



ARMS BROKERING CONTROLS

HOW ARE THEY IMPLEMENTED IN THE EU?

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EXECUTIVE SUMMARY

Arms brokers organise and facilitate transfers in military equipment. Although brokering activities can be carried out in a legal framework, unscrupulous brokers operate with impunity by taking advantage of the weaknesses of and the differences between national laws and control regimes. In order to strengthen brokering controls in Europe, the European Union (EU) Member States adopted in 2003 a Common Position on the control of arms brokering (2003/468/CFSP).

This paper assesses the compliance of EU Member States policies with the Common Position over the past ten years. All in all, the EU's track record is satisfactory. Luxemburg is the only country that has yet to adopt a law on the control of military arms brokering. In addition, three states (Belgium, France and Italy) still need to ensure the compliance of their national regulations to all the requirements of the EU Common Position.

However, because the Common Position comprises both mandatory provisions and optional measures, there are significant differences between the 23 control regimes which comply with the European instrument. As will be put forward in this paper, such differences may have adverse consequences on the quality and the efficiency of controls at the EU level.

In order to close loopholes in control regimes and ensure the prosecution of arms smugglers, EU Member States must review and extend the scope of the Common Position by making the following provisions compulsory:

- 1) The control of brokering and brokering-related activities, which include the facilitation of arms transportation, freight forwarding, warehousing, financing and insurance, and logistics. Although these activities are central to the organisation of arms transfers, they are not systematically controlled by EU Member States;
- 2) The establishment of a registration system that requires brokers to submit regular activity reports. Such a provision would enable states to control the nature and reliability of potential arms brokers;
- 3) The control of extraterritorial brokering activities. Because of the transnational nature of illegal arms transfers and the mobility of arms smugglers, states must restrain brokers from carrying out activities out of countries which do not control arms brokering;
- 4) The establishment of intra- and interstate cooperation mechanisms to optimise the prosecution and conviction of brokers. Indeed, while EU Member States provide for administrative and criminal penalties for failures to comply with arms brokering regulations, effective prosecutions and convictions of smugglers are contingent upon efficient cooperation within and between states.

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I. INTRODUCTION

Arms brokers are persons or entities who organise and facilitate transfers in military equipment. Although brokering activities can be carried out in a legal framework, unscrupulous brokers operate with impunity by taking advantage of the weaknesses of, and the differences between, national laws and control regimes.

For example, in August 2000, because of the absence of adequate legislation, Leonid Minin, an Israeli citizen, escaped prosecution in Italy in spite of incriminating evidence that he had participated in the organisation of several arms transfers in violation of the United Nations Security Council (UNSC) embargoes on Liberia and the Revolutionary United Front of Sierra Leone. Although Minin partly operated from Italy, he was released because the transferred weapons did not touch the Italian territory¹.

Similarly, the British broker Gary Hyde, who was accused of illegally transferring 40,000 AK-47 assault rifles, 30,000 rifles, 10,000 9mm pistols and 32 million rounds of ammunition from China to Nigeria in 2006, was almost acquitted. In January 2012, because of the lack of clarity of the national provisions on brokering, his trial was suspended². Taking advantage of the complexity of the operations in which he was engaged, Hyde's defence lay on the fact that since he operated outside the United Kingdom (UK), he did not require an export licence to carry out his activities. Nonetheless, the Court of Appeal rejected this argument and judged that Hyde had in fact violated British export control legislation³. Hyde was sentenced to seven years imprisonment in December 2012.

These known cases are far from being isolated and represent only the tip of the iceberg. Therefore, it is essential that states establish strict and harmonised national laws to ensure the prosecution and conviction of the arms dealers who contribute to the illicit proliferation of weapons in the world. With this in mind, Member States of the European Union (EU) adopted in 2003 a Common Position on the control of arms brokering (2003/468/CFSP)⁴.

Ten years later, and in view of the arms trafficking stories that continue to make the headlines, an overview of the implementation of the Common Position by the EU Member States is necessary. Although a large majority of Member States have adopted policies on the control of arms brokering, some states have yet to enact a regulatory framework on the matter or ensure the compliance of their legislation with all the requirements of the European text. The first part of this report thus summarises the Common Position and provides a review of its transposition into national law.

1 Amnesty International, *The terror Trade Times*, Issue n° 4, June 2003 (AI Index ACT31/002/200)

2 *Arms smuggling case to go to court of appeal*, the York Press, 20 January 2012 – http://www.yorkpress.co.uk/business/news/9485031.Arms_smuggling_case_to_go_to_court_of_appeal/

3 Notice to Exporters 2012/49 – *Arms dealer convicted for seven years for illegal brokering of military goods*, <http://blogs.bis.gov.uk/exportcontrol/prosecution/notice-to-exporters-201249-arms-dealer-convicted-for-seven-years-for-illegal-brokering-of-military-goods/>

4 *Council Common Position 2003/468/CFSP of 23 June 2003 on the control of arms brokering*, Official Journal of the European Union (L 156/79), 25 June 2003, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:156:0079:0079:EN:PDF>

Nonetheless, because the Common Position contains mandatory provisions as well as optional measures that states can choose to include in their national laws, there are significant differences between European control regimes. Such differences have adverse consequences on the quality and the efficiency of EU controls. This report thus argues that a consistent and effective control of arms brokering in Europe requires a comprehensive legislative approach where both mandatory and optional measures are adopted. To do so, Member States should control brokering activities as well as brokering-related activities; establish licensing and registration systems; control extraterritorial activities; provide for strict sanctions; and create intra- and interstate cooperation mechanisms. To support this argument, the second part of the report examines the above-mentioned provisions and their effects, notably by demonstrating through examples of best practices how they can work.

The conclusion discusses the limits of the Common Position and makes recommendations to ensure greater consistency between national policies and to optimise the control of arms brokering activities that take place under Member States' jurisdiction.

Finally, while the report focuses on the European level, its findings are particularly relevant in the context of the recent adoption of the Arms Trade Treaty (ATT) at the United Nations (UN). The Treaty establishes norms and criteria to regulate at the international level the export, import, transit, trans-shipment and the brokering in conventional arms⁵. In particular, Article 10 sets out that each State Party shall “take measures, pursuant to its national laws, to regulate brokering taking place under its jurisdiction for conventional arms covered under Article 2 (1). Such measures may include requiring brokers to register or obtain written authorisation before engaging in brokering”⁶. Because their responsibilities under this clause are subject to interpretation, the international community should interpret it broadly, notably by looking to the European model.

5 *The Arms Trade Treaty*, Annex to the Draft Decision of the Final United Nations Conference on the Arms Trade Treaty (A/CONF.217/2013/L.3), New York, 18-28 March 2013, Article 2 http://www.un.org/disarmament/ATT/docs/Draft_ATT_text_27_Mar_2013-E.pdf

6 *Ibid.*, Article 10

II. THE COMMON POSITION ON THE CONTROL OF ARMS BROKERING – TEN YEARS AFTER...

In 2003, consequently to the adoption of the Common Position on the control of arms brokering EU Member States undertook to enact or improve their legislation accordingly⁷. The legally-binding text requires States to establish a clear legal framework to “control arms brokering in order to avoid circumvention of UN, EU or OSCE embargoes on arms exports, as well as of the Criteria set out in the European Union Code of Conduct on Arms Exports”⁸ – the latter having been replaced by a Common Position in 2008⁹.

Ten years after it was adopted, this paper reviews the implementation of the Common Position by EU Member States. It does so by briefly presenting the European text in order to highlight the measures it adopted to control brokering activities and to distinguish between mandatory and optional provisions. The report argues that the systematic adoption of these measures would increase the efficiency of controls at the EU level.

1. Common Position

The Common Position on the control of arms brokering contains agreed minimum standards as well as more restrictive provisions that Member States may include in their national control systems.

First, Member States are invited to define brokering activities, at a minimum, as “the activities of persons or entities negotiating or arranging transactions that may involve the transfer of items on the EU Common List of military equipment from a third country to any other third country or who buy, sell or arrange the transfer of such items that are in their ownership from a third country to any other third country”¹⁰. Bearing this definition in mind, states are required to take all necessary measures to control brokering activities that take place within their territory, irrespectively of the broker’s nationality, and establish adequate sanctions, including criminal sanctions, to penalise violations of the measures in force.

Subsequently, brokering activities must have been authorised before being carried out, particularly in view of the criteria set out in the Common Position on Arms Exports (2008/944/CFSP), by competent licensing authorities. Indeed, the idea at the heart of the European control system is that brokers should only be allowed to engage in brokering once they have been applied for and been issued a licence or a written authorisation by the Member State in which they operate¹¹. According to the Common Position, records of all persons and entities which have obtained a licence must be kept for at least ten years.

7 Council Common Position 2003/468/CFSP of 23 June 2003 on the control of arms brokering, op. cit.

8 Ibid., Article 1 §1

9 Council Common Position 2008/944/CFSP of 8 December 2008 common rules governing control of exports of military technology and equipment, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:335:0099:0099:EN:PDF>

10 Common Position 2003/468/CFSP, op. cit., Article 2 §3

11 Ibid., Article 3 §1

Moreover, states may establish a register of arms brokers and require that persons and entities be registered before carrying out brokering transactions. In this framework, brokers may be obliged to regularly submit activities reports. Nevertheless, “registration or authorisation to act as a broker would in any case not replace the requirement to obtain the necessary licence or written authorisation for each transaction”¹².

While third-country transfers must be controlled, States may also choose to include in their control regime the export of equipment from their national territory or the territory of another EU Member State. This optional provision allows states to control more thoroughly the activities that take place under their jurisdiction.

To strengthen brokering controls, European states are further encouraged to control activities that are carried out outside their borders by brokers that are resident or established in their territory, irrespectively of their nationality. This measure aims to prevent brokers from circumventing national controls by carrying out brokering operations from countries with poor or non-existent controls¹³.

Finally, to ensure the consistent and effective implementation of the European regulation, states are required to exchange information on their legislation as well as on registration, if applicable, and licensing applications.

Summary:

1) Member States shall

- a. define brokering activities;
- b. control brokering activities that take place within their territory;
- c. establish a licensing system;
- d. grant or refuse licences on the basis of the criteria of the Common Position on Arms Exports;
- e. keep for a least ten years records on granted licences;
- f. exchange information with other Member States;
- g. establish adequate sanctions.

2) Member States may

- a. control the brokering of items that are exported from their national territory or the territory of another Member State;
- b. establish a registration system;
- c. require that brokers submit regular activity reports;
- d. control extraterritorial brokering activities.

2. Implementation assessment

The summary table below provides an overview of the content of Member State’s arms brokering regulations. The table’s variables are drawn from the Common Position’s provisions and its results are derived from several sources, principally from the

¹² Ibid., Article 4

¹³ MOREAU Virginie and ANDERS Holger, *Arms Brokering Controls and How They Are Implemented in the European Union*, Les Rapports du GRIP 2009/11, <http://www.nonproliferation.eu/documents/other/virginimoreauand-holgeranders4f71749e32b79.pdf>

relevant policies of EU Member States¹⁴. In addition, data was collected from national reports on arms transfers, which generally include information on measures adopted to control brokering activities¹⁵. Another important source was the information provided by states to the United Nations Office for Disarmament Affairs (UNODA) as part of their international commitments, including under the Programme of Action of the United Nations on the Illicit Trade in Small Arms and Light Weapons in all its aspects (PoA)¹⁶, and to the Organization for Security and Cooperation in Europe (OSCE)¹⁷. Finally, the evaluation of the Common Position's implementation was supplemented with interviews of governmental representatives and independent experts.

The table identifies the measures established by the Common Position and whether or not they have been adopted by Member States. The second part of the report will nuance, where necessary, the content of the table. The provisions listed in the table are as follows:

1) General Information:

- a. Has the Member State established a legislation that controls brokering activities?
- b. Does the legislation define brokering in accordance with the Common Position?

2) Scope:

- a. Are brokering activities carried out from the national territory and involving the transfer of military equipment between third countries controlled?
- b. Are brokering activities that involve the export of weapons from the national territory controlled?
- c. Are extraterritorial brokering activities controlled?

3) Authorisation systems:

- a. Does the legislation provide that persons and entities must be registered to act as a broker?
- b. Does the legislation provide that brokering activities must be licenced before being carried out?
- c. Does the legislation take into consideration the criteria of the EU Common Position on arms exports?

4) Brokers' obligations: Are brokers required to regularly submit activity reports?

5) Member State's obligations:

- a. Does the Member State keep records of licenced brokers? If yes, for how long?
- b. Does the Member State exchange information about brokers and brokering activities with other Member States?

6) Sanctions: Has the Member State established adequate sanctions?

¹⁴ See annex – National legislation on arms brokering

¹⁵ SIPRI National Reports Database – http://www.sipri.org/research/armaments/transfers/transparency/national_reports/sipri-national-reports-database

¹⁶ United Nations Office for Disarmament Affairs (UNODA), National Legislation, <http://www.un.org/disarmament/convarms/NLDU/>; Programme of Action on the Illicit Trade in Small Arms and Light Weapons in all its aspects (PoA), National Reports, <http://www.poa-iss.org/poa/NationalReportList.aspx>

¹⁷ Organization for Security and Cooperation in Europe (OSCE), Answers to the Small Arms and Light Weapons Questionnaire 2011, <http://www.osce.org/fsc/76254>

In the table, the symbol ✓ means that the national legislation provides for the mandatory or optional provision, the symbol ✘ means that it does not and the symbol ○ indicates the optional nature of the provision in question. The absence of sign denotes the absence of information.

2.1. Introductory remarks

The adoption of the Common Position has significantly increased the control of arms brokering in the European Union. While in 2003 only five of the fifteen EU Member States regulated brokering activities, twenty-seven countries out of twenty-eight have now enacted legislation in this area. However, despite the legally binding nature of the Common Position, one country remains at the preparatory phase of a legislative framework and three States have yet to ensure the compliance of their national legislation. It must be noted that Croatia, which was required to ensure the compliance of its legislation before joining the EU on 1 July 2013, had long been compliant with the EU Common Positions on arms exports and arms brokering.

2.2. Compliant legislation

Based on the available information, the control regimes of the following twenty-four countries are in conformity with the Common Position: Austria, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

These States have adopted various combinations of the measures adopted by the Common Position to control arms brokering. However, such variations affect the quality and the effectiveness of European controls. Indeed, as previously mentioned, to avoid the risk of being prosecuted and convicted, unscrupulous brokers take advantage of legislative loopholes and differences between control regimes by carrying out their activities from countries where controls are weak or non-existent.

2.3. Non-compliant legislation

To meet all the requirements of the Common Position, Belgium, France and Italy need to amend their legislations.

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In **Belgium**, brokering activities are regulated by the “Law of 25 March 2003 amending the Law of 5 August 1991 relative to the import, export and transit of arms, ammunition, special equipment for military use and related technology”¹⁸. Adopted before the drafting of the Common Position, the aforementioned legislation controls brokers but not their activities. Indeed, persons and entities are only required to register themselves before they can act as an arms broker. If they meet the legal, moral and financial requirements set out by the law, they do not need to apply for a licence prior to organising weapons transfers. However, brokers must apply for an import or export licence if the weapons have

¹⁸ Belgium, *Law of 25 March 2003 amending Law of 5 August 1991 relative to the import, export and transit of arms, ammunition, special equipment for military use and related technology* – See annex

Country	1		2			3			4	5		6
	Legislation	Definition	Control of transfers between third countries made from the national territory	Control of brokered arms exported from the national territory	Extraterritorial control	Registration system	Licensing system	Inclusion of the EU criteria for the export of conventional weapons (2008/944/CFSP)	Mandatory submission of activity reports	Record keeping ¹	Information exchange between Member States	Sanctions
2003/468/CFSP	✓	✓	✓	○	○	○	✓	✓	○	10 yrs	✓	✓
Austria	✓	✓	✓	✗	✗	✗	✓	✓	✓	N/S	✓	✓
Belgium	✓	✓	✓	✓	✓	✓	✗	✗	✗	✓	✓	✓
Bulgaria	✓	✓	✓	✗	✓	✓	✓	✓	✓	N/S	✓	✓
Croatia	✓	✓	✓	✓	✓	✓	✓	✓	✓	10 yrs	✓	✓
Cyprus	✓	✓	✓		✗	✗	✓	✓	✗	7 yrs	✓	✓
Czech Republic	✓	✓	✓	✓	✗	✓	✓	✓	✓	✓	✗	✓
Denmark	✓	✓	✓	✗	✗	✗	✓	✓	✗	10 yrs	✓	✓
Estonia	✓	✓	✓	✗	✗	✓	✓	✓	✓	N/S	✓	✓
Finland	✓	✓	✓	✓	✓	✗	✓	✓	✓	N/S	✓	✓
France	✓	✓	✓	✗	✗	✓	✗	✗	✓	N/S	✗	✓
Germany	✓	✓	✓	✗	✓	✗	✓	✓	✗	10 yrs	✓	✓
Greece	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Hungary	✓	✓	✓	✗	✓	✓	✓	✓	✓	10 yrs	✓	✓
Ireland	✓	✓	✓	✓	✓	✗	✓	✓	✗	N/S	✓	✓
Italy	✓	✗	✗	✓	✗	✓	✓	✓		✓	✗	✓
Latvia	✓	✓	✓	✓	✓	✓	✓	✓	✓	N/S	✓	✓
Lithuania	✓	✓	✓	✓	✓	✓	✓	✓	✓	75 yrs	✓	✓
Luxembourg	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗
Malta	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓
Netherlands	✓	✓	✓	✗	✓	✗	✓	✓	✓	✓	✓	✓
Poland	✓	✓	✓	✗	✓	✗	✓	✓	✓	N/S	✓	✓
Portugal	✓	✓	✓	✓	✓	✓	✓	✓	✓	15 yrs	✓	✓
Romania	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Slovakia	✓	✓	✓			✓	✓		✓	10 yrs		✓
Slovenia	✓	✓	✓			✓	✓		✓	N/S	✓	✓
Spain	✓	✓	✓	✗	✗	✓	✓	✓	✓	✓	✓	✓
Sweden	✓	✓	✓	✗	✓	✓	✓	✓	✓	N/S	✓	✓
United Kingdom	✓	✗	✓	✗	✓	✗	✓	✓	✗	10 yrs	✓	✓

1 Where the period of conservation has not been specified, the symbol ✓ means that record are kept

previously been imported into or are exported from Belgium. In practice, however, no broker has ever submitted such a request¹⁹. Therefore, there are at present no controls over brokering activities carried out from Belgium²⁰.

In **France**, according to the Order 2002-23, brokers need to be certified to manufacture, trade and broker weapons (*Autorisation de fabrication, de commerce et d'intermédiation* - AFCI). Like in Belgium, once they have been registered with the Contrôle Général des Armées (CGA) which supervises the French Ministry of Defence, brokers can operate freely. They only have one obligation: submit biannual activity reports. To close the loopholes of the legislation, a bill that provides for the introduction of a licensing system for brokering activities was tabled in Parliament in 2001 and 2006²¹. Rendered moot following changes in parliament and government, it was reintroduced in the Senate by Hervé Morin, the then Minister of Defence in June 2007²². Although the bill is not on the agenda of either parliamentary assembly, the incumbent Defence Minister, Jean-Yves Le Drian, said in October 2012 that he will be working with Parliament to adopt a law on the control of brokering²³.

Italy only controls brokering activities with military items that are exported from, transit through or are imported into the national territory. Thus, the organisation from Italy of arms transfers between third countries is not controlled. The case of Leonid Minin is illustrative of the problematic nature of the Italian legislation. In spite of incriminating evidence, the Italian Supreme Court could not prosecute Minin because the weapons he transferred did not touch Italian soil²⁴. According to the annual reports of the EU Council Working Group on Conventional Arms Exports (COARM), which are based on submissions by Member States, a new draft law which implements the Common Position has been in preparation since at least 2007²⁵.

2.4. Absence of legislation

Luxembourg is the only country that has yet to adopt a legislation which regulates arms brokering. The national legislation on arms transfers is under review and an amendment to implement the Common Position on arms brokering is foreseen²⁶. Nevertheless, according to the COARM's annual reports, the implementation process has been underway since at least 2007²⁷.

19 Interview with a representative of the Belgian Federal Public Service (FPS) Justice, January 2013

20 MOREAU Virginie, *Pour un réel contrôle des courtiers en armes en Belgique*, Note d'analyse du GRIP, 7 September 2009 – http://grip.org/sites/grip.org/files/NOTES_ANALYSE/2009/NA_2009-09-07_V-MOREAU.pdf

21 Damoclès, *Commerce des Armes. Mettre fin aux « zones grises »*, No. 122, 1-2008, p. 3

22 France, *Projet de loi relatif au régime d'autorisation des opérations d'intermédiation et d'achat pour revendre et modifiant le code de la défense*, <http://www.senat.fr/leg/pjl06-323.html>

23 France, Ministère de la Défense, *Rapport au Parlement 2012 sur les exportations d'armement de la France*, October 2012, p. 5, http://www.defense.gouv.fr/content/download/188581/2078724/file/Le_Rapport_2012_sur_les_exportations_d_ar-%20mement_au_Parlement.pdf

24 Amnesty International, *The terror Trade Times*, op. cit.

25 Reports from 2003 to 2006 do not include information on the EU Common Position on arms brokering – see European External Action Service, *EU Annual Reports on arms exports*, http://eeas.europa.eu/non-proliferation-and-disarmament/arms-export-control/index_en.htm

26 Interview with a representative of the Ministry of the Economy and Foreign Trade of Luxembourg, November 2012

27 See European External Action Service, *EU Annual Reports on arms exports*, op. cit.

III. FOR A CONSISTENT AND EFFECTIVE CONTROL OF ARMS BROKERING

States have various means at their disposal to control arms brokering in a consistent and effective manner. Notably they can adopt provisions that cover both brokering activities as well as brokering-related activities; establish licensing and registration systems; control extraterritorial activities; provide for strict sanctions; and create intra- and interstate cooperation mechanisms.

Although the Common Position distinguishes between mandatory and optional provisions, a consistent and effective control of brokering activities in Europe requires a comprehensive legislative approach. To thwart arms trafficking operations that are carried out from their territory or by their nationals, Member States should adopt all the measures provided for by the European legislation. While steps in this direction have been taken by several governments, all EU Member States should uphold the same standards.

1. A comprehensive definition

The Common Position defines brokering as negotiating and arranging transactions that involve the transfer of military equipment or buying, selling or arranging the transfer of such items that are in the ownership of the persons and entities involved in the aforementioned activities. This broad definition does not clearly indicate whether brokering-related activities – transportation and freight forwarding, financial and insurance services, as well as technical and logistical services – should be covered by national regulations. However, because such activities are crucial to the success of any arms brokering operation, they too should be regulated. The following example is particularly illustrative.

The Democratic People's Republic of Korea, which is under an arms embargo since 2006, takes advantage of the globalisation of trade flows by outsourcing the delivery of its military equipment. On 11 December 2009, 35 tons of conventional weapons left North Korea for Iran²⁸. The next day, tipped off by the United States (US), Thai authorities intercepted the arms as the plane transporting the consignment was refuelling. The investigation brought to light the participation, at various levels of the operation, of eight companies registered in different countries. Notably, SP Trading, a shell company registered in New Zealand, had rented the aircraft used during the transfer. According to a study conducted by TransArms and International Peace Information Service (IPIS), the plane was then chartered by Union Top Management, based in Hong Kong, which led the organisation of the transfer²⁹. This case is proof not only of the complexity and globalisation of the arms trade network, but also of the importance of monitoring brokering-related services. Indeed, because they allow the circumvention of

The Common Position defines brokering as negotiating and arranging transactions that involve the transfer of military equipment or buying, selling or arranging the transfer of such items that are in the ownership of the persons and entities involved in the aforementioned activities.

28 *Brokers Without Borders*, Oxfam Case Study, October 2010 – <http://www.oxfam.org/sites/www.oxfam.org/files/brokers-without-borders-report-181010.pdf>

29 CARNEY Des, *North Korea's Transnational Arms Industry*, ISN Security Watch, January 2010, <http://www.isn.ethz.ch/isn/Digital-Library/Articles/Detail/?lng=en&id=111132>

arms transfers controls, they directly contribute to the uncontrolled proliferation of arms in the world.

Because the interpretation of the scope of the definition is left to EU Member States, most of them are reluctant to control brokering-related activities in view of the complexity of defining arms brokering. In addition, in view of the tight schedule of national licensing authorities, they are wary of increasing their workload by submitting a large number of activities to licensing requirements. Nevertheless, a minority of States have adopted more rigorous measures consistent with their responsibilities under the Common Position by including associated services in their definition of brokering. By doing so, they also address the concerns of the UN Group of Governmental Experts on the illicit brokering in small arms and light weapons, which encourages States “to ensure that such closely associated activities are adequately regulated by law, in cases of illicit brokering in small arms and light weapons involving in particular violations of United Nations Security Council arms embargoes”³⁰.

Among the European States that control brokering-related activities, **Germany** extends the scope of its legislation when items are bound for countries under embargo³¹. In **Bulgaria**, persons and entities that are established on the national territory may transport defence-related products between third countries provided they have been issued a licence by the Interdepartmental Board³². **Estonia** includes the provision of technical assistance and funding in its definition of brokering³³. Similarly, in **Lithuania**, brokering is defined as the negotiation, preparation and execution of transactions that involve the transfer of goods from the national territory, another EU Member State or a non-Member State to any other non-Member State³⁴. Under **Polish** law, brokering covers the participation in activities related to the export, import, transit or conclusion of any lease, donation or loan of arms³⁵. Finally, in the **UK**, the control of transport, financial, insurance and advertising services depends on the category of controlled goods, the country of final destination and the possibility of establishing a clear link between the items and activities considered. First, brokering-related services are systematically controlled when weapons are bound for an embargoed destination or if the transfer involves Category A goods – which includes cluster munitions and certain paramilitary goods that can be used for internal repression or torture. Second, only transportation services in relation to Category B goods – namely small arms and light weapons (including ammunition), Long Range Missiles (LRMs), including Unmanned Air Vehicles (UAVs) and Man Portable Air Defence Systems (MANPADS), as well as components for any of the above – are subject to a licensing requirement. Third, for Category C goods - weapons that fall into neither of the above categories and certain substances for the purpose of riot control or self-protection as well as related portable dissemination equipment – brokering-related services are not subject to controls³⁶.

30 *Report of the Group of Governmental Experts established pursuant to General Assembly resolution 60/81 to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons*, UN Report (A/62/163), 27 July 2007, §63 (iii), http://www.poa-iss.org/BrokeringControls/English_N0744232.pdf

31 Interview with a representative of the German Federal Foreign Office, November 2012

32 Bulgaria, *Defence-Related Products and Dual-Use Items and Technologies Export Control Act* (2012), Article 7 – See annex

33 Estonia, *Strategic Goods Act* (2012), Article 4 §2.1 – See annex

34 Lithuania, *Law on the Control of Strategic Goods* (1995), Article 8 – See annex

35 Poland, *Act of 25 May 2012 amending the Act on foreign trade in goods, technologies and services of strategic importance to the security of the State and to maintaining international peace and security and certain other acts* (2012), Article 5a – See annex

36 United Kingdom, *Export Control Order* (2008), Part 4 – See annex

However, while a comprehensive definition is important, it is only a starting point. For example, the UK has successfully prosecuted and convicted arms brokers although its legislation does not define ‘brokering’³⁷. Instead, the Export Control Act of 2002 defines ‘trade controls’, regardless of the type of equipment concerned, as “the prohibition or regulation of (a) their acquisition or disposal, (b) their movement, or (c) activities which facilitate or are otherwise connected with their acquisition, disposal or movement”³⁸. And, according to the Export Control Order of 2008, ‘contract promotion activity’ means “any act calculated to promote the arrangement or negotiation of a contract for the acquisition, disposal or movement of goods or any agreement to do such an act”³⁹.

Nevertheless, because the scope of the Common Position is quite ambiguous, Member States should undertake to clarify and extend it to ensure that brokering as well as brokering-related activities carried out from the EU or by EU nationals are controlled. At a minimum, national policies should cover such activities when arms are transferred to specific destinations.

2. Licensing and registration systems

To filter out illegal brokering activities, governments should adopt licensing and registration systems. Such control regimes reflect the prerequisite that brokers be registered before carrying out authorised transactions. Alternatively, if they haven’t been authorised, they should automatically become liable to prosecution. In the UK, Gary Hyde, a British arms dealer, was sentenced to seven years in jail for organising the transfer in 2007 of 40,000 AK-47 assault rifles, 30,000 rifles, 10,000 pistols and 32 million rounds of ammunition from China to Nigeria without having previously been authorised to do so by national authorities⁴⁰.

2.1. Licensing

While Member States may require that persons and entities register themselves to act as brokers, they are obliged under the Common Position to establish a licensing system which enables national authorities to approve or refuse brokering transactions under review.

2.1.1. Licensing assessment criteria

The European text urges states to assess, on a case-by-case basis, licence applications on the basis of the criteria of the EU Common Position on arms exports⁴¹:

37 The Export Control Order (ECO) publishes on its website the cases of convicted arms dealers – <http://blogs.bis.gov.uk/exportcontrol/>

38 United Kingdom, *Export Control Act* (2002), Article 4 – See annex

39 United Kingdom, *Export Control Order* (2008), Article 2 – See annex

40 Gary Hyde jailed over Nigeria arms shipment, 5 December 2012 – <http://www.bbc.co.uk/news/uk-england-humber-20611395>

41 *Council Common Position 2008/944/CFSP of 8 December 2008 common rules governing control of exports of military technology and equipment*, op. cit.

- 1) Respect for the international obligations and commitments of Member States, in particular the sanctions adopted by the UN Security Council or the European Union, agreements on non-proliferation and other subjects, as well as other obligations international;
- 2) Respect for human rights in the country of final destination as well as respect by that country of international humanitarian law;
- 3) Internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts;
- 4) Preservation of regional peace, security and stability;
- 5) 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;
- 6) Behaviour of the buyer country with regard to the international community, as regards in particular its attitude to terrorism, the nature of its alliances and respect for international law;
- 7) Existence of a risk that the military technology or equipment will be diverted within the buyer country or re-exported under undesirable conditions;
- 8) 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 needs and defence needs with the least diversion of human and economic resources for armaments.

In addition to these standards, Member States have developed their own criteria of evaluation. Notably, a large number of European governments grant licences upon the reception of end-use and end-user documentation. Through end-use and end-user certificates (EUC's), recipients guarantee that they will be the only end-user for the stated end-use. In **Belgium**, for example, end-users certify through EUC's that they will not re-export the items covered by the certificate without the permission of the national authorities⁴². EUC's usually contain the name and address of the exporter, importer and end-user (if different from the importer), the country of final destination and the description, quantity, weight and value of the goods to be transferred, as well as their final use. While certificates enable *ex ante* and *ex post* controls of brokering operations, verifying their authenticity can be difficult. Therefore, similarly to the OSCE, the EU should consider developing a standard end-user certificate⁴³. Such an instrument would standardise control procedures and enable to detect fraud and abuse more easily.

2.1.2. Types of licences

Although Article 3 of the Common Position states that “for *brokering activities*, a licence or written authorisation *should* be obtained”, Article 4 refers to the “*requirement* to obtain the necessary licence or written authorisation for *each transaction*”. Because of this

⁴² Licences for defence and dual-use goods – http://economic.wallonie.be/Licences_armes/Armes/end_user.html

⁴³ End User Certificate for Small Arms and Light Weapons (OSCE) – <http://www.osce.org/fsc/83178>

ambiguity with regard the configuration of the licensing system, some Member States have established two types of licences for brokering activities: individual licences and open licences. Individual licences are issued for single transfers to a specified recipient. By contrast, open licences cover several operations. They are generally restricted to transfers carried out by specified brokers, with specific goods, or to transfers to specified end-users. Open licences can be divided into two sub-categories: general licences – which are granted when a certain type of weapon is regularly transferred to specified recipients – and global licences – which are granted to specific brokers who engage in a large number of similar operations.

Half of European states requires brokers to obtain an individual licence – the application for which is assessed on a case-by-case basis – prior to engaging in brokering activities. This is the case in Austria, Bulgaria, Croatia, Cyprus, Denmark, Estonia, Hungary, Ireland, Latvia, Lithuania, Malta, the Czech Republic, Romania and Spain⁴⁴.

However, in view of simplifying licensing procedures for regular and similar arms transfers, several governments have also established flexible licences. For example, although **Germany** grants individual licences in most cases, the national legislation also provides for the issuance of general and global licences⁴⁵. General licences are granted when certain types of weapons are transferred to Australia, Canada, Japan, New Zealand, Norway, Switzerland or the United States. Applicants for such licences must be registered with the Federal Office of Economics and Export Control (BAFA). In addition, ‘reliable’ companies can apply for global licences, which are valid indefinitely but are only granted when brokering transactions involve the conclusion of a contract with a specified recipient to acquire or dispose of (Überlassen) military goods⁴⁶. Similarly, in the **Netherlands**, while individual licences are the rule rather than the exception, global licences may be granted to companies that regularly transfer a certain type of weapons to the same consignee⁴⁷. The **UK** issues three types of licences: general (Open General Trade Control Licence - OGTCL), individual (Standard Individual Export Trade Control Licence - SITCL) and global (Open Individual Trade Control Licence - OITCL). General licences are pre-published licences issued by the Export Control Organisation (ECO) licences. They are the most flexible type of licence available and are used in 90 per cent of licensing situations if all pre-set conditions are met – notably the prior registration of brokers. They cover transfers by any trader of specific items (Category C goods or small arms and light weapons) between specific countries of origin and destination. Due to the nature of the weapons involved, OGTCLs are denied for transfers to certain destinations. These licences are valid until suspended or revoked. If the conditions in terms of shipment or destination cannot be met, the broker can apply for an individual or a global licence⁴⁸. Individual licences are issued to a named trader for a single operation and are valid for two years or until the transactions has taken place. They cover transactions to specific destinations - including countries under embargo - with a set quantity of specific

44 Absence of information for Greece, Italy, Slovakia and Slovenia

45 Interview with a representative of the German Federal Foreign Office, November 2012

46 Germany, Federal Office of Economics and Export Control, *Information Leaflet on Trafficking and Brokering*, 2006 http://www.bafa.de/bafa/en/export_control/publications/export_control_information_leaflet_trafficking_brokering.pdf

47 Interview with a representative of the Dutch Ministry of Foreign Affairs, December 2012

48 *Open General Trade Control Licences* – <https://www.gov.uk/open-general-trade-control-licences>

goods. To grant a SITCL, ECO requires information on the country of origin and destination and/or on the consignor, consignee, and end-user. Global licences allow named brokers to facilitate the trading of any number of specific goods between any numbers of specified countries. OITCLs also require information on the country of origin and destination and/or on the consignor, consignee, and end-user. They are generally valid for two years⁴⁹.

In certain situations, several countries have all together suspended licensing requirements. In **Hungary** and **Croatia** for example, a licence is not required if the weapons are transferred in the framework of authorised military or humanitarian operations. In **Romania**, weapons transferred to member and associate countries of the North Atlantic Treaty Organization (NATO) are not controlled⁵⁰.

While open licences and exemption regimes may offer practical advantages to licensing authorities with tight schedules, they only allow for the ex-ante review of applications that cover several transactions. Not only does this mean that it is harder to know and track what is being transferred, it also implies that weapons are more susceptible of being diverted to the illegal market.

In addition, differences among EU control regimes can create loopholes that are easily exploitable by unscrupulous brokers. Therefore, as a dozen Member States use open licences, a clarification of the licensing provisions of the Common Position is required. Indeed, as such, the text is ambiguous with regard the mandatory or optional nature of the requirement to grant individual licences for each brokering transaction.

2.2. Registration and Register

Although the pre-licence registration of brokers is considered to be an optional measure under the Common Position, the United Nations considers it to be a cornerstone - with licensing and appropriate penalties – of effective brokering control regimes⁵¹. While licensing enables governments to assess a priori whether to authorise specific brokering activities, registration allows States to judge a priori the reliability of the persons and entities that wish to engage in arms brokering and to monitor a posteriori registered brokers. In addition, the registration process is an opportunity for governments to inform persons and entities about their rights and obligations but also to sensitise them to the implications of their involvement in brokering activities with defence-related equipment.

In Belgium, for example, the law requires persons or director(s), manager(s) and authorised representative(s) of entities applying for registration to provide a certificate of good conduct in order to be registered⁵². In Portugal, registration is granted or denied by the Logistics and Products Control Division (DGAIED) of the MoD if the applying entity has been issued a security clearance by the National

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49 Import and Export Controls: Licences for Brokering – <https://www.gov.uk/trade-control-licences-for-brokering>; *Export Control Act 2002: Review of Export Control Legislation (2007) Supplementary Guidance Note on Trade (« Trafficking and Brokering ») in Controlled Goods*, January 2009, pp. 8-9 – <http://www.berr.gov.uk/files/file49827.pdf>

50 WOOD David, *Romania's arms transfer control system at EU accession: an analysis*, Saferworld, 2007, p. 9 – http://www.saferworld.org.uk/downloads/pubdocs/Romania_Export_Controls_English.pdf

51 *Report of the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (A/CONF.192/15)*, p. 11 §14, [http://www.un.org/events/smallarms2006/pdf/192.15%20\(E\).pdf](http://www.un.org/events/smallarms2006/pdf/192.15%20(E).pdf)

52 Belgium, *Royal Decree of 16 Mai 2003*, Article 1 – See annex

Security Authority and pending a review of its human resources, technical/financial capacities and its organisational transparency⁵³.

Once brokers have been identified, states can keep track of non-compliant licensees and potentially detect illegal and harmful situations. A registration system may also prevent convicted brokers from engaging in future brokering activities, in that this would likely be one of the criteria for refusing registration. In the UK for example where no registration system is in place, no special impediments will prevent a broker convicted of arms transfer control offences who has served his sentence and/or paid his fine from applying for further brokering licences. Therefore, the licensing authorities would treat those applications exactly as they would any other.

In addition, registration – which implies the centralisation of relevant information – allows for better intra- and intergovernmental cooperation. While cooperation between competent state agencies does not depend on registration, such a mechanism will undoubtedly improve it. Moreover, registration has benefits with regard intergovernmental cooperation. Refusing, suspending or striking a broker from a register sends a strong signal to the actors (states or the public) with whom the information is shared. For example, if licensing authorities from a EU Member State were to see on a licence application the name of a broker that was either not registered or had been de-registered, this could (hopefully) influence their decision and behaviour (i.e. refuse the application and alert the relevant national authorities). This is especially relevant in countries that apply extraterritorial brokering controls, and thus where the involvement of a broker would require the approval of his country of residence or citizenship. States receiving a licence application from a foreign broker would thus be more easily able to check whether or not he is complying with his State's law.

A majority of European States have adopted a two-stage licensing process whereby only a person or an entity registered or authorised to act as a broker can apply for an activity licence. In **Hungary**, for example, brokers must first apply for an activity licence, which is tantamount to applying for registration, before applying prior to each individual brokering activity for a licence from the *Trade Licensing Office*⁵⁴. In **Spain**, national and resident brokers must be registered in the Register of Foreign Trade Operators (REOCE)⁵⁵. Registration can be done simultaneously or prior to the application for an individual licence, which is required to carry out brokering activities. Similarly, Bulgaria, Croatia, Estonia, Greece, Italy, Latvia, Lithuania, Malta, Portugal, Czech Republic, Romania, Slovakia, Slovenia and Sweden provide for a two-stage licensing process.

The registration system is generally accompanied by the establishment of a register of arms brokers. Even though the Common Position is silent on this issue, it is essential that national authorities regularly review their registers to ensure that the information on the basis of which they may suspend or cancel registration is up-to-date. Generally, registration is valid for a few years and is renewable. In **Greece**, brokers must renew their registration every three years. In **Hungary**, registration is valid for a period of

53 Portugal, *Law 49/2005*, Articles 8 – See annex

54 Hungary – *Governmental Decree 160/2011 on Licensing the Export, Import, Transfer and Transit of Military Equipment and Related Services, and on Certification* (2011), Chapter II, Sections 9 and 17 – See annex

55 Spain - Ministry of Economy and Competitiveness, Foreign Trade with Defence and Dual-Use Material, Operator's Guide - <http://www.comercio.gob.es/en/comercio-exterior/informacion-sectorial/material-de-defensa-y-de-doble-uso/guia-operador/Pages/indice.aspx>

two years. In several countries registration is valid indefinitely. This is the case for general licences granted in **Spain**, **Lithuania** and in the **UK**. Most European States do however provide for sanctions - such as fines and/or the suspension or cancellation of registrations – if they are not notified, within a period that generally does not exceed thirty days, of a change in the information based on which brokers registered themselves. Nevertheless, to prevent unlawful brokering activities, States should adopt a proactive approach and regularly audit brokers. This is especially important in view of the fact that in the UK, for example, the ECO Compliance Inspectors found in 2011 that 27 – 30% of licence holders were not fully compliant with the terms and conditions of their licences⁵⁶.

In several countries, registers are public. For example, in **Bulgaria**, at the time of writing, ninety-six brokers are registered in the register of persons authorised to conduct brokering activities⁵⁷. In **Estonia**, eight companies are registered in the National Register of arms brokers⁵⁸. Finally, in **Hungary**, 177 companies are registered to carry out business activities with military equipment⁵⁹.

In certain countries where records are not public, national reports on arms exports and imports indicate the number of registered brokers. In **France**, for example, 93 AFCI authorisations were granted in 2011. One third of the authorisations were granted to companies whose main activity is trading in military equipment and the remaining two thirds were granted to companies who wish to have the possibility to carry out brokering activities⁶⁰.

It is interesting to note that the absolute majority of brokers registered in Europe are commercial entities. It is indeed very difficult to control individual brokers. However, according to Hugh Griffiths of the Stockholm International Peace Research Institute (SIPRI), “nearly all arms brokers involved in illicit arms transfers are ‘legitimate’ businessmen [...] As such, they have companies and bank accounts and use the same methods employed by ‘upperworld’ or licit businesses all over the world”⁶¹. In this regard, the case of Gary Hyde is particularly pertinent. He was the managing director of two Yorkshire gun shops, York Guns and Jago Ltd. In 2005, he legally imported 78,000 AK-47s from Bosnia to a gun shop in Nottingham⁶². One year later, he organised the illegal transfer of over 80,000 weapons and 32 million rounds of ammunition from China to Nigeria. In 2009, with his colleague from Jago Ltd, Karl Kleber, Hyde allegedly imported 5,760 AK-47 Chinese-manufactured drum magazines into the United States, in violation of its embargo against Beijing.

This example is illustrative not only of the grey area in which brokers may operate, but also of the importance of requiring them to register before they carry out their activities so that they can be monitored.

56 BIS Department for Business Innovations & Skills, *United Kingdom Strategic Export Controls Annual Report 2011*, <http://www.official-documents.gov.uk/document/hc1213/hc03/0337/0337.pdf>, p. 10

57 Public register – http://www.micmrc.government.bg/index.php?ch=publichen_registar

58 Registered Brokers of Military Goods – <http://www.vvm.ee/?q=en/node/5035>

59 List of registered brokers (Hatályos haditechnikai külkereskedelmi tevékenységi engedéllyel rendelkező cégek listája) – http://mkeh.gov.hu/hivatal/kozerdeku_adatok_2013/evekenysegre_mukodesre_vonatkozó_adatok/nyilvántartások

60 France, *Rapport au Parlement 2012 sur les exportations d'armement de la France*, op. cit., p. 35

61 CARNEY Des, *North Korea's Transnational Arms Industry*, op. cit.

62 BBC documentary lifts lid on Lincolnshire weapons facility, October 2009 – http://www.bbc.co.uk/pressoffice/pressreleases/stories/2009/10_october/19/io_yorks.shtml

2.3. Activity Reports

When brokers are licenced to carry out brokering activities, through registration or licensing, they may be required to keep detailed records of their activities and/or regularly submit activity reports to national authorities. In Europe, this is the case in at least eighteen Member States.

In **Spain**, brokers must report on their activities every six months⁶³. **Finland** requires brokers to write quarterly reports, which are then made available by the Ministry of Defence⁶⁴. In **Ireland** brokers are not required to submit reports. However, they must keep records of their activities which they must present to competent authorities upon request⁶⁵.

In this framework, it is important that States actively involve brokers in the control process in order to hold them accountable and establish good relations with them.

3. Extraterritorial controls

While states are required to regulate brokering activities taking place under their jurisdiction, they are encouraged under the Common Position to “consider controlling brokering activities outside of their territory carried out by brokers of their nationality resident or established in their territory”.

However, because of the transnational nature of brokering and the mobility of arms dealers, policies of the EU Member States should cover extraterritorial transfers. Indeed, in many cases, brokers are individual businessmen that need little more than a fax machine, a laptop and a mobile phone to conduct their activities. In addition, due to the lack or weakness of controls in many countries, they can easily broker transfers from abroad without violating the legislation of their home state.

Because it is very difficult to apply extraterritorial controls policy-makers believe that extraterritorial controls are ineffective and oppose their introduction into national legislation. Indeed, in case of suspicions, national authorities have no legal authority to conduct investigations in other countries. Moreover, even if a mutual legal assistance treaty is in force, finding sufficient evidence within the limitation period further complicates carrying out extraterritorial controls. However, it is important that the measure be provided for to ensure that if the required conditions are met, traffickers are not acquitted because the applicable legislation did not cover the activities they carried out. This is why at least sixteen European countries have extended the requirement to apply for a licence to brokers carrying out activities from abroad. Only Austria, Cyprus, Denmark, Estonia, France, Italy, the Czech Republic and Spain do not control extraterritorial activities⁶⁶.

EU Member States have introduced different types of extraterritorial control regimes. For example, **German** law provides partial extraterritorial controls. A broker

Because of the transnational nature of brokering and the mobility of arms dealers, policies of the EU Member States should cover extraterritorial transfers.

63 Spain, *Answer to the Small Arms and Light Weapons Questionnaire 2011* (OSCE), <http://www.osce.org/es/fsc/89323>

64 Finish report to the UNODA (2010) – [http://www.un.org/disarmament/convarms/NLDU/docs/NDLU2010/Finland\(E\).pdf](http://www.un.org/disarmament/convarms/NLDU/docs/NDLU2010/Finland(E).pdf)

65 Ireland, *Control of Exports Act* (2008), Article 7 §7 – See annex

66 Absence of information for Slovakia and Slovenia

who resides in Germany and brokers a transfer from abroad must apply for a licence depending on the type of weapon transferred or on the recipient country. Notably, transferring, for a peacekeeping mission for example, military equipment to an embargoed destination or a country on the national list of sensitive countries (such as Cuba or Syria before the arms embargo) requires a licence⁶⁷.

Such partial controls enabled the **Netherlands** to arrest trafficker Gus Van Kouwenhoven in 2005. From 2001 to 2003, he exported arms to Charles Taylor, the President of Liberia, in violation of the arms embargo on the country. Although the weapons did not touch the Dutch territory and he did not operate from the Netherlands, Van Kouwenhoven was convicted under the Sanctions Act of 1977 (Sanctiewet) which provided for extraterritorial controls in the framework of arms embargoes⁶⁸. In 2012, a new Dutch law established full extraterritorial controls on brokering activities thereby rendering national and foreign brokers who reside or are established in the Netherlands liable to prosecution if they engage, without a licence, in brokering activities outside of the EU⁶⁹.

Similarly, in the **UK**, the legislation provides for full extraterritorial controls when weapons from Categories A and B are being transferred. On the contrary, brokered Category C goods are only controlled if part of the transaction is carried out in the national territory⁷⁰.

This brief review of the various measures taken by European countries highlights the need to control extraterritorial brokering activities. At a minimum, governments that do not provide such controls should enforce arms embargoes regardless of where national brokers carried out their activities. Indeed, the absence of extraterritorial provisions enables unscrupulous dealers to broker transfers from countries where controls are weak or non-existent without risking prosecution in their home country.

Moreover, given that brokering transactions take place in more than one country, Member States should cooperate and exchange information, through official communication channels, in order to support investigations and prosecutions⁷¹. In addition, it is essential that States consider introducing a clause on unlawful arms brokering in their extradition agreements. In the absence of such a provision, it is indeed doubtful that, where appropriate, a State shall grant extradition. Nevertheless, within the EU, Member States can rely on the European arrest warrant that requires “each national judicial authority (the executing judicial authority) to recognise, *ipso facto* and with a minimum of formalities, requests for the surrender of a person made by the judicial authority of another Member State (the issuing judicial authority)”⁷². Similarly, at the international level, Interpol is mandated to facilitate interstate police cooperation.

67 Germany, *Foreign Trade and Payments Regulation (AWV)*, Section 42 – http://www.ausfuhrkontrolle.info/bafa/en/export_control/legislation/export_control_awv_en.pdf

68 United Nations Institute for Disarmament Research (UNIDIR), *Developing a Mechanism to Prevent Illicit Brokering in Small Arms and Light Weapons* (UNIDIR 2006/23), Geneva, 2006, pp. 104-105

69 Netherlands, *Strategic Services Act* (2011), Article 12 – See annex

70 BERR, *Export Control Act 2002: Review of Export Control Legislation (2007) Supplementary Guidance Note on Trade (« Trafficking and Brokering ») in Controlled Goods*, op. cit., pp. 6-7

71 *Report of the Group of Governmental Experts on small arms and light weapons*, op. cit., §50

72 *Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States*, http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_criminal_matters/133167_en.htm

4. Sanctions

The Common Position requires European States to “establish adequate sanctions, including criminal, in order to ensure that controls on arms brokering are effectively enforced”.

Sanctions have both a repressive and a preventive role. First, a clear and comprehensive legal system allows distinguishing between legal and illegal activities and prosecuting brokers that engage in illegal operations. Because such activities are so difficult to identify and control, legal loopholes must be closed to ensure that they cannot be abused by unscrupulous brokers. Therefore, control regimes must be robust and comprehensive and penalise illegal brokering and brokering-related activities carried out from or outside of the national territory. Second, brokering policies should include strict penalties to deter violations of their provisions. Indeed, although a number of States have enacted sanctions to punish illegal brokering activities, fewer incidents than in the 1990s have been prosecuted⁷³. If this trend reflects the increasing complexity of brokering routes, it is also evidence of the positive impact of the now reprehensible character of arms brokering.

Sanctions generally target brokers who (a) failed to provide relevant information or provided false information to obtain a licence, (b) failed to notify competent authorities of changes in the information based on which they were registered, (c) did not comply with the terms and conditions of their licences, or (d) carried out transactions without a licence. Depending on the nature of the offence, Member States provide for administrative and/or criminal penalties.

In most cases of administrative offences, brokers must pay a fine. They range from 100 Euros in **Lithuania** for administrative offenses to a maximum of ten million Euros in **Ireland** for indictable offences. Some countries also provide for the suspension or cancellation of issued licences. In **Belgium**, a judge may temporarily prohibit a person or entity from engaging in brokering operations⁷⁴. Other countries, such as **Latvia** and the **Netherlands**, also foresee community sentences. Moreover, in many countries such as **Malta** for example, illegally brokered goods will be seized.

When a serious offence or a crime has been committed, prison sentences are foreseen. Depending on whether a violation is classified as an offense or a crime, the severity of sanctions differs. For example, in **Ireland**, Article 8 of the *Control of Exports Act* provides that any person who commits a *summary offense* is liable to a fine not exceeding 5,000 Euros and/or imprisonment for a term not exceeding six months. By contrast, indictable offenses are punishable by a fine not exceeding ten million Euros and/or imprisonment for a term not exceeding five years⁷⁵. A serious offence will be classified as a crime if, as is the case in **Germany**, it threatens national security, international relations or the peaceful coexistence of States⁷⁶. In addition, if a brokering transaction violates an arms embargo, the sanctions foreseen are particularly severe. In **Bulgaria**, the Penal Code provides that violations of UN, EU, OSCE or national embargoes will be punished by a fine of approximately 100,000 Euros (200,000 BGN) and im-

73 UNIDIR 2006/23, op. cit., p. 130

74 Belgium, *Law of 25 March 2003*, Article 12, op. cit.

75 Ireland, *Control of Exports Act* (2008), Article 8 – See annex

76 Germany, *Foreign Trade and Payments Act (AWG)*, Section 33 – See annex

prisonment for a term of up to six years. If the breach is particularly serious, it will be punished by a fine of up to 250,000 Euros (500,000 BGN) and imprisonment for a term of three to eight years⁷⁷. Additionally, if a large number of goods were illegally transferred, the national law provides for fifteen years of imprisonment – which is the longest sentence in force in any EU Member State⁷⁸. Finally, some European governments apply harsher penalties depending on the type of broker. For example, while in **Estonia** the maximum prison sentence is of five years, state officials who take advantage of their positions to carry out illegal transactions are liable to imprisonment for a term of two to eight years⁷⁹.

Despite the enactment of strict sanction regimes, it is difficult to find examples of convicted arms brokers in Europe - with the notable exception of the **United Kingdom**⁸⁰. Thus, while establishing sanctions is a first step towards their conviction, prosecuting brokers who operate in grey areas primarily depends on the cooperation within and between States.

5. Information exchange and international cooperation

To fully and effectively control brokering activities, EU Member States must enhance intra- and interstate cooperation. Indeed, in **Belgium** no dealer has ever been prosecuted on the basis on the Law of 25 March 2003. This could notably be due to the regionalisation of the competence for the arms trade that same year, which introduced confusion with regard to who is responsible for enforcing the law. Similarly, because competent authorities in the **United Kingdom** failed to cooperate and exchange information, Gary Hyde was able to sell weapons and ammunition to the British police and the Ministry of Defence until 2011, notwithstanding the fact that since 2007, he was being investigated by the Revenue and Customs Department in connection with transfers of AK-47s to Nigeria⁸¹. In contrast, in the United States for example, while the adoption in 1996 of provisions to control arms brokering did not result in any prosecution, several brokers have been tried and convicted since the September 11 attacks. This is notably due to the organisation by the U.S. Department of State of outreach programs to inform and educate law enforcement agencies on brokering controls⁸².

Therefore, it is essential that national law enforcement agencies work closely together and share a common understanding of how arms brokering activities can be controlled and, where appropriate, prosecuted. Such concerns have led to the enactment of relevant provisions in several European countries. In **Belgium**, for example, the Ministry of Justice, which is responsible for registering brokers, can seek advice from police, customs or intelligence services. Similarly, in **Croatia**, licences are issued by the Ministry of Economy after having received the consent of the interdepartmental Commission which is composed of representatives of the Ministry

77 *Criminal Code of the Republic of Bulgaria* (1968), Article 233 – <http://legislationline.org/documents/action/popup/id/8881/preview>

78 *Ibid.*, Article 337

79 Estonia, *Strategic Goods Act* (2012), Article 372 – See annex

80 BROMLEY Mark, *Prosecuting Illicit Arms Brokers: Improving the European Record*, ISN, Zürich, September 2012

81 URRY Allan, *Jailed arms dealer sold guns to police and MoD*, 15 January 2013 – <http://www.bbc.co.uk/news/uk-20991545>

82 BONDI Loretta and KEPPLER Elise, *Casting the Net? The implications of the U.S. Law on Arms Brokering*, Fund for Peace, Washington D.C., January 2001; UNIDIR 2006/23, op. cit., p. 123

of Defence, the Ministry of the Interior, the Ministry of Foreign Affairs and the Ministry of Economy⁸³.

In addition, due to a lack of experience and training, law enforcement agencies could fail to identify illegal activities. For example, as forged EUCs are often at the heart of the illegal trade in arms, licensing authorities, which play a central role in the implementation of brokering controls, must be rigorously trained to detect counterfeit documents. In this regard, a standard European end-user certificate would facilitate the detection of abuse and fraud. Furthermore, governments' outreach activities should also target brokers. This is already the case in several countries, such as in **Hungary** where changes in legislation automatically lead to the organisation of seminars by the Trade Licensing Office. In addition, competent governmental agencies in countries such as **Spain, Estonia, Hungary, Romania** or the **UK** regularly update their websites in order to keep brokers informed on their rights and obligations. For a majority of EU States, such activities are central to the effectiveness of brokering controls⁸⁴.

At the multilateral level, Member States should cooperate with each other to ensure the effective implementation of the Common Position. This cooperation must focus on various issues and should happen at different levels. First, European States should exchange information on good practices. For example, in view of its accession to the EU in 2013, Croatia attended a seminar organised by **Hungary** on arms exports and brokering controls⁸⁵. Similarly, Member States would certainly benefit from a seminar on the prosecution and conviction of brokers in the **UK**, which convicted almost twenty arms traffickers since 2007⁸⁶. Second, in order to facilitate police and judicial cooperation, governments should exchange information about registration (new, suspended and cancelled registrations), licensing (licences granted, refused and suspended) as well as prosecutions and convictions. This is particularly important in view of the mobility of arms brokers.

Aside from the EU, other multilateral and international fora have addressed arms brokering and constitute additional platforms for state cooperation. Indeed, the UN, the OSCE and the Wassenaar Arrangement, in particular, have developed provisions that Member States could consider adopting to strengthen their national controls.

Finally, while strong brokering policies have been adopted in several non-EU countries, international norms can undoubtedly contribute to the adoption of brokering controls in all regions of the world. In Particular, Article 10 of the Arms Trade Treaty (ATT) adopted on 2 April 2013 requires each State Party to “take measures, pursuant to its national laws, to regulate brokering taking place under its jurisdiction for conventional arms covered under Article 2 (1). Such measures may include requiring brokers to register or obtain written authorization before engaging in brokering”⁸⁷. While the clause is vague and the suggested provisions are voluntary, States that will look to ratify and implement the ATT should interpret it progressively, notably by looking to the

83 Croatia, *Law on the Export and Import of Military Goods and Non-Lethal Goods (2008)*, Article 6 – See annex

84 Interview with national representatives competent in arms brokering matters, October 2012 – January 2013

85 *Fourteenth annual report according to article 8(2) of Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment (2012/C 386/01)*, Official Journal of the European Union, December 2012.

86 BROMLEY Mark, *Prosecuting Illicit Arms Brokers: Improving the European Record*, op. cit.

87 *The Arms Trade Treaty*, op. cit.

European model. In addition, to ensure brokers are efficiently controlled, States must be given the means to enforce arms embargoes.

* * *

The present study has put forward the need for EU Member States to continue working on the implementation and elaboration of the Common Position. To put an end to the illegal brokering activities that are carried out from their territories or by their

States should adopt a comprehensive legislation which adopts both the mandatory and provisional measures provided by the European text.

national or resident brokers, States should adopt a comprehensive legislation which adopts both the mandatory and provisional measures provided for by the European text. While steps in this direction have been taken by several governments, all Member States should uphold the same standards.

To close loopholes in control regimes and ensure the prosecution of arms smugglers, EU member states must review and extend the scope of the Common Position by making the following provisions compulsory:

- 1) Controlling brokering-related activities;
- 2) Requiring registration and record keeping of eligible arms brokers;
- 3) Controlling extraterritorial brokering activities;
- 4) Establishing inter- and intra-state mechanisms of cooperation.

IV. CONCLUSION AND RECOMMENDATIONS

Ten years after the adoption of the Common Position on the control of arms brokering, its implementation by EU Member States is satisfactory. Luxemburg is the only country that has yet to adopt a law that regulates arms brokering activities. In addition, Belgium, France and Italy must amend their legislation to ensure their compliance with the requirements of the Common Position. While Belgium and France must complement their registration requirements with licensing systems, Italy must ensure that third-country transfers carried out from its national territory are controlled.

Nonetheless, because the Common Position comprises mandatory provisions as well as optional measures, there are significant differences between the twenty-four control regimes which satisfy the requirements of the European instrument differences that have adverse consequences on the quality and the efficiency of EU controls. Indeed, in terms of implementation, the objective of combating and prosecuting illegal brokering activities has probably not been achieved given the small number of prosecutions.

Therefore, to thwart the arms trafficking activities that are carried out from their territory or by their nationals, Member States should adopt a comprehensive legislative approach. To do so, they should first of all control brokering and brokering-related activities alike. Indeed, although these activities are central to the organisation of arms transfers, they are not systematically controlled by EU Member States.

Second, all policies should provide for a licensing and a registration system. Such a two-stage licensing process enables governments to assess *a priori* the reliability of the persons and entities that wish to engage in arms brokering and the legality of the activities they want to carry out, and to monitor *a posteriori* registered brokers and their activities. In addition, this system should foresee the regular review of the register by licensing authorities and the regular submission of activity reports by arms brokers.

Third, because of the transnational nature of brokering and the mobility of arms dealers, EU governments should control activities that are carried out outside their borders by brokers that are resident or established in their territory, irrespectively of their nationality. Such extraterritorial controls would prevent brokers from circumventing national controls by carrying out transactions from countries where controls are poor or non-existent.

Fourth, States should establish intra- and interstate mechanisms of cooperation and information exchange to optimise the prosecution and the conviction of brokers. Indeed, while EU Member States have enacted strict administrative and criminal sanctions, the effective prosecution and conviction of arms dealers depends primarily on the cooperation within and between States. Such cooperation mechanisms would also allow to better review the implementation of the Common Position and call on States to implement all of its provisions.

Finally, to ensure that strong and robust brokering controls are adopted by the international community as a whole, States looking to implement the recently adopted ATT should look to the EU, notably for assistance. Indeed, because of the complexity

of arms transfers, the international community must pool its resources and expertise to hinder the violation of arms control regimes and arms embargoes.

In conclusion, while laws often seem separated from reality, illegal arms brokering is a problem that has the real consequence of increasing insecurity in the world. Thus, states must not forget that behind each legal provision is a means to curb the illicit proliferation of weapons that affects millions of people.

ANNEX – NATIONAL LEGISLATION ON ARMS BROKERING

Member State	Legislation
Austria	<p><i>Kriegsmaterialgesetz</i> (18/10/1977) (Act on War Material). Text available in German – http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000609</p> <p><i>Außenwirtschaftsgesetz</i> (2011) (Foreign Trade Act). Text available in German – http://www.ris.bka.gv.at/Ergebnis.wxe?Abfrage=Bundesnormen&Titel=Au%C3%99FWG+2011&Kundmachungsorgan=BGBL.+I+Nr.&Kundmachungsnummer=26%2F2011&FassungVom=01.10.2011</p>
Belgium	<p><i>Loi du 25 mars 2003 modifiant la loi du 5 août 1991 relative à l'importation, à l'exportation et au transit d'armes, de munitions et de matériel devant servir spécialement à un usage militaire et de la technologie y afférente</i> (Law of 25 March 2003 amending the Law of 5 August 1991 relative to the import, export and transit of arms, ammunition, special equipment for military use and related technology). Text available in Dutch and in French – http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1991080568&table_name=loi</p> <p><i>Arrêté royal du 16 mai 2003 relatif à la licence visée à l'article 10 de la loi du 5 août 1991 relative à l'importation, à l'exportation, au transit et à la lutte contre le trafic d'armes, de munitions et de matériel devant servir spécialement à un usage militaire ou de maintien de l'ordre et de la technologie y afférente</i> (Royal Decree of 16 Mai 2003 relative to the licence provided for in Article 10 of the Law of 5 August 1991). Text available in Dutch and in French – http://www.ejustice.just.fgov.be/cgi_api2.pl?lg=fr&pd=2003-07-07&numac=2003009464</p>
Bulgaria	<p><i>Закон за експортния контрол на продукти, свързани с отбраната, и на изделия и технологии с двойна употреба</i> (30/06/2012) (<i>Defence-Related Products and Dual-Use Items and Technologies Export Control Act</i>). Text available in English – http://www.mi.government.bg/en/library/defence-related-products-and-dual-use-items-and-technologies-export-control-act-121-c25-m258-1.html</p>
Croatia	<p><i>Zakon 86/08 O Izvozu I Uvozu Robe Vojne Namjene I Nevojnih Ubojnih Sredstava</i> (23/07/2008) (Law on the Export and Import of Military Goods and Non-lethal Goods). Text available in Croatian – http://narodne-novine.nn.hr/clanci/sluzbeni/340350.html</p>
Cyprus	<p>Κ. Δ. Π. 522/2011 για την εξαγωγή, επανεξαγωγή και διαμετακόμιση στρατιωτικού εξοπλισμού απαιτείται άδεια εξαγωγής (23/12/2011) (Act on the import and export of controlled goods). Text available in Greek – http://www.mcit.gov.cy/mcit/trade/ts.nsf/All/F61BB0CFB7B29D39C22573470030125D/\$file/%CE%9A.%20%CE%94.%20%CE%A0.%20522%20%202011.pdf?OpenElement</p>
Czech Republic	<p><i>Zákon 38/1994 o zahraničním obchodu s vojenským materiálem</i> (15/02/1994) (Act on foreign trade in military equipment). Text available in English – http://download.mpo.cz/get/37640/51099/585382/priloha001.pdf</p>
Denmark	<p><i>Bekendtgørelse af lov om våben og eksplosivstoffer</i> (22/06/2009) (Weapons and Explosives Act). Text available in Danish – https://www.retsinformation.dk/Forms/R0710.aspx?id=142859</p>

Estonia	<p><i>Strateegilise kauba seadus</i> (01/02/2012) (Strategic Goods Act). Text available in English – http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=2012X07&keel=en&pg=1&ptyyp=RT&tyyp=X&query=strateegilise+kauba</p>
Finland	<p><i>Laki 282/2012 puolustustarvikkeiden viennistä</i> (08/06/2012) (Act on the Export and transit of Defence Material). Text available in Finnish – http://www.finlex.fi/fi/laki/alkup/2012/20120282</p>
France	<p><i>Décret 95-589 du 6 mai 1995 relatif à l'application du décret du 18 avril 1939 fixant le régime des matériels de guerre, armes et munitions</i> (Decree 95-589 on the application of the Decree of 18 April 1939 laying down the rules applicable to war materials, weapons and ammunition). Text available in French – http://www.legifrance.gouv.fr/affichTexte.do?sessionId=010A63CD0C40847774794931555392BF.tpdjo05v_1?cidTexte=LEGITEXT000005618597&dateTexte=20121106</p> <p><i>Loi 2012-304 du 6 mars 2012 relative à l'établissement d'un contrôle des armes moderne, simplifié et préventif</i> (Act relative to the establishment of a modern, simple and preventive weapons control system). Text available in French – http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000025445727&dateTexte=&categorieLien=id</p>
Germany	<p><i>Kriegswaffenkontrollgesetz</i> (01/06/1961) (War Weapons Control Act). Text available in English – http://www.iuscomp.org/gla/statutes/KrWaffKontrG.htm</p> <p><i>Außenwirtschaftsgesetz (AWG)</i> (27/05/2009) (Foreign Trade and Payments Act). Text available in English – http://www.bafa.de/bafa/en/export_control/legislation/export_control_awg_en.pdf</p> <p><i>Außenwirtschaftsverordnung (AWV)</i> (18/12/1986) (Foreign Trade and Payments Regulation). Text available in English – http://www.ausfuhrkontrolle.info/bafa/en/export_control/legislation/export_control_awv_en.pdf</p>
Greece	<p>N. 4028/2011 - Τροποποίηση διατάξεων του ν. 2168/1993 «Ρύθμιση θεμάτων που αφορούν όπλα, πυρομαχικά, εκρηκτικές ύλες, εκρηκτικούς μηχανισμούς και άλλες διατάξεις» (147/A) (11/11/2011) (Law regulating issues relating to weapons, ammunition and explosives). Text available in Greek – http://www.elinyae.gr/el/item_details.jsp?cat_id=1546&item_id=9110</p>
Hungary	<p><i>160/2011. (VIII. 18.) Korm. Rendelete a haditechnikai eszközök és szolgáltatások kivitelének, behozatalának, transzferjének és tranzitjának engedélyezéséről, valamint a vállalkozások tanúsításáról</i> (18/08/2011) (Government Decree on licensing the export, import, transfer and transit of military equipment and related services, and on certification). Text available in Hungarian – http://magyarkozlony.hu/pdf/10066</p> <p><i>16/2004. (II. 6.) Korm. Rendelet a haditechnikai eszközök és szolgáltatások kivitelének, behozatalának, transzferjének és tranzitjának engedélyezéséről</i> (2004) (Government Decree on the licensing of the export, import, transfer and transit of military equipment and technical assistance). Text available in English – http://mkeh.gov.hu/index.php?name=OE-eLibrary&file=download&id=3868&keret=N&showheader=N</p>

Ireland	<p><i>Control of Exports Act 2008</i>. Text available in English – http://www.irishstatutebook.ie/pdf/2008/en.act.2008.0001.pdf</p> <p><i>Control of Exports (Brokering activities) Order 2011</i>. Text available in English – http://www.irishstatutebook.ie/2011/en/si/0086.html</p>
Italy	<p><i>Legge 09/07/1990 n. 185 Nuove norme sul controllo dell'esportazione, importazione e transito dei materiali di armamento</i> (New rules for the Control of export, import and transit of conventional weapons). Text available in Italian – http://www.opbw.org/nat_imp/leg_reg/italy/export_import_transit_arms.pdf</p>
Latvia	<p><i>Stratēģisks nozīmes preču aprites likums</i> (21/06/2007) (Law on the circulation of strategic goods). Text available in English – http://www.mfa.gov.lv/data/file/l/ES/NATO/stratlik-angliski.doc</p>
Lithuania	<p><i>Strateginių prekių kontrolės įstatymas</i> (05/04/1995) (Law on the Control of Strategic Goods). Text available in English – http://legislationline.org/documents/action/popup/id/6970</p> <p><i>Ginklų ir šaudmenų kontrolės įstatymas</i> (15/01/2002) (Law on the Control of Arms and Ammunition). Text available in English – http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=365738</p>
Luxembourg	/
Malta	<p><i>Military Equipment Export Control Regulation</i> (01/01/2002). Text available in English – http://www.commerce.gov.mt/pdfs/Military_Equipment_Export_Control_Regulations.pdf</p>
Netherlands	<p><i>Wet strategische diensten</i> (29/09/2011) (Strategic Services Act). Text available in Dutch http://wetten.overheid.nl/BWBR0030545/geldigheidsdatum_11-12-2012</p> <p><i>Regels inzake de controle op diensten die betrekking hebben op strategische goederen (Wet strategische diensten)</i> (2011) (Strategic Services Implementing Decree). Text available in Dutch – https://zoek.officielebekendmakingen.nl/dossier/32665?page=1&sorttype=1&sortorder=4</p>
Poland	<p><i>Ustawa z dnia 25 maja 2012 r o zmianie ustawy o obrocie z zagranicą towarami, technologiami i usługami o znaczeniu strategicznym dla bezpieczeństwa państwa, a także dla utrzymania międzynarodowego pokoju i bezpieczeństwa oraz niektórych innych ustaw</i> (25/05/2012) (Act of 25 May 2012 amending the Act on foreign trade in goods, technologies and services of strategic importance to the security of the State and to maintaining international peace and security and certain other acts). Text available in English – http://www.mg.gov.pl/files/upload/9191/Act%20of%2025%20May%202012.pdf</p>
Portugal	<p><i>Lei 49/2009 de 5 de Agosto que regula as condições de acesso e exercício das actividades de comércio e indústria de bens e tecnologias militares</i> (05/08/2009) (Law relative to the accession to and the pursuit of commercial and industrial activities with military). Text available in Portuguese – http://www.gns.gov.pt/NR/rdonlyres/BA92893E-3FEB-4A67-BFE1-0206CE17E05F/0/Lei492009.pdf</p> <p><i>Lei 5/2006 de 23 de Fevereiro sobre Armas e Munições</i> (23/02/2006) (Act on weapons and ammunition). Text available in Portuguese – http://www.psp.pt/Legislacao/Lei_5-2006.pdf</p>

Romania	<p><i>Ordonanța de urgență 55/2012 privind regimul de control al exporturilor, importurilor și altor operațiuni cu produse militare</i> (12/10/2012) (Emergency Ordinance on the control regime of exports, imports and other operations with military goods). Text available in Romanian – http://www.ancex.ro/upload/OUG_55_din_3_oct_2012.pdf</p>
Slovakia	<p><i>Zákon č. 179/1998 Z. z. o obchodovaní s vojenským materiálom a o zmene a doplnení niektorých zákonov v znení neskorších predpisov</i> (1998) (Trade in military material). Text available in Slovak – www.economy.gov.sk/ext_dok-179_1998-z-z-o-obchodovani-s-vojenskym-materialom-a-o-zmene-a-doplneni-niektorych-predpisov/135438c?ext=orig</p> <p><i>Zákon 26/2002 z 18. decembra 2001 o podmienkach a kontrole dovozu, vývozu a sprostredkovateľských činností týkajúcich sa tovaru a technológií podliehajúcich medzinárodným kontrolným režimom</i> (18/12/2001) (Law on the control of the import, export and brokering of military goods and related technology). Text available in Slovak – www.zbierka.sk/sk/predpisy/26-2002-z-z-p-6175.pdf</p>
Slovenia	<p><i>Zakon o orožju</i> (06/01/2011) (Firearms Act). Text available in Slovenian – http://zakonodaja.gov.si/rpsi/r00/predpis_ZAKO1440.html</p>
Spain	<p><i>Ley 53/2007, de 28 de diciembre, sobre el control del comercio exterior de material de defensa y de doble uso</i> (Law on the control of foreign trade in defence and dual-use material). Text available in Spanish – http://www.boe.es/boe/dias/2007/12/29/pdfs/A53670-53676.pdf</p> <p><i>Real Decreto 844/2011, de 17 de junio, por el que se modifica el Real Decreto 2061/2008, de 12 de diciembre, por el que se aprueba el Reglamento de control del comercio exterior de material de defensa, de otro material y de productos y tecnologías de doble uso</i> (Regulation on foreign trade in defence material, other material and dual-use items and technologies). Text available in Spanish – http://www.boe.es/boe/dias/2011/07/02/pdfs/BOE-A-2011-11346.pdf</p>
Sweden	<p><i>Lag 1992:1300 om krigsmateriel</i> (10/12/1992) (Military Equipment Act). Text available in Swedish – http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Lag-19921300-om-krigsmateri_sfs-1992-1300/?bet=1992:1300</p>
United Kingdom	<p><i>Export Control Act 2002</i>. Text available in English – http://www.legislation.gov.uk/ukpga/2002/28/contents</p> <p><i>Export Control Order 2008</i>. Text available in English – http://www.legislation.gov.uk/uksi/2008/3231/contents/made</p>

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ARMS BROKERING CONTROLS

HOW ARE THEY IMPLEMENTED IN THE EU?

The role of arms brokers is still poorly understood. Though brokers can legally organise and facilitate arms transfers, they can also play a key role in arms trafficking schemes. Whilst brokering activities are often carried out in a legal framework, unscrupulous brokers are able to operate with impunity by taking advantage of the weaknesses and differences between national laws and control regimes.

To strengthen controls in the European Union (EU), in 2003, Member States adopted a Common Position on the control of arms brokering (2003/468/CFSP). This paper assesses the compliance of EU Member States' policies with the Common Position over the past ten years. All in all, the EU's track record is satisfactory. Luxemburg is the only country that has yet to adopt a law on the control of military arms brokering. In addition, three states (Belgium, France and Italy) still need to ensure the compliance of their national regulations to all the requirements of the EU legislation. However, there are significant differences between the twenty-four control regimes which currently comply with the European instrument – differences that have adverse consequences on the quality and the efficiency of brokering controls. Indeed loopholes and differences can give way to illegal arms brokering activities as brokers operate from countries where controls are poor or non-existent.

This report analyses the various provisions that EU Member States have adopted to control arms brokering and calls for greater consistency between national policies to ensure that activities carried out from their territory or by their nationals are efficiently controlled. To support this argument, the report utilises examples of best practices and how various provisions can work.

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