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**NOTE**

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From :	Secretariat
to: :	Working Party on Conventional Arms Exports
Subject :	User's Guide to the European Union Code of Conduct on Arms Exports

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Delegations will find annexed the final version of the User's Guide to the European Code of Conduct on Arms Exports, as agreed at the Working Party on Conventional Arms Exports on 28 October 2003.

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## **User's Guide to the European Union Code of Conduct on Arms Exports**

### **Introduction**

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All Member States have agreed to apply the Code of Conduct on Arms Exports, which entered into force in 1998, when assessing applications of export military equipment, listed in the agreed Common List of Military Equipment to outside of the European Union. The Code also aims to give Member States a greater comprehension of each other's reasons for refusal to export, hence increasing mutual understanding of Member States' export licensing policies. On 23 June 2003, Member States also agreed to assess applications for licences to carry out specific brokering transactions against the provisions of the Code.

Operative provision three of the Code of Conduct therefore states that Member States are to circulate, through diplomatic channels, details of licences refused together with an explanation of why the licence has been refused. The details to be included in the notification have been set out in the Annex to the Code and are further clarified in the consolidated reports submitted annually to the Council.

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 user's guide is intended to clarify Member States' responsibilities in this area. The user's guide is intended to unify Member States' practices in this field and lead to an enhanced exchange of information. It does not replace the Code of Conduct, but summarizes agreed guidance for the implementation of its operative provisions. It is intended for use primarily by export licensing officials. It is divided into four sections, as follows.

- 1: The definition of a denial
- 2: The denial information to be notified
- 3: Revocation of denial notifications
- 4: Procedures for conducting denial notifications and consultations

This users' guide will be reviewed every two years, or at the request of one or more Member States, or as a result of any future changes to the Code of Conduct.

## Section 1: The definition of a denial

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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 authorize 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. ...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.”*

1.2. 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.

1.3. 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.

1.4. 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,

1.5. 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.

1.6. 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.

1.7. 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 data base by the Secretariat, but it would remain de-activated.

## **Section 2: The denial information to be notified**

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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) and for modification and revocations of DNs (Form 2).

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 identity 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.

### **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:

- 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 names 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**

Usually this will be "With immediate effect".

### **Denial Notification under the EU Code of Conduct -Form 1**

(\* 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) :
- 5. 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) :

**Amendment or Revocation of a DN under the Code of Conduct –Form 2**

**1. Identification**

1.1 Identification Number :

1.2 Issued by :

1.3 Country of Destination :

1.4 Date of Notification :

1.5 Contact details for more information :

**2. For Amendments only**

2.1 Information element(s) to be amended :

2.2 New information element(s) :

2.3 Reason for amendment :

2.4 Effective date of amendment :

**3. For Revocations only**

3.1 Reason for revocation :

3.2 Effective date of revocation :

### Section 3: Revocation of Denial Notifications

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- 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.
- 3.2 Revocations should be carried out by COREU/ESDPnet 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 Section 2 above) for this purpose.
- 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.
- 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 1.5, 1<sup>st</sup> bullet)

3.5 It is not necessary for Member states to revoke DNs that were issued more than three years previously. These DN will be automatically de-activated on the central database by the Council Secretariat (see Section 4 below). Though de-activated they will remain on the database.

## Section 4: Notifying denials and carrying out consultations

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### **Export licences**

#### Denial notifications: circulation

- 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.
- 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.
- 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

- 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.



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.

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).

- 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.
- 4.8 The Council Secretariat shall regularly check each month that none of the active DNs on the central DN database are more than 3 years old. All DNs of more than 3 years old shall be deactivated, though the information shall remain on the database.
- 4.9 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

- 4.10 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 within the last 3 years, and if so, to first consult the Member State(s) which issued the denial(s).
- 4.11 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.

4.12 A consultation shall be sent preferably via COREU, and be in either English or French. It may also be sent via email or Note Verbale. 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], 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].”*

4.13 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. Responses and further information exchange may be conducted through normal diplomatic channels, as suits the Member State concerned. If the consulted Member State has not responded within this time, they are presumed to have no objection to the licence application.

4.14 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.

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

4.16 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.

4.17 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

4.18 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, preferably 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.

4.19 Each Member State shall submit the following information every year as part of its contribution to the Annual Report on the Code of Conduct:

- the number of DNs it issued in the year in question
- a breakdown of this figure by destination country
- the number of times it invoked each criterion
- the number of bilateral consultations it initiated
- the number of consultation requests it received
- the number of times it ‘undercut’ another Member State.

EU aggregates of these details will be published directly in the Annual Report.

### **Brokering licences**

4.20 All of the above procedures for the circulation, handling and storage of denials, the conduct of consultations, and post-consultation actions (paras 4.1 – 4.19), should be carried out for brokering licence DNs as they are for export licence DNs. 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.

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