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# ANALYSIS NOTE

## Post-export controls: towards a generalized practice in the European Union?

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### Summary

Although most European countries use end-user certificates in their export licences, few check whether the conditions agreed in these documents are met after the arms are delivered. On-site inspections can expose cases of diversion and act as a deterrent to potential offenders. To date, Germany is the only country in the European Union that systematically carries out this type of verification. However, Belgium, Bulgaria or Portugal, as well as the Czech Republic, have already introduced such controls in their national legislation. In addition, Sweden and Spain have recently started to shape their on-site inspection systems. Can this method of combating diversion become a general practice among EU member states?

### Abstract

Bien que la plupart des pays européens utilisent des certificats d'utilisateur final dans leurs licences d'exportation, peu d'entre eux vérifient si les conditions reprises dans ces derniers sont respectées une fois la livraison effectuée. Les contrôles post-exportation permettent de découvrir des cas de détournement et avoir un effet dissuasif sur de potentiels contrevenants. À ce jour, l'Allemagne est le seul pays de l'Union européenne qui mène de façon systématique ce type de contrôles. Cependant, la Belgique, la Bulgarie ou le Portugal, ainsi que la République tchèque, prévoient déjà de tels contrôles dans leur législation nationale. En outre, la Suède et l'Espagne ont récemment commencé à donner forme à leurs systèmes nationaux d'inspection post-livraison. Cette méthode de lutte contre le détournement, peut-elle devenir une pratique généralisée parmi les pays membres de l'Union européenne ?

## Introduction

Weapon diversion refers to a situation in which military or dual-use goods end up in the hands of unauthorized users or are used under prohibited conditions. This phenomenon contributes to the proliferation of illicit arms worldwide and is one of the main obstacles to the effective regulation of the international trade in such goods. The risk of diversion can occur at any stage of the weapon's life cycle, before transfer, during transfer, at the time of import, or afterwards, when it is in storage or awaiting destruction. In order to prevent, or at least limit, the risk of diversion, some European Union (EU) Member States have put in place three instruments: end-user certificates (EUCs), delivery verification certificates and post-export controls.

Although most EU countries include end-user certificates in their export licences<sup>1</sup>, few check whether the conditions in these certificates are met once the goods leave their territory. Post-export controls can uncover cases of diversion and act as a deterrent to potential offenders. They can take the form of shipment verification certificates, which request documentation from the intended destination country certifying that the shipment has reached their territory<sup>2</sup>, or in situ end-user controls, which can be physical inspections in the territory of the importing country. This analysis note will focus on the latter type of control.

In 2015, the German government introduced a major reform in its export control system allowing it to conduct post-delivery inspections in the context of small arms and light weapons (SALW) exports in the country of the final destination. Other EU countries, such as Belgium (the Flemish Region), Bulgaria or Portugal, as well as the Czech Republic, already provide for the possibility of conducting such controls, and Sweden and Spain have recently started to shape their national post-delivery inspection systems. Can this method of combating diversion become a general practice among EU Member States?

This analysis note provides an overview of the existing initiatives on post-export controls within the EU and the different levels of development of these initiatives. It then examines the potential supportive role that the EU could play in this process, putting into perspective the advantages and disadvantages of carrying out these controls at national and at European level.

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1. For more information on end-user certificates see: JACQMIN Denis, "[End-user certificate, an added value?](#)", *Note d'Analyse du GRIP*, 12 September 2018.

2. For more information on delivery verification certificates see: CAMELLO Maria, "[Post-export controls: European practices and their main challenges](#)", *GRIP Analysis Note*, 4 February 2019, pp. 5-7.

## 1. The German System Reaches the End of Its Pilot Phase

The German authorities introduced a post-export inspection system in July 2015, following revelations of several cases of diversion of German weapons and in order to prevent such incidents from happening again<sup>3</sup>. The instrument set up by Germany initially focused on carrying out selective controls of SALW exported to third countries (non-EU, NATO and equivalent countries)<sup>4</sup>. Through the EUC, the importing countries agree that the German authorities can carry out these on-site checks and verify whether the weapons delivered are still in the possession of the end user specified in the certificate<sup>5</sup>. In return, Germany must notify the authorities of the importing country in advance of the time and place of the inspections, which must be agreed to.

These physical post-export controls are carried out by two officials of the German Federal Office of Economic Affairs and Export Control (BAFA), who work full time under the coordination of the Ministry of Economic Affairs and Energy<sup>6</sup>. These two actors also cover the costs for their preparation and execution (expenses, personnel and travel costs) through their general budget. Post-export controls normally take place two to three years after delivery of the exported equipment to the end user and each inspection requires 6 to 12 months of preparation<sup>7</sup>.

The pilot phase of the monitoring system, which was expected to last two years, started in May 2017, following the first on-site inspection in India. Since then, inspections have also been conducted in the United Arab Emirates (December 2017), South Korea (June 2018), Indonesia (January 2019), Malaysia (April 2019), Brazil (April 2019) and Jordan (June 2019)<sup>8</sup>.

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3. WELLS Miriam, '[German Arms Firm Illegally Sold Weapon to Mexico](#)', *InSight Crime*, 7 May 2013.

4. Federal Ministry for Economic Affairs and Energy, [Key points for the introduction of post-shipment controls for German arms exports](#), Publication officielle, 8 juillet 2015.

5. Deutscher Bundestag, [Endverbleibserklärungen und Post-Shipments-Kontrollen bei Rüstungsexporten](#), Publication officielle, Publication officielle, 9 mars 2016.

6. Federal Ministry for Economic Affairs and Energy, *op. cit.* et EDOARDO VARISCO Andrea *et al.*, [Post-shipment Control Measures: European Approach to On-site Inspections of Exported Military Materiel](#), SIPRI, décembre 2020.

7. *Ibid.*

8. Bundesministerium für Wirtschaft und Energie, [Bericht der Bundesregierung über ihre Exportpolitik für konventionelle Rüstungsgüter im ersten Halbjahr 2018](#), Official publication, 2 October 2018, and [Bericht der Bundesregierung über ihre Exportpolitik für konventionelle Rüstungsgüter im ersten Halbjahr 2019](#), Official publication, 13 November 2019.

Only one inspection was conducted in the first half of 2020, in Oman. The rest of the on-site controls planned for this year had to be postponed *indefinitely due to* the COVID-19 pandemic<sup>9</sup>.

As no irregularities were found during the inspections carried out since 2017, the type of measures that would be put in place in case of non-compliance has not yet been determined<sup>10</sup>.

After a long and complex process of introducing these controls into legislation, the pilot phase of the German system was completed in May 2019. The German government is currently conducting an evaluation of this SALW export control instrument<sup>11</sup>. At this stage, the German authorities have not yet announced when this review will end or whether the findings and observations obtained during this evaluation will be made public.

To date, Germany is the only EU Member State that has systematically carried out such on-site inspections. However, it is not the only EU country that provides for this possibility in its national legislation. Belgium, Bulgaria and Portugal formally consider the possibility of carrying out such checks, some of them since 2011.

## 2. Controls Planned in Theory but Not Carried Out in Practice

In Belgium, the competence for arms exports belongs to the regions since the adoption of the special law of 12 August 2003<sup>12</sup>. Thus, only the Flemish Region legally introduced in 2012 the possibility to conduct physical inspections of exported military equipment in the country of the final destination<sup>13</sup>. However, in practice, the responsible Flemish authorities attach more importance to risk assessment and the collection of information on the end user and use prior to the granting of an export licence, so that no physical inspections have taken place<sup>14</sup>.

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9. Federal Ministry for Economic Affairs and Energy, [Report, der Bundesregierung über ihre Exportpolitik für konventionelle Rüstungsgüter im ersten Halbjahr 2020](#) Publication officielle, 28 octobre 2020.

10. Speech by ALBRECHT Irina (BAFA) and GROSCHOFF Jan (Federal Ministry of Economics), at the side event: Post-Shipment Verifications - a new instrument of arms export controls during the Fifth Conference of State Parties to the ATT, 28 August 2019.

11. Federal Ministry for Economic Affairs and Energy, 28 octobre 2020.

12. Government of Belgium, [Special law amending the special law of 8 August 1980 on institutional reforms](#), Official publication, 12 August 2003.

13. Région flamande, [Flemish Parliament Act on the import, export, transit and transfer of defence-related products, and other materials for military use, law enforcement materials, civilian firearms, components and ammunition](#), Publication officielle, article 12 §1 4°, 15 juin 2012.

14. COPS Diederik, DUQUET Nils et GOURDIN Gregory, [Towards Europeanised arms export controls? Comparing control systems in EU Member States](#), Flemish Peace Institute, 15 juin 2017.

In Bulgaria, the 2015 Law on the Control of Exports of Military Equipment provides for the possibility of including a clause in the CUF to conduct '*a physical inspection of the delivery in the end-user state*<sup>15</sup>'. The inclusion of such a clause is left to the discretion of the Interdepartmental Commission, which is responsible for granting export licences. However, it seems that this control instrument is not used as regularly as the shipment verification certificates, which are now a precondition for the approval of a licence<sup>16</sup>.

In Portugal, the 2011 Law on the Transmission and Circulation of Defence-Related Products states that the competent authorities for arms exports may require in their EUC to initiate a verification procedure of the exported material in the declared country of the final destination<sup>17</sup>. However, as in the previous cases, it does not appear that these are carried out on a regular basis.

The national legislation of these three countries has for years provided for the possibility of carrying out such post-export controls. However, no physical inspection of exported military equipment in the territory of end-use seems to have taken place so far. This is partly due to the fact that the defence industry in these states mainly produces high-tech components, not finished weapons, which they export to other EU countries in particular. Also, the systematic adoption of post-export controls entails a number of challenges in terms of organization, financial resources and available specialized personnel that not all countries can afford<sup>18</sup>.

The Czech Republic's legislation also provides for physical inspections of its exported weapons. Act 38/1994 on Foreign Trade in Military Equipment states that, in addition to the usual formalities, the decision to grant a licence must contain '*any other licence conditions*' or '*any other security requirements*<sup>19</sup>'. It is on the basis of these provisions that the Czech licensing authorities (the Ministry of Industry and Trade, the Ministry of Defence and the Ministry of Foreign Affairs) decide on the possibility of adding a clause allowing them to carry out on-site inspections of exported military goods and equipment<sup>20</sup>. It is interesting to note

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15. Bulgarie, [Defence-Related Products and Dual-Use Items and Technologies Export Control Act Promulgated, SG No. 14/20.02.2015](#), Publication officielle, Article 66, 20 février 2015.

16. Permanent Mission of the Republic of Bulgaria to the United Nations, the OSCE and other International Organisations, [Note Verbale](#), 30 juin 2020.

17. Portugal, [Assembleiada República Lein.º37/2011 de 22 de Junho](#), Official publication, Article 27, 22 June 2011.

18. CAMELLO Maria, *op. cit.*

19. Government of the Czech Republic, [Act 38/1994](#), Official Publication 1994, Section 16 §3h, Section 22c §4e and Section 22d §4e.

20. Email exchange with a member of the Czech Trade Policy Unit of the Czech Permanent Representation to the European Union in April 2020.

that this possibility is foreseen for licences for exports to countries outside the EU, as well as for member states of the regional organization<sup>21</sup>.

According to the Czech authorities, up to ten post-export inspections per year are organized<sup>22</sup>. However, no information on these controls (date, place or result) is made public. In the case of Germany or Switzerland, a mention of the post-export controls carried out during the year is made in the annual report on arms transfers<sup>23</sup>. It is also customary for some members of parliament to ask the government questions about their organization and results<sup>24</sup>. In addition, members of the agencies responsible for coordinating and implementing post-export controls in these two countries regularly participate in conferences and meetings where they explain how they operate their national post-export control systems and pass on their knowledge to other countries interested in developing these methods of verification<sup>25</sup>. This does not seem to be the case for the Czech Republic.

### 3. EU Member States Working to Introduce Post-Export Controls

Since the implementation of the German system, other EU countries such as Spain and Sweden have announced their intention to carry out such controls. These two countries have been and are in contact with Germany and Switzerland (which also carries out post-export controls<sup>26</sup>) in the process of developing this instrument and integrating it into their national legislation<sup>27</sup>.

#### 3.1. Spain Approves Integration of Post-Export Controls

Spain's Secretary of State for Trade announced in September 2018 that Spain wanted to introduce post-export controls in the country of the final destination<sup>28</sup>. This followed the government's attempt to cancel a contract to sell guided bombs to Saudi Arabia<sup>29</sup>, which has been involved in the war in Yemen since 2015. In

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21. Government of the Czech Republic, *op. cit.* Government of the Czech Republic, *op. cit.*, provisions for non-EU countries section 16 §3h, provisions for EU member states section 22c § 4e and section 22d § 4e.

22. EDOARDO VARISCO Andrea *et al*, *op. cit.*

23. Federal Ministry for Economic Affairs and Energy, *op. cit.* Swiss Confederation, [Export control in the area under the War Material Legislation 2018](#), Publication officielle, 2019.

24. Federal Ministry for Economic Affairs and Energy, [Written question to the Federal Government in the month of February 2018 Question No. 329](#), Publication officielle, 7 mars 2018.

25. See for example side-events at the Fourth and Fifth Conference of States Parties to the Arms Trade Treaty in 2018 and 2019.

26. *Ibid.*

27. Federal Ministry for Economic Affairs and Energy, 28 octobre 2020.

28. Congress of Deputies, [Appearance of the Secretary of State for Trade Xiana Méndez](#), 7 September 2018.

29. ABELLÁN Lucía, ['Defensa rectifica y enviará a Arabia Saudí la polémica partida de 400 bombas'](#), *El País*, 12 September 2018.

October 2018, the Inter-Ministerial Council for the Regulation of Foreign Trade in Defence and Dual-Use Materials (JIMDDU), which is responsible for controlling Spanish arms exports, gave the green light to the new regulation<sup>30</sup>. However, the successive elections in 2019 and the periods of political transition have postponed its approval.

It was not until April 2020 that the Council of Ministers approved the reform of Royal Decree 679/2014, which establishes for the first time the possibility of carrying out inspections of the final destination of Spanish arms in the field<sup>31</sup>. Thus, the JIMDDU may incorporate, if it deems necessary, a specific clause in the EUC allowing for the establishment of *'verification, monitoring and collaboration mechanisms regarding goods exported in particular operations with the collaboration of the government of the importing country'*. This clause must be accepted by the end user for the approval of the export licence.

For the time being, there is no indication that Spain will apply these inspections exclusively to the export of SALW, as Germany did during the pilot phase. It is also unclear in which cases and on the basis of which criteria the JIMDDU will require this verification mechanism and what measures will be taken to ensure that inspections do not end up with a mere documentary check.

At the time of writing, Spain has not communicated whether it has been able, since the implementation of the instrument, to carry out a physical verification at the place of end use. In any case, JIMDDU would be the body responsible for carrying out the inspections in collaboration with Spanish government ministries or embassies<sup>32</sup>. These structures would also be responsible for the costs associated with on-site controls. In addition, if a case of diversion or misuse of the exported material is discovered during the inspection, the Spanish authorities will revoke the licenses already validated and refuse new export licenses to the end user<sup>33</sup>.

### **3.2. Sweden Is Still Considering the Format of Post-Export Controls**

Sweden has repeatedly confirmed its intention to carry out post-export controls in the end user's territory. Swedish Prime Minister Kjell Löfven's coalition government announced in 2014 its interest in establishing a verification

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30. GONZÁLEZ Miguel, '[El nuevo control de las ventas de armas permitidas bloquear la exportación a Arabia Saudí](#)', *El País*, 2 May 2020.

31. Government of Spain, [Royal Decree 494/2020 of 28 April, amending Royal Decree 679/2014 of 1 August, approving the Regulation on the control of foreign trade in defence material, other material and dual-use products and technologies](#), Publication officielle, 28 April 2020.

32. *Ibid.*

33. *Ibid.*

instrument for exported military equipment<sup>34</sup>. Similarly, the Parliament stated in 2015 that a study on how to implement such a system in Swedish legislation should take place. In the process of reviewing the legal framework initiated in June 2017 by the Swedish National Inspectorate of Strategic Products (ISP), the competent authority for arms exports, the possibility of actively using end-use controls has again been a major debate<sup>35</sup>.

ISP's findings and recommendations on how Sweden could integrate this export control system into its national legislation, inspired by the German and Swiss system, were presented to the Swedish government in 2018<sup>36</sup>. However, at present, the Swedish authorities have not yet announced their decision on this matter.

In the case of Spain, members of the defence industry have considered this reform to be positive, as these controls help to guarantee the stability of the sector and reduce the degree of uncertainty linked to changes in export policies towards, for example, the member countries of the coalition involved in the war in Yemen, which have led to the freezing or withdrawal of several export licences in recent years<sup>37</sup>. In Sweden, there is a reluctance to adopt this control instrument on the part of industry, which believes that it would put Swedish defence companies at a disadvantage compared to those in other countries that do not have this system of physical inspections of the use or end user<sup>38</sup>.

#### **4. The EU: a role to play in the generalization of post-export controls?**

Although decisions on arms exports depend on the sovereignty of individual Member States, the EU supports and encourages practices that eliminate, or at least reduce, the risk of arms diversion. To this end, the EU has created a forum within the Conventional Arms Export's Group (COARM) for the sharing of information between Member States on denials of export licences, on cases of diversion (confirmed or suspected) and even for the exchange of best practices and approaches of Member States<sup>39</sup>. Similarly, in its 2020–2025 Action Plan on

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34. "[Swedish defense industry uneasy over proposed export controls](#)", *Defence News*, 7 April 2017.

35. *Ibid.*

36. EDOARDO VARISCO Andrea *et al. op.cit.*

37. GONZÁLEZ Miguel, *op. cit.*

38. *Defence News, op. cit.*

39. COPS Diederik, [Strengthening EU arms export control through increased information exchange](#), Flemish Peace Institute, Policy Brief, 2018.



Firearms Trafficking, the EU encourages the use of post-export controls to combat the proliferation of firearms<sup>40</sup>.

However, the EU can do more to contribute to the widespread use of post-export controls by its Member States. Indeed, its international recognition, diplomatic relations and expertise can help to respond to the problems encountered when implementing arms export inspections in the end-use territory. The EU's potential support in this area could take several forms: (see table on next page)

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40. European Commission, [Communication from the Commission to the European Parliament, the Council, the Economic Committee and the Committee of the Regions, EU Action Plan to Combat Firearms Trafficking for the period 2020-2025](#), Official publication, 24 July 2020.

Difficulties encountered in conducting post-export controls at national level	Potential EU support? <sup>41</sup>
<b>The process of introducing such controls into national legislation and their implementation is long and complex.</b>	The sharing of experiences via the information-sharing platforms integrated within COARM can facilitate the implementation and development of this instrument.
<b>Difficult to organize and lack of diplomatic relations with the authorities of the importing country.</b>	European External Action Service (EEAS) staff and its EU delegations can carry out on-site inspections of exported military equipment when a Member State does not have a diplomatic presence in a third country.
<b>Insufficient financial resources and lack of specialized staff to carry out inspections</b>	In addition to the support of EEAS staff, the Council of the EU funds the <i>iTrace</i> project, which is run by the UK-based company <i>Control Armament Research</i> (CAR). Under this project, CAR supports or provides, ' <i>upon official request from EU national arms export licensing authorities, post-shipment or post-delivery verification capabilities for the benefit of Member States</i> ' <sup>42</sup> .
<b>Disadvantage of the defence industry compared to other countries that do not carry out on-site verification</b>	If the European Council encourages or recommends the introduction of post-export checks, this would help to standardize practice within the EU.
<b>Difficulties in getting the importing State to agree to physical controls in its territory and risk of loss of confidence</b>	Council guidance on the use of post-export controls would help the EU Member States wishing to carry out such inspections to justify the request to importing countries.

41. EDOARDO VARISCO Andrea *et al*, *op. cit.*

42. Council of the European Union, [Council Decision \(CFSP\) 2019/2191 of 19 December 2019 supporting a global reporting mechanism for illicit conventional arms and their ammunition to reduce the risk of their diversion and illicit transfer\('iTraceIV'\)](#), Official Journal of the European Union, 20 December 2019.

## Conclusion

An increasing number of EU countries wish to introduce post-export controls into their national legislation to combat the risk of diversion of exported weapons. However, the challenges and efforts required to establish and implement such controls are for many too important. Whether due to the type of defence industry or the challenges that such inspections pose in terms of organization, financial resources and specialized personnel, for many EU countries, the establishment of a regular system of post-export inspections is seen as an ordeal that not all countries are able to overcome.

Another obstacle to the development and application of such controls is the idea of a loss of confidence on the part of the importing country, which also leads to a loss of market and potential customers for the industry. However, this does not seem to have been a problem for the German authorities or industry so far. The Swiss experience also confirms this<sup>43</sup>. On the contrary, the defence industry in these countries considers that this instrument contributes to strengthening mutual trust between the two sides of the transfer. For some Spanish defence companies, post-export controls help to ensure the stability of the sector at a time when changes in export policies have led to delays, freezes and even blockages of licences and contracts<sup>44</sup>.

The EU can play a key role in making such inspections more widespread. Recognizing and valuing the implementation of post-export controls as a means of minimizing the risk of arms diversion and encouraging Member States to use this instrument can help to standardize practice within the organization. Support from EU bodies in organizing and carrying out physical inspections can reduce costs for Member States and increase the likelihood of acceptance of such controls by importing authorities.

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43. CAMELLO Maria, *op. cit.*

44. GONZÁLEZ Miguel, *op. cit.*