



The EU, Arms, and the New World Disorder

COARM-NGO Forum

09:30–17:00 (CEST), Tuesday 4 July 2023

Report of discussion

The 2023 COARM-NGO Forum was attended by 62 participants, of which 14 were COARM representatives from member states, 34 were civil society representatives, and the rest were from the European External Action Service (EEAS), the European Parliament and the arms industry. Much of the Forum focused on the upcoming review of EU [Common Position](#) 2008/944/CFSP, around the three COARM focus groups on further harmonisation, commonly produced military equipment and enforcement challenges. The discussion was shaped by the broader context of the current geostrategic shifts indicated by inter alia the war in Ukraine, Europe's deteriorating relationship with China, and the EU's adoption of an increasingly hard-security approach in terms of foreign and security policy. The Forum concluded with a discussion on the ongoing review of the Arms Trade Treaty (ATT) process and how best to rejuvenate it.

Arms and the new world disorder

The importance of the geostrategic context was highlighted as key to shaping the environment in which arms trade takes place, while also influencing wider military and security policies of EU and its member states. Russia's invasion of Ukraine was deemed a turning point, one that has prompted the EU to see itself as more of a hard-security actor than was previously the case. One member state representative asserted that, in responding to Russian aggression in Ukraine, the EU has shown political unity and made significant progress in terms of its security and defence policy. The war in Ukraine has, overall, led to calls for enhanced EU security and defence capabilities and catalysed discussions about European strategic autonomy. To support the demand for military equipment from Ukraine, via the European Peace Facility (EPF) or otherwise, there has been pressure to scale up the production of hardware to levels more in keeping with a wartime environment. As demand currently exceeds the manufacturing capabilities of the European defence industry, questions of scaling up to supply Ukraine are complicated by the need to reconcile a push to increase joint production while protecting member states' capacities for national production and procurement.

The EPF has notably become a key tool in the EU's support for Ukraine in the war with Russia; indeed, its use as a mechanism for channelling support to Ukraine marked the first time it was used to provide 'lethal' military equipment to any partner state. One member state representative asserted that, in financial terms, the EPF is now less focused on conflict prevention and peacebuilding and is more of a military and security tool of member states, as borne out by a significant increase in the financial ceiling of assistance programmes under the instrument. Participants shared concerns that the 'taboo' of providing lethal military equipment through the EPF has been broken and that this could have implications for EPF engagement in

other contexts. However, one member state representative noted that the role of the EPF as 'taboo-breaker' should not be over-stressed, on the grounds that Ukraine is a uniquely complex situation.

Responding to the challenges – the role of Europe

It was noted that while the EU's increasing focus on defence and security, including arms production and higher defence spending, predates the 2022 invasion of Ukraine, Russia's actions have massively accelerated this trend and turbo-charged calls for more strategic autonomy and initiatives to facilitate joint EU procurement and production of military items. This conflict, and the deterioration of relations with Russia, has meant that a variety of arms control instruments have been underwhelming, abandoned or blocked. A recent example is the open-ended working group (OEWG) on ammunition, whose [final report](#) was disappointing in its level of ambition. Also highlighted were the ways in which new technologies are further complicating the long-standing challenge managing items with both civilian and military application.

It was further suggested that, in responding to current geopolitical challenges, the EU and its member states have also been faced with certain trade-offs in terms of their values and standards. For example, we are seeing in some cases a reduction in the level of transparency with respect to arms transfers to Ukraine, which are being justified as being on national security grounds and only temporary. Challenges have also arisen around weapons previously considered 'taboo', such as anti-personal mines and cluster munitions, some of which have been seen by some as acceptable for use by Ukraine. So participants raised concerns about whether the EU and its member states would return to 'pre-Ukraine' practice subsequent to an eventual end to the conflict; member state representatives assured that there is full intention to do so.

That said, the need for greater policy convergence among member states was emphasised, especially given that export control remains a member state competence. Initiatives towards this end have included tools aimed at information sharing in support of arms export risk assessments. Some examples include the COARM licensing officers' database and UN panels of experts monitoring embargos, as well as information from the EPF, the EU-funded [iTrace](#) project of Conflict Armament Research (CAR), and the [EU Non-Proliferation and Disarmament Consortium](#) (EUNPDC). Information that comes from projects financed by the EU was highlighted as an important tool to support export control processes. However, member states' input into these information-sharing tools, including information from diplomatic networks, meetings etc., was noted as lacking. Other sources of information include EU Common Security and Defence Policy (CSDP) missions and tasks, such as the [EU Advisory Mission Ukraine](#). The [Ammunition Management Advisory Team](#) (AMAT) was also proposed as a useful source for licensing officers.

The model offered by the EPF was also suggested as a possible way to promote a more joined-up approach at the EU level or among member states, encompassing military assistance, arms supply and arms management, both to cover the risk of diversion and to build channels of communication among states. While the EPF has for the first time been used to provide lethal military equipment, the EU through the EEAS is called to assess the risks that specific assistance measures could pose, for example on the misuse and diversion of items. It has implemented its own mitigation and safeguarding measures, such as post-shipment visits and on-site inspections in Ukraine. This is noteworthy as it, to some extent, goes beyond the controls and measures that member states have themselves implemented. These measures offer an opportunity for individual EU member states to adopt similar policies and approaches, including in other contexts.

The COARM and CONOP working groups and the role that EU delegations play in coordinating the position of EU member states, to ensure that the 27 states can engage in negotiations as a bloc, such as in the Biennial Meeting of States on the Programme of Action, offer a great opportunity for multi-state coordination. Other examples of this coordination capacity include: a new [Proposal for a Directive of the European Parliament and of the Council on the definition of criminal offences and penalties for the violation of Union restrictive measures](#); and the recent adoption of a [European Economic Security Strategy](#), with sections on export controls of dual-use items, which calls for more coordinated action at the EU level. The EPF could also potentially play an EU coordination role for programmes and initiatives that involve the provision of military assistance. Moreover, the EPF already foresees the possibility of complementing its assistance measures with support to beneficiaries in weapons and ammunition management (WAM). As such, the EU is already well-placed to make assistance conditional on stronger safeguards and then help beneficiaries' implementation.

Belgium has published a paper on the type of information that the EU could provide to member states on an *ad hoc* basis, especially to support smaller states. For example, EU delegations could support verification of end-user certificates (EUCs) for member states that do not always have diplomatic representation in recipient countries. There is also a large scope with post-shipment controls. The EU can also use its role and networks to remind ATT States Parties to submit their national reports, contribute to the treaty, disseminate information and messages, and conduct outreach on arms control.

Regardless of the assurances on eventual return to EU standards and norms as well as the opportunities that can be provided via the EPF, concerns were raised by participants, especially given that worrying trends were already being observed before the invasion of Ukraine. It was

emphasised that the EU and its member states cannot and should not rely on the assumption that the situation will return to business-as-usual, especially given the risk that future leaders of the EU and its member states may not act in line with these expectations. Moreover, it was noted that – citing the still extant [EU 2013 Council conclusions on Egypt](#) as an example – even when there are certain political commitments to apply exceptional restrictive measures on the supply of military equipment, these can lack any practical force where they clash with competing motivations of individual member states. It was suggested that arms control agreements and regulation are all too often viewed as barriers to overcome rather than tools to build human security, only echoing these concerns.

Implications for the Common Position

Among the issues the EU needs to address are intangible transfers of technology and data, emerging technologies, and the out-of-control proliferation of new technologies (e.g. relating to unmanned aerial vehicles). The situation in Ukraine has compromised the ability to update the shared military and dual-use lists. The EU's Common Military List is based off the Wassenaar Arrangement lists, updates to which require Russian agreement. However, as any additions to the Wassenaar lists would immediately be added to Russian sanctions, such agreement is effectively unachievable until circumstances change. The 2023 [EU joint economic security strategy](#) explicitly includes dual-use goods, which raises the prospect of EU acting independently if necessary to establish controls. Ultimately, it is possible for the EU and like-minded counterparts to together update equipment lists, regardless of the Wassenaar Arrangement.

There is a perceived need/intention to strengthen the EU's industrial and technological base through closer cooperation and convergence. One issue raised in this context was cooperation among governments to prevent

disagreements over export licensing processes of commonly-produced military goods. Another was about involving industry more actively in export control, through internal compliance frameworks. The role that industry could play in upholding embargoes was mentioned in this regard. Stronger cooperation and convergence were seen as enhancing arms embargo monitoring and preventative approaches to diversion.

There was a call to build consistency around the EU's external activities, including with respect to arms export control policies, with the EU aiming to be more active and have greater impact as a global actor amid an increasingly challenging security context. However, member states have not reached a consensus on whether arms transfer control should be adopted as an EU policy tool. At the moment, non-EPF arms exports continue to fall fully within national competence, and are based on national security policy. It was suggested there is a need to have a more structured collective approach, which could also allow for the EU to build security partnerships with third countries. This could involve member states more explicitly aligning their export policies with the CFSP; it could also include more assistance from EU institutions, for example information collection through EU diplomatic networks or databases.

Participants were advised not to expect the Common Position review to deliver a 'revolution'; member states are quite happy with the current structure. That said, there is room for progress in some areas, such as transparency and reporting, convergence on anti-diversion measures and post-shipment controls, and more convergence of arms export policies with the Common Position criteria.

One participant discussed the issue of several different institutions becoming involved in the field of defence and security in recent years, as a result of geopolitical developments, which have both direct and indirect implications for arms export controls. The initiatives established within the EU to strengthen intra-EU defence

cooperation as well as support transfers to non-EU countries do pose opportunities for increased coherence and convergence in the application and assessment of the Common Position in the broader framework of EU defence and security, while at the same time complicating, confusing or changing the relationship between member states and EU institutions and the way decisions are made. This is illustrated by the [Act in Support of Ammunition Production \(ASAP\)](#), which states (in para. 45) that in order ‘to speed up the delivery lead times throughout the concerned supply and value chains, it appears necessary to exempt the transfer of relevant defence products from the obligation of prior authorisation within the Union’. This sets a precedent for how EU legislation can impact national transfer control procedures.

One presenter was of the view that the EPF is functioning in part as an ‘autonomous’ arms export control system, including assessments based on the Common Position criteria, EUCs, mitigation measures for the risk of diversion, and post-export controls. Council decisions regarding EPF assistance measures can be seen as representing EU consensus on the interpretation of the Common Position criteria in some examples, which would likely not have taken place just a few years ago. That said, in some countries, national export control authorities are not involved in the decision-making process and determination of the national position in the European Council. As a result, there is a risk of incoherence between EU- and national- level decision-making. This further raises the question on how decisions made at the EU level influence national export control policies and practices. There should be a discussion on how to integrate COARM into these processes. Linking the Common Position review focus groups on further harmonisation and commonly produced military equipment could also contribute to building trust and consistency on decision-making among EU partners, which is vital for collaborative programmes to be sustainable and succeed.

The presenter went on to suggest that the European Defence Fund (EDF) can be seen as contributing to a push towards convergence in national export control policies at the intra- and extra-European level. Agreements on future exports are seen by some as essential for the success and sustainability of transnational collaborative programmes set up within the framework of the EDF. Though consensus among the EU member states is needed it is also difficult to reach. Moreover, there are concerns that any consensus reached will be at the ‘lowest common denominator’ and a limited number of member states will drive the decision-making process. That said, this also provides an opportunity to develop clearer procedures to facilitate efficient and pragmatic cooperation between EU industries, while strengthening the principles set out in the Common Position. Building the link between the Common Position review focus groups on further harmonisation and commonly produced military equipment could allow for balancing economic, geopolitical, and security considerations within the export control system.

Participants questioned whether the Common Position remains relevant amid broader developments concerning human rights at the EU level. There are instruments such as the EU Charter on Fundamental Rights and the UN Guiding Principles on Business and Human Rights, which provide a more obligatory framework, and which raise questions as to whether the Common Position adequately reflects existing human rights frameworks and if a more binding instrument might be useful. One member state representative somewhat echoed these concerns, positing the value of a legal act to ensure respect of human rights when considering strategic partnerships, even though there seems to be a strong humanitarian tendency in member states’ national laws and policies.

Thematic focus of the upcoming Common Position review

Further Harmonisation

Several questions were posed on what harmonisation entails, including in the context of the work of the focus group thus far, with some member state representatives and participants offering suggestions on topics for consideration. Suggestions from member state representatives included:

- Harmonisation of EU Common Position implementation at a national level

While it is a legally binding text, different member states approach the implementation of certain requirements in different ways. For example, Austria pushes for higher transparency regarding the situation in Ukraine by the EU and other member states, due to a concern that it may prove difficult to return to certain norms and standards once they have been deviated from. Along these lines, a proposal was put forward in 2021 in the European Parliament for a [regulation setting up a Union regime for the control of arms exports](#), with parameters set at the European level but with implementation still taking place nationally.

- Harmonisation between a parent and subsidiary company with regards to export decisions

It was noted that while decisions of export authorities in one country have limited sway in other jurisdictions, with a multinational company, with subsidiaries in various states, it is important to consider the responsibility of the state in which the parent company is located. In Austria, for example, requests for the transfer of technology to third countries without Austria-compatible export controls

have been denied. If technology is transferred under a licence issued by the Ministry of Economy, that licence always stipulates that the goods produced with this technology must not be labeled as “made in Austria”. One member state representative argued that this issue is already considered through the assessment of the risk of diversion focusing on the jurisdiction of the subsidiary.

Other questions and issues raised included:

- Whether harmonisation should include decision-making on licences, given that Article 9 does talk about joint assessment of export applications.
- Whether it would be possible to implement a form of ‘no-undercutting’ policy regarding denial notifications.
- How to address the issue of ‘informal’ denials following consultations between licensing authorities and prospective exporters, noting that systems of this type can lead to information of high value to other national authorities not being shared through the denial notification mechanism.
- Having all member states report on *deliveries* would be welcomed by civil society, as not all states currently submit this information to the EEAS for the EU Annual Report. With licensing practices and how to report on licences granted varying widely across member states, reporting on deliveries is crucial, as this produces usefully comparable data.

- How to manage divergence in the use and understanding of categories of technology, such as ML22 (Technology for the development, production or use of controlled items), in relation to reporting.
- Whether there is a potential for greater cooperation or adoption of an EU approach on post-export controls, including on-site inspections.
- How to manage coherence with other instruments across the EU, taking account of the potential issue of political costs for member states of deviating from decisions made under instruments such as, for example, the EPF.
- Harmonisation with the ATT, with respect for example to references to gender-based violence (GBV) and ‘facilitation’, which have not as yet been incorporated into the Common Position. It was pointed out that if, as they claim, EU member states already assess the risks of GBV and facilitation, the relevant changes to the text of EU Common Position should be straightforward.

A claim that decision-making was largely consistent across the EU, with only few outliers under some circumstances, was refuted by various participants, who referred by way of example to the massively divergent approaches taken by member states on exports to leading combatants in the Yemen war.

Ultimately, questions remain as to whether the EU and/or (some of) its member states wish to continue to operate as independently as in the past or to increase harmonisation, and whether to prioritise using arms exports to reinforce a securitised and militarised approach to foreign policy or the EU’s core human rights and humanitarian values.

Commonly produced military equipment

The focus group on commonly produced military equipment has developed a working paper that is currently being discussed in COARM, with the aim of developing consensus around concrete mechanisms to include in the revised Common Position. This approach would aim to address different assessments of exports under the Common Position criteria as well as support joint decision-making on sales of EU goods to third countries. The focus group is looking at circumstances where multiple export control assessments are being applied to jointly produced military goods, especially given the steady increase in joint production, including in the context of Ukraine. With the stated objective being to develop a flexible approach to facilitate and maintain the highest standards on export control processes for commonly produced military equipment, proposals include:

- Develop a streamlined national authorisation process for intra-EU transfer of components required for commonly produced military equipment, with the member state of final assembly and from which export to destinations outside the EU takes place having ultimate responsibility for risk assessment and export decisions.
- When considering sales to third countries, establish cooperative procedures to determine destinations and end-users eligible to receive exports.
- Elaborate specific grounds for intermediate member states in the supply chain to refuse to allow onward export by the state of final assembly, for example on grounds of national security.
- Develop mechanisms to manage disagreements about exports to third countries.

It was suggested that giving final decision-making authority to only the country of final

assembly would compromise efforts to maintain the highest possible standards in export control processes. This is especially given that the majority of decision-making will rest with the small minority of member states that produce significant quantities of finished systems, such as France, Germany, Italy and Spain. The alternative approach is that joint production provides an opportunity for joint responsibility and accountability. Another proposal was the creation of regularly updated white- and/or black-lists to support a streamlined approach to commonly produced military equipment.

One member state representative responded to participants' concerns, stating that the focus group's proposals offer an opportunity for greater convergence regarding understanding and implementation of the Common Position criteria as well as more consultations and discussions among member states on the best way forward. Another reiterated that the objective of the proposal is to improve efficiency while also maintaining high standards in export controls. Regardless, participants maintained their concern that member states' practice is still too varied to move to a system where the country of onward export is in effect taking export decisions on behalf of other member states.

Enforcement Challenges

The focus group on enforcement challenges is still at a relatively early point of their work, with different perspectives within the group about convergence and cooperation in COARM in general, with some satisfied with the current levels and others believing that further steps need to be taken towards this goal.

The focus group has identified a few topics to be examined in detail:

Post-shipment controls – work is required to clarify a few key terminological differences. Further to this, a set of measures has been identified to support post-shipment controls, such as on-site inspections, documentary controls, collecting information from embassies

and EU delegations abroad for EUC verification. Smaller member states in particular supported the involvement of EU delegations in these processes, in light of their relatively limited diplomatic presence abroad. The SIPRI policy paper [Post-shipment on-site inspections: Multilateral steps for debating and enabling their adoption and use](#) was identified as providing useful input to this process.

Exchanging information on legal cases – licensing authorities have increasingly been facing the prospect of challenges brought about by legal cases launched by civil society on one hand and, it was claimed, the arms industry exporting companies on the other if licences are denied.

Controls of intangible transfer of technology – this topic was not explored in depth but was still highlighted as an important issue for COARM. Many participants raised further issues pertinent to enforcement challenges:

It was highlighted that coherent enforcement requires a common understanding of which legal frameworks take priority: national laws, the EU Common Position, or the ATT. It is also crucial to remember that accountability and arms export competence lie more with member states than with the EU, even though there is an EU aspect to the arms exports control process. As such, it is vital to review and support engagement among member states despite diverging positions.

Questions were raised about how the EU and its member states respond to problematic situations, such as deviations from issued licences, in terms of their implications for future risk assessments, re-evaluation of licences, and approaches to national and international policy. An Italian diversion case was referred to as an example, whereby ammunition due for delivery to the Dominican Republic was discovered in Senegal. Further to this, there is also the issue of risk versus reward for companies that deviate from or violate issued licences and whether there are sufficient consequences of non-compliance to ensure companies do follow the rules. One member state representative deemed this as primarily within the purview of individual member states.

Concerns about joint and subsequently downstream production of arms and its implications for ensuring compliance with the Common Position were raised. One example of this was cooperation between Italy and Turkey to produce helicopters, which are now being made entirely by Turkish companies. Another participant raised the issue of links between parent and subsidiary companies, where the latter is outside the jurisdiction of a member state. Particularly, it was suggested that subsidiaries could be required to obtain permission from parent companies when engaging in exports or provide data/information on their activities abroad. However, this is dependent on the political will of the member state.

Concerns were expressed about the enforcement of embargoes, given that recent reports have highlighted a number of European companies may be in breach of the Myanmar embargo. It was highlighted that the challenges in identifying companies violating such embargoes renders this issue difficult to investigate and address. Recent investigations in Italy, for example, found no evidence of violations.

The ATT

At the eighth Conference of State Parties (CSP8) in 2022, States Parties tasked the ATT Management Committee to review the programme of work and prepare a proposal for CSP9 (set for August 2023). There was relatively broad consensus, both among COARM members and among civil society representatives, that the ATT process needs to be reviewed and rejuvenated. That said, participants voiced several concerns regarding the Management Committee's proposal for the review, which suggested that, first and foremost, there should be only one set of preparatory meetings (comprising working groups and a preparatory committee) per cycle (as opposed to the existing two sets), which would see a reduction in the total number of days of preparatory meetings. Another suggestion

was to decouple the working groups and preparatory committee meetings and separately hold informal virtual and/or hybrid small-group/regional meetings over the course of the cycle to supplement the process. The Management Committee's proposals had little to say, however, on what substantive objectives these changes were expected to advance.

The rationales given for these proposals included:

The busy disarmament calendar – although it was noted that the ATT is an arms transfer control treaty, not a disarmament treaty. Further to this point, it was generally agreed that there should be greater involvement and participation of export control officials and authorities to attend these meetings, rather than the current preponderance of Geneva-based diplomats, in order to properly engage in the necessary discussions around practical implementation of the Treaty.

The global economic downturn and the Treaty's unfavourable financial situation – participants argued that the review should not be approached as a cost-cutting exercise as currently seems to be the case. The idea that reducing the scale of the annual Treaty cycle will lead to states paying their existing arrears and then their ongoing dues¹ conflates two different issues but has unfortunately gained undue prominence over the last year or so. Instead, the issues of arrears and contributions should be addressed separately through a more proactive approach that engages and develops targeted solutions with State Parties that are not so far from paying their way.

Low participation rates – participants widely argued that reducing the process will not address the issue of low participation rates and engagement in the process. In-person

¹ The costs of running the ATT Secretariat and holding ATT meetings are apportioned to participating states based in essence on their gross national income. These are referred to as '[assessed contributions](#)'.

attendance was deemed key to maintaining meaningful participation and engagement. The proposal of potential informal virtual and/or hybrid small group and/or regional meetings to supplement the proposal of cutting the process left many unanswered questions as to how these would address the problem, as the Management Committee's proposal had very little to say on how these would work in practice.

The goal was seen as having regular participatory discussions that include all stakeholders.

Other suggestions by civil society representatives for rejuvenating the process, with some support from member state representatives, included:

- Properly preparing delegations for these meetings by bringing forward real-world examples of policy issues with which states could engage. This would be especially useful for states that face challenges on practical treaty implementation, who could look to others with more experience. Information-sharing from industry could also be useful here to understand how they manage their export control responsibilities.
- Engaging in comprehensive stock-taking to get a better understanding of the progress made on issues such as the development and implementation of legislation and national export control systems, etc. This would allow States Parties to more effectively contribute to the review process. Examples were shared of effective support for Latin American states – such as Chile, Colombia, Costa Rica and Peru – in establishing export control systems and national control lists with great results.

Overall, participants and some member state representatives raised the concern of fatigue among States Parties to the ATT, resulting in declining participation and engagement rates,

which needs to be tackled through outreach and system rejuvenation. The review process should therefore be seen as an opportunity to address the challenges discussed through comprehensive examination of the current system and incorporation of the wide-ranging views of all stakeholders, which will not be helped by reducing the time allocated towards such dialogue.²

² In August 2023 the ATT CSP9 decided, on a one-year trial basis, to hold one in-person session of four days of ATT Working Groups and one in-person session of two days of CSP preparatory meetings. To avoid duplication, the Working Group and the CSP preparatory meetings are to be held separately. The [CSP9 final report](#) contained no reference to informal meetings, on the basis that these can happen anyway without official endorsement or direction from the Conference.