



POST-SHIPMENT CONTROL MEASURES: EUROPEAN APPROACHES TO ON-SITE INSPECTIONS OF EXPORTED MILITARY MATERIEL*

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I. Introduction

Diversion of military materiel is one of the main issues in the international arms trade that exacerbates conflicts and fuels crime and insecurity. Diversion refers to materiel passing from the legal to the illicit market, being diverted to unauthorized end users, or being used for unauthorized end uses.¹ It can occur at any stage of an item's life and transfer chain, such as at manufacture, during transfer, or after export and receipt by an authorized end user.² In particular, diversion of military materiel to unauthorized recipients can occur after an initial legal export and in violation of prescriptions stated in end-user certificates (EUCs).³ For this reason, European states have increasingly looked at different post-shipment measures, especially on-site inspections, to ensure that exported military materiel remains in the possession of the authorized end user.

Numerous reports have investigated cases of diversion after shipment. For example, Ukrainian tanks, artillery, small arms and ammunition reportedly authorized for export to Kenya between 2006 and 2008 were subsequently transported to South Sudan.⁴ Likewise, a Belarusian Mi-24p helicopter transferred to the United Arab Emirates (UAE) in 2014 was delivered to the

¹ The Arms Trade Treaty does not define diversion, but in its preamble states: 'Underlining the need to prevent and eradicate the illicit trade in conventional arms and to prevent their diversion to the illicit market, or for unauthorized end use and end users, including in the commission of terrorist acts'. See Arms Trade Treaty, opened for signature 2 Apr. 2013, entered into force 24 Dec. 2014; and Wood, B., *The Arms Trade Treaty: Obligations to Prevent the Diversion of Conventional Arms*, Issue Brief no. 1 (United Nations Institute for Disarmament Research: Geneva, 23 June 2020).

² 'End user' refers to *who* can use the exported item. 'End use' refers to *how* the exported item can be used. See also Arms Trade Treaty, Fourth Conference of States Parties (CSP4), 'ATT Working Group on Effective Treaty Implementation Chair's Draft Report to CSP4', 20 July 2018, Annex D.

³ Some EUC prescriptions, for instance, restrict re-export, which is the onward export to another destination country, or re-transfer, which is the onward transfer to another end user or end use in the same country. See South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC), *Addressing Unauthorized Re-export or Re-transfer of Arms and Ammunition* (SEESAC: Belgrade, June 2014). See also Conflict Armament Research, *Diversion Digest 1* (Conflict Armament Research: London, 2018).

⁴ Lewis, M., *Skirting the Law: Sudan's Post-CPA Arms Flows*, HSBA Working Paper no. 18 (Small Arms Survey: Geneva, Sep. 2009), pp. 39–44; and Wezeman, P. D., Wezeman, S. T. and Béraud-

* The authors would like to thank the German Federal Foreign Office, which generously provided funding for this project, and numerous officials who participated in interviews and written communication. Any errors are the responsibility of the authors.

SUMMARY

● Post-shipment on-site inspections of exported military materiel enable an exporting country to verify that the materiel is still present in the country of destination and in the possession of the authorized end user. An increasing number of European countries are conducting on-site inspections, or are considering or planning to adopt such measures. A wide range of multilateral organizations already include the implementation of on-site inspections as part of their guidance documents.

This SIPRI Background Paper provides an overview of the current state of implementation as regards on-site inspections of exported military materiel by different European countries. It highlights common sensitive issues related to the implementation of on-site inspections, maps the on-site inspection policies and practices of a selection of European countries, and provides recommendations for how the European Union could play a role in promoting such practices.



main non-state armed group in Libya, the Libyan National Army, in April 2015. This transfer occurred without prior authorization of re-export from Belarus and in violation of the 2011 United Nations arms embargo on Libya.⁵

The long life of military materiel means that the risk of diversion to unauthorized end users remains until and unless the materiel is destroyed or, in the case of ammunition, disposed of or used. Diversion of military materiel can take place many years after an initial legal export. For example, this was the case for some AT-4 portable rocket launchers, which were initially delivered by Sweden to Venezuela in the 1980s and subsequently discovered in the hands of the Revolutionary Armed Forces of Colombia in 2008.⁶

Therefore, manufacturing and exporting states have implemented numerous measures to avert in-shipment and post-shipment diversion, ensure that materiel remains in the possession of the authorized end users and mitigate the risk of diversion after export. Such measures aim to prevent unauthorized end use of the materiel and its diversion to unauthorized end users and to the illicit market, as preventing diversion would reduce crime,

conflict and insecurity, as well as avoid potential reputational damage for the manufacturer. Some of these measures can be taken before an export. For example, thorough risk assessments take into account the risks of diversion in the recipient state and of unauthorized end use of the materiel. Another common practice is the provision of certain 'end-user assurances' by the importing state. Such assurances are usually codified in

Exporting states may resort to on-site inspections to prevent diversion of military materiel to unauthorized recipients

an EUC and can cover a range of commitments, including stating that the materiel will not be re-exported or re-transferred to a third party without prior authorization from the original exporting state.⁷ Other measures can be taken after export. For example, the issuance of delivery verification certificates (DVCs) by the importer and the inspection of goods on arrival in the country of import aim to make sure that military materiel has reached its intended destination.

Likewise, other post-shipment measures, such as physical inspections of military materiel in the country of destination (referred to in this paper as 'on-site inspections'), aim at checking that the military materiel is in the possession of the stated end user after its receipt, even several years later. Exporting states may resort to on-site inspections to prevent diversion of military materiel to unauthorized recipients. These measures enable an exporting state to inspect military materiel it has supplied to a recipient state to ensure that it is still in the possession of the authorized end user, as agreed by the importing state or end user.⁸

The United States has an extensive programme of end-use controls that includes on-site inspections, which started in 1990. In contrast, European

Sudreau, L., *Arms flow to sub-Saharan Africa*, SIPRI Policy Paper no. 30 (SIPRI: Stockholm, Dec. 2011), pp. 23–24.

⁵ United Nations, Security Council, Final report of the Panel of Experts on Libya established pursuant to resolution 1973 (2011), S/2017/466, 1 June 2017.

⁶ Holtom, P., Pavesi, I. and Rigual, C., 'Trade update: Transfers, retransfers, and the ATT', *Small Arms Survey 2014: Women and Guns* (Cambridge University Press: Cambridge, 2014).

⁷ McDonald, G., 'Who's buying? End-user certification', *Small Arms Survey 2008: Risk and Resilience* (Cambridge University Press: Cambridge, 2008), p. 162.

⁸ German Federal Ministry for Economic Affairs and Energy, 'Key points for the introduction of post-shipment controls for German arms exports', [n.d.].



countries have only recently started implementing on-site inspections as part of their post-shipment control measures, or are considering the adoption of similar practices. Thus, different practices and views towards on-site inspections currently exist in Europe. A few countries are already conducting on-site inspections of exported military materiel (notably Switzerland, Czechia and Germany), while others have legal provisions in place enabling them to implement on-site inspections, but for a variety of reasons have not implemented such inspections yet (e.g. Spain and the region of Flanders). A third group of countries (e.g. Sweden) is still evaluating the possible diplomatic and practical challenges such inspections entail and their possible added value in preventing diversion of exported military materiel. Several other countries have either not considered the possibility or have decided, at least for the time being, against the use of the instrument (e.g. the United Kingdom).

An increasing number of European countries are thus conducting, or planning to conduct, on-site inspections of exported military materiel. A thorough analysis of the experiences of countries that are at different stages in the adoption of on-site inspections will help to highlight existing practices that can be adopted by other interested countries and common challenges that need to be overcome for the effective implementation of these inspections.

Drawing on interviews conducted with a range of European officials, this SIPRI Background Paper provides an overview of the current state of play regarding European adoption and expansion of on-site inspections. First, it introduces on-site inspections, highlights common sensitive issues related to the practice and presents different guidance documents that have been developed at the international level. Second, it maps the on-site inspection policies and practices of a selected number of European states. Finally, it highlights current initiatives at the European Union (EU) level regarding on-site inspections and presents ways in which the EU could play a role in promoting such practices in the transfer of military materiel from its member states.

II. On-site inspections, sensitivities and multilateral guidance

There is a wide range of possible measures that an exporter can use to ensure that end-user assurances are upheld, and that military materiel is in the possession of the stated end user and not being used for unauthorized end uses after receipt. Such measures encompass anything after the shipment of military materiel and include the issuance of DVCs by the importing state, regular checks of intelligence, media and non-governmental organization reports, and mechanisms that enable an exporting state to inspect the military materiel it has supplied. Different instruments have used various ways to refer to this comprehensive set of measures applied after shipment: for instance, the Council of the EU has used expressions such as ‘post-shipment measures’ and ‘post-shipment control’.⁹ The latter expression has also been used by the Organization for Security and Co-operation in Europe

⁹ Council of the European Union, ‘User’s Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment’, 16 Sep. 2019, p. 9, §3.1.



(OSCE), whereas the UN Coordinating Action on Small Arms (UN CASA) has used the expression ‘post-delivery controls’.¹⁰

The physical inspection of military materiel after export to a recipient country is one of these possible measures and, even in this case, the specific practice has been referred to in different ways. For example, the Council of the EU has called the practice ‘on-site verifications’ and ‘on-site inspections’, whereas the UN Office for Disarmament Affairs (UNODA) has referred to the practice as ‘on-site visits’.¹¹

The use of different terms to indicate the broader set of post-shipment measures and the specific physical on-site inspections of military materiel in recipient countries can leave room for confusion. For instance, Germany commonly uses the term ‘post-shipment controls’ to refer to the specific physical inspection of military materiel in a recipient country, at odds with the use of the same term (e.g. by the OSCE) to indicate the broader range of measures a state can implement after export.¹²

This paper focuses primarily on the specific on-site physical inspections of items after delivery to an end user. As a consequence, it will use the expression ‘on-site inspections’ to refer to these practices, as opposed to other measures that are envisaged after export, such as the provision of a DVC, which do not include a physical inspection component. Given the fact that the terminology used by states conducting such inspections may also reflect the philosophy underlying the activities, and some terms may be more acceptable to the controlled entity than others, the paper will also highlight the terms usually used by states to refer to on-site inspections.

On-site inspections are physical inspections of military materiel conducted by the exporting state on the territory of the importing state, after the transfer of such materiel to an authorized end user. Although on-site inspections are implemented differently by each country, they display some common features. On-site inspections are based on a mutual agreement between the exporting state and the importing state where the end user of the military materiel is located. The exporting state can include an explicit provision for the possibility of conducting on-site inspections in its legislative framework and can decide to insert a clause on on-site inspections in EUCs that are required from recipients as part of the export licensing process.¹³ On-site inspections can also be agreed on an ad hoc basis and take the form of a written authorization.¹⁴ The inspections can be conducted by diplomatic

¹⁰ Organization for Security and Co-operation in Europe (OSCE), ‘Best practice guide on export control of small arms and light weapons’, *Handbook of Best Practices on Small Arms and Light Weapons* (OSCE: Vienna, 2003), chapter 5, p. 11; and United Nations Coordinating Action on Small Arms, Modular Small-arms-control Implementation Compendium (MOSAIC) 03.21, ‘National controls over the end-user and end-use of internationally transferred small arms and light weapons’, 2018, pp. 13–14.

¹¹ Council of the European Union (note 9), §§1.3, 3.1; and United Nations Office for Disarmament Affairs, ATT Implementation Toolkit, ‘Module 10: Preventing diversion’, 2015, §4.1.2.

¹² German Federal Ministry for Economic Affairs and Energy (note 8). Notably, the main German policy declaration on the adoption of post-shipment controls also refers to ‘on the spot checks’ and ‘inspection’, while other documents refer to the practice as ‘on-site controls’.

¹³ Council of the European Union (note 9), §1; Organization for Security and Co-operation in Europe, ‘Template for End User Certificates for Small Arms and Light Weapons’, 28 Sep. 2011; and United Nations Development Programme (UNDP), *How to Guide: Small Arms and Light Weapons Legislation* (Bureau for Crisis Prevention and Recovery, UNDP: Geneva, 2008), p. 75.

¹⁴ United Nations Coordinating Action on Small Arms (note 10), p. 13.



personnel from the exporting state (e.g. political officers or defence attachés based in an embassy in the importing state), a governmental authority of the exporting state (e.g. the export licensing authority), or by a mutually agreed third party.¹⁵

The rationale and sensitivities of on-site inspections

Only a few exporting countries in the world have developed and implemented comprehensive post-shipment measures that include the possibility of conducting on-site inspections. The USA, for instance, has been conducting on-site inspections of exported USA-manufactured military materiel as part of its Blue Lantern and Golden Sentry programmes for decades (see box 1).

Usually, the rationale behind making agreements to on-site inspections a condition for some exports is based on three related objectives for the exporting state: verification, prevention and mutual trust building. States differ in the relative importance they assign to each of these objectives and frame their policies and implementation accordingly. From a verification point of view, on-site inspections allow exporting states to verify that the military materiel is and remains in the possession of the intended end users after export. From a prevention point of view, the requirement and possibility to conduct on-site inspections should act as a deterrent to diversion after export. From a trust-building perspective, failure by the end user to agree to allow on-site inspections, to actually host an inspection or to justify why an item is missing after an inconclusive on-site inspection are all factors that exporting states take into account when assessing future export applications to the same recipient.¹⁶ In other words, constructive engagement by the importing state and by the end user will, over time, build trust on the part of the exporting state.

There are different reasons why states have been hesitant to adopt on-site inspections as part of their post-shipment control measures

There are different reasons why states have been hesitant to adopt on-site inspections as part of their post-shipment control measures. Some of the reasons are linked to a series of political challenges and sensitivities that emerged in a number of cases. On-site inspections have been perceived as a controversial tool by many states, raising issues related to national sovereignty, jurisdiction, and trust among exporters and importers. Importing states can perceive the request for inspections as a violation of their national sovereignty.¹⁷ The USA has, for example, reported that the Blue Lantern Program has sometimes encountered a lack of responsiveness by the foreign party.¹⁸ These sensitivities also emerged from consultations conducted in the framework of recent studies on end-use/r control.

¹⁵ United Nations Office on Drugs and Crime (UNODC), *Technical Guide to the Implementation of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms* (UNODC: Vienna, 2011), pp. 72–73; and United Nations Coordinating Action on Small Arms (note 10), pp. 13–14.

¹⁶ Wassenaar Arrangement, ‘Statement of Understanding on Implementation of End-use Controls for Dual-use Items’, 2007, p. 5; and United Nations Coordinating Action on Small Arms (note 10), p. 11.

¹⁷ Reuters, ‘South Africa amends arms export document after inspection row’, 13 May 2020; and Joshi, S., ‘Indian irritation with end use monitoring’, *StratPost*, 22 July 2009.

¹⁸ US Directorate of Defense Trade Controls, ‘End-use Monitoring of Defense Articles and Defense Services: Commercial Exports FY 2019’, 2020. See also US Secretary of State, ‘Blue Lantern: Discussions with Embassy, Brazilian, and industry officials September 22–24’, Cable, no. 09STATE11869, 9 Feb. 2009.

Box 1. The US Government's Blue Lantern and Golden Sentry programmes

The **Blue Lantern End-use Monitoring Program** was initiated by the United States in 1990 and is managed by the Bureau of Political-Military Affairs' Directorate of Defense Trade Controls of the Department of State.^a The goal of the programme is to 'help ensure the security and integrity of the US defense trade'. In order to do so, the programme 'minimizes the risk of diversion and unauthorized use of US defense articles, combats grey arms trafficking, uncovers violations of the US Arms Export Control Act, and builds confidence and cooperation among defense trade partners'.^b As part of the programme, licensing officers evaluate licensing requests according to a list of different 'warning flags', and controls on end users are conducted at the pre-licence, post-licence/pre-shipment and post-shipment stages of an export.^c

Embassy personnel conduct on-site inspections of targeted and selected authorizations, verifying that weapons are used as described and/or stored appropriately.^d Cases can be rated as 'unfavorable' if, during these visits, findings did not correlate with the information on the licence applications or the items exported could not be fully verified. The US authorities may then decide to deny licence applications, remove parties from licences, or refer the case to US law enforcement agencies. According to publicly available statistics from the US Department of State, a total of 102 inspections were conducted in 2019 (equal to less than 0.5 per cent of licence applications assessed during the year) and 5 instances of unauthorized re-exports/re-transfers were documented.^e

The **Golden Sentry End-use Monitoring Program** is another US programme. The Defense Security Cooperation Agency of the US Department of Defense (DOD) has implemented the programme since 2001. It monitors the proper use, storage and physical security of foreign military sales of defence articles and services transferred via DOD government-to-government programmes.^f As part of the programme, recipients of US military materiel should provide assurances 'regarding authorized end-use, re-transfer restrictions, and protection of US-origin defense equipment'.^g

The Bureau of Industry and Security at the US Department of Commerce runs a third programme that also includes physical visits to foreign end users of exported dual-use items.^h

^a US Directorate of Defense Trade Controls, 'End-use Monitoring of Defense Articles and Defense Services: Commercial Exports FY 2019', 2020; US Department of State, 'United States Support for the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects', 17 July 2007, p. 3; and US Arms Export Control Act, §2785, End-use Monitoring of Defense Articles and Defense Services, 21 July 1996.

^b US Directorate of Defense Trade Controls (note a).

^c US Department of State, Bureau of Political-Military Affairs, Office of Defense Trade Controls Policy, 'US Defense Trade Controls and the Blue Lantern End-use Monitoring Program', Presentation, 2015; and US Directorate of Defense Trade Controls (note a).

^d US Directorate of Defense Trade Controls, 'Blue Lantern Checks', [n.d.].

^e US Directorate of Defense Trade Controls (note a).

^f US Defense Security Cooperation Agency, 'Golden Sentry End-use Monitoring Program'.

^g US Defense Security Cooperation Agency (note f).

^h US Department of Commerce, Office of Inspector General, *Lack of Defined Processes and Procedures Impede Efforts to Monitor End-use Check Performance*, 2 Mar. 2020.

Several challenges related to 'post-delivery cooperation', including on-site inspections, have been identified, such as costs and capacity, extraterritorial application of national transfer control legislation, or difficulties in securing the permission of importing states to include provisions for on-site inspections in contractual agreements or end-use/r documentation.¹⁹

Other reasons are mainly commercial, as political sensitivities can also have commercial implications. For instance, South Africa has recently amended its arms export rules and changed the circumstances in which on-site inspections can be performed, following the refusal by some recipients to agree to inspections and subsequent lobbying from defence firms. The change in the clause would apparently unlock certain weapon

¹⁹ United Nations Institute for Disarmament Research (UNIDIR), *Strengthening End Use/r Control Systems to Prevent Arms Diversion: Examining Common Regional Understandings*, 2017, p. 30; and United Nations Institute for Disarmament Research (UNIDIR), *Examining Options to Enhance Common Understanding and Strengthen End Use and End User Control Systems to Address Conventional Arms Diversion*, 2015, pp. 60–61, 110–11.



sales to some countries in the Middle East and North Africa.²⁰ The case is indicative of the potential difficulties that can emerge as part of a process of building confidence between exporters and importers, as well as introducing measures that are still seen as new or can be perceived as intrusive. Therefore, in some circumstances, diplomatic solutions might need to be devised to retain the possibility of conducting on-site inspections while at the same time ensuring the introduction of inspections does not result in perceived or real competitive disadvantages for exporters.

Finally, some countries do not consider it a necessity to conduct such inspections because they are not major arms exporters, or they remain sceptical about the utility of such measures.

Existing multilateral guidance on on-site inspections

Several multilateral instruments have produced guidance documents on export controls and encouraged states to adopt or to consider adopting on-site inspections of exported military materiel (see table 1). Those voluntary guidelines can cover a wide range of conventional weapons or focus on specific types of conventional weapon, such as small arms and light weapons (SALW) or Man-Portable Air Defence Systems (MANPADS).

The Wassenaar Arrangement (WA) has adopted various documents mentioning ‘on-site verification’, ‘on-site controls’ or ‘on-site inspections’.²¹ The documents focus on conventional weapons, dual-use items and MANPADS. The WA has stressed the importance of conducting on-site inspections on a ‘mutually voluntary basis’ between the exporter and the end user, and to use them to inform future licensing procedures.²²

In 2008 the Council of the EU adopted Common Position 2008/944/CFSP, which updated and replaced the EU Code of Conduct on Arms Exports adopted by the Council on 8 June 1998 and was amended in 2019.²³ The common position establishes some criteria for exports from EU member states, including on end use and diversion.²⁴ In 2009 the Council of the EU published a User’s Guide to Council Common Position 2008/944/CFSP, which refers to ‘post-shipment measures’, including ‘on-site inspections’, as important and useful tools to ‘strengthen the effectiveness of national arms

²⁰ Reuters (note 17).

²¹ Wassenaar Arrangement (note 16), p. 5; Wassenaar Arrangement, ‘Elements for Export Controls of Man-Portable Air Defence Systems (MANPADS)’, 2003 (revised in 2007), §3.8; Wassenaar Arrangement, ‘Best Practices for Effective Export Control Enforcement’, 2000 (revised in 2016), §6; and Wassenaar Arrangement, ‘End-user Assurances Commonly Used Consolidated Indicative List’, 1999 (amended in 2005), §4.2.

²² Wassenaar Arrangement (note 16), p. 5.

²³ Common Position 2008/944/CFSP of 8 Dec. 2008 defining common rules governing control of exports of military technology and equipment, *Official Journal of the European Union*, L335, 13 Dec. 2008; and Council of the European Union, European Union Code of Conduct on Arms Exports, 5 June 1998. On the 2019 review of the EU Common Position see Bromley, M. and Maletta, G., ‘Developments in the European Union’s dual-use and arms trade controls’, *SIPRI Yearbook 2020: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2020), pp. 561–64.

²⁴ Council Decision (CFSP) 2019/1560 of 16 Sep. 2019 amending Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment, *Official Journal of the European Union*, L239, 17 Sep. 2019.

Table 1. Existing guidance documents including provisions for on-site inspections

Organization	Document	Scope	Year ^a
WA	End-user Assurances Commonly Used: Consolidated Indicative List	Conventional military equipment	1999 (2005)
WA	Best Practices for Effective Export Control Enforcement	Conventional military equipment	2000 (2016)
WA	Elements for Export Controls of MANPADS	MANPADS	2003 (2007)
OSCE	Best Practice Guide on Export Control of SALW	SALW	2003
OSCE	Standard Elements of End-user Certificates and Verification Procedures for SALW Exports	SALW	2004
WA	Statement of Understanding on Implementation of End-use Controls for Dual-use Items	Conventional military equipment	2007
OSCE	OSCE Principles for Export Controls of MANPADS	MANPADS	2008
UNDP	How to Guide: Small Arms and Light Weapons Legislation	SALW	2008
Council of the European Union	User's Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment	Conventional military equipment	2009 (2019)
UNODC	Technical Guide to the Implementation of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms	SALW (firearms)	2011
OSCE	Template for End User Certificates for SALW	SALW	2011
UNODA	ATT Implementation Toolkit Module 10: Preventing Diversion	Conventional military equipment	2015
UN CASA	IATG 03.40: End-user and End-use of Internationally Transferred Ammunition	Ammunition	2015
UN CASA	MOSAIC 03.21: National Controls over the End-user and End-use of Internationally Transferred SALW	SALW	2018
ATT Working Group on Effective Treaty Implementation	ATT Working Group on Effective Treaty Implementation, Chair's Draft Report to CSP4, Annex D: Possible measures to prevent and address diversion	Conventional military equipment	2018

ATT = Arms Trade Treaty; CSP = Conference of States Parties; IATG = International Ammunition Technical Guideline; MANPADS = Man-Portable Air Defence Systems; MOSAIC = Modular Small-arms-control Implementation Compendium; OSCE = Organization for Security and Co-operation in Europe; SALW = small arms and light weapons; UN CASA = United Nations Coordinating Action on Small Arms; UNDP = United Nations Development Programme; UNODA = United Nations Office for Disarmament Affairs; UNODC = United Nations Office for Drugs and Crime; WA = Wassenaar Arrangement.

^a Years in parentheses are the years of the last revised version of the document.

export control' and 'help prevent diversion within the buyer country'.²⁵ The user's guide encourages member states implementing these post-shipment measures to 'inform partners about their experience'.²⁶ The latest update of the guide in 2019 added an agreement to allow on-site verification as an element 'which might be required by a Member State, at their discretion' in end-user documentation.²⁷

More recently, the Arms Trade Treaty (ATT) Working Group on Effective Treaty Implementation (WGETI) produced a document on measures to

²⁵ Council of the European Union, 'User's Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment', 29 Apr. 2009, §2.3.1.

²⁶ Council of the European Union (note 25), §2.3.1.

²⁷ Council of the European Union (note 9), §1.3.



address diversion, which lists ‘agreement to on-site inspections’ as an optional clause to include in end-use/r certificates and listed ‘on-site visits’ as part of the ‘post-delivery checks’ an exporting state can conduct after military materiel has been transferred to an importing state.²⁸ Likewise, as part of an ATT Implementation Toolkit published in 2015, UNODA produced a module on preventing diversion, which included conducting ‘on-site visits’ as a mitigation measure to consider adopting when exporting states identify diversion risks.²⁹

Specific guidelines for export controls on SALW also include on-site inspections as a possible measure to prevent diversion after export. The OSCE has produced various documents on export controls of SALW and MANPADS mentioning ‘on-site inspections’ and suggesting the inclusion of ‘post-shipment inspections’ or ‘post-shipment controls’ clauses in EUCs.³⁰

Several agencies, offices and programmes of the UN have produced guidance for on-site inspections for SALW. The UN Development Programme (UNDP) produced a guide on SALW that advises states to include provisions for carrying out ‘post-shipment monitoring and verification checks’ in their national legislation and to establish a special body to conduct inspections.³¹ Likewise, the UN Office on Drugs and Crime (UNODC) guide to implement the Protocol against the Illicit Manufacturing of and Trafficking in Firearms stresses that ‘if possible, the monitoring of the end use of the firearms or ammunition should continue after their delivery’ and recommends that states use their ‘resources on the ground’ in the importing state, such as diplomatic missions or defence attachés, for post-delivery verification.³² Further, UN CASA’s module on national controls over the end use of SALW indicates that ‘post-delivery inspections’ may be carried out by contractors hired by the exporting state or an independent party mutually agreed on by the exporting and importing states. The module also stresses that the inspections must be authorized in writing from the importing states and should be used to inform subsequent applications to export to the same end user.³³

Most of the guidelines emphasize the fact that on-site inspections must be agreed on by both the exporting state and the importing state or end user, and specify that they should be used to inform future export licensing decisions. The guidelines provide practical guidance within two main areas: how to formalize an agreement on on-site inspection and who should carry it out. Most documents recommend inserting a clause in the EUC, but other methods are also mentioned (e.g. by the UNDP guide), such as including provisions for carrying out on-site inspections in national legislation. Certain documents also indicate the type of actors that could carry out the

²⁸ Arms Trade Treaty (note 2).

²⁹ United Nations Office for Disarmament Affairs (note 11).

³⁰ Organization for Security and Co-operation in Europe (note 13); Organization for Security and Co-operation in Europe, Decision no. 5/08 Updating the OSCE Principles for Export Controls of MANPADS, FSC.DEC/5/08, 26 May 2008, §3.6; Organization for Security and Co-operation in Europe, Standard Elements of End-user Certificates and Verification Procedures for SALW Exports, FSC.DEC/5/04, 17 Nov. 2004; and Organization for Security and Co-operation in Europe (note 10), p. 11.

³¹ United Nations Development Programme (note 13), p. 75.

³² United Nations Office on Drugs and Crime (note 15), p. 73.

³³ United Nations Coordinating Action on Small Arms (note 10), pp. 13–14.



inspections: in the majority of cases, these actors are diplomatic staff, but the UN CASA Modular Small-arms-control Implementation Compendium (MOSAIC) module recommends mandating a third party as an alternative. Aside from these two points, however, the guidelines provide very limited information on the practicalities of conducting on-site inspections.

III. European case studies of on-site inspections

In Europe, only a few countries have developed and implemented on-site inspections of military equipment as part of their post-shipment control measures in recent years, and the scope and reach of such programmes differ considerably from the programmes developed in the USA. Some European states are actively considering the development of such measures, while others have provisions in their legislation that would allow for on-site inspections but have not implemented or considered implementing them for the time being.

In order to provide a detailed overview of national approaches to on-site inspections in Europe, this analysis focuses on five case studies. The selected sample of case studies details the experiences of European states that have already implemented on-site inspections and those that are actively considering doing so. In this way, providing experiences from states that are at different stages of considering and implementing on-site inspections can help to inform the decision-making of states that are assessing the adoption of on-site inspections. The case studies are presented in chronological order, according to when a state started conducting on-site inspections. Each case study analyses the rationale and national legislation behind on-site inspections, current policies and practices at the national level, and challenges and lessons learnt. However, no challenges and lessons learnt are included for countries that implemented on-site inspections only recently or are just considering their adoption.

In order to provide a detailed overview of national approaches to on-site inspections in Europe, this analysis focuses on five case studies

Switzerland

Rationale and legislation

The decision by Switzerland to introduce and implement on-site inspections was sparked by several cases of unauthorized re-export and diversion of Swiss military items. In 2005, Swiss surplus M109 self-propelled howitzers that had been sold to the UAE were found to have been re-exported to Morocco.³⁴ As a consequence, Switzerland introduced the possibility of conducting on-site inspections in 2006 by adding a clause in principle to all EUCs for future Swiss war material exports for finished products. However, Swiss authorities were initially sceptical about the implementation of on-site inspections and first only introduced the on-site inspections clause without initiating inspections.³⁵

³⁴ Swiss State Secretariat for Economic Affairs (SECO), 'Aufhebung der Sistierung der Ausfuhr von Kriegsmaterial in die Vereinigten Arabischen Emirate (VAE)' [Revocation of the suspension of export of war material to the United Arab Emirates (UAE)], 3 July 2006.

³⁵ Representatives of the Swiss State Secretariat for Economic Affairs, the Swiss national export licensing authority, Interview with authors, 7 Oct. 2020.



In 2011, Swiss-made ammunition that had been exported to Qatar, subject to a non-re-export clause, was discovered in Libya after it had been re-exported in contravention of the EUC.³⁶ Similarly, in 2012, Swiss-made hand grenades that had originally been exported to the UAE were found in Syria. An investigation by the Swiss authorities later found that they had been re-exported by the UAE to Jordan, in violation of the applicable EUC.³⁷ Following these cases, Switzerland amended its War Material Ordinance in 2012, complementing and clarifying the legal basis for the implementation of on-site inspections to verify the non-re-export of military items without authorization. The amendment, among others, allows the licensing authority to require consent for on-site inspections in the case of an elevated risk that war material due to be transferred could be diverted to an undesirable end user.³⁸ The first of such on-site inspections was implemented in the UAE in 2012.

The Swiss authorities regard on-site inspections as mutual confidence-building measures between Switzerland and the country of destination, and on-site inspections of war material are thus commonly referred to as ‘post-shipment verification’. It is worth noting that while the Swiss authorities received a briefing on the US approach to on-site inspections—at the time the USA was the only other country conducting such inspections systematically—they developed and tailored their system independently, in part because of differences in objectives and capacities.³⁹

Current policies and practices

The Swiss authorities apply a country risk matrix that guides decisions on which transfers, end users and countries of destination are subjected to on-site inspections.⁴⁰ The risk matrix places countries of destination in four categories, based on criteria such as diversion risk and previous cases, armed conflict, domestic and regional stability, the human rights situation and the danger of the respective war material being used against the civilian population in the country.⁴¹ Switzerland applies EUC provisions requiring consent to on-site inspections to all ‘finished items’ on the List of War Material. Ammunition is exempt from on-site inspections, because it is regarded as an expendable item and thus verification may be useful only to a limited extent. On-site inspections are limited to state entities such as militaries, police or law enforcement, intelligence services and presidential guards. Since private entities generally resell the products they acquire, the receipt of an EUC would not be suitable.

Since 2012, Switzerland has implemented 46 on-site inspections in 32 countries.⁴² Switzerland aims to perform 5 to 10 such inspections every

³⁶ SEESAC (note 3), p. 31.

³⁷ SEESAC (note 3), pp. 30–31; Swiss State Secretariat for Economic Affairs (SECO), ‘Swiss hand grenades in Syria: Conclusion of investigation and measures’, Press release, 21 Sep. 2012.

³⁸ Swiss State Secretariat for Economic Affairs (SECO), War Material Ordinance of 25 Feb. 1998 (Status as of 1 Oct. 2015), article 5a, para. 3.

³⁹ Representatives of the Swiss State Secretariat for Economic Affairs (note 35).

⁴⁰ The classification of countries according to the country risk matrix is not publicly available due to potential sensitivities and diplomatic complications.

⁴¹ Bieri, N., ‘Post-shipment Verification von Kriegsmaterial’ [Post-shipment verification of war material], Presentation delivered at the SECO Export Control Day, 4 Nov. 2015.

⁴² The countries or regions in which post-shipment controls have been conducted so far include: Bahrain, Bosnia and Herzegovina, Brazil, Chile, Dominican Republic, Estonia, Ghana, India,



year. They are organized and conducted by the Swiss State Secretariat for Economic Affairs (SECO), but Swiss embassies, consulates and missions (explicitly including defence attachés in the country concerned) are also instrumental, particularly in the preparatory phase and in setting up the in-country logistics. The Federal Department of Foreign Affairs (FDFA) significantly contributes to the compilation of the country risk matrix and bilateral contacts with the countries of destination. It also supports SECO in cases where problems or violations are discovered.

Exporters of military items from Switzerland pay a licensing fee of up to 5000 Swiss francs (€4622) per application.⁴³ There is only one full-time position funded in SECO specifically for these inspections.⁴⁴ The remaining costs for preparatory work and administration are covered under the general budget of SECO. The FDFA covers the costs of its contribution to on-site inspections through its own annual budget, but does not assign a specific budget line to costs related to the implementation of on-site inspections.

Challenges and lessons learnt

After eight years of implementation, Switzerland rarely encounters serious procedural challenges when conducting on-site inspections, such as refusal to allow inspections or access to sensitive sites. The preparatory phase tends to be the most time-intensive, often due to the following two challenges. First, identifying, contacting and receiving a timely response from the responsible counterparts in relevant national authorities, particularly when conducting the first Swiss (or first ever) inspection in a country. Second, organizing and agreeing on the logistics on the ground, particularly in countries with a large territory where items may have been distributed across the country. Both preparations for and the implementation of inspections can take longer if the items must first be compiled in several locations and the inspectors need to travel to each location. The whole process from initiating to completing an on-site inspection usually takes six to nine months. Practical challenges and sensitivities during inspections may occur, for example, with end users such as intelligence services.

The number of annual on-site inspections currently performed by Switzerland is based on an analysis of, among other things, the value, volume, number of shipments and type of military items commonly exported each year. The Swiss authorities continue to assess the current target of 5 to 10 on-site inspections per year as appropriate, as periodic reviews have not indicated a significant shift in the data and assessment since the introduction of inspections.⁴⁵

Indonesia, Jordan, Kazakhstan, Kenya, Kuwait, Lebanon, Lithuania, Macau, Malaysia, Mexico, Oman, Pakistan, Qatar, Senegal, Seychelles, Singapore, Slovakia, South Africa, South Korea, Thailand, Turkey, Ukraine, United Arab Emirates, Viet Nam.

⁴³ See § 7, article 22 of the War Material Ordinance (note 38). 5000 CHF ≈ 4622 EUR, according to the daily exchange rate of the Swiss National Bank on 23 Nov. 2020.

⁴⁴ Swiss Federal Audit Office, 'Prüfung der Kontrolle des Transfers von Kriegsmaterial: Staatssekretariat für Wirtschaft SECO' [Audit of controls on transfers of war materials: State Secretariat for Economic Affairs SECO], EFK-17425, FinDel D4/2018, 20 June 2018, pp. 29–30. These duties are performed by 2–3 officials who also have other responsibilities. Representatives of the Swiss State Secretariat for Economic Affairs (note 35).

⁴⁵ Representatives of the Swiss State Secretariat for Economic Affairs (note 35).



Czechia

Rationale and legislation

Czechia only conducts on-site inspections of its exported military materiel in certain cases, viewing this instrument as a mitigating measure when a certain level of diversion risk has been identified. Instead of denying such cases, Czechia uses on-site inspections to manage the risk and allow licences to be granted. Act 38/1994 Col. on Foreign Trade with Military Material regulates the export licensing process in Czechia.⁴⁶

According to article 16(1), the Ministry of Industry and Trade issues licences for exporting military materiel on the basis of the consent of the Ministry of Foreign Affairs, the Ministry of Interior and, in specific cases, the Ministry of Defence. If one or more of these institutions do not give their consent, the application is denied. This consent might be conditioned by requesting that the applicant provide whatever information, assurances or documents are deemed necessary to conduct risk assessments or mitigate any identified risks. One of these risk-mitigating conditions might be a request for the end user to provide written permission for the Czech Government to conduct on-site inspections.⁴⁷

After eight years of implementation, Switzerland rarely encounters serious procedural challenges when conducting on-site inspections

Current policies and practices

Applications for export licences are reviewed on a case-by-case basis. When an application is received, officers at the Ministry of Foreign Affairs assess, among other things, the risk of diversion and, if deemed necessary, ask the applicant to request either an EUC from the end user that includes a clause on on-site inspections or specific written permission for such. If the end user fails to comply, the required consent is not given and the licence is denied. The request to conduct on-site inspections depends on the character of the identified diversion risk, the type of exported goods and the end user. On-site inspections are usually required for higher-risk importing countries, which do not include, for instance, North Atlantic Treaty Organization (NATO) countries; they concern mostly heavy military equipment, such as armoured vehicles, aircraft or helicopters, and are never required for ammunition.⁴⁸

Czechia carries out up to 10 on-site inspections per year, which represents a little under 1 per cent of the applications received. On-site inspections are undertaken by personnel from local embassies and paid for as part of the embassy's budget. In practical terms, embassy representatives are tasked with visiting the location where the military materiel is stored, checking its actual presence and reporting back. The inspections can be conducted at any time within the time frame agreed in the written permission, which is usually one or two years after the delivery of the materiel. In rare cases, the Czech authorities can request that the end user gives permission for on-site

⁴⁶ Zákon č. 38/1994 Sb., Zákon o zahraničním obchodu s vojenským materiálem a o doplnění zákona č. 455/1991 [Act no. 38/1994 Col. on Foreign Trade in Military Material and on Amendments to Act no. 455/1991], 1994 (amended in 2017).

⁴⁷ Czech Ministry of Foreign Affairs (MFA) representative, Interview with authors, 16 Sep. 2020.

⁴⁸ Czech MFA representative (note 47).



inspections during an unlimited time period, or for more than one inspection of the same materiel during the agreed time frame.⁴⁹

In the case of an end user refusing to allow an on-site inspection, or if the items are no longer in the possession of the authorized end user and no explanation is provided, Czechia will stop exporting military equipment to that end user. Furthermore, Czechia will inform and share this information with other EU member states in the Council Working Party on Conventional Arms Export (COARM), to encourage them to deny exports to certain end users or at least be vigilant about potentially problematic ones.⁵⁰

Challenges and lessons learnt

In general terms, Czechia is satisfied with the current level of implementation of on-site inspections and perceives such inspections as a very efficient and cost-effective way to prevent post-export diversion of its military materiel. Nonetheless, officers from Czechia have identified a few challenges related to the practical aspects of conducting on-site inspections. First, end users can refuse to allow on-site inspections even though they have given their written permission to do so. Such a refusal risks undermining the trust between the two parties and jeopardizing the export relationship. Second, additional possible difficulties are the lack of diplomatic presence in an importing country and travel restrictions or a dangerous security context impeding the visit of an embassy representative to a particular country or location.⁵¹

Czechia perceives on-site inspections as a very efficient and cost-effective way to prevent post-export diversion of its military materiel

Germany

Rationale and legislation

Germany announced the introduction of on-site inspections in 2015 by issuing a policy declaration on ‘Key points for the introduction of post-shipment controls for German arms exports’.⁵² This was part of a broader policy initiative aimed at tightening arms export controls, led by the then minister for economic affairs and energy, Sigmar Gabriel, and complementing the March 2015 Small Arms Principles policy.⁵³ The Small Arms Principles policy mandates that EUCs for small arms must prohibit not only re-export but also change of end user within the importing country. Amending the Foreign Trade and Payments Ordinance and the provisions in the relevant EUCs created the legal basis for the implementation of on-site

⁴⁹ Czech MFA representative (note 47).

⁵⁰ Czech MFA representative (note 47).

⁵¹ Czech MFA representative (note 47).

⁵² Germany refers to on-site inspections and the associated preparatory and follow-up activities as ‘post-shipment controls’. German Federal Ministry for Economic Affairs and Energy (note 8).

⁵³ German Federal Ministry for Economic Affairs and Energy, ‘Gabriel: Entscheidende Verbesserung bei der Kontrolle von Rüstungsexporten’ [Gabriel: Decisive improvement in the control of arms exports], Press release, 8 July 2018; and German Federal Ministry for Economic Affairs 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 (“Small Arms Principles”)', 18 Mar. 2015.



inspections.⁵⁴ The 2015 policy declaration stated the objective of German on-site inspections as improving ‘the guarantees governing end use for military goods exported from Germany’.⁵⁵ Identifying and preventing cases of diversion and reducing the likelihood of unauthorized re-exports are at the core of this rationale. Germany has also increasingly valued on-site inspections as an opportunity for trust building between Germany and importers, particularly as a result of the experience gained during the pilot phase (see below).⁵⁶

After initial discussions on the potential adoption of on-site inspections in 2013–14, the cases of G36 assault rifles diverted to unauthorized end users in Mexico and the discovery of diverted G36 in Libya during the Arab Spring proved to be a significant factor and accelerator in the decision to adopt such inspections.⁵⁷ The ratification of the ATT and its focus on the risk of diversion also added to the motives behind the German decision.⁵⁸ Germany engaged with Switzerland extensively about its model and practices, in particular after the policy declaration was issued in 2015. Consultations were also held with the USA. Germany’s on-site inspection system strongly builds on the model created by Switzerland, but maintains several particularities (see below).

German authorities performed the first on-site inspection in India in May 2017. With the first on-site inspections, a pilot phase began that was due to conclude with an evaluation in 2019. However, as of December 2020, the findings of the evaluation are yet to be agreed and published.

Current policies and practices

During the pilot phase, Germany required consent from importing countries to conduct on-site inspections for exports of SALW and specific types of firearm (pistols, revolvers and sniper rifles) destined for state recipients in ‘third countries’.⁵⁹ While German legislation allows for on-site inspections to be applied to all armaments and military equipment, the pilot phase was explicitly limited to a reduced range of items, namely SALW.⁶⁰ The logic behind this is that SALW are easy to divert but difficult to control through

⁵⁴ German Federal Ministry of Justice and Consumer Protection, Foreign Trade and Payments Ordinance of 2 Aug. 2013 (Federal Law Gazette (BGBl) Part I), § 21(5), as last amended by article 1 of the Ordinance of 27 Feb. 2019; see the clauses requiring consent for post-shipment controls in § G.2 of Annex A 2 and § F of Annex A 4 on end-user certificates. German Federal Office for Economic Affairs and Export Control (BAFA), Annex A 2, EUC for exports of sniper rifles, pump-guns, pistols, revolvers, corresponding ammunition and related production equipment; and BAFA, Annex A 4, EUC for SALW and corresponding ammunition to third countries.

⁵⁵ German Federal Ministry for Economic Affairs and Energy (note 53), p. 1.

⁵⁶ German Government representative, Interview with authors, 27 Oct. 2020.

⁵⁷ Landgericht Stuttgart (2019), ‘Zwei Mitarbeiter von Heckler & Koch wegen illegaler Waffenexporte zu Bewährungsstrafen verurteilt’ [Two employees of Heckler & Koch given suspended sentences for illegal arms exports], Press release, 21 Feb. 2019; and Kimball, S., ‘Arms manufacturer investigates how Gadhafi got German rifles’, *Deutsche Welle*, 4 Sep. 2011.

⁵⁸ German Federal Office for Economic Affairs and Export Control (BAFA) official, Interview with authors, 8 Oct. 2020.

⁵⁹ Werder, E. and Krickow, A., ‘Stärkung der Exportkontrolle durch Vor-Ort-Kontrollen?’ [Strengthening of export controls through on-site controls?], *AW-Prax*, no. 3 (2018), p. 106.

⁶⁰ German Federal Office for Economic Affairs and Export Control (BAFA), Foreign Trade and Payments Ordinance (Außenwirtschaftsverordnung) of 2 Aug. 2013 (Federal Law Gazette I p. 2865), Working translation, Annex 1; and Federal Ministry for Economic Affairs 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’, 29 May 2015.



other mechanisms. Third countries, as defined by Germany's export control guidelines, include all countries other than EU member states, NATO countries and NATO-equivalent countries.⁶¹ During the pilot phase, the selection of which transfers to which third countries would be subjected to on-site inspections was made by the Federal Security Council, which is composed of the relevant federal ministries and the chancellery. On-site inspections are seen as part of a broader end-use control approach following export that also includes foreign trade audits.⁶²

Since May 2017, Germany has performed nine on-site inspections—before implementation was temporarily suspended due to the impact of the coronavirus disease 2019 (COVID-19) pandemic.⁶³ The inspections are prepared and performed by the German Federal Office for Economic Affairs and Export Control (BAFA), with support from the German Federal Foreign Office and German embassies. The German Ministry for Economic Affairs and Energy, as the ministry superordinated to BAFA, is responsible for export licences for military materiel and is responsible for follow-up actions such as presenting BAFA findings from inspections to the chancellery and the ministries represented in the Federal Security Council. The on-site inspections are performed by two BAFA officials (to ensure the four-eyes principle), accompanied by a German diplomatic representative. The receiving country is usually represented by the specific end user, and at times also the ministry of foreign affairs. An on-site inspection is usually planned to take place two or three years after the delivery of the items to the end user. The inspections seek to verify whether the items are still present in the third country and in the possession of the correct end user. A visual inspection of all serial numbers is performed—in cases of large volumes of weapons, a smaller sample may also be acceptable—sometimes supplemented by disassembly and reassembly of some weapons.⁶⁴ The BAFA inspectors compile a report on the visit and submit it to the Ministry for Economic Affairs and Energy, which coordinates any decisions on follow-up actions. The entire process of selection, preparation, implementation and follow-up of an on-site inspection takes on average 9 months, and in general between 6 and 12 months.

BAFA has been assigned two full-time staff positions for the implementation of on-site inspections and covers the associated travel costs from its own general budget.⁶⁵ Other ministries and diplomatic representations do

⁶¹ Germany considers Australia, Japan, New Zealand and Switzerland to be NATO-equivalent countries. Federal Ministry for Economic Affairs and Energy, 'Politische Grundsätze der Bundesregierung für den Export von Kriegswaffen und sonstigen Rüstungsgütern' [Political principles of the Government of the Federal Republic of Germany for the export of war weapons and other military equipment], [n.d.].

⁶² German Federal Office for Economic Affairs and Export Control (BAFA) official (note 58).

⁶³ In chronological order, the on-site inspections were conducted in India, United Arab Emirates, South Korea, Indonesia, Malaysia, Brazil, Jordan, Trinidad and Tobago, and Oman.

⁶⁴ German Federal Office for Economic Affairs and Export Control (BAFA) official (note 58).

⁶⁵ See question 30 in German Bundestag, 'Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Sevim Dağdelen, Heike Hänsel, Matthias Höhn, weiterer Abgeordneter und der Fraktion DIE LINKE. Drucksache 19/3658—Durchführung von Post-Shipments-Kontrollen für Waffenexporte in Drittländer' [Answers provided by the Federal Government to the minor interpellation by the Members of Parliament Sevim Dağdelen, Heike Hänsel, Matthias Höhn, other Members and the DIE LINKE parliamentary group. Printed matter 19/3658—Implementation of post-shipment controls for arms exports to third countries], Drucksache 19/4350, 14 Sep. 2018.



not have a dedicated budget assigned for on-site inspections but cover the costs within their own budgets. Since there are no licensing fees for exporters in Germany, there is no cost-sharing with companies.

Challenges and lessons learnt

Overall, Germany has not faced any insurmountable challenges or significant backlash over the introduction of on-site inspections. However, there are challenges that can make on-site inspections time-intensive and may require more concerted diplomatic efforts. Identifying relevant counterparts in the authorities of a third country, explaining the rationale and process of inspections, and agreeing on the locations and logistics can be a slow and demanding process that requires a certain flexibility.⁶⁶ There is sometimes a lack of understanding as regards on-site inspections in the receiving country, and questions over the security and potential immunity for inspectors can require extensive discussions and coordination. Notably, in those countries where Switzerland had conducted such inspections in the past, it was often considerably easier and quicker for Germany to go through the process. The underlying idea did not need to be explained again in detail to the various actors, and instead the focus was on the German approach and practical implementation. To date, the German authorities have not experienced any outright refusal to conduct on-site inspections, but the coordination phase with the third country can sometimes be time-intensive and might produce negative reactions initially, often due to the novelty of the instrument.⁶⁷

Germany has not faced any insurmountable challenges or significant backlash over the introduction of on-site inspections

The number of on-site inspections performed by the German authorities during the pilot phase remained relatively low, at around three inspections per year. This low number and slow start were due to the fact that once EUC forms were adjusted in April 2016, it took a while for contracts to be concluded and weapons delivered, and a reasonable time to pass to make on-site inspections meaningful. Because of the concurrent tightening of the German Government's small arms policy, there were also fewer potential destinations and cases for on-site inspections. As a result of the evaluation, the annual number of on-site inspections will most likely be raised. Germany might also expand the range of goods to which (as envisioned by its legislation) on-site inspections can be applied and the countries where they can take place. In addition, Germany is considering linking its on-site inspections more closely with its outreach work, particularly outreach concerning conventional arms export controls and the ATT. This could, for example, involve offers for training and capacity-building measures on physical security and stockpile management (PSSM) in order to tackle the underlying problem of post-export diversion at the root and in a constructive manner. The application and scaling of penalties in cases of violations of end-user provisions—none of which was identified during German inspections so far—is also an issue in the ongoing evaluation and development of the German on-site inspection system.

⁶⁶ Werder and Krickow (note 59), pp.105–109.

⁶⁷ German Federal Office for Economic Affairs and Export Control (BAFA) official (note 58).



Spain

Rationale and legislation

Spain introduced on-site inspections in its legislation in April 2020. The main rationale behind the decision to implement such inspections was to achieve better and more accurate control over its arms trade, in order to comply with human rights and non-proliferation objectives. In addition, Spain intended to generate mutual confidence between the recipient country and Spanish authorities, helping to simplify Spanish exports while increasing warranties on no misuse and prevention of diversion.⁶⁸

The Spanish Law 53/2007 already provided the possibility of establishing mechanisms of verification, follow-up and collaboration among governments.⁶⁹ However, the systematization of on-site inspections of exports of military materiel started being assessed more thoroughly in 2015. That year, a working group was convened to assess the feasibility of such inspections and to elaborate the changes in legislation required to carry them out. As part of this process, Spanish authorities approached Germany and Switzerland to learn about their already existing practices in the field and presented their conclusions in 2018.⁷⁰

The law regulating export controls was amended in April 2020. As a result, the Interministerial Committee for Trade and Control of Defence Equipment and Dual-use Technologies (Junta Interministerial para el Comercio y Control del Material de Defensa y Tecnologías de Doble Uso, JIMDDU), which is in charge of assessing export authorization, ‘may, exceptionally, establish mechanisms for verification, monitoring and collaboration with respect to the goods exported in particular operations with the collaboration of the government of the importing country’.⁷¹

As a consequence of this amendment, a new EUC template was produced with the addition of a verification clause that reads: ‘Should it be deemed necessary, access to the facilities where the goods are located, identification of the end user and all the required information and documentation shall be granted to the Spanish verification team.’⁷² Under the Spanish export control system, the Secretary of State for Commerce issues export licences at the instance of the JIMDDU, which evaluates authorizations on a case-by-case basis. The JIMDDU may require the inclusion of an on-site inspection

Spain introduced on-site inspections in its legislation in April 2020

⁶⁸ Spanish national export control authority, Written communication with authors, 5 Oct. 2020.

⁶⁹ ‘Para cada autorización se deberá valorar la conveniencia de establecer mecanismos de verificación, seguimiento y colaboración entre Gobiernos’ [For each authorization, the convenience of establishing mechanisms for verification, monitoring and collaboration between governments should be assessed], Ley 53/2007, de 28 de diciembre, sobre el control del comercio exterior de material de defensa y de doble uso [Law on the control of foreign trade in defence and dual-use goods], 28 Dec. 2007, article 4.3.

⁷⁰ Spanish national export control authority (note 68).

⁷¹ Real Decreto 494/2020, de 28 de abril, por el que se modifica el Real Decreto 679/2014, de 1 de agosto, 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 [Royal Decree 494/2020 of 28 Apr., amending Royal Decree 679/2014 of 1 Aug., approving the regulations for the control of foreign trade in defence materials, other materials and dual-use items and technologies], 28 Apr. 2020, article 18.11.

⁷² Royal Decree 494/2020 (note 71), annex VI.23.



clause in the EUC.⁷³ The new EUC template also includes the possibility of Spain imposing limitations on the re-export of materiel or a commitment to not use military materiel outside an importer's domestic borders to ensure the non-intervention of a recipient country in regional conflicts.⁷⁴

Current policies and practices

Spain aims to conduct on-site inspections in exceptional cases, when intelligence, embassies or other sources of information indicate a possible serious misuse or diversion of military materiel. The end user must agree to the on-site inspection clause included in the EUC for the export authorization to proceed. JIMDDU is the body responsible for on-site inspections and might request assistance from different ministries or embassies. The visits are financed through the budgets of these different entities, mainly to cover the cost of dispatching experts to the verification destination. Repeated visits can be conducted on approval by local authorities. If diversion or misuse of exported materiel is observed during the visit, further export licences to the end user are denied or the ones still valid are revoked.⁷⁵ Spain may also share information about the observed diversion with partners or allied countries bilaterally or in multilateral forums.⁷⁶

At the time of writing, Spain has not yet conducted any on-site inspection in third countries. This is mainly due to the fact that the legislation was amended only recently and some exports agreed after April 2020 have not yet taken place. Nonetheless, Spain has had preliminary contacts with the local authorities of recipient countries to ensure their commitment to the process and acceptance of future verification in-country. In one case, this has already been granted.⁷⁷

Sweden

Rationale and legislation

There is no Swedish legislation currently regulating on-site inspections. However, Sweden has implemented other post-shipment control measures. End-user assurances are always required for permanent exports, and the standard Swedish EUC template includes a text giving Swedish authorities the right to request delivery verification from the end user.⁷⁸ Sweden considers only states, governmental agencies and government-authorized entities as eligible recipients of military materiel. Limitations regarding re-export apply to all types of transfer. However, end users are allowed to

⁷³ Royal Decree 494/2020 (note 71).

⁷⁴ Royal Decree 494/2020 (note 71), annex VI.23.

⁷⁵ 'Las solicitudes de autorización serán denegadas... cuando existan indicios racionales de que el material de defensa, el otro material o los productos y tecnologías de doble uso... tengan como destino países con evidencia de desvíos de materiales transferidos' [Applications for authorization shall be denied... where there are reasonable grounds to believe that the defence material, other material or dual-use items and technologies... are destined for countries with evidence of diversion of transferred materials], Law 53/2007 (note 69), article 8.1.a; and Spanish national export control authority (note 68).

⁷⁶ Spanish national export control authority (note 68).

⁷⁷ Spanish national export control authority (note 68).

⁷⁸ Swedish officials, Written communication with authors, 12 Oct. 2020. See the EUC template in annex 2 of Swedish Inspectorate of Strategic Products (ISP), Investigation of follow-up inspections abroad, 29 Mar. 2018.



transfer military equipment to other countries without permission from Swedish authorities, as long as the equipment remains in the end user's possession.⁷⁹

Sweden is currently actively exploring the inclusion of on-site inspections as part of its regulatory framework on export controls, to complement existing practices and to contribute to minimizing the risk of diversion.⁸⁰ In the past, Sweden has resorted to on-site inspections in a small number of cases and on an ad hoc basis, in order to investigate reports of the possible diversion of its military materiel.⁸¹ In 2015 a parliamentary inquiry into the possibilities of improving arms export controls stated that there was a need for a study on how a Swedish system or programme for on-site inspections could be devised.⁸² As a result of that inquiry, the Swedish Government commissioned a study from the Inspectorate of Strategic Products (ISP) in 2017.⁸³ The ISP report was submitted in 2018. It analyses existing practice and outlines options for the Swedish Government.⁸⁴ At the time of writing, Sweden has not taken a decision on whether to introduce a system of on-site inspections.⁸⁵

Foreseen policies and practices

As part of ongoing reflections on a system for on-site inspections, Sweden has looked at models from other countries, such as Switzerland and Germany.⁸⁶ The possible scope of such a system also remains under consideration, but it would most likely neither include all countries of destination nor all products.⁸⁷ According to the ISP report, on-site inspections would only cover state end users, be conducted for five different types of light weapon and ammunition systems where applicable, and not take place in countries where there are essentially no obstacles to cooperation in terms of foreign and security policy (39 countries foreseen). For cases in which on-site inspections are anticipated, the ISP report advises using new EUCs which explicitly state that the Swedish authorities have a right to conduct 'verification visits' in the final recipient country at a time determined by the inspectorate.⁸⁸

As the national export licensing authority, the ISP would probably be responsible for conducting such visits, and its staff would most likely carry out the tasks.⁸⁹ In its report, the ISP recommends employing a military expert—an active officer with technical training and at least the rank of

⁷⁹ Swedish officials (note 78). Sweden also reports on re-export authorization, see e.g. Swedish Government, Government Communication 2018/19:114, Strategic Export Controls in 2018—Military Equipment and Dual-use Items, 11 Apr. 2019.

⁸⁰ Swedish officials (note 78).

⁸¹ Swedish Inspectorate of Strategic Products (note 78), pp. 28–29.

⁸² Krigsmaterielexportöversynskommittén [Swedish Armaments Export Review Committee], SOU 2015:72, Skärpt exportkontroll av krigsmateriel [Tightened export control of weapons], 2015.

⁸³ Swedish Government, Decision UD2917/17135/NIS, Uppdrag till Inspektionen för strategiska produkter att lämna förslag till utformning av ett system för efterkontroll [Assignment to the Inspectorate for Strategic Products to submit proposals for the design of a system for post-control], 19 Oct. 2017.

⁸⁴ Swedish Inspectorate of Strategic Products (note 78).

⁸⁵ Swedish officials (note 78).

⁸⁶ Swedish Inspectorate of Strategic Products (note 78).

⁸⁷ Swedish officials (note 78).

⁸⁸ Swedish Inspectorate of Strategic Products (note 78).

⁸⁹ Swedish Inspectorate of Strategic Products (note 78).



colonel—who would have a key role in inspections. Swedish embassies would assist the ISP in contacting the authorities required to prepare for the visit and obtain the necessary permits. If a defence attaché is attached to the mission, he or she would assist the military expert during the visit.⁹⁰ As per Swedish guidelines, ‘a state which, in contravention of an undertaking to Sweden, has allowed—or failed to prevent—re-export of Swedish military equipment will in principle not be eligible to receive such equipment from Sweden as long as these circumstances remain’.⁹¹

Other European countries

Some European countries have expressed their aspiration to carry out on-site inspections or include this possibility in their current legislation. The Bulgarian export control law explicitly states that ‘in case of a request by the Interdepartmental Commission the exporter shall be obliged to include in the contract a clause allowing a physical inspection by persons authorised by it of the delivery in the end-user state’.⁹² Likewise, Portuguese legislation states that ‘where the characteristics of the defence-related products or of the consignees so warrant, the Ministry of National Defence may request the Ministry of Foreign Affairs to initiate a verification procedure, in the country of declared final destination, of the exported material with reference to the information contained in the control document of final destination’.⁹³ Furthermore, Romanian legislation gives the authority coordinating the national control system for exports of military goods the power to perform ‘the observance of [the] destination and end-use [of military goods]’.⁹⁴

Some European countries have expressed their aspiration to carry out on-site inspections or include this possibility in their current legislation

Other European countries are still deliberating over the possibility of conducting on-site inspections or appear less inclined to conduct such inspections in the near future. The Committees on Arms Export Controls of the British Parliament have discussed the possibility of introducing on-site inspections on several occasions since 2004. Despite recommendations from the committees to set out a plan and a timetable for implementing

⁹⁰ Swedish Inspectorate of Strategic Products (note 78), p. 57: ‘Finns en försvarsattaché knuten till besikningen ska denna biträda med kontakter med och att utverka nödvändiga tillstånd från berörda försvarsmyndigheter samt biträda den militärsakkunnige vid besöket’ [If a defence attaché is attached to the mission, he/she shall assist through contacts with, and by obtaining the necessary permits from, the relevant defence authorities as well as assist the military expert during the visit].

⁹¹ Swedish guidelines for exports of military equipment and other foreign cooperation, 15 Apr. 2018 (Government Bill 2017/18:23, pp. 66–68), available in English as appendix 4 of Swedish Government, Government Communication 2018/19:114 (note 79).

⁹² Bulgarian Ministry of Economy, Defence-related Products and Dual-use Items and Technologies Export Control Act, 30 June 2012, article 66(6).

⁹³ Portuguese Government, Lei no. 37/2011, Simplifica os procedimentos aplicáveis à transmissão e à circulação de produtos relacionados com a defesa, transpõe as Directivas n.os 2009/43/CE, do Parlamento Europeu e do Conselho, de 6 de Maio, e 2010/80/UE, da Comissão, de 22 de Novembro, e revoga o Decreto –Lei no 436/91, de 8 de Novembro [Law 37/2011 simplifying the procedures applicable to the transmission and circulation of defence-related products, transposing Directives 2009/43/EC of the European Parliament and of the Council of 6 May and 2010/80/EU of the Commission of 22 Nov. and repealing Decree-Law 436/91 of 8 Nov.], 22 June 2011, article 27.

⁹⁴ Romanian Government, Government’s Emergency Ordinance no. 158/1999 on the control regime of exports, imports and other operations with military goods, 26 Sep. 2013, article 24.2.d. See also Romanian Government, Ministry of Foreign Affairs, Initial report on measures undertaken to implement the Arms Trade Treaty, in accordance with its article 13(1), 25 Dec. 2015.



‘post-licensing checks’, in 2018 a British Government representative expressed concerns over ‘a number of barriers’, mostly related to practicalities and legal implications.⁹⁵ Further questions were asked about clarifying ‘that the return would be worth the considerable effort that would have to go into making that possible’, and whether such inspections would offer a superior alternative to the current system.⁹⁶

Similarly, a recent report from the French Parliament acknowledged the use of post-shipment control measures in the USA and, in relation to SALW, in Switzerland, Germany and Sweden. At the same time, the report is hesitant about the possibility of introducing such measures in France, since the country no longer produces small arms, except for a few segments, and it does not have the resources to conduct regular on-site inspections nor the relationship of dependence with regard to the purchasing states that allowed the USA to develop its system.⁹⁷

Italian legislation prescribes that the National Authority for Armament Licensing and Controls (UAMA) of the Ministry of Foreign Affairs carries out ‘the control activity on the phases prior to and following the export of military goods, also performed through checks and inspections, as well as on the certification process’.⁹⁸ The Italian approach to export controls has so far privileged preventive controls before export. Post-export verifications are based on reports, documents and information gathered from different sources, such as embassies, international organizations and research institutes. In the current regulatory framework, UAMA does not directly carry out on-site inspections in third countries.⁹⁹

The Belgian region of Flanders has had legal provisions in place since 2012 that allow it to perform on-site inspections, stating that the issuance of licences may be conditional on consent to the physical verification of the goods concerned.¹⁰⁰ Flemish EUCs can thus include additional commitments that require consent to such inspections from the end user.¹⁰¹ However, while Flanders has included such an EUC commitment on a few occasions, it has to date not implemented any on-site inspections of commitments made in an EUC. The low number of inclusions of these EUC requirements is in

Other European countries are still deliberating whether to conduct on-site inspections or appear less inclined to conduct them in the near future

⁹⁵ British Parliament, House of Commons, Committees on Arms Export Controls, ‘UK arms exports during 2016’, 18 July 2018, p. 61.

⁹⁶ British Parliament, House of Commons (note 95), §205; British Parliament, House of Commons, Committees on Arms Export Controls, ‘Oral evidence: UK arms exports during 2016, HC 666v’, 6 June 2018; and WorldECR, ‘A British “Blue Lantern”—would it work?’, 6 Nov. 2018.

⁹⁷ French Parliament, ‘Rapport d’information sur le contrôle des exportations d’armement’ [Information report on arms export controls], 18 Nov. 2020.

⁹⁸ Italian Government, Law no. 185 of 9 July 1990, New provisions on controlling the export, import and transit of military goods, Modified and integrated by Decree Law no. 105 of 22 June 2012 Implementing regulation approved with Ministerial Decree no. 19 of 7 Jan. 2013, article 20-bis, courtesy translation.

⁹⁹ Italian national export control official, Written communication with authors, 1 Oct. 2020.

¹⁰⁰ Government of Flanders, Decree of 20 July 2012 implementing the Flemish Parliament Arms Trade Act of 15 June 2012, as updated in 2017, article 12, paras 1, 4; Decreet betreffende de in-, uit-, doorvoer en overbrenging van defensiegerelateerde producten, ander voor militair gebruik dienstig materiaal, ordehandhavingsmateriaal, civiele vuurwapens, onderdelen en munitie [Decree on the import, export, transit and transfer of defence-related products, other material for military use, law enforcement equipment, civilian firearms, parts and ammunition], 15 June 2012, as amended 2 Sep. 2019.

¹⁰¹ Government of Flanders, ‘Annex to End-use Certificate: Additional commitments of the end-user’, EUC template.



part due to the nature of the Flemish industry, which produces some high-tech components for military items but exports almost no finished weapons, and if it does so, they mostly go to other EU countries. Therefore, committing resources to a comprehensive programme of on-site inspections is seen as disproportionate in relation to the risks involved, in terms of both the required costs and capacity. The Flemish authorities also argue that in many cases on-site inspections are neither appropriate nor sufficient ‘mitigating measures’ to address the diversion risks that are identified concerning a specific export, and that often a licence denial is the only appropriate prevention measure.¹⁰² The Government of Flanders has been looking to the EU to advance discussions on appropriate standards and practices and, notably, it recently argued for the creation of a ‘post-export control unit’ at the EU level.¹⁰³

The Netherlands does not have an active programme to perform on-site inspections for military materiel. Its Ministry of Foreign Affairs can put certain conditions on licences, including provisions that would allow Dutch embassy staff to visit an end user on-site; however, such visits have only been conducted to inspect sensitive dual-use production equipment (e.g. machine tools).¹⁰⁴ The adoption of on-site inspections has been the topic of internal deliberations and Dutch officials participated in discussions on this in the WA, but to date the Netherlands has taken no additional steps to set up and perform such inspections.¹⁰⁵ Notably, the Netherlands no longer produces SALW, which have been the focus of discussions on the adoption of post-shipment on-site inspections and their perceived necessity.

IV. The role of the EU in promoting on-site inspections

This paper has shown how, in the last two decades, different guidance documents that encourage the use of on-site inspections have been produced at the multilateral level (see section II). It has also presented some European case studies to highlight how an increasing number of these countries have implemented or are considering the adoption of on-site inspections (see section III). Several multilateral forums at regional and international levels have addressed issues related to diversion and on-site inspections. For instance, the recent establishment of the Diversion Information Exchange Forum within the ATT framework aims to give exporting and importing states the opportunity to share information on measures to effectively tackle diversion.¹⁰⁶ A thorough analysis of how regional and international frameworks can facilitate and help the adoption of on-site inspections is beyond the scope of this study. However, given the primarily European focus

¹⁰² Flanders Department of Chancellery and Foreign Affairs licensing officials, Interview with authors, 24 Sep. 2020.

¹⁰³ Government of Flanders, ‘Vlaamse Regering 2019-2024: Regeerakkoord’ [Flemish Government 2019-2024: Coalition agreement], Oct. 2019, p. 162.

¹⁰⁴ See §4, article 14.2, Besluit strategische goederen van 24 juni 2008, Geldend van 01-04-2015 t/m heden [Strategic Goods Decree of 24 June 2008, valid from 1 Apr. 2015]; Dutch national customs officials, Interview with authors, 1 Oct. 2020; and Dutch national ministry official, Correspondence with authors, 26 Oct. 2020.

¹⁰⁵ Dutch national customs officials (note 104).

¹⁰⁶ Arms Trade Treaty, Sixth Conference of States Parties, Final Report, ATT/CSP6/2020/SEC/635/Conf.FinRep.Rev1, 21 Aug. 2020, § 40.

of this paper, this section highlights some initiatives that the EU is already conducting and others that it could promote in the future in the field of on-site inspections.

Current EU initiatives regarding on-site inspections

Notwithstanding the fact that arms exports are the national prerogative of each EU member state, the EU has taken some steps towards promoting the practice of on-site inspections among member states. Existing practices within COARM already allow member states to exchange information on different national export approaches. For instance, member states discuss licence denial cases and violations of end-user commitments.

Likewise, as part of Council Decision 2019/2191/CFSP, the EU funds the iTrace project implemented by Conflict Armament Research (CAR). The project supports investigations, tracing, and the maintenance of a global reporting mechanism on illicit conventional arms and related ammunition documented in conflict-affected areas—in this way providing information on cases of diversion of military materiel to conflict zones. As part of the Council Decision, CAR supports or provides ‘on official request by EU national arms export licensing authorities, post-shipment/post-delivery verification capacity to Member States’.¹⁰⁷

Finally, with Council Decision 2020/979 adopted on 7 July 2020, the EU aims to assess the feasibility of an internationally recognized arms and ammunition management validation system for SALW and ammunition management policies and practices.¹⁰⁸ The desired outcome is intended to serve third countries that have experienced challenges with the safe and secure management of arms and ammunition, which have led to arms diversion and unintended explosions. Although not focused on on-site inspections, the decision nonetheless envisages measures to increase controls in recipient countries and mitigate the risk of diversion of military materiel after export.

An expanded role for the EU

As shown above, the EU has already taken steps to promote on-site inspections and mitigate the risk of diversion of military materiel after export. Since COARM already facilitates the exchange of information among EU member states, it could continue to do so for sharing good practices and experiences, as well as providing briefings on the steps to adoption and costs of implementation of on-site inspections, with practical ways of how to implement them. EU member states could further elaborate common standards for the implementation of on-site inspections—not prescribing their introduction, but instead harmonizing standards for those that do implement them—in order to minimize the negative effects on

¹⁰⁷ Council Decision (CFSP) 2019/2191 of 19 Dec. 2019 in support of a global reporting mechanism on illicit conventional arms and their ammunition to reduce the risk of their diversion and illicit transfer (iTrace IV), *Official Journal of the European Union*, L330, 20 Dec. 2019.

¹⁰⁸ Council Decision (CFSP) 2020/979 of 7 July 2020 in support of the development of an internationally recognised system for the validation of arms and ammunition management according to open international standards, *Official Journal of the European Union*, L218, 8 July 2020.



competition. Consequences of violations detected during on-site inspections could include communication of these violations to all EU member states, and potentially other regimes, in order to inform states' decision making on future licences. Additionally, the current interest across Europe in on-site inspections and the ongoing initiatives at the EU level to exchange information could provide an opportunity for the EU to take an even more active role in the promotion of on-site inspections, including beyond the EU.

As part of the conclusions on the review of Council Common Position 2008/944/CFSP of 8 December 2008 on the control of arms exports, the Council of the EU tasked COARM to 'consider a decision on end-user certificates for the export of small arms and light weapons and their ammunition'.¹⁰⁹ Such a Council decision could harmonize current EU member state practices on EUCs for exports of SALW and ammunition from the EU. At the time of writing, negotiations on the text of the Council decision are still ongoing. EU member states could include on-site inspections as an optional element to add to EUCs as part of the export licensing process, in line with the Council of the EU's User's Guide and several existing end-user assurances and EUC templates.¹¹⁰ If a Council decision mentioned this possibility, or encouraged or recommended such a step, it would help to normalize the practice of conducting on-site inspections of EU SALW transfers. By doing so, it would support EU states that would like to apply such inspections in justifying the request to importing countries and in using the EUCs as the basis for monitoring and taking action if diversion occurs.

Another ongoing initiative at the EU level that could be used to promote the use of on-site inspections is the establishment of the European Peace Facility (EPF).¹¹¹ The EPF would give the EU the possibility to 'support the armed forces of partner countries with infrastructure, equipment or military assistance, and more effective capacity-building'.¹¹² Concerns have been raised about the possible risk of diversion of military materiel after export, and several safeguards and possible actions have been discussed to avoid or mitigate risks related to transfers conducted in the framework of the EPF.¹¹³ Including on-site inspections among these safeguards could be an important measure to verify that military materiel remains in the possession of the legitimate end user after export. Furthermore, by providing information on cases of diversion, on-site inspections could offer insights into the development and effectiveness of the capacity-building measures that the EPF funds in third countries.

The EU has already taken steps to promote on-site inspections and mitigate the risk of diversion of military materiel after export

¹⁰⁹ Council of the European Union, Council conclusions on the review of Council Common Position 2008/944/CFSP of 8 Dec. 2008 on the control of arms exports, 16 Sep. 2019.

¹¹⁰ Council of the European Union (note 9), §1.3; Arms Trade Treaty (note 2); United Nations Coordinating Action on Small Arms (note 10); and Organization for Security and Co-operation in Europe (note 13).

¹¹¹ High Representative of the Union for Foreign Affairs and Security Policy, 'Proposal of the High Representative of the Union for Foreign Affairs and Security Policy, with the support of the Commission, to the Council for a Council Decision establishing a European Peace Facility', 13 June 2018.

¹¹² European Parliament, 'Legislative Train—European Peace Facility', 23 Oct. 2020.

¹¹³ Hauk, S. and Mutschler, M., 'Five ways to make the European Peace Facility a role model for arms export control', BICC policy brief no. 6, Oct. 2020.



In line with ATT requirements and the EU SALW Strategy, the EU could promote an even stronger focus on diversion capacity building

Proposals have been made for who, on a practical level, should carry out on-site inspections of materiel transferred in the framework of the EPF and whether personnel from the European External Action Service (EEAS) would be able to conduct such checks.¹¹⁴ Likewise and by extension, it has been proposed that EEAS staff from EU delegations could carry out on-site

inspections of military materiel exported by member states outside the framework of the EPF when a member state does not have a diplomatic presence in a third country.¹¹⁵ This could help to overcome one of the major challenges encountered by small or medium-sized EU countries that would like to implement on-site inspections, which is their limited diplomatic presence in some countries or regions of the world. A support role from the EU and EU delegations could also have important diplomatic value. On-site inspections can be considered an invasive practice and can cause diplomatic concerns in importing countries. Therefore, requiring and carrying out on-site inspections might be easier for some exporting countries than others. Conducting this practice at the EU level and with EU delegation staff could facilitate the implementation of such inspections for countries that might lack capacity or diplomatic weight.

Nonetheless, inherent challenges might exist in promoting an increased role for EEAS staff in on-site inspections, as a result of some concerns at member state level about the EU increasing its role in arms export controls. The use of EEAS staff from EU delegations to conduct on-site inspections of national materiel, or the creation of an ad hoc unit at the EU level to regularly carry out on-site inspections, might cause concern in some member states about the EU overstepping its treaty-based competences. The implementation and enforcement of arms export controls remain a national prerogative, and sharing confidential information with EU staff could constitute a potential issue for both exporting and importing countries. However, there might be fewer issues with sensitivities if the EU plays a supportive role in coordinating diplomatic responses in cases of diversion.¹¹⁶ Likewise, it is unclear at present what role the EU could take in terms of legal competence, technical expertise and practical capacity. An analysis or a pilot study might be required to understand the ways in which the EU could take on a stronger or more active role.

Another option would be to consider the possibility of reinforcing the focus on diversion as part of the technical assistance and outreach activities that the EU conducts in third countries, such as the activities of the EU Partner to Partner (P2P) Export Control Programme.¹¹⁷ In line with ATT requirements and the EU SALW Strategy, the EU could promote an even stronger focus

¹¹⁴ Hauk and Mutschler (note 113).

¹¹⁵ Proposal from a Czech MFA representative during the webinar ‘Fulfilling the mandate: How can COARM enhance convergence and improve its working methods?’, part of the webinar series ‘The review of the EU Common Position on arms exports: What happened, and what happens next?’, hosted by Saferworld and the EEAS, 6 Oct. 2020.

¹¹⁶ This would also be in line with proposals to create a mechanism for EU-level monitoring and control based on full compliance with the 8 criteria of the EU Common Position. See European Parliament, European Parliament Resolution of 17 Sep. 2020 on Arms Export: Implementation of Common Position 2008/944/CFSP (2020/2003(INI)), 17 Sep. 2020.

¹¹⁷ European Commission, ‘EU P2P (Partner to Partner) export control programme’, [n.d.].



on diversion capacity building.¹¹⁸ On-site inspections could be suggested to importing countries as a possible measure to counter diversion after export, as part of broader prevention goals and the promotion of improved standards and practices regarding arms export controls. The EU already has a set of measures in place in this respect: iTrace and EU Council Decision 2019/2191/CFSP help to identify risky cases; Council Decision 2020/979 and the work of the Ammunition Management Advisory Team help to build capacity and willingness on the part of the recipient state to have good standards in stockpile management; and the EU ATT P2P Programme and neighbourhood outreach provide opportunities for sensitization to on-site inspections. Coordinating interventions between the EU and recipient countries in the ATT WGETI could also be envisaged. In this way, on-site inspections could be introduced as a tool to a wider audience of states and as one of the measures that help to mitigate the risk of diversion of military materiel after export.

V. Conclusions

Diversion of military materiel can happen at any stage of a military item's life and states can adopt a range of measures to ensure control throughout the transfer chain of military materiel, managing the inherent risks entailed in a transfer and mitigating the risk of diversion to an unauthorized end user. Most of these measures are taken before an export, others such as on-site inspections can be taken after a transfer has taken place. Conducting thorough risk assessments before export, ensuring adequate PSSM, sharing information on cases of diversion or on actors involved in it and promoting transparency in the arms trade are all important and necessary steps to minimize risk of diversion of military materiel to unauthorized end users.

On-site inspections are one of the possible post-shipment control measures exporting states can adopt. Through verification that the exported item remains in the possession of the identified end user after export, on-site inspections help to minimize the risk of diversion from recipient states.

This SIPRI Background Paper has provided an overview of the status of implementation of on-site inspections of exports of military materiel by different European countries. It has shown that European countries have different approaches to on-site inspections. Only a few states have already adopted and implemented such inspections, some are actively considering doing so and others might consider them in the future.

Several reasons have contributed to this diversity. Some states do not consider it necessary to have a national programme of on-site inspections. Other states expect or have encountered a range of real or perceived challenges in adopting and implementing on-site inspections. These might be practical difficulties, such as a limited diplomatic presence overseas, or diplomatic reservations related to the possible sensitivity of the request for an importing country.

¹¹⁸ Council of the European Union, Council Conclusions on the Adoption of an EU Strategy Against Illicit Firearms, Small Arms and Light Weapons and Their Ammunition, 13581/18, 19 Nov. 2018. See also the current EU-funded activities on diversion in the SIPRI Mapping ATT-relevant Cooperation and Assistance Activities Database, <<https://att-assistance.org/activities>>.



A potential issue for the development, implementation and request to conduct on-site inspections is related to building sufficient trust between exporters and importers. In many cases, this issue has not constituted a major or an insurmountable problem, and the case studies presented in this paper have shown that countries that are conducting or planning to conduct on-site inspections have only rarely faced negative reactions and a lack of cooperation in requesting access to inspect military materiel.

These types of challenges are intrinsic to the creation of a political, diplomatic and legislative framework that can regulate on-site inspections, and can also be linked to the novelty of the practice for some exporting and importing countries. In this respect, the experience of Germany highlighted how it was often easier and quicker to organize on-site inspections in countries where Switzerland had already conducted such inspections in the past.

Against this backdrop, states have proactively reflected on different national experiences when implementing or considering implementing on-site inspections. Countries that have recently introduced on-site inspections have looked at national models and best practices from the USA, Switzerland and Germany and learnt from their experiences. Therefore, it is important both to maintain this exchange and to make sure that it does not remain limited to states which already have on-site inspections in place, but also includes states that are at different stages of the adoption of these practices.

This paper has also highlighted how the EU could play an expanded role in the promotion of on-site inspections. In particular, current and future initiatives such as the regular information sharing within COARM, the recent EU Council Decision 2020/979 and the already existing technical assistance and outreach activities in the framework of the EU P2P Export Control Programme could provide opportunities for an increased focus on diversion, stronger partnerships between exporters and importer states, further sensitization to on-site inspections and broader measures to prevent diversion after export.

As more states develop and consider the adoption of on-site inspections as part of their export policies, they could still face practical and diplomatic challenges in implementing such measures. Therefore, further analysis and research could examine the types of challenges states face and how they can be addressed, develop a set of good practices for on-site inspections, and consider how regional and international frameworks can facilitate and help the adoption of such practices in states willing to do so.



Abbreviations

ATT	Arms Trade Treaty
BAFA	German Federal Office for Economic Affairs and Export Control
CAR	Conflict Armament Research
COARM	Council Working Party on Conventional Arms Export
COVID-19	Coronavirus disease 2019
CSP	Conference of States Parties
DOD	Department of Defense
DVC	Delivery verification certificate
EEAS	European External Action Service
EPF	European Peace Facility
EU	European Union
EUC	End-user certificate
FDFA	Swiss Federal Department of Foreign Affairs
IATG	International Ammunition Technical Guideline
ISP	Swedish Inspectorate of Strategic Products
JIMDDU	Junta Interministerial para el Comercio y Control del Material de Defensa y Tecnologías de Doble Uso (Spain)
MANPADS	Man-Portable Air Defence Systems
MFA	Ministry of Foreign Affairs
MOSAIC	Modular Small-arms-control Implementation Compendium
NATO	North Atlantic Treaty Organization
OSCE	Organization for Security and Co-operation in Europe
P2P	Partner to Partner
PSSM	Physical security and stockpile management
SALW	Small arms and light weapons
SECO	Swiss State Secretariat for Economic Affairs
SEESAC	South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons
UAE	United Arab Emirates
UAMA	Italian National Authority for Armament Licensing and Controls
UN	United Nations
UN CASA	United Nations Coordinating Action on Small Arms
UNDP	United Nations Development Programme
UNIDIR	United Nations Institute for Disarmament Research
UNODA	United Nations Office for Disarmament Affairs
UNODC	United Nations Office on Drugs and Crime
WA	Wassenaar Arrangement
WGETI	Working Group on Effective Treaty Implementation



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SIPRI BACKGROUND PAPER

POST-SHIPMENT CONTROL MEASURES: EUROPEAN APPROACHES TO ON-SITE INSPECTIONS OF EXPORTED MILITARY MATERIEL

ANDREA EDOARDO VARISCO, KOLJA BROCKMANN AND LUCILE ROBIN

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