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Proposal for a

**COUNCIL DECISION**

**authorising the Member States to negotiate in the United Nations Conference on the Arms Trade Treaty (New York, 2-27 July 2012) on those matters coming under the exclusive competence of the Union**

## EXPLANATORY MEMORANDUM

The United Nations Conference on the Arms Trade Treaty will be held in New York from 2 to 27 July 2012. The objective of the Conference is a legally binding Arms Trade Treaty aiming at making the legal trade in conventional arms more responsible, by setting high common international parameters to regulate international arms transfers.

The envisaged Treaty is likely to provide for measures (such as export or import licenses) , which fall, in principle, within the scope of the Union's Common Commercial Policy. According to well-established case law, such measures are not removed from the scope of the Common Commercial Policy and, hence, of the Union's exclusive competence merely because a Member State takes such measures in order to safeguard its national security.

Whereas Council Regulation (EC) No 260/2009 of 26 February 2009, on the common rules for imports and Council Regulation (EC) No 1061/2009, of 19 October 2009, establishing common rules for exports have authorised Member States to impose restrictions on imports and exports, respectively, based inter alia on grounds of public security and public morality, it is necessary to ensure that the measures provided in the Treaty comply with the terms of such authorizations.

Moreover, over the past 20 years, several EU legal acts have been adopted aiming at facilitating and eliminating barriers for the transfers of conventional arms within the internal market or aiming at regulating the exports of conventional arms and dual use goods to third countries:

- (a) Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons, as amended;
- (b) Council Directive 93/15/EEC of 5 April 1993 on the harmonization of the provisions relating to the placing on the market and supervision of explosives for civil uses, as amended;
- (c) Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community, as amended;
- (d) Regulation (EU) No 258/2012 of the European Parliament and of the Council of 14 March 2012 implementing Article 10 of the United Nations' Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against Transnational Organised Crime (UN Firearms Protocol), and establishing export authorisation, and import and transit measures for firearms, their parts and components and ammunition;
- (e) Council Regulation (EC) No 428/2009, of 5 May 2009, setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items;
- (f) Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works

contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security.

In order to ensure the compatibility between a future Arms Trade Treaty and the provisions of Directives 91/477/EEC, 93/15/EC and 2009/43/EC, the future treaty should not require that the transfers of arms and ammunitions between the Member States should be assessed against agreed parameters and authorised by a license on a case-by-case basis. If such a requirement was retained in a future Arms Trade Treaty, the Member States that would become party to such a treaty could not apply it to intra-EU arms trade without breaching EU law.

In order to ensure the compatibility between a future Arms Trade Treaty and the provisions of Regulation (EU) No 258/2012, the future treaty should be consistent with the principle stated by the UN Protocol on Firearms and namely Article 10. According to the latter firearms and related items should not be transferred between States without the awareness and consent of all States involved. Firearms should not be exported to or through countries that have not authorised the transfer.

The negotiations of the Arms Trade Treaty covers issues coming under the exclusive competence of the Union, because they are within the scope of the common commercial policy and because the conclusion of the Treaty may affect common rules or alter their scope.

In the present circumstances, it is advisable to authorise the Member States to negotiate the Arms Trade Treaty on matters falling under the Union's exclusive competence in accordance with the appropriate negotiating directives. This authorisation does therefore not cover those elements of the Arms Trade Treaty that may fall under Union's competence under the CFSP and relate to the CFSP acquis.

Proposal for a

## COUNCIL DECISION

**authorising the Member States to negotiate in the United Nations Conference on the Arms Trade Treaty (New York, 2-27 July 2012) on those matters coming under the exclusive competence of the Union**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 2(1), 114(1), 207(4) first subparagraph, and 218(3) and (4) thereof,

Having regard to the proposal from the Commission<sup>1</sup>,

Whereas:

- (1) At its sixty-fourth session, the General Assembly of the United Nations adopted resolution 64/48, in which it decided to convene a United Nations Conference on the Arms Trade Treaty to meet for four consecutive weeks in 2012 to elaborate a legally binding instrument on the highest possible common international standards for the transfer of conventional arms. The United Nations Conference on the Arms Trade Treaty will be held in New York from 2 to 27 July 2012. The objective of the Conference is a legally binding Arms Trade Treaty aiming at making the legal trade in conventional arms more responsible, by setting high common international parameters to regulate international arms transfers and tackle the undesirable and irresponsible proliferation of conventional arms.
- (2) The envisaged Treaty is likely to provide for measures (such as export or import licenses) falling within the scope of the Union's Common Commercial Policy. Whereas Council Regulation (EC) No 260/2009 of 26 February 2009, on the common rules for imports and Council Regulation (EC) No 1061/2009, of 19 October 2009, establishing common rules for exports have authorised Member States to impose restrictions on imports and exports, respectively, based inter alia on grounds of public security and public morality, it is necessary to ensure that the measures provided in the envisaged Treaty comply with the terms of such authorizations.
- (3) Several European Union legal acts have been adopted aiming at facilitating and eliminating barriers for the transfers of conventional arms within the internal market or aiming at regulating the exports of conventional arms or dual use items to third countries, including in particular: a) Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons, b) Council Directive 93/15/EEC of 5 April 1993 on the harmonization of the provisions relating to the

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<sup>1</sup> OJ C , p . .

placing on the market and supervision of explosives for civil uses, as amended, c) Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community, d) Regulation (EU) No 258/2012 of the European Parliament and of the Council of 14 March 2012 implementing Article 10 of the United Nations' Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against Transnational Organised Crime (UN Firearms Protocol), and establishing export authorisation, and import and transit measures for firearms, their parts and components and ammunition; e) Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security; and f) Council Regulation (EC) No 428/2009, of 5 May 2009, setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items.

- (4) A legally binding instrument on the highest possible common international standards for the transfer of conventional arms concerns matters that fall under Union exclusive competence because they are within the scope of the Common commercial policy or the conclusion of the Arms Trade Treaty may affect the abovementioned common rules or alter their scope.
- (5) It is necessary to exceptionally authorise the Member States to negotiate the Arms Trade Treaty on those matters falling under the Union's exclusive competence.
- (6) This decision does not cover those elements of the Arms Trade Treaty that may fall under Union's competence under the CFSP and relate to the CFSP acquis.

HAS ADOPTED THIS DECISION:

#### *Article 1*

Member States are hereby authorised to negotiate at the United Nations Conference on the Arms Trade Treaty on those matters falling under the Union's exclusive competence.

Member States shall coordinate with the support of representatives of the Commission and of the European External Action Service, who shall also assist in the negotiations as appropriate.

#### *Article 2*

The negotiations shall be carried out in accordance with the negotiating Directives set out in the Annex.

*Article 3*

This Decision is addressed to the Member States.

Done at Brussels,

*For the Council  
The President*

## ANNEX

- (1) The Arms Trade Treaty shall not contain any provision preventing Member States to apply:
  - (a) Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons, as amended;
  - (b) Council Directive 93/15/EEC of 5 April 1993 on the harmonization of the provisions relating to the placing on the market and supervision of explosives for civil uses, as amended;
  - (c) Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community, as amended;
  - (d) Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security;
- (2) The Arms Trade Treaty shall contain no provision restricting the free movement of goods, persons, services and capital within the Union's internal market, unless the restriction is specifically justified by Article 346 TFEU.
- (3) Any measures provided in the Treaty which restrict exports or imports from/into the Union, or transit through the territory of the Union shall be compatible with any applicable provisions of Union law, including in particular:
  - (a) Council Regulation (EC) No 260/2009 of 26 February 2009, on the common rules for imports;
  - (b) Council Regulation (EC) No 1061/2009, of 19 October 2009, establishing common rules for exports;
  - (c) Regulation (EU) No 258/2012 of the European Parliament and of the Council of 14 March 2012 implementing Article 10 of the United Nations' Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against Transnational Organised Crime (UN Firearms Protocol), and establishing export authorisation, and import and transit measures for firearms, their parts and components and ammunition; and
  - (d) Council Regulation (EC) No 428/2009, of 5 May 2009, setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items;
  - (e) Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community, as amended;

- (4) The Arms Trade Treaty shall contain provisions enabling the European Union to become a Party to the Treaty.