



**EUROPEAN UNION**

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**Brussels, 12.10.2021**

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Subject:                   REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE  
                                  COUNCIL setting up a Union regime for the control of arms exports

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**REGULATION (EU) 2021/...**  
**OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of ...**

**setting up a Union regime for the control of arms  
exports**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(2) thereof,

- (1) Due to recent **technological, legislative, policy and budgetary developments** within the Union, including bilateral initiatives, **the context within which decisions are made on national arms exports** has changed to the point where it is appropriate to establish a new legal and institutional framework for arms exports control at Union level.
- (2) **Technological development** means that modern military equipment and technology typically consists of a multitude of components and sub-assemblies from different origins, regardless of the country of final destination, which are assembled in one country. By design, modern weapon systems and military technology are multi-national. Such products are therefore not purely national, and manufacture and export of such technology is dependent on specific bilateral and multilateral export agreements between states with varying national export policies. Modern arms manufacturing has therefore become a largely **cross-border industrial activity**.
- (3) The 2009 ‘Defence Package’ introduced two directives setting the basis for the emergence of an **EU defence market, by regulating defence procurement and intra-Union transfers**. Both Directive 2009/81/EC and 2009/43/EC apply internal market rules in the defence sector and clarify the scope of application of Article 346 TFEU. They establish the principle that internal market rules on public procurement apply to the acquisition of all military technology. Member States may only deviate from the public procurement rules provided a written justification is presented based on reasons of national security.
- (4) Based on the 2016 Commission Defence Action Plan, the 2017 Commission reflection paper on the future of European defence, and additional initiatives aiming at establishing a Union role in arms manufacturing via the EU budget-funded 2018-2019 EUR 90 million Preparatory Action on Defence Research (PADR), the EU regulation establishing a EUR 500 million EU budget funded European Defence Industrial Development Programme (EDIDP), and the 2021-2027 EU budget funded EUR 7.9 billion EU regulation establishing the European Defence Fund (EDF), the Union developed a **defence industrial policy**.

- (5) With programmes, funds and EU regulations such as PADR, EDIDP, and EDF, the Union takes a key role in military R&D in the EU defence market with an EU budget contribution of nearly EUR 9 billion until 2027. The decision to co-fund military R&D means **that the Union becomes a key player in military research and development** within the EU.
- (6) In order to strengthen consistency and coherence between Member States, Article 20(4) of the EDF Regulation establishes for the **first time in its history Union level *ex ante* assessment** of any transfer of ownership or granting of licences to a third country for military technology and equipment that was developed with the help of the EDF. The Commission is tasked with assessing the transfer's compatibility with the security and defence interests of the Union and its Member States or the objectives set out in Article 3 of the EDF Regulation. A similar provision of *ex ante* assessment of export licences by the Commission is introduced for development actions in Article 23(4) of the EDF Regulation. Via the EDF regulation, **the Commission is *de jure* and *de facto* empowered to exert *ex ante* assessments of a specific category of national arms export licences**, and to **financially sanction** relevant consortia in the event of non-compliance.
- (7) Recent reviews of Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment, **failed to keep pace with the major political, legal, institutional, and budgetary structural changes** in the sector which have occurred since 2008.
- (8) With the **entry into force of the Lisbon Treaty** in 2009, the Union ensures the **consistency of its external activities** as a whole in the context of its external relations, in accordance with the second paragraph of Article 21(3) of the Treaty on European Union; in this respect a **consistent export control policy** regarding defence-related materials is important.
- (9) **According to case law and current practice**, it is stated that national provisions and decisions affecting **exports of military equipment and**

**technology should be taken in the framework of the Common Commercial Policy.** Appropriate exchange of information and consultations on national provisions and decisions should ensure the effective and consistent application of controls throughout the customs territory of the Union.

- (10) There is **broad agreement** that Union measures aimed at regulating arms exports fall within the scope of the Common Commercial Policy. The negotiation and **entry into force of the Arms Trade Treaty (ATT)** clearly illustrates that arms exports are also a trade issue. In this respect, based on Article 114 and Article 207(3) in conjunction with Article 218(6)(a)(v), Council Decision 2014/165/EU of 3 March 2014 authorised Member States to ratify the ATT, in the interests of the European Union.
- (11) Similarly, the **UN Firearms Protocol** requires Parties to put in place or improve administrative procedures or systems to exercise effective control over the manufacturing, marking, import and export of firearms, their parts and essential components and ammunition. Regulation 258/2012 focuses on the export of civilian firearms from the customs territory of the Union to or through third countries **based on Article 207 TFEU**.
- (12) In addition, **other EU regulations**, based on the Union's Common Commercial Policy pursuant to Article 207 TFEU, **implement important international commitments related to human rights, security policies, and important arms control and non-proliferation regimes** such as UN Security Council Resolution 1540, the Nuclear Non-Proliferation Treaty, the Chemical Weapons Convention, the Biological Weapons Convention, the Australia Group, the Wassenaar Arrangement, the Nuclear Suppliers Group and the Missile Technology Control Regime.
- (13) In this respect, Regulation (EU) 2021/821 of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items regulates the export of goods, software and technology that can be used for both civilian and military applications. It establishes **Union-level control** for the export, transit, brokering and technical assistance of dual-use items to contribute to international peace and security

and prevent the proliferation of **weapons of mass destruction (WMD)** and cyber-surveillance technology.

- (14) Based on such legal and policy considerations, and taking into account major developments in the sector since the establishment of the Common Position in 2008, it is appropriate to strengthen the Union's export control policy for military technology and equipment **by transferring the eight criteria** of Council Common Position 2008/944/CFSP and Council Decision (CFSP) 2019/1560 of 16 September 2019 amending Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment, **into a Union regime** for the control of items listed in the Common Military List of the European Union **based on Article 207 TFEU**.
- (15) This Regulation aims to ensure that in the area of arms exports, there is a **coherent and consistent approach** to destinations, bringing an end to the **current practice of significant divergences between Member States'** interpretation of EU export criteria. In addition, the aim is to prevent Member States undermining each other's export policy, and attempt to foster a more successful common approach.
- (16) This Regulation is based on an approach which includes considerations of **international obligations and commitments**, in particular **international human rights law and international humanitarian law obligations**, relevant sanctions, considerations of national foreign and security policy including those contained in the Council Common Position 2008/944/CFSP, among them human rights, and considerations about intended end-use and the risk of diversion.
- (17) Through this Regulation, the Union demonstrates its commitment to **maintaining robust legal requirements** with regard to arms exports, as well as to strengthening the exchange of relevant information and greater transparency.
- (18) This Regulation **does not affect the application of Article 346** of the Treaty on the Functioning of the European Union, which refers to essential interests of the security of the Member States. Member States can **derogate** from the provisions of this Regulation, provided a written justification is presented to the Arms

Exports Coordination Group and the Parliament, based on **reasons of national security**.

- (19) This Regulation is **without prejudice** to the Union regime for the **control of exports, transfer, brokering and transit of dual-use items** established by Regulation (EU) 2021/821 of 20 May 2021. This Regulation is consistent with the other relevant provisions on firearms, their parts, essential components and ammunition for civilian use, security strategies, illicit trafficking in small arms and light weapons and exports of military technology, including Regulation (EU) No 258/2012 of 14 March 2012.
- (20) This Regulation is **without prejudice** to Directive 2009/43/EC of 6 May 2009 simplifying terms and conditions of **transfers of defence-related products within the Community**.
- (21) In order to achieve uniform and consistent application of controls throughout the Union, it is appropriate to upgrade, broaden the scope of and regulate the **consultations and information exchange** between the Member States and the Commission, and to introduce tools to support the **development of a common ex ante risk assessment and an export control network** throughout the Union, such as electronic licensing procedures, and technical expert groups.
- (22) It is of particular importance for strengthening coherence and consistency to ensure that there is a **common risk assessment** as regards destinations and end-users at Union level. Such risk assessments should contain a high level of detail and describe the overall situation in the country, and specific risks associated with each Military List category and should be made available to both the Commission and Member States.
- (23) Based on such common risk assessments, a recommendation on how to categorise third countries should be made available to the Commission. On this basis, the Commission will propose **to Council and Parliament a list of countries** where there is a **risk of violating one or more of the nine criteria, via the delegated acts procedure**.

- (24) **Every six months**, the Commission, on the basis of recommendations by the Common Risk Assessment Body, will propose to Council and Parliament, if needed, **modifications to the list of countries** via the **delegated acts procedure**. In the event of a sudden emergence of new risks, the Commission, based on recommendations by the Common Risk Assessment Body, will immediately propose modifications to the list of countries.
- (25) In order to guarantee a thorough and detailed common risk assessment, there is the need to **establish a permanent Common Risk Assessment Body** composed of independent experts. This independent unit will be established by the Commission and issue non-public recommendations to the Commission and the Member States regarding destinations of risk. In the event of **divergences** between its recommendations and national licensing decisions, representatives of the relevant Member State and Common Risk Assessment Body may be invited to the European Parliament for public consultation on the matter.
- (26) In order to **increase transparency** and in order to support a Union-wide informed **public debate about arms export policies**, an **Open-Source Intelligence Unit**, which predominantly uses open-source information, should be set-up in parallel with the Common Risk Assessment Body. This unit will advise the Common Risk Assessment Body and be at the disposal of all relevant stakeholders such as the Commission, the Council, Member States, the European External Action Service, Parliament, the Arms Exports Coordination Group and civil society organisations.
- (27) The Commission should **establish a list of independent experts** with a view to making both the Common Risk Assessment Body and the Open-Source Intelligence Unit operational. The independent experts should be chosen on the basis of their skills, experience and knowledge, taking account of the tasks to be assigned to them. As far as possible, when appointing the independent experts, the Commission should take appropriate measures to **seek a balanced composition in terms of variety of skills, experience, knowledge, and geographical and gender diversity**. An appropriate rotation of the independent experts and appropriate private-public-non-profit sector balance should also be

sought. The independent experts should not evaluate, advise or assist on matters with regard to which they have any **conflicts of interest**, in particular as regards their position at the time of the evaluation.

- (28) In order to **facilitate the tracing of military technology** and efficiently combat illicit trafficking in weapons, their parts and essential components and ammunition, it is necessary to improve the exchange of information between Member States, in particular through better use of existing communication channels, **and to set up post-shipment and end-use controls at Union level**, which include digital and physical on-site inspections and which rely on risk assessment, the Open-Source Intelligence Unit, EU-funded projects such as iTrace and EU Delegations on the ground.
- (29) The contribution of exporters, brokers, providers of technical assistance or other relevant stakeholders to the overall aim of trade controls is crucial. In order for them to be able to act in conformity with this Regulation, risk assessments relating to transactions covered by this Regulation should also be carried out **through transaction-screening measures, also known as the due diligence principle, as a part of an Internal Compliance Programme (ICP)**. In that regard, the size and organisational structure of exporters in particular must be considered when developing and implementing ICPs.
- (30) **Guidelines** for Internal Compliance Programmes should be introduced in order to contribute to **achieving the level playing field between exporters** and to enhance the effective application of controls. Such guidelines should consider the differences in sizes, resources, fields of activity and other features and conditions of exporters and their subsidiaries, such as intra-group compliance structures and standards, thereby avoiding a ‘one model for all’ approach and helping each exporter to find its own solutions for compliance and competitiveness.
- (31) **Outreach and transparency are essential elements** for an effective export control regime. It is therefore appropriate to provide for the continued development of guidelines, where necessary, to support the application of this Regulation and for the publication of a **Union annual report on the**

**implementation of the nine criteria** by using the format of a **searchable online database**.

- (32) The Union **annual report** on the implementation of the nine criteria should include relevant information on the licensing and enforcement of controls under this Regulation, with due respect to the need to ensure the **protection of the confidentiality** of certain data, in particular where the publication of licensing data could affect national security concerns raised by Member States or jeopardise commercial confidentiality and allow non-Union suppliers to undercut restrictive licensing decisions by Member States. However, where certain information is withheld due to confidentiality considerations, **the Member State should provide a justification**.
- (33) This Regulation respects the fundamental rights and observes the principles recognised in particular by the **Charter of Fundamental Rights** of the European Union.

# CHAPTER I

## SUBJECT AND DEFINITIONS

### *Article 1*

This Regulation establishes a Union regime for the control of arms exports.

### *Article 2*

For the purposes of this Regulation, the following definitions apply:

- (1) ‘arms’ means military equipment and technology, including software, services and technology, which can be used for military purposes, and which are listed in the Common Military List of the European Union<sup>1</sup>;
- (2) ‘export’ means:
  - (a) an export procedure within the meaning of Article 269 of the Union Customs Code;
  - (b) a re-export within the meaning of Article 270 of the Union Customs Code; a re-export also occurs if, during a transit through the customs territory of the Union according to point (17) of this Article, an exit summary declaration within the meaning of Article 5(10) of the Union Customs Code has to be lodged because the final destination of the items has been changed;
  - (c) an outward processing procedure within the meaning of Article 259 of the Union Customs Code; or
  - (d) transmission of software or technology by electronic media, including by fax, telephone, electronic mail or any other electronic means to a destination outside the customs territory of the Union; it includes making available in an electronic form such software and technology to natural or legal persons or to partnerships outside the customs territory of the Union;

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<sup>1</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1584081152567&uri=OJ:JOC\\_2020\\_085\\_R\\_0001](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1584081152567&uri=OJ:JOC_2020_085_R_0001)

it also includes the oral transmission of technology when the technology is described over a voice transmission medium;

(3) 'exporter' means:

- (a) any natural or legal person or any partnership that, at the time when the export declaration or the re-export declaration or an exit summary declaration is accepted, holds the contract with the consignee in the third country and has the power to determine the sending of the items out of the customs territory of the Union; where no export contract has been concluded or if the holder of the contract does not act on its own behalf, exporter means the person who has the power to determine the sending of the items out of the customs territory of the Union; or
- (b) any natural or legal person or any partnership that decides to transmit software or technology by electronic media, including by fax, telephone, electronic mail or by any other electronic means to a destination outside the customs territory of the Union or to make available in an electronic form such software and technology to natural or legal persons or to partnerships outside the customs territory of the Union.

Where the benefit of a right to dispose of the military item belongs to a person resident or established outside the customs territory of the Union pursuant to the contract on which the export is based, the exporter shall be considered to be the contracting party resident or established in the customs territory of the Union;

- (c) where point (a) or (b) is not applicable, any natural person carrying military items to be exported where these military items are contained in the person's personal baggage within the meaning of point (a) of Article 1(19) of Commission Delegated Regulation (EU) 2015/2446<sup>2</sup>;

(4) 'export declaration' means an act whereby any natural or legal person or any

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<sup>2</sup> Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code (OJ L 343, 29.12.2015, p. 1).

partnership indicates, in the prescribed form and manner, the wish to place military items specified in point (1) under an export procedure;

- (5) 're-export declaration' means an act within the meaning of Article 5(13) of the Union Customs Code;
- (6) 'exit summary declaration' means an act within the meaning of Article 5(10) of the Union Customs Code;
- (7) 'denial of a licence' is understood to take place when the Member State has refused to authorise the actual sale or export of the military technology or equipment concerned. For this purpose, 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;
- (8) 'brokering services' means:
  - (a) the negotiation or arrangement of transactions for the purchase, sale or supply of military items from a third country to any other third country;  
or
  - (b) the selling or buying of military items that are located in third countries for their transfer to another third country;
- (9) 'broker' means any natural or legal person or any partnership that provides brokering services from the customs territory of the Union into the territory of a third country;
- (10) 'technical assistance' means any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may take forms such as instruction, advice, training, transmission of working knowledge or skills or consulting services, including by electronic means as well as by telephone or any other verbal forms of assistance;
- (11) 'provider of technical assistance' means:
  - (a) any natural or legal person or any partnership that provides technical

assistance from the customs territory of the Union into the territory of a third country;

- (b) any natural or legal person or any partnership resident or established in a Member State that provides technical assistance within the territory of a third country; or
  - (c) any natural or legal person or any partnership resident or established in a Member State that provides technical assistance to a resident of a third country temporarily present in the customs territory of the Union;
- (12) ‘transit’ means a transport of non-Union military items entering and passing through the customs territory of the Union with a destination outside the customs territory of the Union where those items:
- (a) are placed under an external transit procedure according to Article 226 of the Union Customs Code and only pass through the customs territory of the Union;
  - (b) are trans-shipped within, or directly re-exported from, a free zone;
  - (c) are in temporary storage and are directly re-exported from a temporary storage facility; or
  - (d) were brought into the customs territory of the Union on the same vessel or aircraft that will take them out of that territory without unloading;
- (13) ‘customs territory of the Union’ means the customs territory of the Union within the meaning of Article 4 of the Union Customs Code;
- (14) ‘arms embargo’ means an arms embargo imposed by a decision or a common position adopted by the Council or a decision of the Organisation for Security and Cooperation in Europe (OSCE) or an arms embargo imposed by a binding resolution of the Security Council of the United Nations;
- (15) ‘internal compliance programme’ or ‘ICP’ means ongoing effective, appropriate and proportionate policies and procedures adopted by exporters to facilitate compliance with the provisions and objectives of this Regulation and

with the terms and conditions of the authorisations implemented under this Regulation, including, inter alia, due diligence measures assessing risks related to the export of the items to end-users and end-uses.

## **CHAPTER II**

# **SCOPE AND CRITERIA**

### *Article 3*

1. An authorisation shall be required for the export of arms.
2. Export authorisations under this Regulation shall be granted by the competent authority of the Member State where the exporter is resident or established.
3. Each Member State shall assess the export licence applications made to it, and all prospective government-to-government transfers, for items on the EU Common Military List, on a case-by-case basis against the criteria of Article 4 and on the basis of the relevant common risk assessment of Article 9.
4. Where new relevant information becomes available, each Member State shall reassess export licences after they have been granted.
5. The export licence applications as mentioned in paragraph 2 shall include:
  - (a) applications for licences for physical exports, including those for the purpose of licensed production of military equipment in third countries;
  - (b) applications for brokering licences;
  - (c) applications for 'transit' or 'transshipment' licences; and
  - (d) applications for licences for any intangible transfers of software and technology by means such as electronic media, fax or telephone.

#### *Article 4*

1. **Criterion One:** Respect for the international obligations and commitments of Member States, in particular the sanctions adopted by the UN Security Council or the European Union, agreements on non-proliferation and other subjects, as well as other international obligations and commitments.

An export licence shall be denied if approval would be inconsistent with, *inter alia*:

- (a) the international obligations of Member States and their commitments to enforce United Nations, European Union and Organisation for Security and Cooperation in Europe arms embargoes;
- (b) the international obligations of Member States under the Nuclear Non-Proliferation Treaty, the Biological and Toxin Weapons Convention and the Chemical Weapons Convention;
- (c) the international obligations of Member States under the Convention on Certain Conventional Weapons and the relevant Protocols annexed thereto;
- (d) the international obligations of Member States under the Arms Trade Treaty;
- (e) the international obligations of Member States under the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Ottawa Convention);
- (f) the commitments of Member States under the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects;
- (g) the commitments of Member States in the framework of the Australia Group, the Missile Technology Control Regime, the Zangger Committee, the Nuclear Suppliers Group, the Wassenaar Arrangement and The Hague Code of Conduct against Ballistic Missile Proliferation.

2. **Criterion Two:** Respect for human rights in the country of final destination as well as respect by that country of international humanitarian law.

Having assessed the recipient country's attitude towards relevant principles established by international human rights instruments, Member States shall:

- (a) deny an export licence if there is a clear risk that the military technology or equipment to be exported might be used for internal repression;
- (b) exercise special caution and vigilance in issuing licences, on a case-by-case basis and taking account of the nature of the military technology or equipment, to countries where serious violations of human rights have been established by the competent bodies of the United Nations, by the European Union or by the Council of Europe.

For these purposes, technology or equipment which might be used for internal repression will include, *inter alia*, technology or equipment where there is evidence of the use of this or similar technology or equipment for internal repression by the proposed end-user, or where there is reason to believe that the technology or equipment will be diverted from its stated end-use or end-user and used for internal repression. In line with Article 3 of this Regulation, the nature of the technology or equipment will be considered carefully, particularly if it is intended for internal security purposes. Internal repression includes, *inter alia*, torture and other cruel, inhuman and degrading treatment or punishment, summary or arbitrary executions, disappearances, arbitrary detentions and other major violations of human rights and fundamental freedoms as set out in relevant international human rights instruments, including the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights.

Having assessed the recipient country's attitude towards relevant principles established by instruments of international humanitarian law, Member States shall:

- (c) deny an export licence if there is a clear risk that the military technology or equipment to be exported might be used in the commission of serious violations of international humanitarian law.
  - (d) deny an export licence if there is a clear risk that the military technology or equipment to be exported might be used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children.
3. **Criterion Three:** Internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts.

Member States shall deny an export licence for military technology or equipment which would provoke or prolong armed conflicts or aggravate existing tensions or conflicts in the country of final destination.

4. **Criterion Four:** Preservation of regional peace, security and stability.

Member States shall deny an export licence if there is a clear risk that the intended recipient would use the military technology or equipment to be exported aggressively against another country or to assert by force a territorial claim. When considering these risks, Member States shall take into account *inter alia*:

- (a) the existence or likelihood of armed conflict between the recipient and another country;
- (b) a claim against the territory of a neighbouring country which the recipient has in the past tried or threatened to pursue by means of force;

- (c) the likelihood of the military technology or equipment being used other than for the legitimate national security and defence of the recipient;
  - (d) the need not to adversely affect regional stability in any significant way.
5. **Criterion Five:** National security of the Member States and of territories whose external relations are the responsibility of a Member State, as well as that of friendly and allied countries.

Member States shall take into account:

- (a) the potential effect of the military technology or equipment to be exported on their defence and security interests, as well as those of Member States and those of friendly and allied countries, while recognising that this factor cannot affect consideration of the criteria on respect for human rights and on regional peace, security and stability;
  - (b) the risk of use of the military technology or equipment concerned against their forces or those of Member States and those of friendly and allied countries.
6. **Criterion Six:** Behaviour of the buyer country with regard to the international community, as regards in particular its attitude to terrorism, the nature of its alliances and respect for international law.

Member States shall take into account, *inter alia*, the record of the buyer country with regard to:

- (a) its support for or encouragement of terrorism and international organised crime;

- (b) its compliance with its international commitments, in particular on the non-use of force, and with international humanitarian law;
- (c) its commitment to non-proliferation and other areas of arms control and disarmament, in particular the signature, ratification and implementation of relevant arms control and disarmament conventions referred to in point (b) of Criterion One.

7. **Criterion Seven:** Existence of a risk that the military technology or equipment will be diverted within the buyer country or re-exported under undesirable conditions.

In assessing the impact of the military technology or equipment to be exported on the recipient country and the risk that such technology or equipment might be diverted to an undesirable end-user or for an undesirable end use, the following shall be considered:

- (a) the legitimate defence and domestic security interests of the recipient country, including any participation in United Nations or other peace-keeping activity;
- (b) the technical capability of the recipient country to use such technology or equipment;
- (c) the capability of the recipient country to apply effective export controls;
- (d) the risk of such technology or equipment being re-exported to undesirable destinations, and the record of the recipient country in respecting any re-export provision or consent prior to re-export which the exporting Member State considers appropriate to impose;
- (e) the risk of such technology or equipment being diverted to terrorist organisations or to individual terrorists;
- (f) the risk of reverse engineering or unintended technology transfer.

8. **Criterion Eight:** Compatibility of the exports of the military technology or equipment with the technical and economic capacity of the recipient country, taking into account the desirability that states should meet their legitimate security and defence needs with the least diversion of human and economic resources for armaments.

Member States shall take into account, in the light of information from relevant sources such as United Nations Development Programme, World Bank, International Monetary Fund and Organisation for Economic Cooperation and Development reports, whether the proposed export would seriously hamper the sustainable development of the recipient country. They shall consider in this context the recipient country's relative levels of military and social expenditure, taking into account also any EU or bilateral aid.

9. **Criterion Nine:** Member States shall deny an export license if there is a clear risk that the contract and transaction involves corrupt practices. In order to assess this risk, the licensing authorities of the Member State shall consider the following indicators:

- (a) Have there been allegations, investigations and/or convictions regarding corruption against any the suppliers, intermediates, brokers, recipients or other individuals or entities involved in the transaction?
- (b) Is the recipient country party to the UN Convention against Corruption and does it have a good track record in terms of honouring its obligations under the implementation review mechanism? Are there effective legal instruments and administrative measures in place to prevent corruption?

#### *Article 5*

1. This Regulation shall not affect the right of Member States to operate more restrictive national policies, legislation or decisions.
2. This Regulation does not provide additional legal remedies to those found in Member States' legislation regarding the denial of an export licence by a Member State to a destination country that has not been listed by the Commission.

#### *Article 6*

Member States and the Commission shall keep denials and consultations confidential and not use them for commercial advantage.

#### *Article 7*

While Member States, where appropriate, may also consider the effect of proposed exports on the economic, social, commercial and industrial interests of Member States, these factors shall not affect the application of the above criteria of Article 4.

# **CHAPTER III**

## **IMPLEMENTATION AND ENFORCEMENT**

### *Article 8*

1. Export licences shall be granted only on the basis of reliable prior knowledge of end use in the country of final destination. This will require a thoroughly checked end-user certificate or appropriate documentation and/or some form of official authorisation issued by the country of final destination. When assessing applications for licences to export military technology or equipment for the purposes of production in third countries, Member States shall take into account the potential use of the finished product in the country of production and of the risk that the finished product might be diverted or exported to an undesirable end-user.
2. For the purpose of this Article, Member States shall use the common risk assessments and the list of third countries referred to in Article 9.
3. If a Member State decides to grant an export licence for a destination for which the Common Risk Assessment Body has recommended denial of licences, the Member State shall present a written justification to the Commission and the Arms Exports Coordination Group referred to in Article 12, based on reasons of national security, in line with Article 346 TFEU. Such justification shall be sent to the relevant body of the European Parliament for further considerations.

### *Article 9*

1. At Union level, the nine criteria of Article 4 shall be implemented via common risk assessments, which outline, in detail and per country, the specific associated risks per Military List category. The common risk assessment shall also describe the overall situation in the country.
2. Member States shall use the common risk assessments when preparing national

licensing decisions.

3. Based on the common risk assessments, the Commission shall establish a list of countries, which are post-embargo countries, and/or regarding which there are one or more risks. The list of countries shall be adopted by means of delegated acts in accordance with the procedure referred to in Article 17.
4. Every six months, based on the recommendations of the Common Risk Assessment Body referred to in Article 10, the Commission shall, by means of delegated acts, propose modifications to the list of countries referred to in paragraph 3 of this Article. On the request of a Member State, the Common Risk Assessment Body, or in the event of an emergency, and after consulting the Arms Exports Coordination Group, the Commission shall adopt modifications to the lists of countries.

#### *Article 10*

1. The Commission shall set up a Common Risk Assessment Body at Union level to assess the situation of potential or actual recipients of exports of military technology and equipment from Member States, with regard to the nine criteria set out in Article 4 of this Regulation, and specific risks associated with all Military List categories. Such risk assessments shall be made available to the Commission and the Member States.
2. The common risk assessments shall be carried out by independent experts appointed by the Commission in accordance with Article 11.

### *Article 11*

1. The Commission shall appoint independent experts for the Common Risk Assessment Body referred to in Article 10.
2. The independent experts referred to in paragraph 1 of this Article shall be nationals of as broad a range of Member States as possible and shall be selected on the basis of calls for expressions of interest addressed to the Commission. The Commission shall seek a balanced composition of the Common Risk Assessment Body in terms of variety of skills, experience, knowledge, geographical and gender diversity, and shall ensure representation of national governmental bodies, research institutes, universities, private sector and civil society organisations with a view to establishing a list of independent experts.
3. The committee referred to in Article 12 shall be informed of the list of independent experts on an annual basis. The Commission shall ensure that independent experts do not evaluate, advise or assist on matters with regard to which they have any conflicts of interest.
4. The independent experts shall be chosen on the basis of their skills, experience and knowledge relevant to the tasks to be assigned to them.
5. Together with the Member States, the European External Action Service (EEAS), and EU Delegations, the Commission shall set up an effective post-shipment and end-use control for Military List items exported to listed countries.

### *Article 12*

1. An Arms Exports Coordination Group chaired by a representative of the Commission shall be established. Each Member State shall appoint a representative to that group.
2. The Arms Exports Coordination Group shall examine any questions concerning the application of this Regulation, including, without limitation, the exchange of

information on administrative practices and any questions which may be raised either by the chair or by a representative of a Member State.

3. The Arms Exports Coordination Group may, whenever it considers it to be necessary, consult exporters, brokers, providers of technical assistance and other relevant stakeholders affected by this Regulation.
4. The Arms Exports Coordination Group shall exchange information and guarantee direct cooperation between competent authorities and enforcement agencies of the Member States. The Member States and the Commission shall exchange relevant information, where available, including on the application, nature and effect of the measures, on enforcement of best practices and unauthorised exports of military items and/or infringements of this Regulation and/or relevant national legislation.
5. Member States and the Commission shall also exchange information on best practices of national enforcement authorities regarding risk-based audits, the detection and prosecution of unauthorised exports of military items and/or possible other infringements of this Regulation and/or relevant national legislation.
6. Member States, in cooperation with the Commission, shall take all appropriate measures to establish direct cooperation and exchange of information between the competent authorities with a view to enhancing the efficiency of the Union export control regime and to ensure the consistent and effective implementation and enforcement of control throughout the customs territory of the Union. The information exchange may include:
  - (a) relevant licensing data, provided for each authorisation issued (e.g. value and types of licence and related destinations, number of users of general authorisations);
  - (b) additional information regarding the application of controls, including information on the application of criteria, the number of operators with an ICP and, where available, data on exports of military items carried out in other Member States;

- (c) information regarding the enforcement of controls, including risk-based audits, details of exporters deprived of the right to use the national or Union general export authorisations, and, where available, number of violations, seizures and application of other penalties;
  - (d) data on sensitive end-users, actors involved in suspicious procurement activities and, where available, routes taken.
- 7. The exchange of licensing data shall take place at least annually in accordance with guidelines to be drawn up by the Arms Exports Coordination Group established pursuant to Article 12 and with due consideration to legal requirements concerning the protection of personal information, commercially sensitive information or protected defence, foreign policy or national security information.
- 8. Member States and the Commission shall regularly examine the implementation of Article 15 based on information submitted pursuant to this Regulation and analyses of such data. All participants of these exchanges shall respect the confidentiality of the discussions.
- 9. Council Regulation (EC) No 515/97, and in particular its provisions on the confidentiality of information, shall apply *mutatis mutandis*.
- 10. A secure and encrypted system shall be developed by the Commission, in consultation with the Arms Exports Coordination Group set up to support direct cooperation and exchange of information between the competent authorities of the Member States and, where appropriate, the Commission. The system shall, where feasible, be connected by the Commission to the electronic licensing systems of the competent authorities of the Member States to the extent necessary for the purpose of facilitating this direct cooperation and exchange of information. The European Parliament shall be informed about the system's budget, development and functioning.
- 11. The Commission shall submit an annual report in writing to the

European Parliament on the activities, examinations and consultations of the Arms Exports Coordination Group. The annual report shall be drawn up paying due regard to the need not to undermine the commercial interests of natural or legal persons.

*Article 13*

1. Each Member State shall take appropriate measures to ensure the proper enforcement of this Regulation. In particular, it shall lay down the penalties applicable to infringements of the provisions of this Regulation or of those adopted for its implementation. Those penalties shall be effective, proportionate and dissuasive.
2. If a Member State fails to ensure the proper implementation of this Regulation, in particular as regards respect for the nine criteria set out in Article 4, the Commission shall exclude companies based in the relevant Member States from future grants under the European Defence Fund.

# CHAPTER IV

## CONTROL MEASURES

### *Article 14*

1. Where an exporter is aware, according to its due diligence findings, that the export of items which the exporter proposes to export are potentially non-compliant with the criteria in Article 4, in their entirety or in part, the exporter shall notify the competent authority. That competent authority shall decide whether to authorise or deny the relevant export. The Commission and the Member States shall make common risk assessments available to exporters, as referred to in Article 9.
2. Exporters of military technology and equipment shall keep detailed registers or records of their exports, in accordance with the national law or practice in force in the Member State concerned. Such registers or records shall include in particular commercial documents such as invoices, manifests and transport and other dispatch documents containing sufficient information to allow the following to be identified:
  - (a) a description of the military items;
  - (b) the quantity of the military items;
  - (c) the name and address of the exporter and of the consignee;
  - (d) the end-use and end-user of the military items.
3. In accordance with national law or practice in force in the Member State concerned, brokers and providers of technical assistance shall keep registers or records for brokering services or technical assistance so as to be able to prove, on request, the description of the military items that were the subject of brokering services or technical assistance, the period during which the items were the subject of such services, the destination of such items and services, and the countries concerned by those services.

## Article 15

1. In order to ensure that this Regulation is properly applied, each Member State shall take all necessary measures to permit its competent authorities:
  - (a) to gather information on any order or transaction involving military items;
  - (b) to establish whether the export control measures are being properly applied, which may include in particular the power to enter the premises of persons with an interest in an export transaction or brokers involved in the provision of brokering services under circumstances, or providers of technical assistance under the circumstances;
  - (c) to ensure its capacity to revoke or suspend granted licences which may also involve the establishment of a mechanism for full or partial compensation of costs caused by that decision;
  - (d) to reassess granted export licenses in the event that new relevant information becomes available, and if necessary revoke or suspend the granted licences.
  
2. Member States shall inform the Commission without delay of the laws, regulations and administrative provisions adopted in implementation of this Regulation, including:
  - a. a list of the competent authorities of the Member States empowered to:
    - i. grant export authorisations,
    - ii. grant authorisations under this Regulation for the provision of brokering services and technical assistance,
    - iii. prohibit the transit of non-Union items under this Regulation;
  - b. the measures referred to in Article 13.

The Commission shall forward the information to the other Member States and shall publish the information in the C series of the *Official Journal of the European Union*.

3. The Commission and the Member States shall, upon request, inform each other of the measures taken under this Regulation and supply each other with any relevant information at their disposal in connection with this Regulation, in particular information on authorisations granted and denied.

Relevant information on authorisations granted and denied shall comprise at least the type of decision, the grounds for the decision or a summary thereof, the names of the consignees and, if they are not the same, of the end-users as well as the goods concerned.

# CHAPTER V

## DELEGATED ACTS

### *Article 17*

4. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
5. The power to adopt delegated acts referred to in Article 9 shall be conferred on the Commission for an indeterminate period of time from (DATE ENTRY INTO FORCE//OJ).
6. The delegation of power referred to in Article 9 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
7. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
8. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
9. A delegated act adopted pursuant to Article 9 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

# **CHAPTER VI**

## **TRANSPARENCY, OUTREACH, MONITORING, EVALUATION**

### *Article 18*

1. By 30 June of each year, each Member State shall submit to the Commission information for the preceding calendar year on its exports of military technology and equipment, and on its implementation of this Regulation.
2. Each Member State shall provide the following information to the Commission on its exports:
  - a) Number of export licences granted to each destination, broken down by Military List category;
  - b) Value of export licences granted to each destination, broken down by Military List category; and
  - c) Value of actual exports to each destination, broken down by Military List category.
3. An EU Annual Report, based on contributions from all Member States, shall be made available to the public in the format of a narrative report and a searchable online database on the website of the Commission.
4. In addition, each Member State which exports technology or equipment on the EU Common Military List shall publish a national report on its exports of military technology and equipment, the contents of which will be in accordance with national legislation, as applicable.

In order to generate the basis for a broad and informed exchange between relevant stakeholders on short-, medium-, and long-term developments of risks or potential risks, the Commission, with the assistance with the External Action Service (EEAS), shall set up an Open-Source Intelligence Unit. The analysis and recommendations of the unit should be based on open-source information and be made publicly available.

# CHAPTER VII

## FINAL PROVISIONS

### *Article 20*

The User's Guide to this Regulation, which is regularly reviewed, shall serve as guidance for the implementation of this Regulation.

### *Article 21*

Between ... [five years after the date of entry into force of this Regulation] and ... [seven years after the date of entry into force of this Regulation], the Commission shall carry out an evaluation of this Regulation and report on the main findings to the European Parliament, the Council and the European Economic and Social Committee. After ... [three years after the date of entry into force of this Regulation], the Commission shall carry out an evaluation of Article 5 and report on the main findings to the European Parliament, the Council and the European Economic and Social Committee.

### *Article 22*

This Regulation shall enter into force 90 days after the date of its publication in the *Official Journal of the European Union*.

### *Article 23*

This Regulation shall be binding in its entirety and directly applicable in all Member States.