



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 23 December 2004

16133/1/04

REV 1

**PESC 1171
COARM 33**

NOTE

From :	Secretariat
to: :	Delegations
Subject :	User's Guide to the European Union Code of Conduct on Exports of Military Equipment

Delegations will find annexed the updated version of the User's Guide to the European Code of Conduct on Exports of Military Equipment, as agreed by the Working Party on Conventional Arms Exports.

**USER'S GUIDE TO THE EUROPEAN UNION CODE OF CONDUCT ON EXPORTS OF
MILITARY EQUIPMENT**

Introduction

All Member States have agreed to apply the Code of Conduct on Exports of Military Equipment when assessing applications to export items listed in the agreed EU Common Military List. The Code of Conduct also aims to improve the sharing of information between Member States and to increase mutual understanding of their export control policies.

The User's Guide is intended to help Member States apply the Code of Conduct. It does not replace the Code in any way, but summarises agreed guidance for the implementation of its operative provisions. It is intended for use primarily by export licensing officials.

This User's Guide will be regularly updated. The most recent version will be available on the Security-related export controls web-page of the Council internet site.

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CHAPTER 1 - DENIAL NOTIFICATIONS AND CONSULTATIONS

Introduction

Operative Provision 3 of the Code of Conduct states that Member States are to circulate details of licences refused together with an explanation of why the licence has been refused.

Sharing information on denials is one of the most important means through which the aims of Member States' export control policies, and the convergence of these policies, can be achieved. This chapter is intended to clarify Member States' responsibilities in this area. It also takes into consideration the fact that, on 23 June 2003, Member States agreed to assess applications for licences to carry out specific brokering transactions against the provisions of the Code.

Section 1: The definition of a denial

1.1.1 Operative Provision 3 of the Code of Conduct states that *“a denial of a licence is understood to take place when the Member State has refused to authorise the actual sale or export of the item of military equipment concerned, where a sale would otherwise have come about, or the conclusion of the relevant contract. ...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.”*

1.1.2 Practices currently differ between Member States as to at what time their companies approach their government authorities to get export permissions. Some Member States will consider a request from business only at a time when the formal export licence is applied for. Others deal with industry more informally, giving early and non-binding indications of whether or not a proposed transaction would be permitted.

1.1.3 Whether the company's request concerning a possible export is made at an early stage in the marketing process or just prior to an export order being received, the request has to contain certain formal aspects before a formal response can be given and, if negative, notified as a denial by the government authority. Without certain facts a discussion could merely be based on assumptions rather than handled as an application by the competent authority. A request over the telephone or a brief e-mail with general information or questions would therefore not constitute a situation in which the authority could approve or deny a specific business opportunity.

1.1.4 A denial should be notified when the government authority has refused an application for export approval made in writing (email, fax, or letter) with a certain degree of precision giving the competent authority enough information on which to make a decision. The minimum level of information that the written request has to contain is:

- country of destination;
- full description of the goods concerned, including quantity and where appropriate technical specifications;
- buyer (specifying whether the buyer is a government agency, branch of Armed Forces, paramilitary force or whether it concerns a private natural or legal person);
- proposed end-user.

1.1.5 A denial notification should furthermore be issued when:

- a Member State revokes an extant export licence;
- a Member State denies an export licence that is relevant to the scope of the Code, and has already circulated a DN relating to this denial in other international export control regimes;
- a Member State has refused an export transaction deemed essentially identical to a transaction that another Member State previously has refused and notified as a denial. Among the points to be assessed more particularly in order to determine whether a transaction is “essentially identical” are the technical specifications, the quantities and volumes, and the clients and end-users of the goods concerned.

1.1.6 Equally, in the following situation, a denial notification (DN) should not be issued:

- an application for approval has either not been made in writing or has not provided all the information given in section 1.4 above.

1.1.7 In the case of a licence being refused on the basis of a national policy that is stricter than that required under the Code, a denial notification (DN) could be issued "for information only". Such DN would be added to the central database by the Secretariat, but it would remain de-activated.

Section 2: The denial information to be notified

1.2.1 It is vital for the successful operation of the DN system that all relevant information is provided when notifying a denial, so that this information can be taken account of by other Member States in developing their export control policies. This section therefore sets out harmonised notification forms, for DNs for export and brokering licences (Form 1, cf. model form annexed hereto) and for modification and revocations of DNs (Form 2, cf. model form annexed hereto).

1.2.2 Descriptions of these information elements are set out below:

Identification number

Standard registry number assigned by the issuing Member State, in the following format:

Standard acronym to identify regime (EUARMS)/2-letter acronym for issuing country/year (4 numbers)/serial number (3 numbers). For example, EUARMS/PT/2005/007, EUARMS/ES/2003/168.

Country of final destination

Country where (according to the exporting country's information) the end-user is located.

Date of notification

This is defined as the date of the message that informs EU partners of the decision to deny or to amend or revoke the denial.

Contact details for more information

This shall give the name, phone number, fax number and email address of a person who can provide further information.

Short description of the goods

Technical specification, permitting a comparable assessment. If necessary for this purpose, technical parameters should be indicated. The French/English glossary of technical terms (to be developed) should be used where appropriate. In addition to this description, the following voluntary information can be provided:

- Quantity
- Value
- Manufacturer of the goods

Control List reference

Identification of the item number of the notified goods on the most recently agreed version of the EU Common Military List (with sub-item number where applicable), or on the dual-use goods list (give official reference), for goods on which DN information is shared pursuant to Operative Provision 6 of the Code of Conduct.

Stated end-use

Information on the intended use of the notified commodity (e. g. spare part for..., incorporation in ... , use as...). If it is a supply to a project, the name of the project should be indicated.

Consignee and end-user

This information should be given with as much detail as possible in order to permit a comparable assessment. Separate fields to cover name/address/country/telephone number/fax number/e-mail address.

Reason for notification/denial/amendment

In case of a denial, the applicable criteria of the EU Code of Conduct for arms exports are given here. Where the relevant criteria consist of numerous “sections” (e.g. 7 (a), (b), (c) and (d)), they shall specify which one(s) were relevant. In case of amendment or revocation of a notification, a short explanation should be added, e.g. following lifting of an embargo, replacement by notification X, etc.

Additional remarks

Voluntary – any additional information that could be helpful to other Member States in their assessment.

Origin country of the goods

This category should only be filled in for brokering DNs. This is the country from which the brokered goods are being exported.

Broker's name and details

This category should only be filled in for brokering DNs. The name(s), business address(es), country, telephone number(s), fax number(s) and e-mail address(es) of the brokers whose application for a licence has been refused should be given.

Information elements to be amended

Specify which item of the original notification is to be changed.

New information elements

New content of the modified item

Effective date of amendment/revocation

The date on which the decision to amend or revoke the denial takes effect.

Section 3: Revocation of Denial Notifications

1.3.1 The purpose of a denial notification is that it provides information on a Member State's export control policy that other Member States should then be able to take into account in their own export licensing decisions. Whilst it would not be possible for a Member State's stock of DNs to perfectly reflect its export control policy at all times, Member States can keep information up to date by revoking denial notifications where appropriate.

1.3.2 Revocations should be carried out by COREU message as soon as possible after the decision has been made to revoke, and in any event within 3 weeks of this decision. The Member State shall use Form 2 (see Annex) for this purpose.

1.3.3 Member States shall annually review their extant denial notifications and shall revoke a notification if a change in national thinking means they are no longer relevant (updating), or to suppress multiple notifications relating to essentially identical transactions (tidying) in order to retain only the ones which are most relevant to its national export control policy.

1.3.4 Revocations shall also take place in the following circumstances:

- A Member State grants an export licence for a transaction that is “essentially identical” to a transaction it has denied in the past. In this case, the DNs that it previously issued should be revoked.
- After an arms embargo has been lifted. In this case, Member States shall revoke the denials that were solely based on the embargo, within one month of the lifting of the embargo.
- A Member State decides that a licence which it previously revoked should be reinstated (see Section 1.1.5, 1st bullet)

Section 4: Notifying denials and carrying out consultations

Export licences

Denial notifications: circulation

1.4.1 When an arms export or brokering licence is denied, the Member State must circulate the denial notification no more than one month after the licence has been refused.

1.4.2 Member States will circulate denials to all other Member States using Form 1. All fields must be filled in, or an explanation should be given of why they are not relevant. Incomplete applications will not be entered on the database by the Council Secretariat.

1.4.3 All DNs, revocations and modifications must be written in either English or French. They are to be circulated by COREU to all Member States (the message will automatically be copied to the Council Secretariat). The classification should be “Restricted”. The priority setting should be “urgent”.

Denial notifications: handling and storage

1.4.4 The Council Secretariat will operate a central DN database for export licence DNs. This shall not prevent Member States from operating their own databases. The central DN database is a resource for all Member States to use. The database will allow Member States to search on any of the denial notification fields (country issuing the DN; country of destination of the equipment; criteria for refusal; description of goods,...), or combinations of fields. The database will allow statistics based on these fields to be compiled.

1.4.5 The information on the database is classified ‘Restricted’ and will be treated as such by all Member States and the Council Secretariat. It will be in the English language. Where the information provided is in French it shall be translated by the Council Secretariat into English. For this purpose, the Member States will compile a glossary of technical terms.

1.4.6 The Council Secretariat will check each Form 1 DN to ensure that it contains all the essential information. If complete, it will be entered on to the central database. If essential information has been omitted, the Secretariat will request this information from the Member State that has issued the denial. Denial notifications will not be input on the database until at least the following information has been received:

- identification number;
- country of destination;
- short description of the goods (with their matching control list number);
- stated end-use;

- name and country of consignee, or end-user if different (specifying whether the buyer is a government agency, police, army, navy, air force, or paramilitary force, or whether it concerns a private natural or legal person and, if denial is based on criterion 7, the name of the natural or legal person);
- reasons for denial (these should include not only the number(s) of the criteria, but also the elements on which the assessment is based);
- date of the denial (or information on the date when it takes effect unless it is already in force).

1.4.7 When the Council Secretariat receives a Form 2 message revoking a DN, it shall remove this DN from the central DN database. When the Council Secretariat receives a Form 2 message to change the details in a DN, it shall amend them as requested so long as the new information conforms to the agreed format.

1.4.8 Until remote access to a secure database is possible, the Council Secretariat shall, around the first working day of each month, send to Member States, via nominated persons in their Permanent Representations in Brussels, a disc containing the latest version of the database. Appropriate security procedures shall be followed.

Consultation Procedures

1.4.9 When Member States are considering granting an export licence, they should consult the database to see if another Member State has denied an essentially similar transaction, and if so, consult the Member State(s) which issued the denial(s).

1.4.10 If a Member State is not sure whether or not a DN on the central database constitutes an ‘essentially identical transaction’; it should initiate a consultation in order to clarify the situation.

1.4.11 A consultation shall be sent via COREU, and be in either English or French. It will be addressed to the Member State who has issued the DN, and shall preferably be copied to all other Member States, but may be sent bilaterally only. The message will be in the following format:

“[Member State X] would be grateful for further information from [Member State Y] on EU Code of Conduct denial notification [identification number and destination concerned], as we are considering a relevantly similar licence application. Under the Users’ Guide of the Code of Conduct, we hereby request a response on or before [deadline date]. It will be considered that there has been no response unless we receive a reply by this date. For further information please contact [name, telephone number, e-mail address].”

1.4.12 The deadline shall be 3 weeks after transmission of the consultation request, unless otherwise agreed between the parties concerned, from the date of initiation of the consultation.. If the consulted Member State has not responded within this time, they are presumed to have no objection to the licence application.

1.4.13 If a Member State’s refusal was based on intelligence information, then they may choose to state that *“The refusal was based on information from sensitive sources”*. The consulting Member State would then usually refrain from asking for further details about the source of this information.

1.4.14 The consulted Member State may, within this 3 weeks, request an additional extension of one week. This should be requested as soon as practicable.

1.4.15 Whilst the initial consultation must be made in the manner set out above, Member States may continue the consultation through any jointly agreed format. However, the consulted Member State should provide a full rationale of their thinking behind the refusal.

1.4.16 EU Member States will keep such denials and consultations confidential. They will treat them in the appropriate manner and not use them for commercial advantage.

After the consultation has ended

1.4.17 If the relevant Member States agree to share the outcome of the consultation in which they have participated, the consulting Member State shall inform all Member States, by COREU, of its decision on the licence application. This applies whether or not the consulting Member State decided to grant the licence. If the decision is to grant the licence, the Member State shall also provide a brief statement of its reasoning. If following consultation, the consulting Member State decides that its licence application is not an ‘essentially identical transaction’, it will inform the consulted Member State of this fact, and by the means it considers most appropriate. Notice of the decision should be sent within 3 weeks.

Licences for brokering, transit or transshipment, and intangible transfers of technology

1.4.18 All of the above procedures for the circulation, handling and storage of denials, the conduct of consultations, and post-consultation actions (paras 1.4.1 – 1.4.17), should be carried out for brokering, transit or transshipment, and intangible transfers of technology licence DNs as they are for denials related to applications for physical export licences.

1.4.19 All Member States who have laws on brokering and operate a licensing system for brokering transactions should notify denials in the same way as for export licence denials in accordance with and to the extent permitted by their national legislation and practice. These brokering DNs should be recorded on a separate database by the Council Secretariat, which will circulate this, with the export licence DN database, on a monthly basis.

CHAPTER 2 - LICENSING PRACTICES

Section 1: Best-practices in the area of end-user certificates

2.1.1 There are a common core of elements that should be in an end-user certificate when one is required by a Member State in relation to an export of items on the EU Common Military List. There are also some elements which might be required by a Member State, at their discretion.

2.1.2 The end-user certificate should at a minimum set out the following details:

- exporter's details (at least name, address and business name),
- end-user's details (at least name, address and business name). In the case of an export to a firm which resells the goods on the local market, the firm will be regarded as the end-user;
- final destination country;
- a description of the goods being exported (type, characteristics), or reference to the contract concluded with the authorities of the final destination country;
- quantity and/or value of the exported goods;
- signature, name and position of the end-user;
- the date of the end-user certificate;
- end-use and/or non re-export clause, where appropriate
- indication of the end-use of the goods

2.1.3 The elements which *might* be required by a Member State, at their discretion, are *inter alia*:

- a clause prohibiting re-export of the goods covered in the end-user certificate. Such a clause could, among other things:
 - contain a pure and simple ban on re-export;
 - provide that re-export will be subject to agreement in writing of the authorities of the original exporting country;
 - allow for re-export without the prior authorisation of the authorities of the exporting country, to certain countries identified in the end-user certificate,
 - an undertaking, where appropriate, that the goods being exported will not be used for purposes other than the declared use,
 - an undertaking, where appropriate, that the goods will not be used in the development, production or use of chemical, biological or nuclear weapons or for missiles capable of delivering such weapons,
 - full details, where appropriate, of the intermediary,
 - if the end-user certificate comes from the government of the destination country of the goods, the certificate will be authenticated by the authorities of the exporting country in order to check the authenticity of the signature and the capacity of the signatory to make commitments on behalf of their government.

Section 2: Assessment of applications for ‘incorporation’ and re-export

2.2.1 As with all licence applications, Member States shall fully apply the Code of Conduct to licence applications for goods where it is understood that the goods are to be incorporated into products for re-export. However, in assessing such applications, Member States will also have regard inter alia to:

- (i) the export control policies and effectiveness of the export control system of the incorporating country;
- (ii) the importance of their defence and security relationship with that country;
- (iii) the materiality and significance of the goods in relation to the goods into which they are to be incorporated, and in relation to any end-use of the finished products which might give rise to concern;
- (iv) the ease with which the goods, or significant parts of them, could be removed from the goods into which they are to be incorporated;
- (v) the standing entity to which the goods are to be exported.

Section 3: The export of controlled equipment for humanitarian purposes

2.3.1 There are occasions on which Member States consider permitting the export of items on the Common Military List for humanitarian purposes in circumstances that might otherwise lead to a denial on the basis of the criteria in the Code of Conduct. In post-conflict areas, certain items can make important contributions to the safety of the civilian population and to economic reconstruction. Such exports are not necessarily inconsistent with the criteria. These exports, like all others, will be considered on a case-by-case basis. Member States will require adequate safeguards against misuse of such exports and, where appropriate, provisions for repatriation of the equipment.

Section 4: Definitions

- 2.4.1 The following definitions apply for the purposes of the Code of Conduct and Operative Provisions:
- 2.4.2 - 'Transit': movements in which the goods (military equipment) merely pass through the territory of a Member State
- Transshipment: transit involving the physical operation of unloading goods from the importing means of transport followed by a reloading (generally) onto another exporting means of transport
- 2.4.3 As defined in Article 2 of Council Common Position 2003/468/CFSP, 'Brokering activities' are activities of persons and entities:
- negotiating or arranging transactions that may involve the transfer of items on the EU Common Military List from a third country to any other third country; or
 - who buy, sell or arrange the transfer of such items that are in their ownership from a third country to any other third country.

CHAPTER 3 – TRANSPARENCY

Section 1: Requirements for submission of information to the EU Annual Report

3.1.1 Operative Provision 8 of the Code of Conduct States that *“Each EU Member State will circulate to other EU Partners in confidence an annual report on its exports of military equipment and on its implementation of the Code of Conduct”*

3.1.2 An EU Annual Report, based on contributions from all Member States, will be submitted to the Council and published in the "C" series of the Official Journal of the European Union. In addition, each Member State which exports equipment on the EU Common Military List will publish a national report on its defence exports, the contents of which will be in accordance with national legislation, as applicable, and will provide information for the EU Annual Report on the implementation of the Code of Conduct as stipulated in the User's Guide.

3.1.3 Each Member State shall provide the following information to the Council Secretariat on an annual basis. The information elements labelled with a * will not be published directly in the EU Annual Report, but aggregated in a manner to be agreed by Member States:

- (a) Number of export licences granted to each destination, broken down by Military List category (if available)
- (b) Value of export licences granted to each destination, broken down by Military List category (if available)
- (c) Value of actual exports to each destination, broken down by Military List category (if available)
- (d) Number of denials issued for each destination, broken down by Military List category*
- (e) Number of times each criterion of the Code is used for each destination, broken down by Military List category*

- (f) Number of consultations initiated.
- (g) Number of consultations received.
- (h) Number of undercuts carried out.*
- (i) Address of national website for annual report on arms exports.

3.1.4 Where Member States make use of open licences, they shall provide as much of the above information as possible.

Section 2: Internet addresses for national reports on arms exports

The Internet address of each Member State national website on arms export controls is shown below:

Austria:	Relevant statistical data is available on the "Security-related export controls" web-page in the Common Foreign and Security Policy section of the Council internet site (http://ue.eu.int)
Belgium:	diplobel.fgov.be
Czech Republic:	www.mzv.cz/kontrolaexportu
Denmark:	Paper version may be obtained from: Ministry of Foreign Affairs, N.SP, Asiatisk Plads 2, DK-1448 Copenhagen K, Denmark Electronic (pdf) version may be downloaded from: www.um.dk (full web address http://www.um.dk/da/menu/Udenrigspolitik/FredSikkerhedOgInternationalRetsorden/NedrustningIkkeSpredningOgEksportkontrol/Eksportkontrol/Udfoerselsrapporter/ Full English version to be published and obtainable from the same source.
Estonia:	http://www.vm.ee/eng/kat_153
Finland:	www.defmin.fi/index.phtml/page_id/75/topmenu_id/5/menu_id/75/this_topmenu/65/lang/3/fs/12
France:	www.defense.gouv.fr/actualités/dossier/d49/index.html
Germany:	http://www.bmwa.bund.de/Navigation/Aussenwirtschaft-und-Europa/finanzierung-und-Recht/exportkontrolle.html
Hungary:	www.mkeh.hu/tev/fegyverek/fegyverekenglish.html
Ireland:	http://www.entemp.ie/trade/export/military.htm
Italy:	www.camera.it , select “attività parlamentare”, select “lavori”, select “documenti parlamentari”, select “doc LXVII”
Latvia:	www.mfa.gov.lv
Luxembourg:	www.mae.lu
Malta:	(site under construction)
Netherlands:	www.exportcontrole.ez.nl
Poland:	http://dke.mg.gov.pl/
Portugal:	www.mdn.gov.pt
Slovakia:	www.economy.gov.sk
Slovenia:	site under construction
Spain:	www.mcx.es/sgcomex/mddu

Sweden: [www.utrikes.regeringen.se/inenglish/pressinfo/information/
Publications.htm](http://www.utrikes.regeringen.se/inenglish/pressinfo/information/Publications.htm)

United Kingdom: www.fco.gov.uk/files/kfile/Full_Report_03.pdf

Chapter 4 – Adherents to the Code of Conduct

Section 1: List of adherents, contact points, and further information relating to their adherence.

4.1.1 Norway:

Contact person/Institution

Name: Ministry of Foreign Affairs,
Department for Security Policy and Bilateral Relations
Section for Export Controls
Contact person: Anne Kari Lunde
Address: 7 juni pl./Victoria Terrace
N-0032 Oslo
Telephone: 47 22 24 35 96
Fax: 47 22 24 34 19
Email: s-ekso@mfa.no
anne.kari.lunde@mfa.no

Annual Report website reference: <http://www.eksportkontroll.mfa.no>

Background

- Aligned with the Code of Conduct when it was established in June 1998
- Respects embargoes on arms sales imposed by the EU.

Relevant International Agreements

- OSCE Criteria on conventional arms exports.
- The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies.
- Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Landmines and on their Destruction.

Relevant national legislative and other provisions

- Law of 18 December 1987 no.93 on Control over the Export of Strategic Goods, Services and Technology;
- Ministry for Foreign Affairs Decree of 10 January 1989 to implement export regulations for strategic goods, services and technology.

Chapter 5 – EU Common Military List

5.1.1 The EU Common Military List has the status of a political commitment in the framework of the Common Foreign and Security Policy. The most recent version of the EU CML was published in Official Journal C 314 of 23 December 2003, and takes into account changes agreed within the Wassenaar Arrangement since publication of the previous list in July 2000.

5.1.2 The list will be updated to reflect changes in relevant international lists, and to incorporate any other changes agreed upon by Member States.

5.1.3 The most recent version of the EU CML is available at the following internet address: http://ue.eu.int/cms3_fo/showPage.asp?id=408&lang=en&mode=g#exp3 (i.e. the Security-related export controls web-page of the Common Foreign and Security Policy section of the Council Internet site).

ANNEX

FORM 1 - Denial Notification under the EU Code of Conduct

(* denotes an obligatory field)

1. Identification

- 1.1 Identification Number* :
- 1.2 Notifying Government* :
- 1.3 Country of Final Destination* :
- 1.4 Date of Notification* :
- 1.5 Contact details for more information :

2. Goods

- 2.1 Short Description of Goods* :
- 2.2 Control List Reference* :
(with sub-category if appropriate)
- 2.3 Quantity :
- 2.4 Value (voluntary) :
- 2.5 Manufacturer (voluntary) :

3. Stated End-Use* :

4. Consignee

- 4.1 Name* :
- 4.2 Address :
- 4.3 Country* :
- 4.4 Telephone number(s) :
- 4.5 Fax number(s) :
- 4.6 E-mail address(es) :

End-user (if different)

5.1 Name* :
5.2 Address :
5.3 Country* :
5.4 Telephone number(s) :
5.5 Fax number(s) :
5.6 E-mail address(es) :

6 Reason for Denial (Criteria)* :

7. Additional Remarks (voluntary) :

8. For brokering DNs only

8.1 Origin country of goods
8.2 Brokers' name(s)
8.3 Business address(es)
8.4 Telephone number(s) :
8.5 Fax number(s) :
8.6 E-mail address(es) :

FORM 2 - Amendment or Revocation of a DN under the Code of Conduct

Identification

- 1.1 Identification Number :
- 1.2 Issued by :
- 1.3 Country of Destination :
- 1.4 Effective date of revocation or amendment :
- 1.5 Contact details for more information :

For Amendments only

- 2.1 Information element(s) to be amended :
- 2.2 New information element(s) :
- 2.3 Reason for amendment :

For Revocations only

- 3.1 Reason for revocation :