorising Member States to sign, in the interests of the European Union, the Arms Trade Treaty was adopted by the Council on the basis of a Commission proposal.
- (7) Therefore, in accordance with Article 2(1) TFEU, with respect to those matters falling under the exclusive competence of the Union, the Council should also authorise Member States to ratify the Treaty in the interests of the Union.

¹ OJ C , , p. .

² A/CONF.217/2013/L.3

HAS ADOPTED THIS DECISION:

Article 1

With respect to those matters falling under the exclusive competence of the Union, Member States are hereby authorised to ratify the Arms Trade Treaty in the interests of the Union.

Article 2

This Decision is addressed to the Member States.

Done at Brussels,

*For the Council
The President*