

Case Study: EU Code of Conduct on Arms Exports

By Alan Hudson

The EU, within the respective competences of the Community and the Member States, will strengthen the control of its arms exports, with the aim of avoiding that EU manufactured weaponry be used against civilian populations or aggravate existing tensions or conflicts in developing countries.¹

1. Introduction

The EU's Code of Conduct on Arms Exports was introduced in 1998. Member states retain the power to grant or deny applications for licences to export arms, but the Code lays down criteria, and aims at harmonising practices across the EU. The Code of Conduct has two parts. The first is a series of eight criteria, which constitute grounds for refusing an application to export arms; these include the potential impact on human rights, internal and regional stability and sustainable development. The second is a set of operative provisions for implementing the Code.

Between the end of 2003 and early 2005, the EU was engaged in a process of reviewing and revising the Code. The process of revising the Code of Conduct is all but complete. Technical discussions have been concluded, but one country has political objections that are linked to the debate about lifting the EU's embargo on arms sales to China. The revision of the Code has been about updating it, expanding its scope and tidying it up. Perhaps the most significant change is that the Code will now likely have the status of an adopted Common Position, and member states will have an *obligation*, although not a legal requirement, to ensure that national laws are in compliance.

In addition, in November 2003 the Working Party on Conventional Arms Exports (COARM) issued the first edition of the User's Guide, intended to set out certain agreed practices and clarify member states' responsibilities. This first User's Guide was intended to unify member states' practices in respect to Operative Provision 3 of the Code and thus lead to an enhanced exchange of information. Subsequently, the User's Guide has been expanded to include chapters on issues such as transparency and criteria guidance. Criterion 8 – the sustainable development criterion – was the first to be elaborated, with new guidance appearing in the 2005 edition of the User's Guide. Elaboration of criterion 2 (human rights), a criterion that is crucial to development issues, and criterion 7 (end-use controls) is expected to follow.

2. Implications for development

The EU Code of Conduct on Arms Exports and its review, as well as the User's Guide, are of great importance for development because of the close links between security and development, and because of the role of EU member states in exporting arms to developing countries. In 2004, the four major arms-exporting countries in the EU had a 22% share – \$4.8 billion – in arms exports to developing countries.² Although it is acknowledged that countries have the right to self-defence and may have legitimate interests in acquiring military equipment, there is no doubt that the proliferation of small arms and light weapons fuels conflict in and between developing countries. Additionally, funds spent by developing country governments on arms exports are not available for investment in development. In terms of policy coherence for development, it would

¹ Quoted from the European Consensus on Development, OJ C 46/01, 24.02.2006, para 37.

² See European Council, *Seventh Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports*, 14053/05, Brussels, 17.11.2005(g).

seem inconsistent for the EU to spend resources on development cooperation, while at the same time risking that its arms exports might undermine sustainable development.

The revision of the Code of Conduct and the User's Guide are important from a developmental perspective; the Code lays down criteria and the User's Guide provides member states with guidance on the issues to consider when determining whether to grant export licences. A Code of Conduct with tighter or clearer guidelines about not granting licences that might hamper sustainable development or be used for internal repression in countries where human rights abuses have taken place, may stem the flow of arms to developing countries, reduce the risk of conflict and further human rights violations, and prevent developing countries from spending excessively on arms. Achieving policy coherence for development in this area is about ensuring that the developmental effects of arms exports are taken sufficiently into account in both member states' decisions about granting export licences and the EU's Code of Conduct.

3. EU (Council) players, processes and inputs to development policy

Member states retain the competence to decide on applications for arms export licences. As such, the Commission does not play a role in relation to the EU Code of Conduct on Arms Exports. Rather, it is member states – in capitals and through their representatives on Council committees – who are key, in terms of both determining and implementing policy through their decisions about whether or not to grant particular licence applications. With regard to the Council, the General Affairs and External Relations Council is at the apex of decision-making, but COARM is the body where the Code of Conduct, its implementation and evolution are discussed in detail.

COARM is chaired by the presidency, and its membership comprises member states' representatives from capitals, a representative from the Commission, along with administrative support from the Council Secretariat. Member state representatives tend to be from foreign ministries; some larger countries may also send a representative from the organisation that processes export licence applications. COARM meets approximately every two months. The presidency meets with the European Parliament once every six months, and, acting in their national capacity rather than as members of COARM, national experts attend twice-yearly meetings organised by NGOs concerning arms export control.

The review of the Code of Conduct, and the drafting and issue of the User's Guide (containing best practice guidelines for the interpretation of the criteria of the Code) take and have taken place through two parallel processes. In terms of development, the action takes place in the elaboration of the criteria. Both tasks were managed by COARM. The review of the Code of Conduct began in December 2003 and was concluded in early 2005.³ Agreement on the elaboration of criterion 8 passed unopposed in COARM on 26 September 2005 and was included in the User's Guide published in October 2005 as "best practices for interpretation of criterion 8".⁴ The process of elaborating criterion 2 – the human rights criterion – is well underway. Germany has led on this process, with a draft now having been circulated by COARM. Subject to the responses from other member states, the process may be concluded during the Austrian presidency (Jan-June 2006).

There are no expert groups feeding into the work of COARM; the Working Party itself is where the expertise is to be found. It is very rare for officials from development agencies or from the development side of foreign ministries to attend meetings of COARM, and the Code of Conduct

³ Ibid.

⁴ See European Council, *User's Guide to the EU Code of Conduct on Arms Exports*, 5179/1/06 Rev. 1, PESC 18, COARM 1, Brussels, 19.4.2006(b).

has reportedly not been discussed at the Working Party on Development Cooperation. Yet when the Code of Conduct was being developed in the late 1990s, the Department for International Development chaired COARM and was able to promote criterion 8. As such, under certain circumstances COARM can take account of development issues.

Above the level of COARM is the Political and Security Committee (PSC), made up of representatives from member states' permanent representations in Brussels. The Council or the PSC may issue instructions to COARM. Similarly, COARM's outputs may pass through the PSC to the Council. For politically contentious issues, there may be substantive discussion in the PSC. Above the level of the PSC is the Committee of Permanent Representatives (Coreper). This committee endorsed the new Code on 30 June 2005; the Council's approval has not yet been given.

With arms export controls an area of member state competence, the European Parliament has no formal role. Nevertheless, the Committee on Foreign Affairs has produced regular reports on the EU's Code of Conduct, with the Committee on Development providing its opinion too. The European Parliament's report of October 2005 encouraged COARM to further strengthen the Code of Conduct, in particular to ensure that EU arms exports do not undermine sustainable development.⁵ This report was forwarded to both COARM and member states by the Rapporteur, in an effort to increase the level of engagement between the Parliament and COARM. National parliaments have also applied some pressure to push the review of the Code in certain directions.

NGOs such as Saferworld, Oxfam, the International Action Network on Small Arms and Amnesty International have sought to influence the review of the Code of Conduct, with some success. In particular, the elaboration of criterion 8 owes much to the analysis provided by the report on *Guns or growth? Assessing the impact of arms sales on sustainable development*, although from an NGO perspective the key features of their proposals – thresholds to enable clear decisions about whether arms exports are likely to hamper sustainable development – were not included.⁶

4. Lessons for policy coherence on development objectives

The review of the EU's Code of Conduct on Arms Exports holds a number of lessons in terms of policy coherence for development:

- Perhaps especially on a subject area in which the Commission has a limited role, it is member states that have the responsibility for achieving policy coherence, individually in terms of licensing decisions and collectively in terms of reviewing the Code of Conduct.
- COARM is the key Council committee. COARM has been seen as a technical committee, which is ill-suited for taking account of development objectives. But, with COARM firmly established as the main committee, it is imperative that it becomes a forum where development objectives are discussed.
- Efforts to attain policy coherence on development objectives can be very much influenced by political issues that might seem distant from the issue at hand (e.g. the EU's embargo on

⁵ See European Parliament, *Report on the Council's Sixth Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports*, Rapporteur: Raül Romeva i Rueda, A6-0292/2005 final, 12.10.2005.

⁶ See Amnesty International, International Action Network on Small Arms and Oxfam, *Guns or growth? Assessing the impact of arms sales on sustainable development*, Amnesty International, New York, IANSA, London and Oxfam, Oxford, 2004.

arms exports to China). This can stimulate progress towards policy coherence for development, but also hinder progress.

- Arms exports are a pillar 2 inter-governmental issue, while development is, in part, a pillar 1 area of Community competence. This distinction can be a source of friction, for instance in terms of efforts to prevent the spread of small arms in developing countries. The division of responsibilities between the Commission and the Council needs to be clear and well-understood.
- The use of criteria to guide decision-making about whether or not to grant arms export licences has played a useful role in ensuring that development objectives are not forgotten. But, the existence of clear criteria does not ensure that they are interpreted and applied in the same ways by different countries; political considerations can override the application of the criteria. Elaboration of the criteria is very important. In addition, there is a danger that once a 'development criterion' has been established, stakeholders will take the view that the development issues are covered entirely by that criterion. To prevent this, efforts must be made to clarify the relationship between different criteria and to ensure that criteria – which aim at preventing development from being forgotten – do not lead to development being marginalised.