

# **SIPRI YEARBOOK 2013**

Armaments, Disarmament and International Security

## Export control developments in the European Union

SIBYLLE BAUER AND MARK BROMLEY



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## V. Export control developments in the European Union

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During 2012 the ongoing review of the European Union (EU) Common Position defining common rules governing control of exports of military technology and equipment led to no major developments regarding EU-wide rules for the control of arms exports, brokering, trans-shipment and transit. However, EU member states moved ahead with the implementation of a new regulation governing intra-community trade in defence goods. The range of dual-use items subject to control was expanded in line with agreements in the multilateral control regimes, albeit with a substantial delay due to the new requirement to involve the European Parliament. The European Parliament's efforts to expand the coverage of EU controls on dual-use items to include transfers of surveillance technology formed part of a range of initiatives in this area in the wake of the events of the Arab Spring in 2011 and 2012. The European Parliament is thus emerging as a new actor shaping dual-use trade controls in the EU.

### **The review of the European Union's Common Position on arms exports**

Since the early 1990s there have been ongoing efforts at the EU level to strengthen and harmonize member states' arms export policies.<sup>1</sup> The most important element of these efforts is the 2008 EU Common Position defining common rules governing control of exports of military technology and equipment.<sup>2</sup> Article 15 of the Common Position states that the instrument 'shall be reviewed three years after its adoption'. In mid-2011, the European External Action Service (EEAS)—as chair of the Council Working Group on Conventional Arms Exports (COARM), which oversees implementation of the Common Position—began preparations for the review. A questionnaire was distributed seeking EU member states' views on the potential scope and coverage of the review and substantive dis-

<sup>1</sup> See Bauer, S., 'The Europeanisation of arms export policies and its impact on democratic accountability', Doctoral thesis, Université libre de Bruxelles and Freie Universität Berlin, May 2003; and Bromley, M., *The Impact on Domestic Policy of the EU Code of Conduct on Arms Exports: The Czech Republic, the Netherlands and Spain*, SIPRI Policy Paper no. 21 (SIPRI: Stockholm, May 2008).

<sup>2</sup> Council of the European Union, Council Common Position 2008/944/CFSP of 8 Dec. 2008 defining common rules governing control of exports of military technology and equipment, *Official Journal of the European Union*, L335, 8 Dec. 2008. The 2008 Common Position superseded the 1998 Code of Conduct on Arms Exports. Council of the European Union, 'European Union Code of Conduct on Arms Exports', 8675/2/98 Rev. 2, 5 June 1998.

cussions on the topic took place in COARM throughout 2012.<sup>3</sup> Discussions were also held with the European Parliament, non-governmental organizations (NGOs) and defence industry representatives.<sup>4</sup>

The review took place against a background of widespread criticism by NGOs and parliamentarians concerning the implementation of EU arms export controls at the national level, largely due to revelations about transfers to states in the Middle East and North Africa prior to the Arab Spring uprisings.<sup>5</sup> However, in late 2012 the EU and its member states announced that the EU Common Position continued to ‘properly serve the objectives set by the Council in 2008 and to provide a solid basis for the coordination of member states’ arms export policies’.<sup>6</sup> This means the review will not result in any changes to the text of the Common Position itself. However, the EU also announced that ‘further progress is achievable in the implementation of the Common Position and in ensuring maximum convergence among Member States in the field of exports of conventional arms’.<sup>7</sup> The EU and its member states have tasked themselves with updating, as appropriate, ‘the User’s Guide and EU Common Military List, notably in the light of the results of the review process of the Common Position’.<sup>8</sup> It is likely that several sections of the User’s Guide—which provides guidance on the implementation of the Common Position—will be revised and updated, particularly those sections that deal with the implementation of the Common Position’s eight criteria as well as the mechanisms for information exchange, denial notification and consultation.<sup>9</sup>

### **Implementation of the directive on intra-community transfers**

During 2012, EU member states continued to transpose the directive on intra-community transfers of defence related products (ICT Directive) into

<sup>3</sup> Council of the European Union, ‘Council conclusions on the review of Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment’, 3199th Foreign Affairs Council Meeting, Brussels, 19 Nov. 2012.

<sup>4</sup> Council of the European Union (note 3).

<sup>5</sup> See e.g. A. Vranckx, F. Slijper and R. Isbister (eds), ‘Lessons from MENA: appraising EU transfers of military and security equipment to the Middle East and North Africa’, Academia Press, Nov. 2011, <<http://www.saferworld.org.uk/smartweb/resources/view-resource/596>>.

<sup>6</sup> Council of the European Union (note 3).

<sup>7</sup> Council of the European Union (note 3).

<sup>8</sup> Council of the European Union, Fourteenth Annual Report according to Article 8(2) of Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment, *Official Journal of the European Union*, C386, 14 Dec. 2012, p. 3.

<sup>9</sup> Council of the European Union (note 4); and EU official, Communication with author, 28 Jan. 2013. For the current version of the User’s Guide see Council of the European Union, ‘User’s guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment’, 9241/09, 29 Apr. 2009 <<http://register.consilium.europa.eu/pdf/en/09/st09/st09241.en09.pdf>>.

their national legislation on arms transfer controls.<sup>10</sup> The ICT Directive forms part of a wider package of EU efforts aimed at reducing barriers to intra-EU cooperation in the defence industry.<sup>11</sup> It requires EU member states to grant general or global licences that would allow their recipient to carry out certain intra-EU exports of defence-related products without needing additional authorizations. These exports could include transfers to the national armed forces of another member state, transfers that are part of a cooperative armament programme within the EU, or transfers to a 'certified company' in another member state. The process of certifying a company will be handled, in accordance with common criteria agreed at the EU level, by the national authorities of the member state where the company is headquartered.<sup>12</sup> The ICT Directive also abolishes requirements for transit and trans-shipment licences for defence-related products originating in another EU member state (although reasons of public security can justify retaining such requirements).

EU member states were given until 30 June 2011 to transpose the directive and until 30 June 2012 to apply it.<sup>13</sup> As of June 2012, 20 states had officially notified the Commission of their transposition of the ICT Directive into national legislation, indicating that 'timely transposition seemed to have been difficult for several Member States'.<sup>14</sup> The Commission has launched infringement proceedings against member states that have failed to communicate the national rules transposing the Directive.

### Developments in dual-use trade controls

In 2011 the European Commission launched a green paper on reviewing the EU's trade controls on dual-use products, contained in the 2009 Dual-

<sup>10</sup> 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, *Official Journal of the European Union*, L146, 10 June 2009.

<sup>11</sup> Anthony, I. and Bauer, S., 'Controls on security-related international transfers', *SIPRI Yearbook 2009*, pp. 476–78.

<sup>12</sup> Commission Recommendation of 11 Jan. 2011 on the certification of defence undertakings under Article 9 of Directive 2009/43/EC of the European Parliament and of the Council simplifying terms and conditions of transfers of defence-related products within the Community, *Official Journal of the European Union*, L11, 15 Jan. 2011, pp. 62–74. Information about which companies have been certified at the national level is made available via the CERTIDER database maintained by the European Commission, <<http://ec.europa.eu/enterprise/sectors/defence/certider/index.cfm>>.

<sup>13</sup> European Commission, Directorate-General for Enterprise and Industry, 'Defence industries: reference documents', 2 Feb. 2012, <[http://ec.europa.eu/enterprise/sectors/defence/documents/index\\_en.htm](http://ec.europa.eu/enterprise/sectors/defence/documents/index_en.htm)>.

<sup>14</sup> European Commission, Report from the Commission to the European Parliament and the Council on transposition of Directive 2009/43/EC simplifying terms and conditions for transfer of defence-related products within the EU, 29 June 2012, <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0359:FIN:EN:PDF>>, p. 5.

use Regulation.<sup>15</sup> The paper was part of a public consultation process that aimed to initiate a discussion about how the EU's current dual-use trade control system functions. A wide range of submissions from civil society organizations, industry, academia and the governments of member states were summarized in a staff working document published in January 2013.<sup>16</sup> This document, in turn, is expected to form the basis of a document to be submitted to the European Parliament and the Council of the EU during 2013.<sup>17</sup>

The staff working document reflects the diversity of perspectives in the submissions, which covered a broad range of issues including challenges related to the practical implementation of the new transit and brokering controls; the uniform implementation of catch-all controls across the EU; and the appropriateness of activities and items subject to control in the current trade, political and technological environment. A Swedish Government report stated that the 'result of the joint consultation will ... contribute to identifying strengths and weaknesses in the current system and to map out a long-term vision of the EU's export control framework'. According to the report, 'the ambition is that the results will contribute to concrete changes in the current system and to the preparation of a long-term strategy for developing the EU's export controls'.<sup>18</sup>

In April 2012 the EU amended its control list for dual-use items, which is an annex to the Dual-use Regulation.<sup>19</sup> Changes routinely add, remove or

<sup>15</sup> European Commission, 'The dual-use export control system of the European Union: ensuring security and competitiveness in a changing world', Green Paper COM(2011) 393, 30 June 2011. EU Regulation 428/2009 regulating the export, brokering and transit of dual-use items, including software and technology, entered into force on 27 Aug. 2009. The law substantially expanded the scope of dual-use trade activities subject to control, in line with the requirements of UN Security Council Resolution 1540 regarding brokering, transit and trans-shipment controls. 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, *Official Journal of the European Union*, L134, 29 May 2009. This regulation updates and expands previous EU-wide control provisions for dual-use items, the first of which go back as far as 1995. Anthony, I. et al., 'Multilateral weapon-related export control measures', *SIPRI Yearbook 1995*, pp. 616–19.

<sup>16</sup> European Commission, 'Strategic export controls: enduring security and competitiveness in a changing world. A report on the public consultation launched under the Green Paper COM(2011) 393', European Commission staff working document, SWD(2013) 7 final, Brussels, 17 Jan. 2013, <[http://trade.ec.europa.eu/doclib/docs/2013/february/tradoc\\_150459.pdf](http://trade.ec.europa.eu/doclib/docs/2013/february/tradoc_150459.pdf)>.

<sup>17</sup> Some of the organizations consulted made their submissions public. See e.g. British Department for Business Innovation and Skills, Export Control Organisation, 'Response from Her Majesty's Government to the European Commission Green Paper on the dual-use export control system of the European Union', Jan. 2012, <<http://www.bis.gov.uk/assets/biscore/eco/docs/12-509-eco-response-eu-green-paper-dual-use.pdf>>.

<sup>18</sup> Swedish Government, 'Strategic export controls in 2011: military equipment and dual-use products', Skr. 2011/12:114, 15 Mar. 2011, <<http://www.isp.se/sa/node.asp?node=528>>, p. 48.

<sup>19</sup> Regulation (EU) no. 388/2012 of the European Parliament and of the Council of 19 Apr. 2012 amending 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, *Official Journal of the European Union*, L129, 16 May 2012; and British Export Control Organisation, 'Annex 1: Comprehensive change note summary for Council Regulation (EU) no. 428/2009', 25 May 2012, <[http://trade.ec.europa.eu/doclib/docs/2012/may/tradoc\\_149517.pdf](http://trade.ec.europa.eu/doclib/docs/2012/may/tradoc_149517.pdf)>.

reduce controls on certain items, and revise definitions and descriptions in the control list. The most recent control list amendments (approximately 250 in total) entered into force on 15 June 2012, bringing the EU list in line with changes agreed in the Australia Group, the Missile Technology Control Regime (MTCR), the Nuclear Suppliers Group (NSG) and the Wassenaar Arrangement during 2010. The implementation of multilaterally agreed changes always takes time due to technical consultations and translation processes. In addition, for practical reasons, while changes are made on an annual basis they are agreed at different points in the year depending on the regime.

Parliaments are not normally involved in control list changes, which are generally of a technical nature and, in many cases, implement international obligations taken on by governments. The unusually long delay in the implementation of the 2010 changes was due to the adoption of the 2007 Lisbon Treaty, which gave the European Parliament a co-decision right in the Dual-use Regulation.<sup>20</sup> The delay is significant because such changes must be made swiftly in order to keep up with technological developments and evolving procurement methods. The implications of the delayed update of the EU list are compounded by the fact that an increasing number of European countries outside the EU and countries in other regions, particularly Asia, base their control list updates on the EU changes, since the EU list simply consolidates and structures the various international regime requirements.<sup>21</sup>

To help prevent such delays in the future, in late 2011 the European Commission presented a proposal for changes in the EU Dual-use Regulation that would empower it to update Annex I in line with control list amendments adopted by the four regimes. The proposal would also have allowed the Commission to swiftly exclude specific destinations or products from the scope of the EU's general export licences.<sup>22</sup> The Commission would therefore be empowered to adopt delegated acts, as foreseen in the Lisbon

<sup>20</sup> Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed 13 Dec. 2007, entered into force 1 Dec. 2009, <[http://europa.eu/lisbon\\_treaty/](http://europa.eu/lisbon_treaty/)>.

<sup>21</sup> Countries that use the same control list structure as the EU include the accession and potential accession countries in South Eastern Europe—Albania, Bosnia and Herzegovina, Croatia, FYR Macedonia, Montenegro and Serbia—as well as countries in Asia including Singapore and Malaysia. See e.g. Singapore Customs, 'Strategic Goods Control List: overview', 28 Feb. 2013, <<http://www.customs.gov.sg/stgc/leftNav/str/>>; and Malaysian Government, Ministry of International Trade and Industry, 'Strategic Trade Act 2010', [n.d.], <[http://www.miti.gov.my/cmspreview/content.jsp?id=com.tms.cms.article.Article\\_a84fac8e-c0a81573-f5a0f5a0-57df60c6](http://www.miti.gov.my/cmspreview/content.jsp?id=com.tms.cms.article.Article_a84fac8e-c0a81573-f5a0f5a0-57df60c6)>. For more information see Holtom, P. and Mičić, I., 'European Union arms export control outreach activities in Eastern and South Eastern Europe', Non-proliferation Papers no. 14, EU Non-proliferation Consortium, Apr. 2012, <<http://nonproliferation.eu/activities/activities.php>>.

<sup>22</sup> European Commission, Proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) no. 428/2009 setting up a Community Regime for the control of exports, transfer, brokering and transit of dual use items, COM(2011) 704 final, 7 Nov. 2011.

Treaty.<sup>23</sup> At its plenary session of 23 October 2012, the European Parliament adopted its position on the Commission's proposal. The Parliament proposed amendments that would (a) provide for delegated powers in those areas for tacitly extendable five-year periods and (b) require the Commission to provide 'full information and documentation on its meetings with national experts within the framework of its work on the preparation and implementation of delegated acts'.<sup>24</sup>

The European Parliament also proposed other amendments to the Commission's proposal, in relation to surveillance and interception technology (see below) and the so-called catch-all provision. The catch-all provision, or end-use control mechanism, allows the competent EU member state authorities to impose an authorization requirement if items are or may be intended for end-use in a weapon of mass destruction (WMD) programme, or in relation to a listed conventional military item in a destination subject to an arms embargo. However, other member states do not have to follow suit, even when informed. This had previously resulted in the creation of different authorization requirements within the EU's common market for dual-use items. The Parliament's proposal, therefore, would oblige all EU member states to 'impose the same authorisation requirement' if one member state decides to apply a catch-all control to a certain unlisted item.<sup>25</sup>

A proposal to create five new EU general export authorizations (GAEs) was agreed by the European Parliament and the Council at the end of 2011 and entered into force in January 2012. These GAEs provide for some facilitation of the export of certain dual-use items to certain destinations; export after repair or replacement; temporary export for an exhibition or fair; exports of telecommunications systems; and exports of chemicals. For certain specified items and destinations, no individual export licence is required from the EU.<sup>26</sup>

In terms of implementation efforts, a database of notifications of export licence application denials and catch-all decisions by member states was launched in 2011.<sup>27</sup> The database is available to authorized enforcement officers and licensing officers.

<sup>23</sup> Treaty of Lisbon (note 20), Article 290.

<sup>24</sup> European Parliament, European Parliament legislative resolution of 23 Oct. 2012 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) no. 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (COM(2011)0704–C7-0395/2011–2011/0310 (COD)), Strasbourg, 23 Oct. 2012.

<sup>25</sup> European Parliament (note 24), amendment 12.

<sup>26</sup> Regulation no. 1232/2011 of the European Parliament and of the Council of 16 Nov. 2011 amending Regulation (EC) no. 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, *Official Journal of the European Union*, L326, 8 Dec. 2011.

<sup>27</sup> Swedish Government (note 18).



## Controls on transfers of surveillance technology

During 2011, companies based in the EU (as well as companies based in other parts of Europe and North America) were revealed to have been involved in the supply of security, surveillance and censorship technologies and services to states in the Middle East and North Africa.<sup>28</sup> In many cases, these technologies were used by national security forces in the commission of violations of international human rights law. Existing EU and Wassenaar Arrangement strategic trade control lists do not cover many of the technologies involved, which include systems for monitoring or censoring Internet activity or mobile phone-based communications. During 2011 and 2012 the EU explored ways in which existing systems for controlling transfers of strategic goods could be expanded to encompass and control these items. The issue was also raised and discussed within the Wassenaar Arrangement (see section IV above). Several European governments—including the United Kingdom—have explored the issue of how to exert control in this area through the implementation of existing national laws and regulations.<sup>29</sup> There have also been attempts to exert stronger controls on the export of surveillance technologies through the development of improved industry standards, such as via the US-based Global Network Initiative (GNI).<sup>30</sup>

In late 2011 and early 2012, the EU arms embargoes on Iran and Syria (see section II above) were both updated to include prohibitions on the sale of surveillance technologies. In December 2011, the EU embargo on Syria was updated to include a ban on the ‘sale, supply, transfer or export of equipment or software intended primarily for use in the monitoring or interception by the Syrian regime, or on its behalf, of the Internet and of telephone communications on mobile or fixed networks’, as well as the provision of associated services.<sup>31</sup> In March 2012 equivalent language was inserted into the EU embargo on Iran.<sup>32</sup> The EU also specified the list of

<sup>28</sup> Grey, S., ‘UK firm denies “cyber-spy” deal with Egypt’, BBC News, 20 Sep. 2011, <<http://www.bbc.co.uk/news/technology-14981672>>; Elgin, B. and Silver, V., ‘Syria crackdown gets Italy firm’s aid with U.S.–Europe spy gear’, Bloomberg, 4 Nov. 2011, <<http://www.bloomberg.com/news/2011-11-03/syria-crackdown-gets-italy-firm-s-aid-with-u-s-europe-spy-gear.html>>; Elgin, B. and Silver, V., ‘The surveillance market and its victims’, Bloomberg, 20 Dec. 2011, <<http://www.bloomberg.com/data-visualization/wired-for-repression/>>; and Wagner, B., ‘Exporting censorship and surveillance technology’, Humanist Institute for Co-operation with Developing Countries (Hivos), Jan. 2012, <[http://www.academia.edu/2133607/Exporting-Censorship\\_and-Surveillance\\_Technology#](http://www.academia.edu/2133607/Exporting-Censorship_and-Surveillance_Technology#)>, p. 7. See also Bromley, M. and Wezeman, P. D., ‘Policies on exports of arms to states affected by the Arab Spring’, *SIPRI Yearbook 2012*.

<sup>29</sup> Topping, A., ‘Customs urged to investigate UK spyware firm’, *The Guardian*, 26 Dec. 2012.

<sup>30</sup> For more detail see the GNI website, <<http://www.globalnetworkinitiative.org>>.

<sup>31</sup> Council Decision 2011/782/CFSP of 1 Dec. 2011 concerning restrictive measures against Syria and repealing Decision 2011/273/CFSP, *Official Journal of the European Union*, 2 Dec. 2012.

<sup>32</sup> Council Decision 2012/168/CFSP of 23 March 2012 amending Decision 2011/235/CFSP concerning restrictive measures directed against certain persons and entities in view of the situation in Iran, *Official Journal of the European Union*, 24 Mar. 2012, p. 85.

technologies covered by the expanded embargoes on Iran and Syria, including deep packet inspection equipment, semantic processing engine equipment, speaker recognition or processing equipment, pattern recognition and pattern profiling equipment, semantic processing engine equipment, and wired equivalent privacy (WEP) and Wi-Fi protected access (WPA) code-breaking equipment.<sup>33</sup> This language represented the first time that the EU has specified the types of surveillance technology that are of concern with regard to potential violations of international human rights law.

The EU has also investigated ways of extending controls on transfers of surveillance technologies to countries that are not subject to EU arms embargoes, particularly through the expansion of controls on transfers of dual-use items. In May 2012 the European Parliament adopted a non-legislative resolution deploring ‘the role of European companies in the exporting of arms and dual-use items to repressive regimes, and in complying with technological disruptions organised by the dictatorships’. The resolution called on the European Commission to ‘produce guidelines for EU companies to act in a manner consistent with the Union’s fundamental principles in such situations’.<sup>34</sup> In October 2012 the European Parliament included relevant language in its list of proposed amendments to the European Commission proposal to amend the 2009 Dual-use Regulation. Specifically, the Parliament proposed the inclusion of a requirement for authorization of exports of unlisted dual-use items if the exporter has been informed by either its national authorities or the Commission that the items may be used in connection with violations of human rights, democratic principles or freedom of speech through the use of ‘interception technologies and digital data transfer devices for monitoring mobile phones and text messages and targeted surveillance of internet use’.<sup>35</sup> If this wording were included (which is unlikely, due to competence issues and the division of responsibilities) the amendment would potentially increase the involvement of the Commission in the implementation of controls on transfers of dual-use items by giving it the right to

<sup>33</sup> Council Regulation (EU) no. 36/2012 of 18 Jan. 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) no. 442/2011, *Official Journal of the European Union*, L16, 19 Jan. 2012, Annex V; and Council Regulation (EU) no. 264/2012 of 23 Mar. 2012 amending Regulation (EU) no. 359/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Iran, *Official Journal of the European Union*, L87, 3 Mar. 2012, Annex IV.

<sup>34</sup> European Parliament, ‘Trade for change: the EU Trade and Investment Strategy for the Southern Mediterranean following the Arab Spring revolutions (2011/2113(INI))’, Resolution, 10 May 2012, <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0201+0+DOC+XML+V0//EN>>.

<sup>35</sup> European Parliament, Legislative resolution on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) no. 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (COM(2011)0704 – C7-0395/2011 – 2011/0310(COD)), 23 Oct. 2012.

directly inform exporters of the need for an authorization. A similar legal catch-all construction is already in place for dual-use items with a WMD end-use or a conventional military use in connection with listed items in an embargoed destination. However, the Commission has no information role in those instances.

### **European Union cooperation programmes on dual-use and arms trade control**

A number of actors have been involved in the development of cooperative measures to establish and strengthen systems to control cross-border flows of arms and dual-use items. These cooperative measures initially focused on export controls but now also encompass associated activities of transit, trans-shipment, brokering and financing. The major dedicated programmes with international scope are the EU-funded Cooperation in Export Control of Dual-use Goods programme and the US Department of State's Export Control and Related Border Security (EXBS) programme, as well as complementary programmes funded by other US Government agencies, such as the Department of Energy.<sup>36</sup> While the US programme is larger, the EU programme now involves countries in Africa, Asia and the Middle East as well as Europe.<sup>37</sup> Due to the internal division of competences, the EU's dual-use and arms trade control programmes are funded by different financial instruments.

During the 1990s the EU provided technical assistance on chemical, biological, radiological and nuclear (CBRN) issues such as detecting the trafficking of nuclear materials.<sup>38</sup> However, such assistance was ad hoc and primarily focused on the former Soviet Union. Furthermore, it was not underpinned by a common strategy and did not focus on establishing dual-use export control systems. Before 2005 certain EU member states also provided bilateral export control cooperation that was limited in scope. In 2004–2005 the realization grew in EU circles that export control was one area where EU funding could support the implementation of the 2003 EU

<sup>36</sup> German Office of Economics and Export Control (BAFA), 'EU cooperation in dual-use export control', [n.d.], <[http://www.eu-outreach.info/eu\\_outreach/](http://www.eu-outreach.info/eu_outreach/)>; US Department of State, Export Control and Related Border Security (EXBS) programme, 'The EXBS Program', <<http://www.state.gov/t/isn/ecc/c27911.htm>>; and US Department of Energy, National Nuclear Security Administration, 'Second Line of Defence Program', <<http://nnsa.energy.gov/aboutus/ourprograms/nonproliferation/programoffices/internationalmaterialprotectionandcooperation/se>>.

<sup>37</sup> A number of other states, including Japan and to a lesser extent Australia, focus on WMD-related trade control capacity building at the regional level. See Bauer, S., 'Enhancing export control-related CTR (cooperative threat reduction) programmes: options for the EU', Background Paper no. 6, Conference on Strengthening European Action on WMD Non-proliferation and Disarmament, Brussels, 7–8 Dec. 2005; and Bauer, S., 'Arms trade control capacity building: lessons from dual-use trade controls', SIPRI Insights on Peace and Security no. 2013/2, Mar. 2013, <[http://books.sipri.org/product\\_info?c\\_product\\_id=454](http://books.sipri.org/product_info?c_product_id=454)>.

<sup>38</sup> Bauer, 'Enhancing export control-related CTR programmes' (note 37).

Strategy against the Proliferation of WMD, and United Nations Security Council Resolution 1540.<sup>39</sup> In 2006 the EU created the Instrument for Stability (IFS) to respond to global issues, including the threats outlined in the WMD Strategy, by providing financial support for capacity-building measures in non-EU countries.<sup>40</sup>

The IFS allocated about €13 million (\$17.8 million) to dual-use export control capacity building for the period 2007–13.<sup>41</sup> The EU Cooperation in Export Control of Dual-use Goods programme is implemented by the German Federal Office of Economics and Export Control (Bundesamt für Wirtschaft und Ausfuhrkontrolle, BAFA), with a pool of legal, licensing, industry outreach and enforcement practitioners drawn from across the EU.<sup>42</sup> While substantial technical assistance on CBRN issues has also been provided by EU member states, in particular Germany and the UK, capacity building in the area of strategic trade controls has been delivered almost exclusively within the EU programmes. The programmes evolved from an export control component of an EU pilot project on cooperative threat reduction and two pilot projects specifically dedicated to technical assistance on dual-use export controls. While only 4 countries were involved in the first pilot project in 2005, the geographical scope of the long-term programme has since expanded to include nearly 30 countries. The EU programme conducts activities across five specific pillars: legal, awareness of industry and other stakeholders, licensing, the role of customs, and investigation and prosecution of export control-related offences.<sup>43</sup>

During 2010 the EU began to broaden the substantial, geographical and financial scope of its CBRN- and proliferation-related cooperation programmes. The EU CBRN Risk Mitigation Centres of Excellence (CBRN

<sup>39</sup> Council of the European Union, 'Fight against the proliferation of weapons of mass destruction: EU Strategy against Proliferation of Weapons of Mass Destruction', 15708/03, 10 Dec. 2003, <[http://europa.eu/legislation\\_summaries/foreign\\_and\\_security\\_policy/cfsp\\_and\\_esdp\\_implementation/133234\\_en.htm](http://europa.eu/legislation_summaries/foreign_and_security_policy/cfsp_and_esdp_implementation/133234_en.htm)>; and UN Security Council Resolution 1540, 15 Apr. 2004.

<sup>40</sup> Council Regulation (EC) no. 1717/2006 of the European Parliament and of the Council of 15 Nov. 2006 establishing an Instrument for Stability, *Official Journal of the European Union*, L327, 24 Nov. 2006; and European Commission, 'Instrument for Stability', <[http://ec.europa.eu/europeaid/how/finance/ifs\\_en.htm](http://ec.europa.eu/europeaid/how/finance/ifs_en.htm)>.

<sup>41</sup> The total IFS budget is approximately €2.1 billion (\$2.8 billion) and includes funding for crisis management, conflict prevention and disaster response. The IFS has assigned €320 million (\$438 million) for non-proliferation and chemical, biological, radiological and nuclear (CBRN) risk-mitigation activities for the period 2007–13.

<sup>42</sup> German Office of Economics and Export Control (note 36).

<sup>43</sup> The 1st pilot project (led by SIPRI) contained a field validation exercise designed to explore ways to deliver effective export control assistance. The 2nd and 3rd (led by BAFA and implemented in cooperation with SIPRI) were dedicated to expanding and developing this work. BAFA also implemented a European Commission export control cooperation programme with Russia. See German Office of Economics and Export Control (note 36); and SIPRI Dual-use and Arms Trade Control, 'Current projects', <<http://www.sipri.org/research/disarmament/dualuse/capacity-building/current>>.

COEs) are funded through the IFS budget.<sup>44</sup> Programmes are now carried out in North Africa; the 'African Atlantic façade'; the Middle East; South Eastern Europe, the Southern Caucasus, Moldova and Ukraine; and South East Asia.<sup>45</sup> The CBRN COE initiative aims to build on and expand regional expertise on CBRN issues, complemented by expertise from the EU, other regions, and regional and international organizations. Partner countries and regions can propose the scope, type and issue area of EU-funded projects implemented through this conceptual and financial framework. The COE concept seeks to expand the discussion and action on CBRN issues beyond WMD and export control to include issues such as 'criminal (proliferation, theft, sabotage and illicit trafficking), accidental (industrial catastrophes, in particular chemical or nuclear, waste treatment and transport) or natural (mainly pandemics)'.<sup>46</sup>

Limited funding is currently provided for complementary EU capacity-building activities in the conventional arms transfers area, although an expansion of activities is foreseen from 2013.<sup>47</sup> In November 2012 the Council adopted a Decision in support of continued EU activities to promote the control of conventional arms exports and the principles and criteria of the EU Common Position on arms exports outside the EU.<sup>48</sup> The 2012 Decision will fund regional seminars in South Eastern Europe, North Africa, Eastern Europe and the Caucasus during 2013 and 2014 to support licensing and enforcement officials in the effective control of exports of military technology and equipment. The initiative will also support staff exchanges between partner countries in these regions and export control

<sup>44</sup> On the EU CBRN Risk Mitigation Centres of Excellence initiative see the CBRN COE website, <<http://www.cbrn-coe.eu/>>. The estimated budget for the CBRN COEs in 2007–13 is €95 million (\$130 million). UN Interregional Crime and Justice Research Institute, 'CBRN Risk Mitigation and Security Governance Programme: CBRN Centres of Excellence', [n.d.], <<http://www.unicri.it/topics/cbrn/coe/>>.

<sup>45</sup> The COE African Atlantic façade region potentially includes Benin, Gabon, Guinea, Côte d'Ivoire, Liberia, Mauritania, Morocco and Senegal.

<sup>46</sup> EU CBRN Risk Mitigation Centres of Excellence initiative, 'A coordinated strategy for CBRN risk mitigation', [n.d.], <<http://www.cbrn-coe.eu/ReadMore.aspx>>.

<sup>47</sup> Holtom, P. and Bromley, M., 'Implementing an arms trade treaty: mapping assistance to strengthen arms transfer controls', SIPRI Insights on Peace and Security no. 2012/2, July 2012, <[http://books.sipri.org/product\\_info?c\\_product\\_id=447](http://books.sipri.org/product_info?c_product_id=447)>; and Council Decision 2012/711/CFSP of 19 Nov. 2012 on support for Union activities in order to promote, among third countries, the control of arms exports and the principles and criteria of Common Position 2008/944/CFSP, *Official Journal of the European Union*, L321, 20 Nov. 2012.

<sup>48</sup> Council Decision 2012/711/CFSP provides €1.86 million (\$2.4 million) for 24 months (2013–14) and follows on from 2 previous Council decisions: 1 in Dec. 2009 providing €787 000 (\$1.1 million) for conventional outreach initiatives for 2010–11, and a 2nd in Mar. 2008 providing €500 500 (\$733 000) towards conventional outreach initiatives for 2008–2009. Council Decision 2009/1012/CFSP of 22 Dec. 2009 on support for EU activities in order to promote the control of arms exports and the principles and criteria of Common Position 2008/944/CFSP among third countries, *Official Journal of the European Union*, L348, 29 Dec. 2009, pp. 16–20; and Council Joint Action 2008/230/CFSP of 17 Mar. 2008 on support for EU activities in order to promote the control of arms exports and the principles and criteria of the EU Code of Conduct on arms exports among third countries, *Official Journal of the European Union*, L75, 18 Mar. 2008, pp. 81–85.

authorities in EU member states and the drafting, implementation and enforcement of legislation. In contrast to previous Council decisions, the 2012 Decision also introduced two new activities: individual country assistance and the development of a web portal for access to technical resources and information. The two-year project will be implemented by BAFA, which is the implementing agent for EU-funded capacity-building programmes for export control of dual-use items and conventional arms.<sup>49</sup>

<sup>49</sup> Holtom and Mičić (note 21).