

DIRECTORATE-GENERAL FOR EXTERNAL POLICIES
POLICY DEPARTMENT



WORKSHOP

**The implementation
of the EU arms export
control system**

SEDE

WORKSHOP

The implementation of the EU arms export control system

ABSTRACT

The aim of the workshop was to provide an overview of the EU arms export control system as well as options for improvement. The main speaker, Dr Sibylle Bauer, Director of the Dual-Use and Arms Trade Control Programme at the Stockholm International Peace Research Institute (SIPRI), provided a brief overview of the main elements of the EU Common Position 2008/944/CFSP and then focused on aspects related to strengthening implementation of the eight criteria of the Common Position, the enhancement of compliance with the reporting obligation by Member States, possible ways to increase the transparency and public scrutiny of the export control framework and the development of the EU's institutional framework in this context. Her presentation was followed by a debate involving members of the Security and Defence Committee of the European Parliament, the outcome of which may feed into the EP Annual Report on Arms Export.

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WORKSHOP

POLICY DEPARTMENT, DG EXPO
FOR THE SUBCOMMITTEE ON SECURITY
AND DEFENCE (SEDE)



Wednesday 12.04.2017 – **09:00-10:30**
ALTIERO SPINELLI BUILDING – ROOM **A3G-3**

CONTACTS AND REGISTRATION: poldep-expo@europarl.europa.eu

IMPLEMENTATION OF THE EU ARMS EXPORT CONTROL SYSTEM

Chair: Anna FOTYGA

PROGRAMME OF THE WORKSHOP

DIRECTORATE-GENERAL FOR EXTERNAL POLICIES
POLICY DEPARTMENT



For the Sub-Committee on Security and Defence (SEDE)

WORKSHOP

Implementation of the EU arms export control system

Wednesday, 12 April 2017
Brussels, **Altiero Spinelli building, Room ASP 3G3**
09.00-10.30h

PROGRAMME

- | | |
|--------------------|---|
| 9.00-9.05 | Welcome and introductory remarks by <ul style="list-style-type: none">• Ms Anna FOTYGA, Chair of the Sub-Committee on Security and Defence (SEDE) |
| 9.05-9.35 | The EU Arms Export Control System <ul style="list-style-type: none">• Dr Sibylle BAUER, Programme Director, Dual-Use and Arms Trade Control at the Stockholm International Peace Research Institute (SIPRI) |
| 9.35-10.25 | Q&A |
| 10.25-10.30 | Concluding remarks by <ul style="list-style-type: none">• Ms Anna FOTYGA, Chair of the Sub-Committee on Security and Defence (SEDE) |

BIOGRAPHICAL SUMMARIES OF THE SPEAKER AND THE CONTRIBUTORS TO THIS REPORT

Dr Sibylle Bauer (Germany) is the Director of Studies, Armament and Disarmament at the Stockholm International Peace Research Institute (SIPRI), and also SIPRI's Programme Director for Dual-use and Arms Trade Control. She holds a PhD in Political Science jointly from the Free University of Brussels (ULB) and the Free University of Berlin. Her PhD thesis was on the Europeanisation of Arms Export Policies and Its Impact on Democratic Accountability. Dr Bauer has published widely on dual-use and arms trade control-related issues and been a frequent speaker on these topics in Asia, Europe and North America. Since 2005 she has spent much of her time on capacity-building to enhance transit, transshipment, brokering and export controls for arms and dual-use items, in particular in Europe and Asia.

Mark Bromley (United Kingdom) is Co-Director of the SIPRI Dual-use and Arms Trade Control Programme, where his work focuses on national, regional and international efforts to regulate the international arms trade. His recent publications include 'ICT Surveillance Systems: Trade Policy and the Application of Human Security Concerns', Strategic Trade Review (Spring 2016, co-author), 'The dual-use export control policy review: balancing security, trade and academic freedom in a changing world', EUNPC Non-proliferation Paper No. 48 (Mar. 2016, co-author), 'Western Arms Exports to China', SIPRI Policy Paper no. 43 (Jan. 2015, co-author), and 'The Arms Trade Treaty: challenges for the First Conference of States Parties', SIPRI Insights on Peace and Security (Sep. 2014, co-author).

Giovanna Maletta (Italy) holds a Bachelor's Degree in Political Science and a Master's Degree in International Relations from LUISS 'Guido Carli' University of Rome. While graduating, she worked as an intern in the office of the Ambassador of Pakistan in Italy. From February to August 2015, she participated in the internship programme of the Organization for the Prohibition of Chemical Weapons (OPCW) in The Hague, where she worked with the International Cooperation Branch. From March to July 2016, she joined the Disarmament, Non-proliferation and Arms Control Division of the European External Action Service (EEAS) as a Blue Book Trainee. Following an EU Non-proliferation Consortium internship, she now works as a Research Assistant with SIPRI's Dual-Use and Arms Trade Control Programme.

PART I: CONTRIBUTIONS OF THE SPEAKERS

Ms Anna FOTYGA (ECR), the Chair of the Sub-Committee on Security and Defence (SEDE) of the European Parliament, started the proceedings by giving her welcoming remarks and outlining the scope of the workshop, which was initiated by Ms Bodil Valero, and focused on the implementation of the EU arms export control system. Ms Fotyga also introduced the main speaker, Dr Sibylle Bauer, Director of [the Dual-use and Arms Trade Control Programme](#) at the [Stockholm International Peace Research Institute](#) (SIPRI).

Dr Sibylle BAUER (SIPRI) started her presentation by giving a quick overview of the history and the role of SIPRI and highlighting the main features of the EU Common Position 2008/944/CFSP.¹ More specifically, Dr Bauer outlined as the key elements of this document: the 8 criteria, the User's Guide to the Common Position providing instructions on their implementation,² the mechanisms for information exchange and consultation among the EU Member States, the public reporting system and, finally, the common list of military equipment. In addition, she explained that the scope of the Common Position, actually, goes beyond the control on the export of arms as this very broad instrument also covers transit and transshipment, brokering and transfer of technology, including intangible transfers of technology (ITT), and licenced production. Finally, she argued that the Common Position was very relevant considering the EU's contribution to the international arms trade, as SIPRI's figures reveal that among the top 10 world biggest arms exporters, five are EU Member States (France, Germany, United Kingdom, Spain and Italy).³

Following these introductory points, Dr Bauer's presentation on the EU Arms Export Control System focused on the following issues, highlighting for each one of them key points and recommendations:

1. Enhancing compliance with the EU Common Position;
2. Enhancing compliance with reporting obligations;
3. Enhancing transparency and public scrutiny;
4. Developing the EU's institutional framework.

1 Enhancing compliance with the EU Common Position

In the first part of her presentation, Dr Bauer outlined the main issues associated with the implementation of the EU Common Position, starting by describing the different ways in which the EU Member States implement its provisions. As the EU Common Position leaves implementation in the hands of EU Member States, there are significant differences in how controls are implemented at the national level. The very nature of the EU implies that there are at least 28 different implementation systems (even more if we consider the regional systems in Belgium). Differences include also which departments/ministries/agencies are involved in assessing licences (and their respective roles i.e. who is consulted and who has veto powers) and the powers states have to suspend or revoke licences. This latter point, for example, was particularly debated during the Arab Spring, when many countries regretted having issued certain licences for exports to affected states. Member States also tend not to be

¹ Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment [OJ L 335, 13.12.2008, p. 99–103](#)

² [User's Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment](#)

³ A. Fleurant, P. D. Wezeman, S. T. Wezeman, N. Tian, [Trends in International Arms Transfer, 2016](#), *SIPRI Fact Sheet*, February 2017.

very uniform in their interpretation of the criteria of the User's Guide. This problem arises for example when applying criterion 8, which refers to the technical and economic development of the recipient country.⁴ This is an issue that is debated also in the context of the Arms Trade Treaty, a forum where the relationship between security and development has been widely discussed. Another key point highlighted by Dr Bauer refers to the fact that, while detailed information is shared on licence denials, the amount of information that EU Member States systematically share on export licences and actual exports is still limited to the COARM meetings and the data collected for the Annual Report which, however, is published very late. Still, the launch of a new IT platform for sharing information is a sign of improvement.

The recommendations put forward by Dr Bauer to enhance implementation of the EU Common Position include different options. The first one is the launch of a peer review process to compare the different systems and methodologies of implementation adopted by EU Member States in detail and which should involve representatives of the policy, licencing and enforcement sides. Dr Bauer also suggested that the information shared in COARM on certain recipient countries could be more detailed. In addition, more information could be shared on cases of diversion, companies involved in criminal activities, as well as suspended and revoked licences. Another instrument that could prove extremely useful would be sharing the level of information which was envisaged under the 'post-embargo tool box', proposed and, almost adopted, in 2004. It envisaged a quarterly exchange on licences issued for type and quantity of equipment and technology, as well as information on end use and end users for destinations that had recently been subject to an EU arms embargo. It also foresaw frequent consultations as well as discussions at Council level if there was a major policy change by one or several Member States. Finally, the speaker proposed two more options. One referred to strengthening the language of the Common Position on the human rights evaluation to be made when assessing a licence, by clarifying whether the exporter should look at the general situation of a country (a principled approach) or rather consider whether a particular weapon could be used to violate certain human rights (a functional approach). The last recommendation was to turn the User's Guide, a useful but long document, into a more interactive and user-friendly online tool.

2 Enhancing compliance with reporting obligations

In the second part of her presentation, Dr. Bauer focused on EU Member States' compliance with their reporting obligations. The first point she made was that not all Member States make a full submission (19 out of 28 in 2015), meaning that not all of them provide disaggregated data on actual arms deliveries. Such incomplete submissions can be attributed to secrecy, lack of human and technical resources and/or policy priorities. Among them are also big exporters, notably Germany, France and the UK. On the other hand, countries, like Sweden, are able to provide disaggregated data on actual exports as they request this information to be provided by their industry. Ideally these data, argued the speaker, should also be retrievable from customs databases.⁵ However at present, this method still appears to pose technical challenges, arising both from the way national customs databases are set up and from the classification

⁴ Criterion 8 states that Member States should consider: 'Compatibility of the exports of the military technology or equipment with the technical and economic capacity of the recipient country, taking into account the desirability that states should meet their legitimate security and defence needs with the least diversion of human and economic resources for armaments. Member States shall take into account, in the light of information from relevant sources such as United Nations Development Programme, World Bank, International Monetary Fund and Organisation for Economic Cooperation and Development reports, whether the proposed export would seriously hamper the sustainable development of the recipient country. They shall consider in this context the recipient country's relative levels of military and social expenditure, taking into account also any EU or bilateral aid'.

⁵ This would also support effective enforcement, since customs declarations for licensable exports should be cross-checked against a valid licence being in place.

system used by customs. This could potentially be addressed through cooperation with the World Customs Organisation based in Brussels.⁶

Information on actual arms export is very important: While export licence data is essential for understanding how the criteria have been applied, it is still not a reliable indicator of when, or if, a delivery takes place (considering also the increasing use of open licences). The timing of the publication of the EU Annual Report constitutes another issue. The 17th EU Annual Report – covering 2014 – was published in May 2016, the latest ever. The 18th EU Annual report – covering 2015 – was made public (although not formally published yet) in March 2017, creating a gap of 14 to 26 months between the moment when licences are issued or exports made and the possibility for the parliament to scrutinize them.

In order to address these issues, Dr Bauer put forward several suggestions: First and foremost, to encourage Member States to make full submissions by exchanging information (for example in the context of peer review meetings) on how some countries manage to collect disaggregated data. In addition, an earlier deadline for submission should be set or, alternatively, more than one report could be delivered (the Netherlands, for instance, decided to submit a monthly report at the national level, and other countries, such as Germany, have introduced six-monthly reports). Finally, national reports on arms exports, which EU member states are required to produce under the Common Position, remain relevant as a fundamental tool for the national parliaments to assess the decisions made by their governments. These decisions are usually the product of competing interests such as economics, security, development, protection of human rights and counterterrorism. In this regard, the number of countries producing national reports has increased substantially but, still, only three quarters of Member States do so.

3 Enhancing transparency and public scrutiny

This section of the presentation focused particularly on the information contained in the EU Annual Report, a very thick document which nonetheless does not allow for a full assessment of how the 8 criteria are implemented. Often, EU Member States include in their reports information that happens to be available but is not necessarily of most interest for the public and their parliaments for assessing the implementation of licensing criteria. For example, the financial volume of exports to a certain recipient country does not tell us whether these transactions contributed to the violation of human rights in that country. In this regard, in order to be more transparent, the report should be designed to answer key questions by providing information such as what types of weapons have been exported, how many and to whom (e.g. which type of recipient/end-user, such as industry, police or the military). To include details on how the decision has been made against the criteria would also be useful in this context.

Enhancing the scrutinising role of national parliaments regarding decisions on arms export control is another way to increase transparency and public and parliamentary scrutiny. Some EU countries recently adopted significant steps to provide parliaments with more ‘real time’ and quality information. The Dutch and German parliaments now receive information on certain major exports within weeks of the decision being taken. In Sweden a body involving parliamentarians is confidentially consulted on arms exports before the decision is taken. Finally, the British Parliament takes a very active scrutinising role after licensing decisions have been taken. The European Parliament could also play a very significant role as a forum for national parliaments to exchange and highlight good reporting practices and mechanisms for

⁶ National customs databases in the EU currently differ regarding the way they are structured, the information they include and the way they can be searched. Additionally, the lack of direct correspondence between customs codes and control list categories continues to pose challenges, which would need to be addressed at the European and international level.

ensuring better oversight and accountability of arms export controls. Although joint arms production and delivery of components and sub-systems in the EU is substantial, cooperation and exchange on arms exports between national parliaments, and also with the European Parliament, seems to be very limited. Finally, as for the User's Guide, actions could be taken to make the EU annual report less static and more user-friendly.

4 Developing the EU institutional framework

The last part of the presentation highlighted key points related to the EU institutional framework involved in the control of arms export and made suggestions on how to improve it. The first set of issues relates to the differences between smaller and bigger EU Member States in terms of diplomatic resources that can be used to conduct end-user checks or post-shipment verification. In this regard, it has been suggested that EU Delegations could make a contribution by providing information for export licensing risk assessments, checks on EUCs, and post-shipment controls. This, however, implies the need for diplomatic staff to receive specific training. Another issue to be considered is the fragmentation of the EU arms export control regime and the existence of complementary pieces of legislation in addition to the Common Position: the Dual-use Regulation,⁷ the ICT Directive,⁸ arms embargoes, the anti-Torture Regulation,⁹ and the Firearms Regulation¹⁰ that are spread across different EU institutions. This makes it important to ensure coordination, also from a European Parliament perspective in its role regarding these different elements. Finally, the limited number of staff working on export control across the EU institutional framework constitutes another issue, together with the limited amount of resources available, highlighting the need for 'in-reach' activities and capacity building within the EU. In this regard, there is still a lot that the European Parliament could do in terms of enhancing coherence among the different aspects of the European export control regime, as well as in terms of allocation of resources.

⁷⁷ 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 (OJ L 134, 29.5.2009, p. 1–269).

⁸ 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 (OJ L 146, 10.6.2009, p. 1–36).

⁹ Council Regulation (EC) No 1236/2005 of 27 June 2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (OJ L 200, 30.7.2005, p. 1–19).

¹⁰ Commission Implementing Regulation (EU) 2015/2403 of 15 December 2015 establishing common guidelines on deactivation standards and techniques for ensuring that deactivated firearms are rendered irreversibly inoperable (Text with EEA relevance) (OJ L 333, 19.12.2015, p. 62–72).

PART II: DISCUSSION

Ms Bodil VALERO (Greens/EFA) asked the speaker if there have been any changes or any trend emerging, since the Arab spring, in the way Member States sell weapons and give licences to problematic countries, like Saudi Arabia, or involved in real wars like Yemen. In addition, she asked if there was evidence or were figures that criterion 8 has been used as a criterion to reject a licence, as it seemed that only few countries make use of it. Her third question referred to the unattended reporting obligation by some Member States and on how we could make this a less sensitive issue so that it became evident that everybody had to report what they are doing. Ms Valero referred to a report written on the issue where a paragraph was added on 'naming and shaming' which, however, disappeared in the plenary vote. She also mentioned the fact that, after the last report, she received a letter from a government stating that she should not do so. Finally, as regards Criterion 2, Ms Valero said that the speaker mentioned that there were two types of implementing approach, functional and principled, yet the criterion asks whether the exported material can be used for oppressing its own population. When implementing the criterion, some Member States look at the overall situation of the country and other do not. She believes Sweden is among those looking at this overall situation but, still, it may be ready to do as the other Member States do and decrease the number of requirements, also considering that we are talking about strategic products. So, Ms Valero concluded, her question was which countries actually look at the overall situation when exporting.

Mr Michael GAHLER (EPP) argued that the presentation made quite clear that there was a wide range of different practices in place even though when you have an EU and a UN embargo against a certain country and it should be assumed there is a uniform practice as regards arms export. Beyond that, Mr Gahler wanted to know if the EU disposed of a set of decisions and rules which enable it to establish that a certain country behaved wrongly from a European point of view. With regard to a situation where the EU deems the behaviour of a state to be wrong in a specific issue area and has expressed this by criticizing said behaviour, Mr Gahler asked if this still resulted in diverging export practice and further if these divergences led to discussion on EU level. As an example, he referred to the EU policy towards Saudi Arabia, which had in the past included critique towards certain policies, but did not result in the adoption of any formal policy decisions to establish an arms embargo nor a uniform export practice. Therefore, he wondered how the EU would be able to formulate a common response to these challenges and whether it would not be more effective to produce such a response through the European national parliaments and through a coordination mechanism between the national parliaments of the Member States with respect to specific third countries. He argued that by some, the opinion of the European Parliament may be considered to be 'irrelevant' or biased and thus working with the national parliaments might be a more effective way to achieve a unified approach when adopting restrictive policies against a specific state. Mr Gahler concluded his remarks by clarifying that he was not generally opposed to the export of arms to third countries, if this demonstrably supported the European interest, yet conclusions should be drawn from the experience that the EU had sometimes supported the wrong side.

Mr Geoffrey Van Orden (ECR), agreed on the need for European governments to control the export of dangerous goods (like chemicals, drugs and weapons), yet, he argued, in the context of arms export control Europeans seemed very able in what he calls self-flagellation, self-criticism and self-control. Then, he asked where the evidence was, the linkage, that the control of Western arms export had a benign impact in reducing conflict across the world. He added that we were now witnessing that there was an increasing sort of industry, almost, on arms export control and the speaker also proudly mentioned this bureaucratic documentation that passed from one page to hundreds of pages, as if that in itself was a justification and an achievement. Hence, Ms Van Orden asked, what was the effect all of this was having

besides making feel people better. And with reference to China and Russia, who export to the 'bad guys', what controls will there ever be on their exports?

Ms Sabine LÖSING (GUE/NGL) referring to the comments of her colleagues, argued that these already explained a lot about the problems the EU was facing. She then started her intervention by stating that, from Dr Bauer's presentation it was clear that on the one hand we have the criteria and on the other reality. Her first question, therefore, was on how the EU Member States could better implement these criteria, whose existence seemed to have been questioned by the intervention of Mr Van Orden. But these criteria are the outcome of a decision made in the past and they have been adopted as a Common Position of the EU, so to question them would, in her opinion, represent a step back. Ms Lösing, then, referred to Mr Gahler's comment on how large the room for manoeuvre for the interpretation of these criteria was, so that 'sustainable' political interests could actually change them in practice. She also referred to sustainability, a very clear argument of the 2030 Agenda, not just in environmental terms but also intended as a capacity to foresee consequences of the decisions and steps we will make. But, addressing Mr Gahler, Ms Lösing asked how sustainability could be applied to arms export control and, in this case, who would decide, for instance, if German exports to Saudi Arabia were sustainable, politically, economically or in any other way advantageous. In this regard, the logic of Mr Van Orden's question could be reverted in how harmful these exports have been. Finally, Ms Lösing wanted to remind how important political will was: the fact that bigger countries are unable to share data due to technical and IT problems appears a bit absurd and rather reveals the lack of the political willingness to submit this information. On this matter, she then asked to what extent the speaker thought that the political level is the level that needs to be influenced as there are all these rules but then a practice that remains untouched. Finally, Ms Lösing argued that, considering how security and development are so intertwined at the European level, this criterion should be appreciated for its importance. Ms Lösing asked if there were any correlations between the socioeconomic or social justice situation in some states and the diverging interpretations of the criterion, because in her opinion, regardless of in how many agendas and documents this linkage was made, implementation of criterion 8 should not be that controversial.

Mr Javier NART (ALDE) argued that, here as in many other issues, we were in between the ethics, which was the criteria, and the practice, which was the reality. He added that talking about hypocrisy was useless, since it was evident. To start with, he stated, there should not be exports, and this was part of the criteria, to countries which were in a war of aggression, in an external war, and not in a defensive war. This is evident, but it is true that it has not produced a blocking statement for exports, for example to the 'very democratic' regime of Saudi Arabia or to the similarly 'democratic' and 'respectful' regarding human rights regime of the United Arab Emirates, simply because they belong to our friends' circle. Therefore, it does not matter if a behaviour is criminal or not if this behaviour is carried out within the democratic international society, even though this means the massacre of civilian society, such a dark and horrible situation, which is the consequence of the Saudi and UAE blockage in the case of Yemen. It looks like we are saying that these are second-category, expendable victims and there is no problem. But the problem is not that China and Russia are the 'bad guys', but the fact that we act like the bad ones here. We fill our mouth with democratic words and respect of human rights and we are very sensitive when we see bombed hospitals and suffering children. But this is far less important than the fundamental truth that this is happening with weapons exported by the highly democratic Europe. He was not referring only to the UK, which has an enormous responsibility in this case, but also to Spain. At this moment, Spain has an on-going contract with Saudi Arabia according to which in Cadiz the shipyard, which was about to be closed, will be kept alive because it will start producing military ships for this country. Mr Nart also stated that he did not believe Spain would stop selling bombs to the Saudis. Hence, we are caught in this tension between rhetoric and a pragmatic approach, the politically correct because we have no other option, the political realism. It would be a good thing that we try to adopt an ethical approach in practice but at the same time we face national needs in front of which criteria disappear leaving only harsh reality.

Mr Nart questioned, therefore, whether there was a way of reconciling our ethics with our practice, not Russian or Chinese but ours.

Mr Tunne KELAM (EPP) expressed his special pleasure to welcome SIPRI, highly regarded as a competent and serious institution. He argued that the problem of inconsistency between rules and their interpretation was a very typical issue within the EU, the difference between rules and implementation, ideas and pragmatic goals and needs, with the only difference that, in this case, the playground was more sensitive. We understood that there is a competition between national arms industries, which are not very happy to share information. Yet, first, the EU should address the differences in the national implementation systems, intensify information sharing mechanism in COARM and, the speaker mentioned, the timing and the contents of the reports. Mr Kelam then asked Dr. Bauer to elaborate further on the post-embargo tool-box and how third countries could be involved in this tool. He also agreed with Mr Gahler who argued common policies towards certain countries were needed in order to make the implementation of the Common Position easier. Mr Kelam also highlighted how the EU was, on the one hand, very demanding towards itself but, on the other, incapable of applying the principles that nations under aggression, like Ukraine, should be able to defend themselves and receive arms. Finally, he pointed out how differences with big arms exporters, not part of the system, like China and Russia, could have devastating impacts on the behaviour of EU arms exporters.

Dr Sibylle BAUER thanked the Members of Parliament for the numerous and interesting questions and started addressing them one by one. With reference to the impact of the Arab Spring on the licencing decisions of EU Member States, she argued that a very solid answer would require a deeper assessment and a systematic analysis of how the policies of the main suppliers changed with regard to some countries. Differences, for example, arise if we consider the destination. In Libya, for instance, there was a boost in arms export after the embargo was lifted in 2003, while this trend changed dramatically as the security situation worsened. Saudi Arabia, on the other hand, constitutes a different case as the country kept receiving weapons from many EU Member States.

On implementation of criterion 8: this does not very often constitute an exclusive criterion, it is rather considered in the overall risk assessment part of the licence decision process. When a licence is denied this often happens for more straightforward reasons (e.g. risks of diversion, human rights violation etc.). For these reasons it is much more relevant to look at the details of the licencing procedure itself as the risk assessment is much broader, and consider for example if the Development Ministry was consulted in a licensing decision.

On the proposal to 'black list' those who don't report, Dr. Bauer pointed out that, actually, this was already public information as it is evident if you report or you don't. Reporting, according to Dr. Bauer, should also be considered in a more fair and balanced manner: the picture in this sense is very diverse as some report but not completely, some report for example on quantity and some on end users (providing different elements of information, thus it would be like comparing apples and oranges), and some report to the UN Register of Conventional Arms every year. And those big countries unable to provide disaggregated data on actual exports, like the UK and Germany, still, are able to provide very useful information and could be actually considered as cases of reporting best practices as regards other elements of reporting. The UK, for example, includes case studies on selected recipient countries in its national reports. On this matter, it should be national parliaments who ask for more detailed information if they believe their governments did not provide enough. Here, the Spanish Parliament proved very active by adopting a law outlining to whom the report is due, and what information it should contain, and which minister had to appear in front of which committee.

Moving on to the question on Criterion 2, and which EU country applied a functional approach and which a principled approach, Dr. Bauer replied that how human rights are considered by individual EU Member States was rather a research question that would require interviewing the licencing authorities and also

looking at the additional national criteria. Nevertheless, it can be said that the human rights criterion was acquiring more and more weight as now it is also included in the Arms Trade Treaty, and has become a national, European and internationally binding requirement.

As regards the differences between national policies and risk assessments and the question on embargoes raised by Mr Gahler, the speaker replied that when an embargo was in place, the situation was quite clear and that embargoes are not necessarily based on UN decisions but can also be the outcome of autonomous EU considerations. This is ultimately a question of common political assessment and if you don't have such a common assessment, this can lead to different arms export licences decision and it will remain this way until there are common policies towards which we have still quite some way to go.

In response to the question of whether arms export constraints had positive effects on conflict affected countries, Dr. Bauer argued there was an inherent contradiction in proving that something would not have happened if you had acted differently. Nevertheless, there is evidence that the delivery of weapons in countries like Libya, has generated disasters and cases of diversion that put in danger EU troops themselves for example in Mali. And going back to the 1990s when the 8 criteria were adopted, the Iraq war illustrated that when you export fighter jets to countries you later fight, your troops will be confronted with your own fighter jets. Situations like these show how relevant the Common Position and the ATT are. And as to whether the fact that the EU report now counts many pages compared to the first one-page report can be considered an achievement: this is indeed a success since it reflects a shift towards a transparency norm while 20 years ago, secrecy regarding arms exports was still the norm. But then, step by step, governments realized that there was much less sensitivity than they believed and that lack of transparency enables and facilitates scandals as have happened in a number of European countries.

On the role of the industry in transparency vs secrecy, Dr. Bauer argued that actually there was not as much controversy as was often portrayed. Rather, companies tend to consider information about the price commercially sensitive. Moreover, firms are usually very proud of their deals and ready to publicize them, however after the contract has been concluded. The issue of what type of information is considered sensitive, by whom, when and why, was also addressed by the German Constitutional Court in 2014.

The speaker also addressed the Sustainable Development Goals (SDGs) issue and the linkage between security and development: this discussion has actually come a long way both in the UN and in the ATT context, where a thematic discussion on this very topic was held at an informal preparatory meeting for the ATT Conference of States Parties in Geneva last Friday. As regards the ATT, even though the EU has been urging other countries to join the treaty, these efforts are undermined by the lack of coherence in arms export control implementation and contradictions between human rights policies and licensing decisions in the EU.

As regards the question on arms exports towards allies and democratic countries and the need to adopt an ethical approach also in practice: discussions on the issue have been held notably in Norway and Sweden, at the initiative of the respective parliaments. The debate in Norway is concluded and in Sweden still ongoing, and the debate shows how difficult it is to formulate a clear definition of a democracy or authoritarian country. What was surprising, the speaker argued, was that in some countries there appeared to be little consultation between licencing authorities and the human rights departments of relevant ministries. Finally, as regards the post-embargo tool box, this instrument would be extremely helpful as there has been a lot of exchange on denials but little real time information on how assessments are made during licence procedures and actual licencing decisions. And in order to come to a common assessment, a dialogue on how criteria are interpreted real time should be possible, and the toolbox was intended to support this process.

Ms Sabine LÖSING (GUE/NGL) asked one more question on end users and, more specifically, how cases of diversion (as the one involving IS acquiring weapons supplied to the Peshmerga by the EU) can be avoided by introducing more end-user guarantees.

Dr Sibylle BAUER (SIPRI) replied that the end use and end-user was part of the risk assessment and there was never a 100% guarantee on this as different situations may occur, such as instability, theft of weapons or a change in the country's political situation. It is the responsibility of the government to say to what extent they are willing to take a certain risk. Nonetheless, there are some steps that can be taken in order to avoid diversion beyond end use certificates: adopting effective sanctions (stopping arms exports to a country as a consequence of intentional diversion could be a strong deterrent if this decision was backed by the other Member States as well), and technical solutions such as marking and tracing notably SALW. And of course there could be more exchange among EU countries on cases of diversion and other technical information, and, as already mentioned, resources should be allocated for in-reach activities to fund both training and cooperation, also for enforcement authorities. Germany, in addition, recently decided to introduce post shipment controls which, however, need to be agreed before through a contract and cannot be implemented overnight, in order not to violate countries' sovereignty.

Ms Anna FOTYGA (ECR), thanked the speaker for the valuable and instructive contribution and closed the workshop.

PART III: PRESENTATION SLIDES

Implementation of the EU arms export control system

Dr. Sibylle Bauer

12 April 2017

sipri

Strengthening compliance with the EU Common Position – Key points

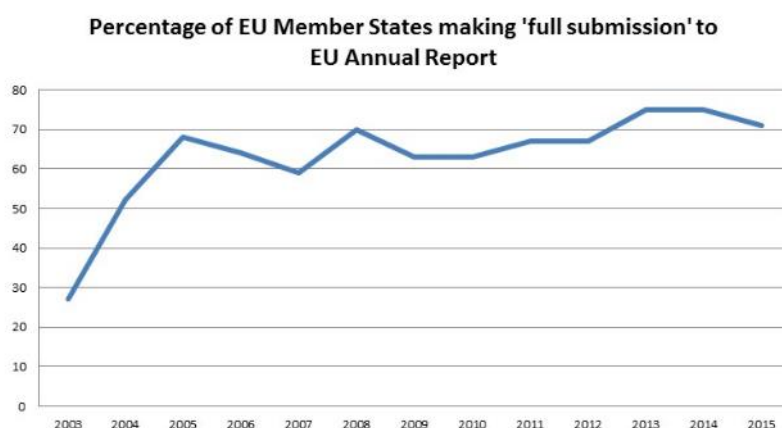
- Considerable differences in national implementation of the EU Common Position (CP):
 - Departments involved in assessing licences
 - Powers to suspend or revoke licences
 - Interpretation of some criteria (particularly criterion 8)
- User's Guide useful but also static and hard to navigate.
- Detailed information shared on licence denials, but amount of information systematically shared on export licences and actual exports still limited.
- New IT system for sharing information on export licence denials in real time.

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Options for strengthening compliance with the EU Common Position

- Conduct detailed assessment of how MS implement EU CP via peer review process.
- At COARM meetings ask MS to provide detailed information on destinations of concern, including as a *potential* recipient.
- Create the 'post-embargo toolbox' discussed in 2004 and expand its coverage to include non-members of the EU (and NATO).
- Ask MS to share information on cases of diversion, forged end-user certificates, suspect brokers or transport companies, and suspended or revoked licences.
- Include language in EU CP encouraging MS to take account of the extent to which a recipient state respects human rights and maintains systems of good governance.
- Transform User's Guide into online resource with links to publicly available information that can inform export licensing decisions.
- Encourage MS to share good practices adopted for implementing the 8 criteria, particularly criterion 8.

Enhancing compliance with reporting obligations



Enhancing compliance with reporting obligations – Key points

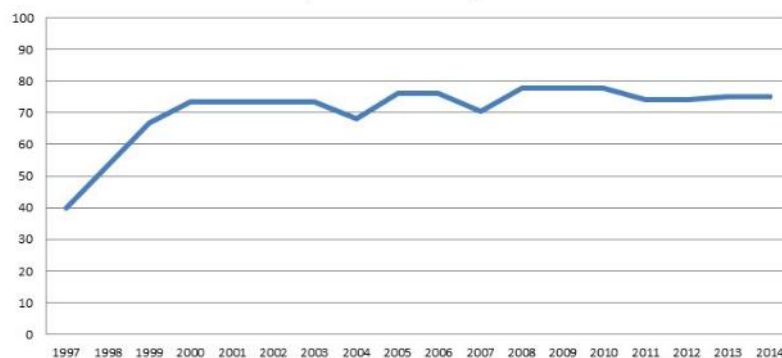
- Number of MS making full submissions to EU Annual Report (disaggregated data on licences and actual exports) has peaked at 21 and fell to 20 for 2015.
- Key barrier: certain states (including DE, FR and UK) unable to provide disaggregated data on actual arms exports.
- MS providing disaggregated data on actual exports tend to base it on information submitted by companies on the use of export licences.
- Export licencing data essential for understanding how the criteria have been applied but no reliable indicator of when, or if, a delivery takes place. Additional complication for transparency: open licences.
- 17th EU Annual Report (covering 2014) published in May 2016, the latest ever.
18th EU Annual Report (covering 2015) published in March 2017.
- New data sharing system may help with generating a more timely EU Annual Report but key barrier has always been when states submit data.

Options for enhancing compliance with reporting obligations

- Take steps to increase number of MS making full submissions to EU Annual Report.
- Encourage MS to share good practices in data collection and reporting, particularly where for submission of disaggregated data on actual arms exports.
- Explore possibility of using customs figures as a source for data on actual arms exports, including through creation of specific codes at COMTRADE level for exports of military goods.
- Establish more standardised reporting and submission procedure, including an earlier deadline for states to submit data for inclusion in the EU Annual Report.
- Consider publishing two editions of the EU Annual Report, one 6 months after the end of the reporting period (with figures for states that can report then) and one 12 months after the end of the reporting period with the remaining countries included.

Enhancing transparency and public scrutiny

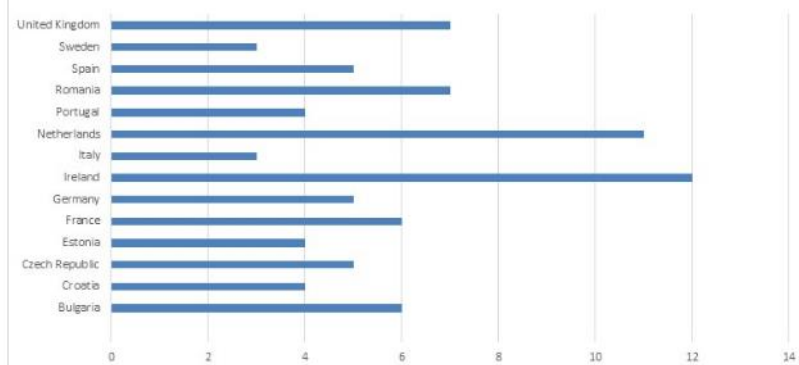
Percentage of EU Member States publishing a national report on arms exports



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Enhancing transparency and public scrutiny

Number of months between period covered by EU Member States' national report for 2014 and publication (where available)



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Enhancing transparency and public scrutiny – Key points

- 23 MS have published at least one national report (compared with 6 of the 15 in 1997). Proportion doing so has peaked at around 75%.
- Reports vary in terms of both timeliness and level of detail
 - Some reproduce submissions to the EU Annual Report
 - Others give detailed descriptions of goods licensed and exported, types of end-users, and denials issued.
- Information provided in EU Annual Report (value of licences and exports broken down by destination and ML category) does not allow for assessments of how the criteria of EU CP are implemented.
- EU Annual Report only available as static PDF document, unlike the South Eastern Europe regional report on arms exports (also available in searchable online database).
- National parliaments in EU MS play roles in policy formation, oversight and – in certain cases – implementation. This varies depending on *inter alia* parliamentary interest, party priorities, and available resources.

Options for enhancing transparency and parliamentary scrutiny

- Encourage all MS to publish a national report on arms exports, as required in EU CP.
- Carry out detailed comparison of national reports to highlight examples of good practice.
- Increase amount and detail of information EU MS publish via EU or national reports.
- Ensure that information includes descriptions of goods licensed and exported, number of items and description of end-user.
- Focus on information required to answer relevant questions, rather than information easily available/retrievable, such as
 - Details of potentially sensitive transfers
 - Details of the goods and end-user (more relevant than financial values)
- Examine ways to make EU Annual Report more publicly accessible, including by turning it into searchable online database.
- Carry out detailed comparison of role national parliaments play in policy formation, oversight and implementation, and use the European Parliament as a forum for highlighting and promoting examples of good practices.

Developing the EU's institutional framework – Key points

- Smaller MS note that resources at their disposal to carry out end-user checks or post-shipment verification are limited.
- Larger EU MS (that do have the resources to do end-user checks or post-shipment verification in certain cases) have been reluctant to share their resources with others.
- The EU delegations have the potential to provide resources that MS could use, including producing information for export licensing risk assessments, checks on EUCs and post-shipment controls.
- Different aspects of the EU's export control 'regime' (EU CP, Dual-use Regulation, ICT directive, arms embargoes, Anti-torture Regulation, and Firearms Regulation) are spread between different EU institutions.
- In contrast, within a majority of MS most or even all aspects of policy implementation in these policy areas is managed by the same government ministry or agency.

Options for developing the EU's institutional framework

- Establish coordination and exchange mechanism among the different EU institutions responsible for the various aspects of the EU's export control regime.
- Increase the number of personnel working on export control-related issues at EU level.
- Establish EU funds to be used for 'in-reach', i.e. capacity-building among licensing and enforcement officials in EU MS.
- Enhance role EU delegations play in assisting MS with their risk assessments and implementation of end-user controls, including through training.
- Focus the European Parliament's attention on issues relating to information-sharing and transparency mechanisms as well as the overall content of the EU common position and its relationship with other areas of EU activity in the field arms export policy.

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