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

COUNCIL DECISION (CFSP) 2019/1560

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amending Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 29 thereof,

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

Whereas:

(1) On 8 December 2008 the Council adopted Common Position 2008/944/CFSP[(1)], which updated and replaced the European Union Code of Conduct on Arms Exports adopted by the Council on 8 June 1998.

(2) Since the adoption of Common Position 2008/944/CFSP, a number of developments at both Union and international level have resulted in new obligations and commitments for Member States.

(3) On 24 December 2014 the Arms Trade Treaty (ATT), which regulates the international trade in conventional arms, entered into force. All Member States are States Parties to the ATT. The ATT aims to establish the highest possible common international standards for regulating or improving the regulation of the international trade in conventional arms and to prevent and eradicate the illicit trade in conventional arms and prevent their diversion.

(4) On 20 July 2015 the Council adopted conclusions relating to the review of Common Position 2008/944/CFSP and the implementation of the ATT, tasking the competent working group with reassessing the implementation of that Common Position and the fulfilment of its objectives in 2018.

(5) On 25 September 2015 the United Nations General Assembly (UNGA) adopted the 2030 Agenda for Sustainable Development, which includes, inter alia, the goal of promoting peaceful and inclusive societies for sustainable development.

(6) On 19 November 2018 the Council adopted the EU Strategy against illicit firearms, small arms and light weapons and their ammunition, which replaced the EU Strategy to combat illicit accumulation and trafficking of small arms and light weapons and their ammunition adopted by the European Council in 2005. Its purpose is to guide integrated, collective and coordinated European action to prevent and curb the illicit acquisition of small arms and light weapons (SALW) and their ammunition by terrorists, criminals

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and other unauthorised actors, and to promote accountability and responsibility with regard to the legal arms trade.

(7) In accordance with the second subparagraph of Article 21(3) of the Treaty on European Union, the Union is required to ensure consistency between the different areas of its external action. In this respect, the Council takes note of, inter alia, Council Regulation (EC) No 428/2009[(2)] and Regulations (EU) No 258/2012[(3)] and (EU) 2019/125[(4)] of the European Parliament and of the Council.

(8) It is appropriate to strengthen the Union's export control policy for military technology and equipment by updating Common Position 2008/944/CFSP.

(9) Common Position 2008/944/CFSP should therefore be amended,

HAS ADOPTED THIS DECISION:

Article 1

Common Position 2008/944/CFSP is amended as follows:

(1) Article 1 is amended as follows:

(a) paragraph 1 is replaced by the following:

1. Each Member State shall assess the export licence applications made to it, including those relating to government-to-government transfers, for items on the EU Common Military List mentioned in Article 12 on a case-by-case basis against the criteria of Article 2.;

(b) the following paragraph is inserted:

1a. Where new relevant information becomes available, each Member State is encouraged to reassess export licences for items on the EU Common Military List after they have been granted.;

(2) in Article 2, paragraph 1 is amended as follows:

(a) the first subparagraph is replaced by the following:

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.;

(b) the second subparagraph is amended as follows:

(i) the following points are inserted:

(ba) the international obligations of Member States under the Convention on Certain Conventional Weapons and the relevant Protocols annexed thereto;

(bb) the international obligations of Member States under the Arms Trade Treaty;;

(ii) point (c) is replaced by the following:

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(c) 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);;

(iii) the following point is inserted:

(ca) 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;;

(3) Article 6 is replaced by the following:

Article 6

Without prejudice to Council Regulation (EC) No 428/2009[(5)], the criteria in Article 2 of this Common Position and the consultation procedure provided for in Article 4 are also to apply to Member States in respect of dual-use goods and technology as specified in Annex I to Regulation (EC) No 428/2009 where there are serious grounds for believing that the end-user of such goods and technology will be the armed forces or internal security forces or similar entities in the recipient country. References in this Common Position to military technology or equipment shall be understood to include such goods and technology.;

(4) Article 7 is replaced by the following:

Article 7

In order to maximise the effectiveness of this Common Position, Member States shall work within the framework of the CFSP to reinforce their cooperation and to promote their convergence in the field of exports of military technology and equipment, inter alia, by exchanging relevant information, including information on denial notifications and arms export policies, as well as by identifying possible measures to further increase convergence.;

(5) Article 8 is replaced by the following:

Article 8

1 By 30 June of each year, each Member State shall submit to the European External Action Service information for the preceding calendar year on its exports of military technology and equipment and on its implementation of this Common Position.

2 An EU Annual Report, based on contributions from all Member States, shall be submitted to the Council for adoption and made available to the public in the format of a narrative report and a searchable online database on the website of the European External Action Service.

3 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.;

(6) Article 13 is replaced by the following:

Article 13

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