(Acts adopted pursuant to Title V of the Treaty on European Union)

COUNCIL COMMON POSITION 2003/468/CFSP
of 23 June 2003
on the control of arms brokering

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the European Union, and in particular Article 15 thereof,

Whereas:

(1) In implementing the European Union Code of Conduct on Arms Exports Member States have agreed to address the problem of control of arms brokering.

(2) Member States have continued and deepened their discussions on arms trafficking and brokering activities and have reached agreement on a set of provisions for controlling these activities through national legislation, as set out below.

(3) Most Member States already have in place or are in the process of adopting national legislation on the subject.

(4) In the Fourth Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports Member States have agreed to continue deliberations in the area of arms brokering on the basis of the guidelines already approved, with a view to adopting a Common Position on the subject.

(5) In the Wassenaar Arrangement Participating States agreed on a Statement of Understanding to consider the adoption of national measures regulating arms brokering activities.

(6) The United Nations Programme of Action on Small Arms and Light Weapons (SALW) commits States to develop adequate national legislation or administrative procedures to regulate small arms and light weapons brokering activities, and undertake further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering of small arms and light weapons.

(7) 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 requires States Parties to establish a system for regulating the activities of those who engage in brokering,

HAS ADOPTED THIS COMMON POSITION:

Article 1

1. The objective of this Common Position is to control arms brokering in order to avoid circumvention of UN, EU or OSCE embargoes on arms exports, as well as of the Criteria set out in the European Union Code of Conduct on Arms Exports.

2. In order to achieve this objective, Member States will ensure that their existing or future national legislation on arms brokering is in conformity with the provisions set out below.

Article 2

1. Member States will take all the necessary measures to control brokering activities taking place within their territory. Member States are also encouraged to consider controlling brokering activities outside of their territory carried out by brokers of their nationality resident or established in their territory.

2. Member States will also establish a clear legal framework for lawful brokering activities.

3. For the purposes of paragraph 1, brokering activities are activities of persons and entities:

— negotiating or arranging transactions that may involve the transfer of items on the EU Common List of military equipment from a third country to any other third country;

or

— who buy, sell or arrange the transfer of such items that are in their ownership from a third country to any other third country.

This paragraph shall not preclude a Member State from defining brokering activities in its national legislation to include cases where such items are exported from its own territory or from the territory of another Member State.

Article 3

1. For brokering activities, a licence or written authorisation should be obtained from the competent authorities of the Member State where these activities take place, and, where required by national legislation, where the broker is resident or established. Member States will assess applications for a licence or written authorisation for specific brokering transactions against the provisions of the European Union Code of Conduct on Arms Exports.

2. Member States should keep records for a minimum of 10 years of all persons and entities which have obtained a licence under the terms of paragraph 1.

Article 4

1. Member States may also require brokers to obtain a written authorisation to act as brokers, as well as establish a register of arms brokers. Registration or authorisation to act as a broker would in any case not replace the requirement to obtain the necessary licence or written authorisation for each transaction.

2. When assessing any applications for written authorisations to act as brokers, or for registration, Member States could take account, *inter alia*, of any records of past involvement in illicit activities by the applicant.

Article 5

1. Member States will establish a system for exchange of information on brokering activities among themselves as well as with third States, as appropriate. A specific arrangement for such exchange of information will be established. This arrangement will take particular account of the case where several Member States are involved in the control of the same brokering transaction(s).

2. Information will be exchanged, *inter alia*, in the following areas:

— legislation,

— registered brokers (if applicable),

— records of brokers,

— denials of registering applications (if applicable) and licensing applications.

Article 6

Each Member State will establish adequate sanctions, including criminal sanctions, in order to ensure that controls on arms brokering are effectively enforced.

Article 7

This Common Position shall take effect on the date of its adoption.

Article 8

This Common Position shall be published in the *Official Journal of the European Union*.

Done at Brussels, 23 June 2003.

For the Council

The President

G. PAPANDREOU