Council Decision (CFSP) 2020/1464 of 12 October 2020 on the promotion of effective arms export controls

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on the promotion of effective arms export controls

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 28(1) and 31(1) thereof,

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

(1) The European Security Strategy adopted by the European Council on 12 December 2003 outlines five key challenges to be addressed by the Union: terrorism, the proliferation of weapons of mass destruction, regional conflicts, state failure and organised crime. The consequences of the uncontrolled circulation of conventional weapons are central to four of those five challenges. That Strategy underlines the importance of export controls to contain weapons proliferation. The Global Strategy for the Union's foreign and security policy, titled 'Shared Vision, Common Action: A Stronger Europe', which was presented by the High Representative on 28 June 2016, confirms the Union's support for the universalisation, full implementation and enforcement of multilateral disarmament, non-proliferation and arms control treaties and regimes.

(2) On 5 June 1998 the Union adopted a politically binding Code of Conduct on arms exports, setting common criteria to regulate the legal trade in conventional weapons.

(3) On 19 November 2018 the Council adopted the EU Strategy against illicit firearms, small arms and light weapons and their ammunition ('Securing arms, protecting citizens'). The full and effective implementation of the 2001 United Nations (UN) Programme of Action to prevent, combat and eradicate the illicit trade in small arms and light weapons in all its aspects is the main objective of that Strategy. The Strategy states that the Union will continue to promote responsible and effective arms export control and to support the universalisation and implementation of the Arms Trade Treaty. The Strategy also states that the Union will continue to support the African Union and relevant regional economic communities in their efforts against the illicit trade in small arms and light weapons and their ammunition.

(4) The Code of Conduct on arms exports was replaced on 8 December 2008 by Council Common Position 2008/944/CFSP[(1)], which establishes eight criteria against which applications for the export of conventional arms are to be assessed. It also includes a notification and consultation mechanism for arms exports denials, and transparency

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measures such as the publication of an EU annual report on arms exports. A number of third countries have aligned themselves with Common Position 2008/944/CFSP. A 2019 review of that Common Position resulted in the adoption of Council Decision (CFSP) 2019/1560[(2)].

(5) Article 11 of Common Position 2008/944/CFSP states that Member States are to use their best endeavours to encourage other States which export military technology or equipment to apply the criteria set out in that Common Position.

(6) The Arms Trade Treaty (ATT) was adopted by the UN General Assembly in April 2013 and entered into force on 24 December 2014. The ATT aims to strengthen transparency and responsibility in the arms trade. As with Common Position 2008/944/CFSP, the ATT lays down a number of risk-assessment criteria against which arms exports have to be assessed. The Union supports the effective implementation and universalisation of the ATT through its dedicated programmes adopted under Council Decisions 2013/768/CFSP[(3)] and (CFSP) 2017/915[(4)]. Those programmes assist a number of third countries, upon their request, in strengthening their arms transfer control systems in line with the requirements of the ATT.

(7) It is therefore important to ensure complementarity between the outreach and assistance activities provided for in this Decision and those provided for in Decision (CFSP) 2017/915. To that end, regular exchanges of information should take place between the implementing agencies of the Union outreach activities in the field of arms export control, as well as with the European External Action Service. This coordination mechanism will encourage the participation of experts from other Member States whenever relevant.

(8) Union activities to promote effective and transparent arms export controls have developed since 2008 under Council Joint Action 2008/230/CFSP[(5)] and Council Decisions 2009/1012/CFSP[(6)], 2012/711/CFSP[(7)], (CFSP) 2015/2309[(8)] and (CFSP) 2018/101[(9)]. The activities carried out have notably supported further regional cooperation and enhanced transparency and greater responsibility, in line with the principles of Common Position 2008/944/CFSP and the risk-assessment criteria set out therein. The activities in question have traditionally addressed third countries of the eastern and southern neighbourhoods of the Union.

(9) In recent years, the Union has also provided assistance to improve export controls on dual-use goods in third countries. Effective coordination with those activities relevant to dual-use export controls should be ensured.

(10) The German Federal Office for Economic Affairs and Export Control (Bundesamt für Wirtschaft und Ausfuhrkontrolle — BAFA) has been entrusted by the Council with the technical implementation of Decisions 2009/1012/CFSP, 2012/711/CFSP, (CFSP) 2015/2309 and (CFSP) 2018/101. BAFA is also an implementing agency for projects supporting the effective implementation of the ATT under Decision 2013/768/CFSP and Decision (CFSP) 2017/915. Since 2005, BAFA has been engaged in the implementation of a number of Union cooperation projects in the area of dual-use export controls. BAFA is the competent export control authority of Germany, and has developed a large

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body of knowledge and expertise on outreach activities, in addition to sharing its core competencies with other States.

(11) On 28 May 2018 the UN Secretary-General presented his agenda on disarmament, entitled 'Securing Our Common Future'. Transparency in military activities, such as reporting on arms imports and exports, promotes democratic accountability and responsible governance. The activities supported through this Decision contribute to the objectives of that agenda, as well as to Sustainable Development Goal 16 of the UN 2030 Agenda for Sustainable Development,

HAS ADOPTED THIS DECISION:

Article 1

1 For the purpose of promoting peace and security, and in line with the European Security Strategy and the Global Strategy for the Union's foreign and security policy, the Union shall pursue the following objectives:

a promoting effective controls on arms exports by third countries in accordance with the principles set out in Common Position 2008/944/CFSP and in the ATT, and seeking, where appropriate, complementarity and synergies with Union assistance projects in the field of export controls on dual-use goods; and

b supporting third countries' efforts at national and regional levels to render trade in conventional weapons more responsible and transparent, and to mitigate the risk of the diversion of arms to unauthorised users.

2 The Union shall pursue the objectives referred to in paragraph 1 through the following project activities:

a further promoting, among third countries, the criteria and principles set out in Common Position 2008/944/CFSP and in the ATT, on the basis of the achievements made through the implementation of Joint Action 2008/230/CFSP and Decisions 2009/1012/CFSP, 2012/711/CFSP, (CFSP) 2015/2309 and (CFSP) 2018/101;

b assisting third countries in the drafting, updating and implementing, as appropriate, of relevant legislative and administrative measures which aim to establish an effective system of conventional arms export controls;

c assisting beneficiary countries in the training of licensing and enforcement officers to ensure adequate implementation and enforcement of arms export controls;

d assisting beneficiary countries in outreach to their national arms industry to ensure compliance with export control regulations;

e promoting transparency and responsibility in the international arms trade, including through support for national and regional measures that promote transparency and appropriate scrutiny with regard to the export of conventional weapons;

f encouraging those beneficiary countries that have not taken any steps towards accession to the ATT to join the ATT, and to encourage signatories of the ATT to ratify it; and

g promoting further consideration of the risk of the diversion of arms and the mitigation thereof, both from the importing and exporting perspectives.

A detailed description of the project activities referred to in this paragraph is set out in the Annex to this Decision.

Article 2

1 The High Representative of the Union for Foreign Affairs and Security Policy ('the High Representative') shall be responsible for the implementation of this Decision.

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2 The implementation of the project activities referred to in Article 1(2) shall be carried out by the German Federal Office for Economic Affairs and Export Control (Bundesamt für Wirtschaft und Ausfuhrkontrolle — BAFA). The selection of BAFA is justified by its proven experience, qualifications and necessary expertise across the full range of relevant Union arms export control activities.

3 BAFA shall perform its tasks under the responsibility of the High Representative. For that purpose, the High Representative shall enter into the necessary arrangements with BAFA.

Article 3

1 The financial reference amount for the implementation of the project activities referred to in Article 1(2) shall be EUR 1 377 542,73.

2 The expenditure financed by the financial reference amount set out in paragraph 1 shall be managed in accordance with the procedures and rules applicable to the Union's budget.

3 The Commission shall supervise the proper management of the financial reference amount set out in paragraph 1. For that purpose, it shall conclude a financing agreement with BAFA. The financing agreement shall stipulate that BAFA is to ensure the visibility of the Union's contribution, appropriate to its size.

4 The Commission shall endeavour to conclude the financing agreement referred to in paragraph 3 as soon as possible after the entry into force of this Decision. It shall inform the Council of any difficulties in that process and of the date of conclusion of the financing agreement.

Article 4

The High Representative shall report to the Council on the implementation of this Decision on the basis of regular reports prepared by BAFA. Those reports shall form the basis for the evaluation carried out by the Council. The Commission shall report on the financial aspects of the implementation of the project activities referred to in Article 1(2).

Article 5

This Decision shall enter into force on the date of its adoption.

It shall expire 24 months after the date of conclusion of the financing agreement referred to in Article 3(3), or 6 months after the date of its adoption if no financing agreement has been concluded within that period.

Done at Luxembourg, 12 October 2020.

For the Council

The President

J. BORRELL FONTELLES

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ANNEX

PROJECT FOR THE PROMOTION OF EFFECTIVE ARMS EXPORT CONTROLS

1. Objectives

The purpose of this Decision is to promote accountability and responsibility with regard to the legal arms trade in line with Common Position 2008/944/CFSP, thereby contributing to peace, security and stability in countries neighbouring the Union. The objectives of this Decision are to promote improved controls on arms transfers by third countries and to support third countries' efforts, at national and regional levels, to render international trade in conventional weapons more responsible and transparent, and to mitigate the risk of the diversion of arms to unauthorised users. Those objectives should be obtained by promoting the principles and criteria set out in Common Position 2008/944/CFSP and the ATT. The outcomes should aim to increase the effectiveness of national arms export systems in targeted countries: the implementing agency will report on legal, institutional and other relevant changes and their alignment with Common Position 2008/944/CFSP and, where appropriate, the ATT. Those outcomes should be pursued in seeking complementarity and synergies with the Union's ongoing assistance projects in support of the implementation of the ATT, as well as in the field of export controls on dual-use goods. The scope of beneficiaries under this Decision should not overlap with beneficiaries covered under Decision (CFSP) 2017/915.

In order to achieve the abovementioned objectives, the Union should continue to promote the standards of Common Position 2008/944/CFSP, building on the achievements reached through the implementation of Joint Action 2008/230/CFSP and Decisions 2009/1012/CFSP, 2012/711/CFSP, (CFSP) 2015/2309 and (CFSP) 2018/101. For that purpose, assistance should be provided to beneficiary third countries for the drafting, updating and implementation, as appropriate, of relevant legislative, administrative and institutional measures that support an effective system of conventional arms transfer controls.

Support should also be given to the training of licensing and enforcement officers responsible for the implementation and enforcement of arms transfer controls, and to national and regional measures promoting transparency and appropriate scrutiny over exports of conventional weapons. Furthermore, contacts with the private sector (including industry, research institutes and academia) should be promoted in order to ensure compliance with arms transfer control legislation and regulations, focusing in particular on internal compliance programmes (ICPs).

2. Selection of the implementing agency

The implementation of this Decision is entrusted to BAFA. Where appropriate, BAFA will partner with Member States' export control agencies, relevant regional and international organisations, think tanks, research institutes and NGOs.

BAFA has leading experience in the provision of export control assistance and outreach activities. It has developed such experience in all of the relevant fields of strategic export control, addressing CBRN-related dual-use goods and military goods. Through those programmes and activities, BAFA has gained in-depth knowledge of the export control systems of most of the countries included in this Decision.

With regard to arms export control assistance and outreach, BAFA successfully completed the implementation of Decisions 2009/1012/CFSP, 2012/711/CFSP, (CFSP) 2015/2309 and (CFSP) 2018/101. BAFA is also in charge of the technical implementation of the ATT implementation support programme established by Decisions 2013/768/CFSP and 2017/915/CFSP.

BAFA is therefore uniquely placed to identify the strengths and weaknesses of the export control systems of countries that will be the beneficiaries of the activities provided for in this