The Permanent Mission of Germany to the United Nations presents its compliments to the Office for Disarmament Affairs and has the honour to submit in attachment, with reference to verbal note ODA/24-2008/NLDU of 14 March 2008, its reply to the United Nations Secretary-General's request for statements with regard to United Nations General Assembly resolution 62/26 entitled "National legislation on transfer of arms, military equipment and dual-use goods and technology".

For more detailed information, the Federal Republic of Germany wishes also to refer to its National Report on the Implementation of the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects, submitted by verbal note 107/2008 of 26 March 2008.

The Permanent Mission of Germany to the United Nations avails itself of this opportunity to renew to the Office for Disarmament Affairs the assurances of its highest consideration.
NATIONAL LEGISLATION ON TRANSFER OF ARMS, MILITARY EQUIPMENT AND DUAL-USE GOODS AND TECHNOLOGY

GERMAN REPLY TO THE REQUEST FOR A STATEMENT BY THE SECRETARY-GENERAL OF THE UNITED NATIONS

1. The German export control system

Germany's military equipment exports are governed by the Basic Law, the War Weapons Control Act, and the Foreign Grade and Payments Act in conjunction with the Foreign Trade and Payments Ordinance. The "Political Principles Adopted by the Government of the Federal Republic of Germany for the Export of War Weapons and Other Military Equipment" of 19 January 2000 and the criteria of the European Union's Code of Conduct on Arms Exports, in force since mid-1998, provided the licensing authorities during the reporting year with guidelines for the discretion given them by law. The agreement of the current German coalition (which took power on November 22, 2005) advocates continued implementation of these weapons export principles.

The Foreign Trade and Payments Act and the Foreign Trade and Payments Ordinance require the licensing of all military equipment. The military equipment has been listed in full in Part I Section A of the Export List (EL, Annex to Foreign Trade and Payments Ordinance). They are broken down into 22 positions (No. 0001 to No. 0022) that have their own sub-divisions. Just as the EU's Military List, these positions are closely oriented to the corresponding list of the Wassenaar Arrangement (Munitions List), which the German Government has thereby converted into national law to meet its political commitments.

Some of the military equipment articles falling under the Foreign Trade and Payments Act, Foreign Trade and Payments Ordinance and Export List are simultaneously war weapons as defined by the War Weapons Control Act. They are displayed in the 62 positions of the War Weapons List (Annex to the War Weapons Control Act) and provided in full in Part I Section A of the Export List. For the export of these weapons a license must first be obtained under the War Weapons Control Act ("transport authorization for the purpose of export") and then an export license pursuant to the Foreign Trade and Payments Act and Ordinance. By contrast, the export of those items of military equipment that are covered by Part I Section A of the Export List and are not war weapons (so-called "other military equipment") requires - only - a license pursuant to the Foreign Trade and Payments Act and Ordinance.

The War Weapons Control Act provides that all activities in connection with war weapons (production, acquisition and transfer of actual control, every type of transport or procurement transactions) require prior licensing by the German government (cf. Sections 2 - 4a of the War Weapons Control Act). The Federal Ministry of Economics and Technology is the licensing agency for commercial transactions; the other ministries (Federal Ministry of Finance, Federal Ministry of the Interior, and Federal Ministry of Defense) whose portfolio includes the treatment of war weapons are themselves responsible for the respective approvals falling within their scope of competence. The Federal Ministry of Transport, Building, and Housing is the licensing agency for certain cases of transport abroad via German vessels or aircraft (cf. Section 1 of the First Ordinance on the Implementation of the War Weapons Control Act of 1

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3 Foreign Trade and Payments Ordinance in the version promulgated on 22 November 1993 (Federal Law Gazette I, p. 2493), last amended by the Ordinance of 8 April 2006 (BAnz. no. 70, p. 2647)
4 See Annex 1.
5 See Appendix to Annex 1.

Under Section 6 of the *War Weapons Control Act* applicants have no legal right to the issuance of a license for the export of war weapons. Licenses must be denied where there is a danger that the war weapons will be used in connection with peace-disturbing acts, obligations of the Federal Republic of Germany under international law being impaired or where the applicant does not possess the necessary reliability for the action. In all of the other cases the federal government decides on the issuance of export licenses in accordance with the discretion it must exercise under the above mentioned “Political Principles”. Since mid 1998, the criteria of the EU Code of Conduct on Arms Exports, which is now an integral part of the updated Political Principles, are additionally used to reach such decisions.

The export of so-called other military equipment is governed by the export rules in the *Foreign Trade and Payments Act and Ordinance*. In accordance with the principle of the freedom of external economic transactions on which the systematic approach of the *Foreign Trade and Payments Act* is based, the applicant has a fundamental right to the issuance of an export license (Section 1 in conjunction with Section 3 of the *Foreign Trade and Payments Act*), unless a license may be denied because of a violation of interests protected under Section 7 Subsection 1 of the *Foreign Trade and Payments Act*. Section 7 Subsection 1 of the *Foreign Trade and Payments Act* reads as follows:

"(1) The conducting of legal business and acts in connection with external economic transactions may be confined in order to

1. guarantee the essential security interests of the Federal Republic of Germany

2. prevent a disturbance of the peaceful coexistence of nations or

3. to prevent the foreign relations of the Federal Republic of Germany from being seriously disturbed."

As it is also the case for war weapons, the German government exercises its discretion in the issuance of export licenses in keeping with the “Political Principles” and EU Code of Conduct.

Responsible for granting/denying export licenses under the *Foreign Trade and Payments Act and Ordinance* is the Federal Office of Economics and Export Control, which is a subordinate agency operating under the jurisdiction of the Federal Ministry of Economics and Technology. The Federal Office of Economics and Export Control submits sensitive projects to the federal government for its assessment from a political perspective. The coalition agreement calls for the export control licensing procedure to be expedited and rendered less bureaucratic while still fulfilling existing international obligations.

The so-called advance inquiry practice has become customary in the course of the past several decades. This practice lets companies know at an early stage if - based on an agreement of a

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6 For more information please see www.bafa.de.
sales contract the required export license will be granted at a later point in time - assuming the circumstances of the transaction remain unchanged. Decisions on advance inquiries are taken in accordance with the same criteria as decisions on export license applications.

Advance inquiries relating to war weapons must be submitted to the Federal Foreign Office (unlike applications for which the Federal Ministry of Economics and Technology is the licensing agency; see above); applications for other military equipment must be filed with the Federal Office of Economics and Export Control. The procedure corresponds to that of the actual license applications. Here too, important projects are submitted to the federal government for decision. The purpose of advance inquiries is to make the outcome of the subsequent licensing procedure visible at the earliest possible stage in the interest of reliable planning. However, an advance inquiry is never a substitute for the export license which is always required.

The decisions on export projects take significant account of interests relating to foreign policy, security policy and/or the interests of the NATO Alliance. Germany's Federal Security Council is normally included in deliberations on export projects that stand out because of the consignee country, the military equipment involved or the volume of the transaction. The Federal Security Council is a Cabinet committee chaired by the Federal Chancellor. Its members comprise the Federal Ministers of Foreign Affairs, Finance, the Interior, Justice, Defense, Economics and Technology and Economic Cooperation and Development.

2. Application of the “Political Principles”

The War Weapons Control Act and the Foreign Trade and Payments Act serve as the framework providing the federal government with the latitude for assessment in most of the cases; the only exceptions to this rule are cases where the War Weapons Control Act strictly requires the denial of a license (cf. Section 6 Subsection 3 of the War Weapons Control Act, see I above) and practice shows that such cases do not figure significantly. To guarantee the uniform exercise of the political discretion available to the federal government and to make the politically important criteria more transparent the “Political Principles” were defined and have been in force since 1982 (updated in January 2000); they serve as a basis for deciding the individual cases.

The updated version of the “Political Principles” adopted by the federal Cabinet on 19 January 2000 introduced the following substantively new elements:

The observance of human rights is of special importance for every export decision regardless of the potential consignee country. Therefore, military equipment exports are fundamentally not approved where there is "sufficient suspicion" of the involved military equipment's misuse for internal repression or other ongoing and systematic violations of human rights. The human rights situation in the consignee country plays an important role in connection with this question. In this point the “Political Principles” are more restrictive than the EU Code of Conduct which rules out export licenses only where a "clear risk" exists.

Following the General Section, the updated “Political Principles” distinguish between the group of EU, NATO, and NATO-equivalent countries (Australia, New Zealand, Japan, Switzerland) and the group of other countries (so-called third countries). For the first group of
countries, licenses are to be the rule and denials the exception; for the second group, there is a continuation of the restrictive and reserved policy with respect to license issuance.

In this context, the following applies for the group of third countries:
The export of war weapons is approved only in exceptional cases where, as justified by the individual situation, special foreign policy or security policy interests of the Federal Republic of Germany would support the granting of a license. For other military equipment, licenses are granted only insofar as such action does not endanger the interests to be protected under foreign trade and payments statutes (Section 7 Subsection 1 of the *Foreign Trade and Payments Act* as cited under 1.).

Even under this restrictive licensing practice for third countries the legitimate security interests of such countries may therefore argue for granting an export license in individual cases. This situation arises in particular where the respective security interests are also internationally significant. The defense against terrorist threats and the combating of international drug trafficking are conceivable examples. In connection with the export of naval equipment to third countries important aspect could be the interest of the community of nations in secure seaways and an effective exercise of respective national sovereignty in coastal waters. Alongside the pre-eminent importance of the seaways for world trade the increasing threats from piracy, narcotics trafficking, the smuggling of weapons and humans, pollution and illegal fishing play also a role here.

The German government's "special interest" in maintaining Germany's defense industry's continued capability for cooperation in the NATO and the EU framework is expressly highlighted above all against the background of the development of a common European defense policy.

The factors that are taken into serious consideration in deciding whether to grant licenses for the export of arms to third countries include – apart from human rights, which merit particular attention – the internal and external situation as well as the extent to which the recipient country’s sustainable development might be jeopardized by disproportionate outlays on arms. Other factors come into play as well: the recipient country’s conduct toward the international community concerning matters such as the fight against international terrorism and organized crime; the extent to which the recipient country meets its international obligations, particularly with respect to human rights, as well as in the areas of nonproliferation, military weapons and arms control.

These more comprehensive rules place greater emphasis - than it was previously the case - on ensuring the correct final destination and end-use.

The EU Code of Conduct was declared an "integral part" of the Political Principles.

Finally, the German government agreed to submit to the Bundestag a “Military Equipment Export Report” on developments and trends in respectively concluded calendar years, a commitment that is now being met by submission of this Report for the seventh successive year.
Annex 1

Political Principles

Adopted by the Government of the Federal Republic of Germany
for the Export of War Weapons and Other Military Equipment


The Government of the Federal Republic of Germany, desiring

- to pursue a restrictive policy on arms exports,

- with regard to the international and statutory obligations of the Federal Republic of Germany, to gear arms exports to Germany's security needs and foreign policy interests,

- through the restriction and control of such exports to contribute to safeguarding peace, preventing the threat or use of force, securing respect for human rights and promoting sustainable development in all parts of the world,

- hence to take account also of decisions adopted by international institutions with a view to disarmament and designed to restrict the international arms trade,

- to press for such decisions to be made legally binding at the international as well as the European level,

has modified its principles for the export of war weapons and other military equipment as follows:

I General Principles

1. The Federal Government's decisions regarding the export of war weapons\(^1\) and other military equipment\(^2\) are made in accordance with the provisions of the War Weapons Control Act and the Foreign Trade and Payments Act as well as the EU Code of Conduct for Arms Exports adopted by the European Council on 8 June 1998\(^3\) and such arrangements as may be agreed subsequently as well as the Principles Governing Conventional Arms Transfers adopted by the Organization for Security and Cooperation in Europe (OSCE) on 25 November 1993. The criteria laid down in the EU Code of Conduct are an integral part of these Policy Principles. The standards stipulated in the Code of Conduct will be superseded by any more stringent standards that may be derived from the following principles:

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1. Weapons (complete weapons as well as components classed separately as weapons) listed in the Schedule of War Weapons (Annex to the War Weapons Control Act).
2. Goods specified in Part I, Section A of the Schedule of Exports (Annex to the Foreign Trade and Payment Act) with the exception of war weapons.
3. enclosed as annex.
2. The issue of respect for human rights in the countries of destination and end-use is a key factor in deciding whether or not to grant licenses for the export of war weapons and other military equipment.

3. On principle export licences for war weapons and other military equipment will not be granted where there are reasonable grounds to suspect they may be used for internal repression as defined in the EU Code of Conduct for Arms Exports or the sustained and systematic abuse of human rights. In this context the assessment of the human rights situation in the recipient country is an important factor to be considered.

4. Such assessments will take into account the views of the European Union, the Council of Europe, the United Nations (UN), the OSCE and other international bodies. Reports issued by international human rights organizations will also be taken into consideration.

5. The end-use of war weapons and other military equipment must be definitively determined.

II NATO countries\textsuperscript{4}, EU member states, countries with NATO-equivalent status\textsuperscript{5}

1. The export of war weapons and other military equipment to these countries will be geared to the security interests of the Federal Republic of Germany with regard to the Alliance and the European Union.

In principle such exports will not be restricted unless in specific cases this is warranted on particular political grounds.

2. Cooperative ventures in this area should be in the interest of the Alliance and/or European policy

In the case of coproduction projects covered by intergovernmental agreements with countries referred to in this Section, these arms export principles will be given practical effect as far as possible. While mindful of its special interest in its cooperation standing, the Federal Government will not forgo any opportunities it may have to influence export projects envisaged by its cooperation partners (Section II (3)).

3. Before concluding any cooperation agreement, a timely joint assessment of its export policy implications is to be made.

To give effect to its arms exports policy principles, the Federal Government reserves the right by way of consultations to object to particular export projects envisaged by its cooperation partners. All new cooperation agreements should therefore aim in principle to incorporate a consultations procedure enabling the Federal Government to raise effectively any objections it might have to exports envisaged by its partner country. In so doing the Federal Government will seek, in the light of the human rights criterion, to strike a balance between its interest in cooperation and its fundamentally restrictive arms exports policy.

\textsuperscript{4} Area of application of NATO Treaty, Article 6
\textsuperscript{5} Australia, Japan, New Zealand, Switzerland
4. Before any exports of war weapons or other military equipment involving German components take place, the Federal Foreign Office, the Federal Ministry of Economics and the Federal Ministry of Defence, in conjunction with the Federal Chancellery, will evaluate whether in any specific case the relevant conditions for initiating such consultations exist.

The Federal Government will raise objections - generally following consideration of the matter by the Federal Security Council - against such exports involving the use of German components in the following cases:

- exports to countries involved in armed conflict, unless such conflict is covered by Article 51 of the UN Charter,

- exports to countries where an outbreak of armed conflict is imminent or where exports may stir up, perpetuate or exacerbate latent tensions and conflicts,

- exports where there are reasonable grounds to suspect they may be used for internal repression as defined by the EU Code of Conduct for Arms Exports or the sustained and systematic abuse of human rights,

- exports that would impair vital security interests of the Federal Republic of Germany,

- exports that would impose such a strain on relations with third countries that even Germany's own interest in the cooperative venture and in maintaining good relations with its cooperation partner must rank second.

Objections will not be raised if in the light of the considerations outlined in Section III (4) to (7) below licences for the export of direct deliveries of war weapons and other military equipment are likely to be granted.

5. In the case of cooperative ventures between German companies and companies in countries referred to in Section II above not covered by intergovernmental agreements, supplies of components will, as with direct deliveries of war weapons and other military equipment to those countries, in principle not be restricted. The Federal Government will, however, as in the case of cooperative ventures covered by intergovernmental agreements, bring its influence to bear in the matter of exports resulting from cooperative ventures between commercial companies.

To that end it will require German cooperative venture partners to enter a contractual obligation that, should they supply components of a quantity or type that could be relevant to the manufacture of war weapons, they will inform the Federal Government in good time as to their partners' export intentions and seek legally binding arrangements on end-use.

6. In the case of German supplies of components (separate components or sub-systems) that constitute war weapons or other military equipment, the partner country is in terms of exports law both purchaser and user. Where such components are built into
a weapons system as fixed features, that process in terms of exports law makes the partner country the country of origin of the goods in question.

III Other countries

1. A restrictive policy will be pursued regarding exports of war weapons and other military equipment to countries other than those covered by Section II. Notably the development of additional, specifically export-oriented capacities must be avoided. The Federal Government will not take the initiative to privilege any specific country or region.

2. Export licences for war weapons (subject to licensing under the War Weapons Control Act and the Foreign Trade and Payments Act) will not be granted unless in a specific case this is exceptionally warranted on particular foreign and security policy grounds, having due regard to Alliance interests. Labour policy considerations must not be a decisive factor.

3. Export licences for other military equipment (subject to licensing under the Foreign Trade and Payments Act) will be granted only where such exports will not prejudice interests that German law on foreign trade and payments serves to protect, namely, security, peace among the nations and Germany's foreign relations.

The protection of these interests takes priority over economic interests as defined in Section 3(1) of the Foreign Trade and Payments Act.

4. Export licences pursuant to the War Weapons Control Act and/or the Foreign Trade and Payments Act will not be granted where the internal situation in the country concerned precludes such action, e.g. in the case of armed conflict or where there are reasonable grounds for suspecting such exports may be used for internal repression or the sustained and systematic abuse of human rights. In this context the human rights situation in the recipient country is a major factor to be considered.

5. No licences will be granted for the export of war weapons and other military equipment related to war weapons to countries

- involved in armed conflict or where armed conflict is imminent,

- where the outbreak of armed conflict is imminent or where such exports would stir up, perpetuate or exacerbate latent tensions and conflicts.

Exports to countries involved in external armed conflicts or where there is a danger such conflicts may erupt are therefore ruled out on principle except in cases covered by Article 51 of the UN Charter.

6. Decisions on whether to grant export licences for war weapons and other military equipment will take into account whether sustainable development in the recipient country is being seriously impeded by excessive arms spending.

\[6\] Plant and documentation for the manufacturer of war weapons
7. Also to be taken into account is the recipient country's conduct in terms of whether it
- supports and promotes terrorism and international organized crime,
- complies with international obligations, especially renunciation of the threat or
  use of force, including obligations under humanitarian law on international or
  non-international conflicts,
- has assumed obligations in the area of non-proliferation and other aspects of
  arms control and disarmament, notably by signing, ratifying and implementing
  the arms control and disarmament arrangements specified in the EU Code of
  Conduct for arms exports,
- supports the UN Arms Register

IV  Definitive determination of end-use

1. Export licences for war weapons and other military equipment will be granted only
   on the basis of prior knowledge of definitive end-use in the country of final destina-
   tion. This will generally require a written assurance by the end-user as well as other
   appropriate documentation.

2. Export licences for war weapons or other military equipment of a quantity and type
   relevant to war weapons may be granted only on presentation of governmental end-
   use certificates that preclude re-exports without prior authorization. This applies
   mutatis mutandis to any other military equipment related to war weapons exported in
   connection with a manufacturing licence. For the export of such equipment used for
   the manufacture of war weapons definitive end-use certificates must be furnished.

   Stringent standards are to be applied in assessing whether the recipient country is
   capable of carrying out effective export controls.

3. War weapons and other military equipment relevant to war weapons may only be re-
   exported to third countries or transferred inside the EU Internal Market with the
   written approval of the Federal Government.

4. A recipient country that, in breach of an end-use certificate, authorizes or does not seek
   to prevent or sanction the unauthorized re-export of war weapons or other military
   equipment relevant to war weapons will on principle, as long as such conditions
   persist, be excluded from receiving any further deliveries of war weapons or other
   military equipment related to war weapons.

V  Arms exports report

The Federal Government will submit to the German Bundestag an annual report on the
principle and practice of its arms exports policy listing, with details of the relevant legis-
lation, the export licences for war weapons and other military equipment it has granted
over the past year.
APPENDIX TO ANNEX 1

EU CODE OF CONDUCT FOR ARMS EXPORTS

adopted by the EU-Council on 8 June 1998

The Council of the European Union,
BUILDING on the Common Criteria agreed at the Luxembourg and Lisbon European Councils in 1991 and 1992,
RECOGNISING the special responsibility of arms exporting states,
DETERMINED to set high common standards which should be regarded as the minimum for the management of, and restraint in, conventional arms transfers by all EU Member States, and to strengthen the exchange of relevant information with a view to achieving greater transparency,
DETERMINED to prevent the export of equipment which might be used for internal repression or international aggression, or contribute to regional instability,
WISHING within the framework of the CFSP to reinforce their cooperation and to promote their convergence in the field of conventional arms exports,
NOTING complementary measures taken by the EU against illicit transfers, in the form of the EU Programme for Preventing and Combating Illicit Trafficking in Conventional Arms,
ACKNOWLEDGING the wish of EU Member States to maintain a defence industry as part of their industrial base as well as their defence effort,
RECOGNISING that states have a right to transfer the means of self-defence, consistent with the right of self-defence recognised by the UN Charter,
has adopted the following Code of Conduct and operative provisions:

CRITERION ONE

Respect for the international commitments of EU member states, in particular the sanctions decreed by the UN Security Council and those decreed by the Community, agreements on non-proliferation and other subjects, as well as other international obligations.

An export licence should be refused if approval would be inconsistent with, inter alia:
a) the international obligations of member states and their commitments to enforce UN, OSCE and EU arms embargoes;
b) the international obligations of member states under the Nuclear Non-Proliferation Treaty, the Biological and Toxin Weapons Convention and the Chemical Weapons Convention;
c) their commitments in the frameworks of the Australia Group, the Missile Technology Control Regime, the Nuclear Suppliers Group and the Wassenaar Arrangement;
their commitment not to export any form of anti-personnel landmine

CRITERION TWO

The respect of human rights in the country of final destination

Having assessed the recipient country’s attitude towards relevant principles established by international human rights instruments, Member States will:

a) not issue an export licence if there is a clear risk that the proposed export might be used for internal repression.

b) exercise special caution and vigilance in issuing licences, on a case-by-case basis and taking account of the nature of the equipment, to countries where serious violations of human rights have been established by the competent bodies of the UN, the Council of Europe or by the EU;

For these purposes, equipment which might be used for internal repression will include, inter alia, equipment where there is evidence of the use of this or similar equipment for internal repression by the proposed end-user, or where there is reason to believe that the equipment will be diverted from its stated end-use or end-user and used for internal repression. In line with operative paragraph 1 of this Code, the nature of the equipment will be considered carefully, particularly if it is intended for internal security purposes. Internal repression includes, inter alia, torture and other cruel, inhuman and degrading treatment or punishment, summary or arbitrary executions, disappearances, arbitrary detentions and other major violations of human rights and fundamental freedoms as set out in relevant international human rights instruments, including the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights.

CRITERION THREE

The internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts

Member States will not allow exports which would provoke or prolong armed conflicts or aggravate existing tensions or conflicts in the country of final destination.

CRITERION FOUR

Preservation of regional peace, security and stability

Member States will not issue an export licence if there is a clear risk that the intended recipient would use the proposed export aggressively against another country or to assert by force a territorial claim.
When considering these risks, EU Member States will take into account inter alia:

a) the existence or likelihood of armed conflict between the recipient and another country;
b) a claim against the territory of a neighbouring country which the recipient has in the past tried or threatened to pursue by means of force;
c) whether the equipment would be likely to be used other than for the legitimate national security and defence of the recipient;
d) the need not to affect adversely regional stability in any significant way.

CRITERION FIVE

The national security of the member states and of territories whose external relations are the responsibility of a Member State, as well as that of friendly and allied countries

Member States will take into account:

a) the potential effect of the proposed export on their defence and security interests and those of friends, allies and other member states, while recognising that this factor cannot affect consideration of the criteria on respect of human rights and on regional peace, security and stability;
b) the risk of use of the goods concerned against their forces or those of friends, allies or other member states;
c) the risk of reverse engineering or unintended technology transfer.

CRITERION SIX

The behaviour of the buyer country with regard to the international community, as regards in particular to its attitude to terrorism, the nature of its alliances and respect for international law

Member States will take into account inter alia the record of the buyer country with regard to:

a) its support or encouragement of terrorism and international organised crime;
b) its compliance with its international commitments, in particular on the non-use of force, including under international humanitarian law applicable to international and non-international conflicts;
c) its commitment to non-proliferation and other areas of arms control and disarmament, in particular the signature, ratification and implementation of relevant arms control and disarmament conventions referred to in sub-para b) of Criterion One.
CRITERION SEVEN

The existence of a risk that the equipment will be diverted within the buyer country or re-exported under undesirable conditions

In assessing the impact of the proposed export on the importing country and the risk that exported goods might be diverted to an undesirable end-user, the following will be considered:

a) the legitimate defence and domestic security interests of the recipient country, including any involvement in UN or other peace-keeping activity;
b) the technical capability of the recipient country to use the equipment;
c) the capability of the recipient country to exert effective export controls;
d) the risk of the arms being re-exported or diverted to terrorist organisations (anti-terrorist equipment would need particularly careful consideration in this context).

CRITERION EIGHT

The compatibility of the arms exports with the technical and economic capacity of the recipient country, taking into account the desirability that states should achieve their legitimate needs of security and defence with the least diversion for armaments of human and economic resources

Member States will take into account, in the light of information from relevant sources such as UNDP, World Bank, IMF and OECD reports, whether the proposed export would seriously hamper the sustainable development of the recipient country. They will consider in this context the recipient country’s relative levels of military and social expenditure, taking into account also any EU or bilateral aid.

OPERATIVE PROVISIONS

1. Each EU Member State will assess export licence applications for military equipment made to it on a case-by-case basis against the provisions of the Code of Conduct.

2. This Code will not infringe on the right of Member States to operate more restrictive national policies.

3. EU Member States will circulate through diplomatic channels details of licences refused in accordance with the Code of Conduct for military equipment together with an explanation of why the licence has been refused. The details to be notified are set out in the form of a draft pro-forma at Annex A. Before any Member State grants a licence which has been denied by another Member State or States for an essentially identical transaction within the last three years, it will first consult the Member State or States which issued the denial(s).
If following consultations, the Member State nevertheless decides to grant a licence, it will notify the Member State or States issuing the denial(s), giving a detailed explanation of its reasoning.

The decision to transfer or deny the transfer of any item of military equipment will remain at the national discretion of each Member State. A denial of a licence is understood to take place when the member state has refused to authorise the actual sale or physical export of the item of military equipment concerned, where a sale would otherwise have come about, or the conclusion of the relevant contract. For these purposes, a notifiable denial may, in accordance with national procedures, include denial of permission to start negotiations or a negative response to a formal initial enquiry about a specific order.

4. EU Member States will keep such denials and consultations confidential and not to use them for commercial advantage.

5. EU Member States will work for the early adoption of a common list of military equipment covered by the Code, based on similar national and international lists. Until then, the Code will operate on the basis of national control lists incorporating where appropriate elements from relevant international lists.

6. The criteria in this Code and the consultation procedure provided for by paragraph 2 of the operative provisions will also apply to dual-use goods as specified in Annex 1 of Council Decision 94/942/CFSP as amended, where there are grounds for believing that the end-user of such goods will be the armed forces or internal security forces or similar entities in the recipient country.

7. In order to maximise the efficiency of this Code, EU Member States will work within the framework of the CFSP to reinforce their cooperation and to promote their convergence in the field of conventional arms exports.

8. Each EU Member State will circulate to other EU Partners in confidence an annual report on its defence exports and on 1st implementation of the Code. These reports will be discussed at an annual meeting held within the framework of the CFSP. The meeting will also review the operation of the Code, identify any improvements which need to be made and submit to the Council a consolidated report, based on contributions from Member States.

9. EU Member States will, as appropriate, assess jointly through the CFSP framework the situation of potential or actual recipients of arms exports from EU Member States, in the light of the principles and criteria of the Code of Conduct.

10. It is recognised that Member States, where appropriate, may also take into account the effect of proposed exports on their economic, social, commercial and industrial interests, but that these factors will not affect the application of the above criteria.
11. EU Member States will use their best endeavours to encourage other arms exporting states to subscribe to the principles of this Code of Conduct.

12. This Code of Conduct and the operative provisions will replace any previous elaboration of the 1991 and 1992 Common Criteria.

ANNEX A

........... (name of Member State) has the honour to inform partners of the following denial under the EU Code of Conduct:

Destination country: ............

Short description of equipment, including quantity and where appropriate, technical specifications: ............

Proposed consignee: ............

Proposed end-user (if different): ............

Reason for refusal: ............

Date of denial: ............