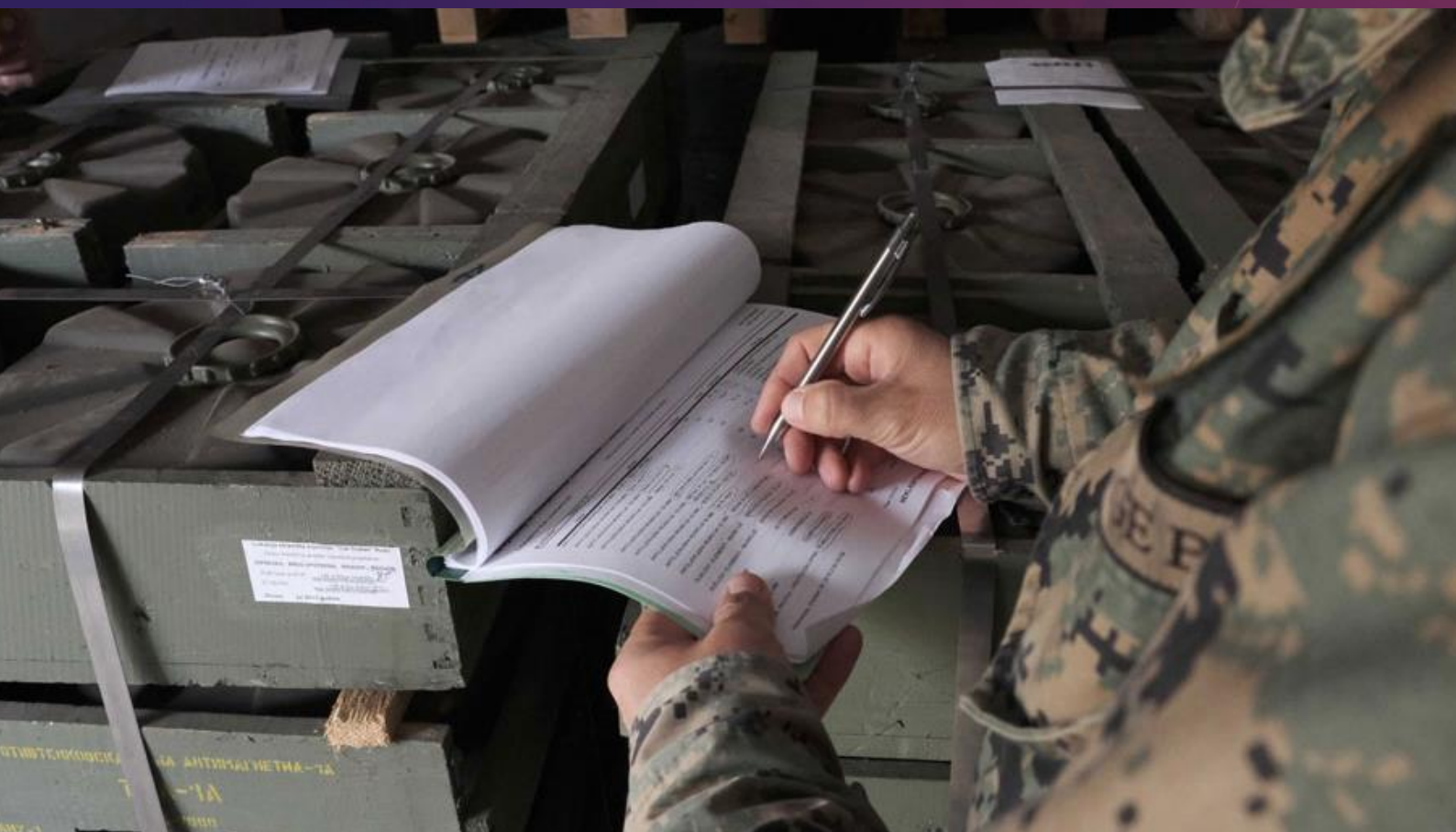


IANSA and International Peace Information Service (IPIS) Briefing Paper  
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# Post-shipment Control of Small Arms and Light Weapons



AFBih soldier inspecting ammunition.  
(Source: European Union Force in Bosnia-Herzegovin)



**iansa**  
International Action Network  
on Small Arms

**UNITED AGAINST  
GUN VIOLENCE**

# Post-Shipment Control of Small Arms and Light Weapons

***The illicit<sup>1</sup> trade of small arms<sup>2</sup> and light weapons<sup>3</sup> (SALW) and their ammunition, parts and components remains a serious international problem in many States. To prevent the illicit trade in conventional weapons and to prevent their diversion<sup>4</sup> to the illicit market, all States have made commitments since 2001 to establish stronger systems that will ensure responsible control of arms transfers. A coherent regulatory system for SALW should include robust export and import risk assessment procedures and licensing systems entailing the verification of end-use(r) certificates and other documents, as well as secure physical security and reporting measures, relating to brokering, transport, storage, and deployment. Post-export activities have come under increasing attention – what governments are now calling “post shipment control.”<sup>5</sup>***

## Preventing Post-Shipment Diversion

Following an international transfer of SALW and their ammunition, parts and components, the exporting State should verify that each consignment have been received by the authorized end-user as agreed in advance with the importing State. Documenting the receipt of the items in the importing State can be done through a Delivery Verification Certificate (DVC) and through on-site inspections.

Prior to 2012 the United States was the sole country performing post-shipment checks. In 2012 Switzerland introduced post-shipment measures, followed by Germany in 2015 for small arms and lights weapons (see *infra*), by Spain in 2020, and Sweden in 2021, among others.<sup>6</sup> Other States that do not have post-shipment controls in place still tend to be supportive of such measures being included as options in international or regional instruments.<sup>7</sup> Exporting States that have introduced post-shipment measures, and on-site post-delivery verification inspections in particular, emphasize the cooperative nature of such measures. Apart from preventing diversion in the post-shipment phase, the stated objective of “mutually agreed-upon” measures is to increase the importing and exporting States’ trust and confidence and to contribute to transparency and accountability in the post-shipment phase.<sup>8</sup>

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<sup>1</sup> See paragraph 6 of the International Instrument To Enable States To Identify and Trace, In A Timely and Reliable Manner, Illicit Small Arms And Light Weapons (ITI).

<sup>2</sup> ITI § 4.

<sup>3</sup> ITI § 4.

<sup>4</sup> For a recently elaborated definition of diversion for the purposes of the Arms Trade Treaty, see the definition of diversion developed by Peter Danssaert and Brian Wood in P. Danssaert (2019): *Anti-diversion measures. Real-time locating systems*. International Peace Information Service vzw: p. 7, and Brian Wood (2020): *The Arms Trade Treaty: Obligations to Prevent the Diversion of Conventional Arms*. United Nations Institute for Disarmament Research: p.33.

<sup>5</sup> See Council of the European Union General Secretariat (2021): DE non-paper on Post Shipment Control, Brussels, 18 November 2021.

<sup>6</sup> [Real Decreto 494/2020, de 28 de abril 2020](#); SIPRI (2021): *Post-Shipment On-Site Inspections of Military Materiel: Challenges and Responses*. SIPRI Policy Brief: p. 1.

<sup>7</sup> Netherlands - Comments - Non-paper on a draft Council Decision on EUC’s for SALW Exports. COARM Working Party on Conventional Arms Exports, 8 May 2020 (WK 4855/2020 INIT); Ireland comments on non-paper on draft Council Decision on End-User Certificates for SALW exports. COARM Working Party on Conventional Arms Exports, 13 May 2020 (WK 4994/2020 INIT); Italian comments on non-paper on draft Council Decision on End-User Certificates for SALW exports. COARM Working Party on Conventional Arms Exports, 13 May 2020 (WK 4955/2020 INIT).

<sup>8</sup> Post-Shipment Controls presentation by Germany. COARM Working Party on Conventional Arms Exports, 28 January 2022 (WK 1221/2022 INIT); *Good Practice Guide on Post-Shipment On-Site Inspections of Military Materiel* SIPRI Good Practice Guide, August 2022: p. 2.

The United States maintains three end-use monitoring programs by law: The Department of State's Blue Lantern (for Direct Commercial Sales), the Department of Defense's Golden Sentry (for Foreign Military Sales), and the program by the Department of Commerce (for dual-use items). These programs may include on-site inspections on a case-by-case basis. [The Golden Sentry program](#) includes Routine End Use Monitoring and Enhanced End Use Monitoring (EEUM).<sup>9</sup> The EEUM is used for highly sensitive defence equipment like for instance Stinger missiles, anti-tank missiles, and night-vision equipment. The EEUM designated equipment inventory of the recipient is verified by serial number on an annual basis through planned and coordinated visits.

Sweden's Inspectorate of Strategic Products has recommended the Swedish Government to introduce post-shipment controls for five different types of light weapons and their associated ammunition systems manufactured in and exported from Sweden. It is required that the end-user country has approved such visits in an end-user certificate, and that the system should only cover state end-users and not weapons manufactured under licence abroad. The Swedish policy is that: "Post shipment controls should, as a rule, not take place in countries for which the guidelines and preliminary work statements indicate that there are in principle no foreign and security policy obstacles to international cooperation. For all other countries, post shipment controls should as a rule take place through on-site verification visits in the country of the weapons".<sup>10</sup>

## Relevant International Instruments

All States have committed themselves to one or more international and regional instruments to combat the illicit trade and diversion of small arms and light weapons. Those instruments include international obligations for the control of exports, imports, transits, trans-shipments and brokering of SALW, as well as other measures. The main five international instruments in question are the Programme of Action To Prevent, Combat and Eradicate the Illicit Trade In Small Arms and Light Weapons In All Its Aspects (PoA), the International Instrument To Enable States To Identify and Trace, In A Timely and Reliable Manner, Illicit Small Arms And Light Weapons (ITI), the Arms Trade Treaty (ATT), the UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition (Firearms Protocol), and the guidelines agreed by the Wassenaar Arrangement in which the world's most significant arms producers and exporters participate. For small arms and light weapons, practical guidance is set out in the United Nations Modular Mosaic Small-Arms-Control Implementation Compendium (MOSAIC).<sup>11</sup>

Under the PoA, Member States of the UN recognized that all States are responsible for solving the problems associated with the illicit trade in SALW and that States need close international cooperation to prevent, combat and eradicate the illicit trade.<sup>12</sup> To do so "States undertake to cooperate and to ensure coordination, complementarity and synergy in efforts to deal with the illicit trade in small arms and light weapons in all its aspects at the global, regional, subregional and national levels."<sup>13</sup> States also undertake to strengthen "mechanisms based on the exchange of relevant information."<sup>14</sup>

Under the PoA States also "should where appropriate, cooperate, develop and strengthen partnerships to share resources and information on the illicit trade in small arms and light weapons in all its aspects."<sup>15</sup> At the

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<sup>9</sup> Thomas Little (2017): [End-use monitoring is the key to success in foreign military sales](#). Army Sustainment, September-October 2017.

<sup>10</sup> Swedish Government (2020): Strategic Export Controls in 2019 – Military Equipment and Dual-Use Items. Government Communication 2019/20:114, 9 April 2020.

<sup>11</sup> See in particular: "National controls over the end-user and end-use of internationally transferred SALW" (MOSAIC 03.21).

<sup>12</sup> UNPoA § III.1.

<sup>13</sup> UNPoA § III.2.

<sup>14</sup> UNPoA § III.11.

<sup>15</sup> UNPoA § III.5.

national level States undertake “to put in place, (...) adequate laws, regulations, and administrative procedures to exercise effective control (...) over the export, import, transit or retransfer of such weapons, in order to prevent (...) illicit trafficking in small arms and light weapons, or their diversion to unauthorized recipients.”<sup>16</sup>

According to article 11 of the ATT all States Parties involved in the transfer of SALW and other conventional arms are required to take measures to prevent diversion of those items. For the exporting State Party this means the establishment of diversion prevention measures and export risk mitigation measures. Although not directly mentioned in article 11 of the ATT, a State Party may interpret those measures to include the use of end-use(r) certification and other end use documents, as well as post-shipment measures required by the exporting State Party such as restrictions on the re-export of the arms, the verification of deliveries and on-site verification in the importing State.<sup>17</sup>

Two other important instruments are the Firearms Protocol and the Wassenaar Arrangement. As per Article 10(4) of the Firearms Protocol, importing States Parties “shall, upon request, inform the exporting State Party of the receipt of the dispatched shipment of firearms, their parts and components or ammunition.” The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies recommends that the end-use/user certificate includes an agreement by the importer/end user to allow on-site verification.<sup>18</sup>

For example, after the entry into force of the Arms Trade Treaty in Burkina Faso, the Burkinabé Permanent Secretary of the *Haute autorité de contrôle des importations d’armes et de leur utilisation* (HACIAU) recognized exporting States’ requirements “to have guarantees from importing countries lest the arms fall into the path of unauthorised groups who may use them to commit, among other things, acts of serious human rights violations, terrorism or genocide.”<sup>19</sup> The authentication and verification of an end use certificate (EUC) is recognized by the Burkinabé authorities as an instrument to “effectively combat arms diversion”.<sup>20</sup> The import of conventional weapons into Burkina Faso is dependent on the presentation of a certificate of final destination (*certificats de destination finale*) and/or a certificate of end-use (*certificats d’utilisation finale*) by the importer.<sup>21</sup>

## Defining Post-Shipment Measures

Post-shipment measures taken by exporting States can include the use of (a) delivery verification certificates, (b) on-site post-delivery verification inspections, (c) use of non-re-export clauses in the end-use(r) certificate, and (d) on-site end-use monitoring to ensure respect for an obligation by importing State to not transfer title or possession of goods to any person or entity without the consent of exporting State, so that the arms or other items are used only for their intended purpose. Post-delivery verification could be done during or shortly after delivery but could also be repeated at a later stage to carry out scheduled inspections or physical inventories of all articles transferred.

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<sup>16</sup> UNPoA § II.2

<sup>17</sup> Pablo Adrián Arrocha Olabuenaga, Claudio Gramizzi (2015): Article 11: Diversion. In: Clara da Silva, Brian Wood (eds). *The Arms Trade Treaty. Weapons and International Law*. Larcier; Stuart Casey-Maslen, Andrew Clapham, Gilles Giacca, Sarah Parker (2016): *The Arms Trade Treaty: A Commentary*. Oxford University Press: pp. 355 – 358.

<sup>18</sup> See e.g. the [indicative list](#) of commonly used end-user assurances.

<sup>19</sup> Service d’Informations du Gouvernement burkinabé (2017): Lutte contre l’insécurité au Burkina Faso : Impulser la sécurité par un contrôle strict des importations d’armes, 13 June 2017.

<sup>20</sup> Service d’Informations du Gouvernement burkinabé (2017): Lutte contre l’insécurité au Burkina Faso : Impulser la sécurité par un contrôle strict des importations d’armes, 13 June 2017.

<sup>21</sup> Loi N°014-2019 Portant Mise en Œuvre du Traite sur le Commerce des Armes au Burkina Faso, Article 12.

**(a) Delivery Verification Certificates:**

A Delivery verification certificate (DVC) is a document, certified by customs or other competent authority of the importing State, used to prove that the SALW or related items have been effectively transferred and delivered to the end user or consignee in the importing State. To this end, an undertaking by the end-user to provide a delivery verification certificate should be included in the end-use(r) certificate.<sup>22</sup>

MOSAIC module 03.21 recommends that when an end-user certificate includes an undertaking to provide a delivery verification certificate,

- a) the authorized end-user, upon custom clearance of the consignment of small arms or light weapons and taking possession of it, should request the customs administration or other competent authority of the importing State to issue a delivery verification certificate;
- b) the customs administration or other competent authority of the importing State should, upon receiving such a request, verify all relevant documentation and, if satisfied, issue a delivery verification certificate to the authorized end-user; and
- c) the authorized end-user should provide the exporter with an original of the delivery verification certificate. The exporter should receive the delivery verification certificate within a reasonable time (e.g. not more than 30 days) of the consignment being cleared through customs by the end-user.<sup>23</sup>

Off-the-record conversations with government officials indicate that timely receipt of DVC's from importing State authorities is a problem. There are examples where DVCs were still not received by the exporter six months after the delivery of the arms. Therefore, penalties for not returning a valid DVC within a reasonable period should be included in the export regulations and in such cases the licensing authorities of the exporting State could then be justified in taking necessary action.

**(b) On-Site Post-Delivery Verification Inspections:**

An undertaking to allow on-site post-delivery inspections may be included in an end-user certificate or end-user statement. MOSAIC module 03.21 recommends that an undertaking allowing on-site inspections should be included if the weapons being transferred are high-risk weapons such as small arms and light weapons.

As part of the end-use/r certificate required by the German government, importing States allow the German authorities to conduct on-site verification inspections.<sup>24</sup> Such inspections were restricted to exports of small arms and light weapons destined for government recipients in the initial pilot phase of its post-delivery inspection regime starting 2015. Following its evaluation of the pilot phase of post-shipment controls, the German government also identified the risk of diversion as the central criterion for those controls.<sup>25</sup> Hence, the restriction of on-site visits to SALW will be continued since those weapons are associated with the highest risk of diversion, even though the German government had previously announced a possible expansion of the list

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<sup>22</sup> See Brian Wood, Peter Danssaert (2011): *Study on The Development of A Framework For Improving End-Use And End-User Control Systems*. UNODA.

<sup>23</sup> MOSAIC 03.21 § 7.2.2.

<sup>24</sup> See German Federal Ministry of Economic Affairs and Energy, "Key points for the introduction of post-shipment controls for German arms exports" (2015).

<sup>25</sup> Bundesministerium für Wirtschaft und Energie (2021): Bericht der Bundesregierung über ihre Exportpolitik für konventionelle Rüstungsgüter im ersten Halbjahr 2021. Rüstungsexportbericht, November 2021: p. 4.

of the items to be covered by such controls.<sup>26</sup> The Spanish post-delivery verification system is limited to countries and products that are deemed especially sensitive.<sup>27</sup> In a similar way, the Swiss War Material Ordinance allows for post-delivery inspections where the Swiss authorities assess an “increased risk” in the importing country of the arms being diverted to “an undesirable end recipient”.<sup>28</sup>

Exporting States adopting post-shipment controls have also stated that on-site inspections are dependent on resource availability. The German inspection missions so far consisted of two members of the Federal Office for Economic Affairs and Export Control (BAFA) and one member of the local diplomatic mission.<sup>29</sup> In contrast to the Swiss missions that usually involve a military/defense attaché, no military personnel were included in the German inspection missions.<sup>30</sup> The Spanish inspection delegations will potentially have a more multidisciplinary composition. The responsible authority can include various other bodies in the operations,<sup>31</sup> thereby ensuring the adequate expertise of the inspection team.

As more exporting and importing States conduct post-delivery verification inspections, the pooling of their resources may be a solution. For example, the Spanish decree of 29 April 2020 puts special emphasis on “collaboration” between the Spanish authorities and those of the recipient country in conducting the post-delivery verification measures.<sup>32</sup>

German post shipment inspections have centred on visual checks of the markings on the arms that the exporter had reported to BAFA prior to the shipment. The serial numbers of the arms inspected on-site are then compared to those reported by the exporter.<sup>33</sup>

MOSAIC module 03.21 recommends that on-site inspections should only take place with prior, written authorization by the importing State.<sup>34</sup> Time and place of the on-site inspection can be jointly decided. Some importing countries have voiced misgivings about on-site inspections which they consider a violation of their sovereignty. The use of Delivery Verification Certificates has been proposed as alternative.

For example, in late 2019 South Africa had decided to block arms exports to Saudi Arabia, United Arab Emirates, Oman and Algeria after these countries refused to allow South African officials to inspect their facilities to verify compliance with the South African National Conventional Arms Control Act and South African National Conventional Arms Control Regulations. The clause in the end-use certificate at the centre of this dispute stated the following: “The Consignee/Buyer grants access and permission to South African Government Authority’s representative(s) to visit the stated facilities so as to verify the end user and end use of and

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<sup>26</sup> Federal Foreign Office (2021); [Mehr Kontrolle für Rüstungsexporte](#) (16/6/2021).

<sup>27</sup> Respuesta del gobierno, Pregunta escrita a congreso, 184/11766 05/05/2020, Congreso de los diputados, Secretaría General, Registro General, 8/6/2020.

<sup>28</sup> Art. 5a(3) Verordnung vom 25. Februar 1998 über das Kriegsmaterial (Kriegsmaterialverordnung, KMV).

<sup>29</sup> Kleine Anfrage der Abgeordneten Sevim Dagdelen, Heike Hänsel, Matthias Höhn, u. a. und der Fraktion DIE LINKE betr.: „Durchführung von Post-shipment-Kontrollen für Waffenexporte in Drittländer“. BT-Drucksache: 1913658 (12/9/2018).

<sup>30</sup> *Ibid.* Die Bundesversammlung – Das Schweizer Parlament (2018): [Waffenexporte. Kontrollen verstärken](#). Motion 18.4084 (28/9/2018).

<sup>31</sup> SIPRI (2020): Post-Shipment Control Measures: European Approaches to On-Site Inspections of Exported Military Materiel. SIPRI Background Paper: p. 19.

<sup>32</sup> *Real Decreto 494/2020*.

<sup>33</sup> Written evidence submitted by German Federal Office for Economic Affairs and Export Control (BAFA) (AAR0013, 31 January 2019).

<sup>34</sup> MOSAIC module 03.21, § 7.3.1. See e.g., the German “Key points for the introduction of post-shipment controls for German arms exports” (2015): “Receipt of export authorisation applications for third countries with an end-use certificate in which the recipient country consents to later on-the-spot checks”.

compliance with the above stated stipulations".<sup>35</sup> The on-site inspections were allegedly refused by Saudi Arabia and UAE on the grounds that these inspections would be a violation of their sovereignty.

Meanwhile, one of South Africa's trade unions, Solidarity, objected to the government's inclusion of the post-shipment clause in the end-user certificates claiming that South African arms manufacturing jobs might be at risk and that it was not necessary under South Africa's National Conventional Arms Control Act (NCACA) of 2002. In a press statement the trade union said: "Several legal opinions indicate that the inspections clause of the end-user certificate is illegal and obstructive in nature and is in fact not contained in the NCACA itself, but only in the wording of the certificate."<sup>36</sup> It was noted by critics, however, that the NCACA of 2002 makes provision for the "Minister may make regulations... regarding... matters which must be contained in an end-user certificate."<sup>37</sup> The Minister did just that in Annexure B of the National Conventional Arms Control Regulations of 2012 by including a clause whereby the recipient or end-user of controlled items to be exported "...is agreed that on-site verification of the controlled items may be performed by an inspector designated by the Minister in terms of Section 9 of the Act."<sup>38</sup>

South Africa is a participating State in the Wassenaar Arrangement.<sup>39</sup> In May 2020 South African government changed the National Conventional Arms Control Regulations regarding on-site end use verification after protests by Saudi Arabia and the United Arab Emirates. The end use undertaking now reads "It is agreed that on-site verification of the controlled items may be performed, through diplomatic process."<sup>40</sup>

### **(c) Restrictions on re-export:**

Re-export is the international transfer of arms that have been previously imported from another State. Preferably the end-use(r) certificate or equivalent document includes a clause prohibiting the re-export of the small arms and light weapons. Such a clause could: (a) contain a pure and simple ban on re-export; (b) provide that re-export will be subject to agreement in writing of the authorities of the original exporting country; or (c) allow for re-export without the prior authorization of the authorities of the exporting country to certain countries identified in the end-user certificate.

If the end-use(r) certificate or equivalent document does not contain undertakings regarding re-export, authorization should not be granted to export previously imported small arms or light weapons without first informing the original exporting State.

Most countries place restrictions on re-exports. In the case of the German controls, the end-use(r) certificates include a clause whereby the exported arms can only be re-exported with prior consent of the German government.<sup>41</sup> Furthermore, the German "Small Arms Principles" provide that SALW shall also not be transferred *within* the importing state unless the German government authorises the transfer.<sup>42</sup>

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<sup>35</sup> DefenceWeb (2019): [South Africa blocks arms sales to Saudi and UAE in inspection row](#). 25 November 2019.

<sup>36</sup> Solidariteit (2019): [Regulasies kan wapenbedryf kelder en tot werksverliese lei](#). 3 december 2019.

<sup>37</sup> [National Conventional Arms Control Act 41 of 2002](#).

<sup>38</sup> [Reuters \(2020\): South Africa amends arms export document after inspection row. 13 May 2020](#); Department Of Defence (2011): Draft National Conventional Arms Control Regulations. Notice 485 of 2011, Staatskoerant, 15 Julie 2011.

<sup>39</sup> Brian Wood, Peter Danssaert (2011): [Study On The Development Of A Framework For Improving End-Use And End-User Control Systems](#). UNODA.

<sup>40</sup> Department of Defence (2020): [National Conventional Arms Control Regulations Amended](#). 13 May 2020.

<sup>41</sup> Kleine Anfrage der Abgeordneten Sevim Dagdelen, Heike Hänsel, Christine Buchholz u. a. der Fraktion DIE LINKE betr.: „Post-Shipment-Kontrollen beim Export deutscher Rüstungsgüter“. BT-Drucksache: 191155 (22/12/2017).

<sup>42</sup> Principle 7, Federal Ministry for Economic and Energy, Principles of the German Federal Government governing the export of small arms and light weapons, corresponding ammunition and production equipment to third countries.

Switzerland also conditions the re-export of arms on the prior consent of its licensing authority.<sup>43</sup> The Swiss authorities underline the importance of on-site post-delivery verification inspections to validate the adherence to non-re-export clauses.<sup>44</sup> Consequently, Swiss post-delivery inspections have exposed violations of the re-export restrictions.<sup>45</sup> Since unauthorised re-exports can also occur after a post-delivery inspection has cleared the importing state of any violations, the Swiss government stated that repeated post-delivery inspections can be envisaged in the same country of destination.<sup>46</sup> In the case of a violation of the non-re-export clause, the Swiss licensing authority can take “precautionary measures”.<sup>47</sup> For example, arms exports to the State in question can be suspended and the export controls tightened with regard to that country.<sup>48</sup>

Not all importing States would agree to an exporting State’s restrictions on re-exports and can argue that when an international transfer of SALW is made that comes with a change of ownership and thus the right of States to re-export the items. Nevertheless, an exporting State can simply refuse to authorize an export if it does not meet its export criteria and presents an unacceptable risk. Under the POA all UN Member States committed themselves “to make every effort...to notify the original exporting State in accordance with their bilateral agreements before the retransfer of those weapons.”<sup>49</sup>

#### **(d) On-Site End-Use Monitoring (EUM):**

On-site monitoring by the exporting State of end uses in the importing States can also involve ongoing inspections and occur much later after the transfer of the small arms and light weapons. This is applied in sensitive cases where the danger of diversion and/or serious misuse is considered by both the exporting and importing States to be significant. The purpose of such monitoring is to determine if the end-user respects the conditions set forth in the end-use certificate or equivalent end use agreement, e.g. the SALW are used only for the purposes for which they were furnished, and if possible restrictions on re-export are abided to. For example, the United States Government includes in its end-use monitoring programs “scheduled inspections, physical inventories, general inquiries, and reviews of accountability records by the U.S. government”.<sup>50</sup>

Some importing countries are not keen on such on-site inspections by an exporting State. They consider these a potential violation of their sovereignty. But procurement of defence equipment brings obligations and responsibility. Importing States should be informed and made aware of the legal requirements mandated by the laws of the exporting State. The United States government has defined the purpose of its end use monitoring program as one means to “improve accountability with respect to defense articles sold, leased, or exported under the AECA or Foreign Assistance Act”.<sup>51</sup>

In 2009 India signed an end-use monitoring agreement with the United States to gain access to military technology. The agreement gives India the prerogative to decide on the time and place of the inspection.<sup>52</sup> The Indian government specified “There is no provision in the 2009 End Use Monitoring formulation with the United States for any unilateral action by the United States with regard to inspection or related matters. It

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<sup>43</sup> See Art. 5a(2) Verordnung vom 25. Februar 1998 über das Kriegsmaterial (Kriegsmaterialverordnung, KMV).

<sup>44</sup> Die Bundesversammlung – Das Schweizer Parlament (2018): [Waffenexporte. Kontrollen verstärken](#). Motion 18.4084 (28/9/2018).

<sup>45</sup> See e.g.: Inter Press Service (2014): [Swiss Step Up Arms Exports, Peacefully](#). 13 March 2014.

<sup>46</sup> Statement of the Swiss State Secretariat for Economic Affairs (SECO), Prüfung der Kontrolle des Transfers von Kriegsmaterial, Swiss Federal Audit Office, 20/6/2018, FinDel D4/2018: p. 30.

<sup>47</sup> Art. 5a(4) Verordnung vom 25. Februar 1998 über das Kriegsmaterial (Kriegsmaterialverordnung, KMV).

<sup>48</sup> Press Release of the Swiss Bundesrat (2017): [Ausfuhr von Kriegsmaterial nach Ghana vorübergehend gestoppt](#), 16/6/2017.

<sup>49</sup> UNPoA, § II.13.

<sup>50</sup> Bureau of Political-Military Affairs (2021): [End-Use Monitoring of U.S.-Origin Defense Articles](#). 20 January 2021.

<sup>51</sup> Bureau of Political-Military Affairs (2021): [End-Use Monitoring of U.S.-Origin Defense Articles](#). 20 January 2021.

<sup>52</sup> The Times of India (2009): [Government accused of giving in to US](#). 2 July 2009.



provides for joint consultations on modalities; in no way does it compromise our sovereignty, or limit our sovereign choice of whether, where and what we choose to buy for our national defence or scientific establishments. The arrangements to which we have agreed are fully in consonance with our sovereignty and national interest.”<sup>53</sup>

In principle, there is nothing to prevent exporting and importing States reaching amicable agreements on end use monitoring programs as part of their international cooperation and assistance efforts, as long as such agreements conform to international legal obligations and commitments. For example, relevant obligations include the prohibitions in Article 6 of the ATT and in Article 10 of the UN Firearms Protocol particularly where the exporting and importing States are parties to those treaties.

Under the POA all UN Member States committed themselves “to promote safe, effective stockpile management and security, in particular physical security measures, for small arms and light weapons, and to implement, where appropriate, regional and subregional mechanisms in this regard.”<sup>54</sup> Moreover, under the POA Member States have undertaken:

“to ensure, subject to the respective constitutional and legal systems of States, that the armed forces, police or any other body authorized to hold small arms and light weapons establish adequate and detailed standards and procedures relating to the management and security of their stocks of these weapons. These standards and procedures should, inter alia, relate to: appropriate locations for stockpiles; physical security measures; control of access to stocks; inventory management and accounting control; staff training; security, accounting and control of small arms and light weapons held or transported by operational units or authorized personnel; and procedures and sanctions in the event of thefts or loss.”<sup>55</sup>

### European Union’s new approach to delivery verification

On 15 January 2021, the Council of the European Union adopted “Council Decision (CFSP) 2021/38 establishing a common approach on the elements of end-user certificates in the context of the export of small arms and light weapons and their ammunition”. The aim was to have a more uniform approach to the export of small arms and light weapons (SALW) and their ammunition and reduce the risk of arms diversion. The Decision considers post-delivery verification as one optional element which may take the form of:

- (a) a commitment by the end-user to confirm reception of the goods covered by the end-user certificate, including their exact quantity;
- (b) a commitment by the end-user to allow post-shipment on-site verification of the exported goods by representatives of the exporting Member State, including details of arrangements for the verification visits.<sup>56</sup>

Other optional post-shipment elements identified by Council Decision 2021/38 and to be considered are:

- (c) a commitment by the end-user to notify the exporting Member State in case of loss or theft of the goods covered by the end-user certificate;

<sup>53</sup> Ministry of External Affairs (2014): [Q NO. 4896 end use monitoring agreement](#). 13 August 2014.

<sup>54</sup> UNPoA § II.29.

<sup>55</sup> UNPoA § II.17.

<sup>56</sup> Council Decision 2021/38, Article 6.

- (d) assurances by the end-user that demonstrate its capacity for safe and secure weapons and ammunition management, including its capacity for safe and secure management of the stockpiles where the goods will be stored;
- (e) a commitment by the end-user on decommissioning of surplus military equipment, including:
  - i. a 'new for old' commitment to destroy the old goods that will be replaced by the imported goods; and/or
  - ii. a 'destruction after decommissioning' commitment to destroy the imported goods after decommissioning.<sup>57</sup>

### Concluding remarks

The use of post-shipment control measures as one means to prevent the diversion of SALW in the post-delivery phase has gained popularity among exporting States and garnered increasing interest by commentators in the last couple of years. States that have introduced such measures take great care in presenting them, especially on-site inspections, as mutually agreed as well as trust- and confidence-building measures between exporting and importing States.

Post-shipment measures taken by exporting States can include the use of (a) delivery verification certificates, (b) on-site post-delivery verification inspections, (c) use of non-re-export clauses in the end-use(r) certificate, and (d) on-site end-use monitoring to ensure respect for an obligation by importing State to not transfer title or possession of goods to any person or entity without the consent of exporting State, so that the arms or other items are used only for their intended purpose.

If the transferred weapons are high-risk, it is recommended that the end-use certificate or equivalent document includes an undertaking to allow on-site post-delivery inspection. The EU is poised to take a leading role in the promotion of a common European approach to on-site post-shipment controls. At the EU level, however, the practical added value of on-site verification inspections remains to be demonstrated. In contrast to the USA and Switzerland, EU countries so far have limited experience in this regard. Taking the German example, the actual potential to develop trust and confidence with the importing State will be put to the test once the measures lead to the finding of irregularities.

This briefing paper was written by Peter Danssaert and Dr. Markus Fahlbusch. Editorial contributions were made by Dr. Brian Wood. It was designed by Emily Callsen.

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<sup>57</sup> Council Decision 2021/38, Article 6.