

Controlling arms brokering

Next steps for EU member states

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Executive Summary

One of the key weaknesses in controls on the international arms trade is the absence or penury of national regulations on arms brokering activities. At present, only about 16 countries in the world are known to control the activities of those negotiating, arranging or otherwise facilitating arms transfers between buyers and sellers. Moreover, unscrupulous brokers have demonstrated their ability to circumvent existing controls by exploiting differences in national approaches, or by simply conducting their activities from another country with lax or no controls at all. This weak link in arms control allows unscrupulous brokers to engage with impunity in undesirable or illicit activities such as arranging arms transfers to embargoed governments or non-state actors.

An important regional initiative to counter this phenomenon is the recently adopted EU Common Position on the Control of Arms Brokering. Under this instrument, EU member states have committed themselves to establishing a clear legal framework for brokering activities taking place within their territory. This means that over the coming months and years states member to the EU will join those seven EU countries (Austria, Belgium, Finland, France, Germany, The Netherlands, and Sweden), which already have brokering controls in place. By creating common standards, the EU Common Position thus represents a significant step forward. However, there remain concerns that these standards still fall short of what is required to effectively combat undesirable or illicit brokering activities.

The first part of this report identifies key issues in this respect and suggests concrete measures governments should consider when deciding on what controls they deem appropriate. Recommendations pertain to the establishment of controls on brokering-related activities such as arranging shipping or financial services and of controls on activities by brokers of EU nationality or residency when operating from abroad. Recommendations further address measures within the context of screening applicants for brokering licenses, of licensing brokering activities, of monitoring brokers' activities, and promoting further regional and international efforts to combat undesirable arms brokering. The second part of this report presents an overview of already existing or planned brokering controls in certain EU member states.

The appendix to the report contains the EU Common Position on Arms Brokering.

The report concludes that despite the progress presented by the EU Common Position, there are still shortcomings regarding the controls that would seem necessary for effectively combating unscrupulous brokers and their activities. Rather, what has emerged is an agreement on basic controls that governments may supplement and reinforce as they consider necessary. Where appropriate, governments of EU member states should therefore individually be encouraged to ensure that their national approach fully addresses arms brokering. This would also facilitate possible future efforts on the level of the EU to further strengthen common commitments. In turn, such further efforts to counter undesirable brokering will be required to strengthen member states' abilities to combat and prevent illicit arms transfers.

Résumé

L'absence de règlements nationaux sur les activités de courtage est une des principales faiblesses du contrôle sur le commerce international des armes. En ce moment, seuls 16 pays dans le monde contrôlent les activités consistant à négocier, arranger ou faciliter les transferts d'armes entre acheteurs et vendeurs. De plus, des courtiers sans scrupules ont démontré leur capacité à contourner les contrôles existants en exploitant des différences dans les approches nationales, ou en menant leurs activités à partir d'un pays dont les contrôles sont faibles ou inexistantes. Ces maillons faibles dans le contrôle des armements permettent aux courtiers de s'engager avec impunité dans des activités indésirables ou illicites comme par exemple des transferts d'armes vers des gouvernements ou d'autres acteurs sous embargo.

La position commune récemment adoptée par l'UE sur le contrôle du courtage d'armes est une initiative régionale importante pour contre-carrer ce phénomène. Grâce à cet instrument, les Etats membres de l'UE se sont engagés à établir un cadre légal clair régissant les activités de courtage se déroulant sur leur territoire. Ceci signifie que dans les mois et les années à venir, d'autres membres rejoindront les sept pays de l'UE (l'Autriche, la Belgique, la Finlande, la France, l'Allemagne, les Pays-Bas, et la Suède), qui contrôlent déjà le courtage. En créant des normes applicables à tous, la position commune de l'UE représente une amélioration significative. Cependant, il n'est pas certain que ces normes soient suffisantes pour combattre efficacement les activités de courtage indésirables ou illicites.

La première partie de ce rapport identifie les principales questions et suggère aux gouvernements les mesures à considérer lors de l'établissement des contrôles. Les recommandations se rapportent à l'établissement de contrôles sur les activités de courtage telles que l'expédition ou les services financiers ainsi que sur les activités des courtiers de nationalité européenne ou les résidents européens opérant à l'étranger. Les recommandations proposent des mesures de sélection pour l'attribution de licences de courtage, un monitoring des activités de courtage, et une promotion des efforts régionaux et internationaux pour combattre le courtage indésirable. La deuxième partie de ce rapport présente un aperçu général des contrôles de courtage déjà existants ou planifiés dans cer-

tains Etats de l'UE. L'appendice du rapport reprend la position commune de l'UE sur le courtage.

Le rapport conclut que, malgré le progrès représenté par la position commune de l'UE, il y a encore des lacunes concernant les contrôles qui sembleraient nécessaires pour combattre efficacement des courtiers sans scrupules et leurs activités. En fait, il s'agit d'un accord sur les contrôles élémentaires que les gouvernements peuvent compléter et renforcer s'ils le jugent nécessaire. Les gouvernements d'Etats membres de l'UE devraient chacun être encouragés à s'assurer que leur approche nationale délimite efficacement les activités de courtage. Ceci faciliterait aussi les efforts futurs de l'UE pour renforcer les engagements communs. Ces efforts pour endiguer le courtage indésirable sont à leur tour indispensables pour renforcer les capacités de lutte et de prévention en matière de transferts illicites d'armements.

Introduction

Arms brokers are those who mediate weapons transfers by bringing together buyers and sellers or who otherwise facilitate such transfers. They do not necessarily acquire weapons, nor need transfers they arrange pass through the country from which they operate. Dealers who buy or already are in possession of weapons in foreign countries may likewise arrange for their transfer to another foreign country. As weapons in these cases are not exported from the country in which the broker conducts his or her activities, arms export controls of these countries usually do not apply. Further, insofar as regulations on arms brokering exist, these vary widely and often leave loopholes that allow unscrupulous dealers and brokers to conduct their activities without the risk of penal sanctions. A clear example is that of Leonid Minin, an Israeli citizen who partly operated from Italian territory to organise arms transfers in violation of UN embargoes to Liberia and the Revolutionary United Front in Sierra Leone. Arrested in Italy in August 2000 and charged with illegal arms trafficking, the Italian Supreme Court argued that it could not prosecute Minin because the trafficked weapons did not touch Italian soil.¹

In recognition of the problems posed by unregulated arms brokering, EU member states, in June 2003, adopted a Common Position on Arms Brokering² that builds on the guidelines agreed under the Swedish EU presidency in 2001. EU member states are now required to 'take all the necessary measures to control brokering activities taking place within their territory.' Brokering activities are defined as 'activities of persons and entities negotiating or arranging transactions that may involve the transfer of items on the EU Common List of Military Equipment [from one country outside the EU to another country outside the EU] or who buy, sell or arrange the transfer of such items that are in their ownership from a third country to another third country.' The lawful engagement in such activities will require 'a license or written authorisation ... from the competent authorities of the Member State where these activities take place', and member states will assess applications 'for specific brokering transactions against the provisions of the European Union Code of Conduct on Arms Exports.'³

By focusing on negotiating or arranging transfers of arms that may or may not be in the ownership of the broker, the Common Position captures core brokering activities that have remained unregulated in most EU member states. These countries will now have to join those that already are operating such controls. For example, in Germany, persons and entities wishing to mediate a contract involving the acquisition or cession of war weapons located abroad, or wishing to demonstrate that the opportunity for the conclusion of such a contract exists, require a license.³ Persons or entities wishing to conclude such a contract equally require a license.⁴ In Sweden, companies and persons who are resident or permanently domiciled may not supply military equipment located abroad to a person or entity located abroad without a license.⁵ Such supply activities include intermediary activities.⁶ Certain controls also already exist in Austria, Belgium, Finland, France and The Netherlands.⁷ These countries will now have to review their legislation to ensure that it is in line with the requirements contained in the EU Common Position. Other countries, which control only brokering activities related to transfers of arms that originate in their territory, such as Italy, will have to ensure that their legislation also covers brokering of weapons that are neither exported nor transferred through their territory. For the remaining EU member states, basic brokering controls will have to be newly introduced into their arms control systems. Some of these countries are already in the process of doing so. They include, for example, the UK, which is expected to have new regulations on brokering enter into force by May 2004.

At the same time, while certainly representing a step in the right direction, the EU Common Position reflects minimal standards rather than already existing best practice in certain countries both within the EU and abroad. For example, the 1996 amendment on brokering to the Arms Export Control Act of the USA has sometimes been advocated as a comprehensive model that other governments could consider

3. Germany, *Kriegswaffenkontrollgesetz*, § 4a.1. (References to national legal or regulatory texts in this study are marked with the underlined name of the relevant country. The sources of the texts are listed in the bibliography sub-section on national legislation and regulations.)

4. *Ibid*, §4a.2.

5. Sweden, *Military Equipment Act*, Section 5 and Section 4.

6. *Ibid*, Section 2.

7. See Part B of this report.

1. Amnesty International, 2003, p.2.

2. European Union, 2003, §2.1, 2.3 and 3.1.

for adoption. This law “requires U.S. brokers living anywhere and foreign nationals residing in the United States to register and obtain licenses for all arms deals they transact. Not only does the law empower U.S. implementing and enforcing agencies to keep tabs on the number of brokers and the type of their operations, it also subjects violators to U.S. jurisdiction wherever an offence has been committed.”⁸

While even this law is not without shortcomings, the approach based on the registration of brokers, the licensing of their activities, and controls on their activities abroad, has proven too ambitious for EU member states. The EU Common Position therefore only requires member states to adopt certain basic controls, while suggesting several further controls that governments might consider including in their national control systems.

It is against this background that the present report investigates in particular those areas of arms brokering controls which are left as optional controls in the EU Common Position, or which are not mentioned at all. Where appropriate, EU member states should be encouraged to consider the feasibility of adopting such additional controls.

8. Bondi and Keppler, 2001, p.9.

Part A : Issue-specific controls

1. Brokering-related activities

While focusing on core brokering activities related to, for example, facilitating the negotiation of contracts on arms transfers from one country abroad to another country abroad, the EU Common Position does not explicitly address the need for controls on brokering-related activities. These related activities include services such as negotiating logistics and/or providing transportation, freight forwarding, insurance, financing arms transfers, and other financial services connected with arms transfers. The role of those arranging for or providing such services in undesirable arms transfers should not be underestimated. To mention just one example: in August 2000, it emerged that some 10,000 assault rifles, exported by Jordan and allegedly destined for the Peruvian military, had been illicitly diverted to Colombian rebels. Key people behind this deal included, next to corrupt Peruvian officials, Sarkis Soghanalian, an internationally known arms broker, and his business associate, Charles Acelor. It is believed that Acelor “both furnished the introduction and arranged the financial transactions between Soghanalian and the Peruvian traffickers. In turn, Soghanalian brokered the weapons and organized their delivery.”⁹ This example highlights that those involved in brokering illicit arms transfers are often working closely with associates who arrange brokering-related services. Indeed, arranging for the physical transport and financing of weapons transfers is as much a part of transfers as bringing together buyers and sellers for arms transfers.¹⁰

However, despite the known critical role of, for example, air transport in the circumvention of arms embargoes, very few states have controls on brokering-related activities. One reason for this is that many governments regard brokering-related activities as a peripheral or secondary problem. Another reason is that governments are often concerned that establishing a licensing requirement for brokering-related activities will lead to an overburdening of licensing authorities without promising significant tangible benefits. To elaborate, introducing a licensing system for shipping companies and air

carriers and obliging them to request an authorisation every time they intend to transport weapons would certainly increase administrative burdens for both national authorities and the transportation industry. The same might be true regarding the establishment of a licensing requirement for financial agents and others involved in brokering-related activities.

Nevertheless, there already exist precedents for controls on brokering-related activities. In Germany, for example, persons wishing to transport war weapons that are neither loaded or unloaded nor transit Germany on vessels sailing under German flag or in aircraft registered in Germany require a license.¹¹ Precedents for controls on financial services related to arms transfers exist in, for example, The Netherlands. There, Dutch residents require a license for engaging in financial transactions related to transfers of strategic goods taking place outside the European Union.¹² Another model exists in Italy. Under the Italian legislation, while focusing only arms transfers that originate in, pass through, or are destined for Italy, all bank transactions concerning such transfers require an authorisation by the Ministry of the Treasury.¹³ In the UK, new legislation that covers brokering activities is currently under preparation. It will include controls on the provision or arrangement of transport and the provision of financial and insurance services related to transfers of ‘restricted goods’, that is long-range missiles and equipment used in torture.¹⁴ It should be noted however that the UK is not planning to control brokering-related services with respect to transfers of other ‘controlled goods’. These form the main bulk of traded conventional weaponry.¹⁵

Options for controls

Unless governments become convinced that controls on brokering-related activities can make a significant contribution to curbing illicit arms transfers, concerns about administrative burdens will continue to act as an obstacle to greater controls. There are, however, ways of establishing certain minimum controls that would entail limited administrative burdens

9. Bondi and Keppler, 2001, p.10.

10. Wood and Peleman, 1999, particularly chapters 5 and 6.

11. Germany, *Kriegswaffenkontrollgesetz*, §4.1.

12. The Netherlands, *Besluit van 24 oktober 1996*, §1. See also Centrale Dienst voor In- en Uitvoer, 2003, p.13.

13. Italy, *Legge 09/07/1990 n° 185*, §27.1-2.

14. United Kingdom, *Consultation Document on Draft Orders*, p.29.

15. *Ibid*, p.33.

while substantially contributing to the creation of greater oversight over the actors involved in the arms trade. For example, a distinction can be made between requiring a license on a case-by-case basis (this is what EU member states have agreed on regarding core brokering activities) and a possible general authorisation for two or three years for those engaging in brokering-related activities. Such a general license would imply that transport agents and those providing financial services need, for the duration of their general authorisation, not apply for a license for every specific arms transfer they are involved in. To provide for greater oversight by the authorities, such a general authorisation would need to be tied to a regular reporting mechanism by authorisations holders on their activities, providing detailed information on the transfers they were involved in, and the other parties to the transfer. Authorisation holders should also be required to obtain documentary evidence by these other parties, that is, buyers, sellers and brokers or dealers that the arms transfer has received the necessary authorisations by the relevant authorities in the arms exporting and importing country, and, if applicable, by the country responsible for issuing the brokering license.

Governments choosing such an approach will also have to decide on whether they limit such general authorisations to, for example, those transporting weapons on ships or in aircrafts registered in their country, or whether they oblige every person falling under their jurisdiction to obtain a general authorisation for brokering-related activities. The current German approach would seem a minimal standard in this respect by considering ships and aircraft registered in Germany as an extension of German territory. It implies that if an aircrew captain were, for example, to transport and deliver arms in a plane registered in Germany to an unauthorised end-user, this captain would violate German law and be subject to legal sanctions. However, what the German regulation does not cover at present is the situation where a German national or resident delivers weapons to an unauthorised end-user on a ship or aircraft that is registered in a country without controls on brokering-related activities.

Governments seeking to strengthen their controls with a view to combating illicit arms transfers will also need to decide whether they limit controls on brokering-related activities to only those persons who actually transport weapons or provide financial services for

weapons transfers, or whether they will also impose controls on those arranging for the provision of brokering-related services. To clarify, often, once a contract on the transfers of arms has been negotiated, the logistics of the transfer have to be arranged. That is, someone will have to contact transport agents and those providing financial services to implement the negotiated transfer. Controls that only focus on core brokering activities such as those related to establishing contact between buyers and sellers and facilitating contract negotiations between buyers and sellers do not cover the activity of arranging brokering-related services. However, as the above mentioned activities of Mr. Soghalian and Mr. Acelor in the Peruvian trafficking scandal indicate, the distinction between core brokering activities and arranging brokering-related services might often be hard to make in practice. Governments should therefore seriously consider how to best avoid loopholes in their national approaches to brokering controls that allow unscrupulous individuals to circumvent regulations without the risk of legal punishment.

Recommendations

- Governments should seriously consider establishing a licensing requirement for arranging brokering-related services, that is, for negotiating logistics and establishing contact and/or hiring, for example, transportation companies.
- Governments should also consider the introduction of a general authorisation obligation for those individuals and entities falling under their jurisdiction who transport weapons or provide transfer-related financial services.
- General authorisations should be subject to regular renewals and should be tied to regular reporting obligations and the obligation of authorisation holders to verify the legality of the arms transfer they participate in.

2. Territorial scope of controls

Under the EU Common Position, EU member states have committed themselves to controlling brokering activities taking place on their territory. This includes the activities of both nationals and residents as well as of foreigners operating from the territory of a EU member state. At a minimum, governments should adopt the current practice in, for example, Germany and France with regards to the interpretation of 'activities taking place on their territory'. For controls to be applicable, at least one element of the brokering operation has to be linked to the territory of these countries. Such a link exists if, for example, the interested contract parties meet with the broker on their territory, or if telephone calls, e-mails or faxes related to the planned transfer in question are sent from or are received in their territory.¹⁶

An important further control aspect pertains to brokering activities completely conducted abroad. Brokers involved in undesirable arms transfers are often highly mobile, equipped with little more than a mobile phone, a fax and good connections, and may operate offices in several countries. While a broker might therefore be a national or resident in a EU member state, he or she can easily arrange for arms transfers in violation of, for example, EU arms embargoes from a country abroad. In most cases, this broker can return afterwards to his or her country of residence without risk of legal sanctions. Thus, without controls on activities abroad of brokers of EU nationality or residency, violations of UN, EU, OSCE or national arms embargoes as well as of national arms control regulations in EU member states will go unpunished.

It is against this background that the EU Common Position encourages, though not obliges, EU member states 'to consider controlling brokering activities outside their territory carried out by brokers of their nationality resident or established in their territory.' Indeed, certain governments have already enacted legislation that covers extraterritorial activities of arms brokers. In Belgium, for example, persons may be prosecuted for violations of Belgian arms brokering controls outside Belgian territory if they are found on Belgian territory. This jurisdictional competence also exists if the Bel-

gian authorities have not received a complaint or official notification by the authorities in the country in which the alleged violation took place as well as if the activity is not punishable in the country where it was carried out.¹⁷ In Finland, citizens, corporations or foreign residents are required to have a brokerage license to engage outside Finnish territory in the brokerage of defence material between third countries.¹⁸ In The Netherlands, controls on activities abroad relate to corporations located outside Dutch territory but having their main establishment in The Netherlands. These corporations, like those established in The Netherlands, are required to obtain a brokering license.¹⁹ In Sweden, authorities, Swedish companies and persons who are resident or permanently domiciled in Sweden may not engage abroad in the supply of military equipment, including intermediation activities, without a license.²⁰

While these countries therefore already have controls on brokering activities conducted abroad, there remain significant differences in which actors are covered by extraterritorial controls. The most extensive legislation would seem to exist in Belgium where activities abroad of both nationals and foreign residents in Belgium are covered. In contrast, brokering activities of nationals residing abroad are not covered in Sweden. Nevertheless, by including controls on activities abroad of foreign residents, the Swedish legislation already goes further than the recommendation in the EU Common Position.

Obstacles to extraterritorial controls

However, even the minimal standard for extraterritorial controls recommended in the EU Common Position is proving a challenge for certain EU member states. One issue of concern for governments in this respect are constraints they face on grounds of their legal traditions. In Germany, for example, administrative and criminal law generally refrain from controls on activities abroad of persons solely based on their nationality or residency.²¹ At the same

17. Belgium, *Loi du 25 mars 2003*, §15.

18. Finland, *Act on the Export and Transit of Defence Material*, Section 2a.

19. Kingdom of The Netherlands, 2003, p.6.

20. Sweden, *Military Equipment Act*, Section 4.

21. Laws tied to the nationality or residency of a person were widely abused under the regime of the national socialists in Germany in the 1930s and 40s. There now exists a certain barrier to enact new legislation that would equally focus on the nationality or residency of a person

16. Information provided to the author by the French Ministry of Defence, October 2003. See also Federal Republic of Germany, 2003, p.29f.

time, it should be pointed out that EU member states, including Germany, already have legislative precedents for extraterritorial jurisdiction. Such jurisdiction applies to crimes considered to be of exceptional gravity and that are banned by the international community as a whole. Such crimes include, for example, piracy, terrorism, and the sexual abuse of children.²²

Significantly, there is also considerable concern among many EU member states regarding the enforceability of extraterritorial controls on arms brokering. Particularly law enforcement agencies, including customs, are often sceptical as to their possibilities to gain access to documentary evidence on brokering activities conducted abroad. If documentary evidence relating to illicit arms transfers is already difficult to come by in general, difficulties are amplified if brokering activities are conducted abroad. Documentary evidence, however, is essential to allow for successful prosecutions. Moreover, in the absence of successful prosecutions, laws will be regarded as being of limited viability and as lacking the desired deterrent effect on potential violators. In turn, the general lack of known successful precedents of prosecutions for violations of extraterritorial controls on brokering in other countries further limits the willingness of certain EU member states to adopt extraterritorial brokering controls.

In contrast, many advocates for comprehensive brokering controls argue that laws should be adopted not only with a view to their potential enforceability, but also with a view to provide the legal basis for prosecutions in those cases where documentary evidence is available. Law enforcement agencies, intelligence services, United Nations panels of experts on sanctions-busting, investigative journalists and non-governmental organisations have frequently acquired documentary evidence relating to illicit arms brokering over the last years.²³ However, in the absence of a legislative basis for prosecutions, such evidence has remained unused by courts. An example here is the already mentioned case of Leonid Minin. When arrested in Italy in August 2000, police found a large number of documents in his possession that reportedly detailed illicit arms transfers to Sierra Leone. As Italy at present does not have legisla-

tion under which Minin's activities could be prosecuted, the documentary evidence of his activities remains unused by courts.

There is yet a further argument that is often brought forward against the adoption of extraterritorial controls, that is, for national and regional brokering controls to be truly effective, an international instrument on arms brokering must complement them. This is certainly correct insofar as the absence of brokering controls in other countries and regions means that unscrupulous brokers can conduct undesirable activities from these countries and regions with impunity. Thus, once an international instrument that stipulates the creation of brokering controls were adopted in all countries, the need for extraterritorial controls would be redundant. In consequence, certain EU governments argue that rather than adopting extraterritorial controls, there is a need for promoting an international brokering instrument.

While there is little doubt about the need for such an international instrument, there are limits to the argument that EU member states therefore need not adopt extraterritorial controls. First, it cannot be taken for granted that there will emerge the international consensus necessary for a start to negotiations on an international instrument on arms brokering. Further, it is far from certain that, if an international instrument were negotiated, the resultant instrument would have sufficient teeth necessary for effectively preventing undesirable arms brokering as opposed to becoming a political statement of intention with weak and partial commitments. Second, even if there were a comprehensive international instrument, its effective implementation may be hampered by limited resources and capacities of governments particularly in the developing world. Thus, even an international instrument does not necessarily ensure a speedy end to the activities of unscrupulous brokers. On these grounds then, there would still seem to be a good case for the adoption of extraterritorial brokering controls by all EU member states.

As a first step, EU member states without any extraterritorial controls on brokering activities might consider imposing extraterritorial controls only in relation to certain categories of weapons or to specific destinations. A notable example here is the UK. In 1998, the UK banned anti-personnel landmines and activities such as assisting, encouraging or inducing other persons to participate in the acquisition or transfer of anti-personnel landmines, as well as on

rather than on the question of whether or not the relevant activity was undertaken in Germany. See Pottmeyer, 2003.

22. Ibid.

23. See United Nations, 2001, p.45ff; United Nations, 2000/1, p.31ff; and United Nations, 2000/2, p.9ff. See also Wood and Peleman, 1999.

making arrangements for transfers or contracts on transfers of anti-personnel landmines.²⁴ The ban covers these activities in the United Kingdom as well as abroad.²⁵ Further, in 2002, the UK adopted a new Export Control Act.²⁶ To enter into force, this act has to be complemented by secondary legislation that is planned for adoption by May 2004. This secondary legislation will introduce new controls on, among other things, the trafficking and brokering of military equipment. For the trade in and brokering of 'restricted goods', that is, long-range missiles and equipment used in torture, controls will apply to activities of UK persons anywhere in the world. Controls on UK persons abroad are also planned with respect to trade and brokering of sanctioned materials to embargoed destinations. Extraterritorial brokering controls will therefore exist with respect to UN, EU, OSCE and national embargoes.²⁷ Again, however, the UK government currently does not plan the imposition of extraterritorial controls on brokers who trade in 'controlled goods', that is, conventional weaponry with the exception of certain categories such as long-range missiles. Nevertheless, if experiences of British licensing and law enforcement authorities should be positive regarding the implementation of these partial extraterritorial brokering controls, momentum would build up to extend such controls to brokering of all conventional weapons.

not only to nationals residing in their territory, but also to foreign residents and those maintaining offices in their territory, as well as to corporations with their main establishment in their territory.

Recommendations

- At a minimum, states should subject brokering activities that have any link with their territory to a licensing requirement. Such a link should already exist if any part of the brokering activity, such as meetings or telecommunications take place, are received on, or are sent from, EU member state territories.
- As a minimal standard for extraterritorial controls, legislation should criminalize brokering activities conducted abroad involving transfers of goods to destinations or end-users under a UN, EU, OSCE, or national embargo.
- Countries intending to introduce extraterritorial controls on brokering activities should seriously consider applying such controls

24. United Kingdom, *Landmine Act*, §2.1-8.

25. *Ibid*, §3.1-6.

26. United Kingdom, *Export Control Act*.

27. United Kingdom, *Consultation document on Draft Orders*, p.28.

3. Screening license applicants

An important element of brokering controls is the screening of applicants for brokering licenses prior to decisions regarding the granting or denial of licenses. The principle underlying such screening should be to deny licenses to those individuals or entities who do not fulfil certain requirements of trustworthiness or credibility. For example, anyone who, in the past, was convicted for involvement in illicit trafficking, or who otherwise violated national arms controls, should have brokering licenses denied. Licensing bodies should further use special vigilance when assessing applications by individuals and entities who were accused of such violations in, for example, reports by groups of governmental experts and by non-governmental organisations. The screening of applicants would thereby significantly assist in identifying and excluding from the legitimate trade those brokers, who, in the past, demonstrated their disregard for their obligations under national and international law.

In order to allow for effective screening of license applicants, the following elements would seem necessary. At a minimum, requests for brokering licenses should contain information on the broker's "name, domicile, residence and place of business, and, in the case of legal entities, the names, domicile and residence of the persons responsible for the management and control of the legal entity."²⁸ Further, every person or entity applying for a brokering license should be obliged to provide full information on, if any, prior convictions for involvement in illicit trafficking of arms or other embargoed goods, or for other violations of national arms control regulations. Failure to provide accurate information should be subject to legal sanctions.

Registries on arms brokers

One fundamental question concerning the screening of license applicants is how licensing authorities will acquire the necessary information to decide on the credibility and trustworthiness of applicants. A straightforward mechanism to allow for such screening is the establishment of a registration requirement for arms brokers. The EU Common Position, for exam-

ple, while not obliging member states to adopt a registration requirement, nevertheless suggests that member states 'may also require brokers to obtain a written authorization to act as brokers, as well as establish a register of brokers.' Under such a mechanism, only those who have a valid registration for trading or brokering weapons are entitled to apply for brokering licenses. This means that registered brokers would still need to apply for licenses for brokering individual weapons transfers. Such a registration requirement already exists in, for example, Belgium, where the Ministry of Justice may only accord a license for a specific brokering transaction to those persons, who possess a trade authorisation under the Law of 1933 on the Manufacture of and Trade in Arms and Ammunition.²⁹ In France, entities manufacturing or trading war materials, including their intermediaries or sales agents, also require a prior authorisation by the state.³⁰ Such registration requests in France have to include information on the person or entity applying for an authorisation as well as on the planned activities. Granted authorisations indicate, among other things, the material in which the trade has been authorised as well as the duration of the authorisation.³¹ Authorisations can be withdrawn for reasons of public order or if the authorisation holder ceases to fulfil the conditions under which the authorisation was granted.³² A recent governmental order in France further stipulates the creation of an electronic database for the collection of information submitted by those requesting a registration.³³ Likewise, in The Netherlands, any engagement in the trade in goods falling under the 1997 Arms and Ammunition Act requires a prior certificate. This is only handed out after the successful completion of a training course by the applicant.³⁴

In contrast, EU member states without a registration requirement for those engaging in the arms trade, or even only for arms brokers, often view the imposition of such a requirement with scepticism. Some countries, for example, argue that the registration of brokers might give brokers registered in EU member states a potentially unwarranted 'bill of clean health' on the international arms market.

29. See *Belgium, Arrêté royal du 16 mai 2003*, §1.1.

30. *France, Décret n° 95-589*, §6.3.

31. *Ibid*, §13.

32. *Ibid*, §15.

33. *France, Arrêté du 15 janvier 2003*.

34. The Netherlands Ministry of Foreign Affairs, 2003.

28. *Model Convention on the Registration of Arms Brokers and the Suppression of Unlicensed Arms Brokering*, §3.2. See also Bondi, 2001.

Nevertheless, improved mechanisms for the screening of applicants for brokering licenses and the creation of registries on brokers may also be possible in countries that do not impose a general registration obligation. For example, a registry of arms brokers may be established as part of the licensing process for brokering activities. This is the practice in, for example, Sweden, where the National Inspectorate of Strategic Products (ISP) keeps records of all applications for brokering licenses.³⁵ The ISP therefore has a good idea of who in Sweden is engaging in arms brokering, which, in turn, greatly facilitates the monitoring of arms brokering activities taking place on Swedish territory.³⁶ Similarly, Finland, which at present does not have a registration requirement, keeps a database of all granted brokering licenses. In a notable example of transparency, the public can consult this register.³⁷ Moreover, the EU Common Position stipulates that member states 'should keep records for a minimum of 10 years of all persons and entities which have obtained a [brokering] license'. Elements for the establishment of a registry containing information on active arms brokers will consequently exist even in those countries that do not require a general registration.

To clarify, governments should, prior to decisions on whether or not to grant brokering licenses screen applicants (as well as, where applicable, applicants for general authorisations for brokering-related activities). Such screening may either be undertaken as part of a registration requirement or, at a minimum, through the creation of registries on arms brokers based on information provided in applications for brokering licenses. In either case, licensing bodies should keep those records, where a registration request or brokering license application was denied on grounds of concern about the reliability of the applicant. Such denials should be circulated among the licensing bodies of EU member states to ensure that a broker who is considered as lacking credibility and trustworthiness in one state cannot simply relocate his or her business to another EU member state.

Recommendations

- Governments not planning to establish a general registration scheme for arms brokers

should seriously consider appropriate alternative means to screen brokering license applicants. At a minimum, this should entail the establishment of a registry of arms brokers based on the collection of data obtained through license applications.

- Governments should, as a general rule, deny licenses to any person or entity which does not meet requirements of trustworthiness and credibility, including those who have a previous conviction for involvement in illicit trafficking of goods or violations of national arms control regulations.
- Registers on arms brokers should be kept in centralized and electronic databases that allow easy access by both national and authorised foreign licensing bodies and law enforcement agencies.

35. Kingdom of Sweden, 2003, p.6.

36. Personal interview at the National Inspectorate for Strategic Products, Stockholm, August 2003.

37. Finnish Ministry of Defence, 2003, p.3.

4. Licensing arms brokering

Once a decision has been reached on the credibility and trustworthiness of an applicant for a brokering license, licensing authorities will need to decide on whether the weapons transfer to be brokered is permissible under national regulations. The principle underlying licensing decisions on arms brokering should be to only grant licenses for those arms transfers that would also receive an export license under the national laws and regulations and international commitments of the country in which the brokering activity takes place. To recall, regulations on arms brokering, as defined in the EU Common Position, cover only those brokering activities that are related to the transfers of weapons on the EU Common List of Military Equipment from one country outside the EU to another country outside the EU. Decisions on such brokering licenses will be taken on a case-by-case basis. An example might be an application by a person or entity acting on the territory of a EU member state to broker an arms transfer between a country in Asia and a country in Africa. In this case, licensing authorities will need to assess whether there are reasons why the recipient country or end-user of the brokered weapons should not receive these weapons. In practice, this would mean that a EU member would deny a brokering license for a transfer of arms where, for example, there is a clear risk that the weapons might be used for internal repression in the country of final destination. To be clear, EU member states have no authority to prevent the export of weapons by an Asian country to an African country. But licensing bodies may determine that a broker operating from the territory of a EU member state might not participate in such a transfer.

Decisions on brokering licenses therefore require that licensing bodies obtain full information on the planned transfer of weapons. Such information should include information on the broker, on the potential buyer and seller of weapons, on the type, quantity and origin of brokered weapons, and on their country of final destination and their end-use and end-user.

Insofar as available at the time of requesting a brokering license, applicants should also provide information on those providing transfer-related shipping and financial services, on trade routes, and dates of transfers. As such information might only become available after a contract has been concluded, license holders should

be obliged to submit it as soon as it becomes available. Further, brokers should be required to submit proof of delivery to the authorised recipient in the form of, for example, a delivery verification certificate. Additional controls could include measures such as currently operated in Belgium. There, brokers have to pay a deposit that is repaid once proof of correct and legal execution of the operation in question has been obtained by the Belgian authorities.³⁸

In the context of deciding on brokering licenses, EU member states will also have to decide on whether or not to use available instruments such as end-use declarations, and, if so, for which cases. To stay with the previous example, one straightforward option here is to require brokers to obtain a certified copy of an end-use declaration issued by the relevant authorities in the arms importing African country to the exporting Asian country. However, not all arms exporting countries require such a declaration and a broker would therefore not be in a position to obtain relevant documentation. Ideally, the EU member state issuing the brokering license would, in such cases, make the license conditional on the receipt of an original end-use declaration by the arms importing African country even though the weapons in question do not originate from EU territory. EU member states might also require original end-use declarations for all arms transfers that are brokered by those falling under their jurisdiction. When requesting original end-use declarations, EU member states will also have to decide on the appropriateness of including obligations on the arms importing country regarding the re-transfer of such weapons.

Types of licenses

A further issue that might require clarification in certain EU member states is the types of available brokering licenses. Regarding export licenses for military goods, for example, several EU member states such as Germany, France and the UK issue 'individual' as well as 'global' export licenses. In the former case, an arms exporting company receives an authorisation only for a specific export to a specified country of final destination or end-user. In the latter, an arms exporting company may be

38. Belgium, *Loi du 25 mars 2003*, §15. The deposit for an indeterminate license is 10.000 EUR. For licenses for specific operations, the deposit is 1% of the value of the operation with a minimum amount of 1.000 EUR (See Belgium, *Arrêté du 16 mai 2003*, §3).

authorised for several exports (often limited to a certain weapons category or monetary value) to one or more specified countries of final destination or end-users within the period of duration of the ‘global’ license. Such ‘global’ licenses are often used in, for example, Germany for arms exports to NATO allies. While exports under ‘global’ licenses are consequently not controlled on a case-by-case basis, they are often favoured by the defence industry and licensing bodies as they imply reduced administrative burdens.

a) Destination-specific licenses

With regards to brokering licenses, these will, according to the EU Common Position, be assessed in general on a case-by-case basis and limit licenses to specific transfers. However, considering the potential administrative burdens for the defence industry and licensing bodies, one might anticipate pressures to introduce ‘global’ brokering licenses to certain specified countries of final destination and end-users. Such a ‘global’ brokering license could imply that a broker may arrange for several arms transfers to a specified recipient country or end-user during the period of the license without having to apply for an ‘individual’ license every time he or she intends to broker an arms transfer to this country or end-user. In the case of Germany, for example, such a ‘global’ brokering license could imply that the broker may arrange for several arms transfers that are destined to NATO allies. The same person or entity however would still need to apply for an ‘individual’ brokering license if he or she intended to broker an arms transfer to a country or end-user not covered by the ‘global’ brokering license.

If ‘global’ brokering licenses are not to undermine efforts to combat illicit arms trafficking, governments will need to clearly define the circumstances under such licenses may be granted. As a general rule, ‘global’ licenses for arms brokering should only be granted where the recipient countries of brokered goods operate responsible and effective arms control policies and are not otherwise considered to give cause for concern. Moreover, ‘global’ brokering licenses should be time-limited and clearly specify the types and quantities of goods that may be brokered, as well as their end-use/end-user.

b) Activity-specific licenses

There might also be scope for considering the issuing of general authorisations for specific activities. One possible area of application previously mentioned in this report might be brokering-related activities. For example, under Germany regulations, war weapons that are not loaded, unloaded or transit German territory may be transported on German ships and aircraft under a general authorisation or ‘open’ license.³⁹ This approach is based on the perception that, although controls on the transport of weapons are necessary, the need for these does not justify requiring an individual license every time weapons to certain specified countries are transported. Such an approach could be extended to cover not only transport services but also the provision of financial services. Importantly, such ‘open’ licenses for brokering-related activities would establish the framework for legal sanctions on those, who are found to have engaged in unauthorised actions.

Irrespective of which types of licenses will be available though, license holders should be obliged to verify that the other parties to the arms transfer have received the necessary authorisations by the respective national authorities. And, particularly with a view to ‘global’ or ‘open’ licenses, license holders should be obliged to provide regular comprehensive reports on their activities.

Recommendations

- Governments should ensure that applicants for brokering licenses provide full details on their person or entity, the other potential parties to the arms transfer, including the end-user, and on the brokered weapons.
- License holders should be obliged to verify that other parties to the transfer have obtained the necessary authorisations by their respective national authorities.
- Holders of ‘individual’ brokering licenses should be obliged to provide documentary evidence of the correct delivery of brokered weapons.
- Holders of ‘global’ or ‘open’ brokering licenses should be obliged to provide regular comprehensive reports on their activities.

39. Further requirements for the receipt of an open license for transport of war weapons include that weapons are unloaded in certain countries such as EU member states, Norway, Turkey or the USA. See [Germany](#), *Erste Verordnung über Allgemeine Genehmigung*, §3.

5. Monitoring brokers

A further important tool for creating greater oversight regarding the activities of arms brokers is the creation of monitoring mechanisms. One possible measure already mentioned is the imposition of a reporting obligation on arms brokers and others involved in the arms trade. This is often practiced in those countries, which operate a registration scheme for those involved in the arms trade. In France, for example, intermediaries registered to trade in war materials have to maintain a register in which they note, from the first contacts, the name of the entities brought into contact, the contents of the operation and its status. This obligation to maintain a register equally applies to operations involving the buying or selling of war materials located outside France.⁴⁰ These registers are subject to controls by the relevant authorities⁴¹ and authorisation holders must provide a six-monthly report on their activities.⁴² Failure to keep accurate records is punishable by a fine.⁴³

Even countries without a registration scheme can create better oversight regarding the activities of their subjects. Sweden, for example, obliges license holders for the supply of military equipment to provide three-monthly reports on their marketing activities abroad as well as on measures aimed at concluding agreements on the granting or transfer of manufacturing rights and on the development or joint manufacture of such equipment with persons or entities abroad.⁴⁴ These reports have to contain information on which countries such activities are undertaken in, the particular recipient to which marketing efforts are addressed, and the types of equipment marketed.⁴⁵ While this reporting obligation extends to intermediation activities conducted abroad, it does not cover activities when the military equipment in question is already located abroad.

A further approach exists in countries, which, rather than focusing on activities of brokers, focus on information about the whereabouts of military goods by requiring manufacturers and dealers to keep arms registers. In Austria, for example, those exporting war materials are required to keep an arms register in

which must be noted information on the exported weapons, the date of export, and the buyer. The registers must also include proof of exportation. The registers are subject to controls by the relevant national authorities.⁴⁶ Similarly, in Germany, persons manufacturing, transporting, including through a third party, or trading war weapons have to maintain an arms register to prove the whereabouts of these weapons.⁴⁷ In cases of exports, these registers must provide information on the person who transported the weapons, on who acquired the weapons, and on the date of exportation.⁴⁸ Those required to keep such registers further have to submit six-monthly reports on the changes in their stockpiles.⁴⁹ These stockpiles and registers are subject to controls by the relevant authorities.⁵⁰

As demonstrated above, there exist considerable differences in approaches of EU member states to the monitoring of those involved in the arms trade. The most comprehensive system would seem to exist in France by requiring brokers to provide full information on other parties involved in potential weapons transfers as well as on the weapons in question. Importantly, this reporting obligation exists irrespective of whether the weapons in question are transferred from French territory or from abroad. In contrast, arms registers in Germany and Austria do not require brokers to provide full information on other parties to a contract, on transfers that were negotiated but did not result in a contract, and on weapons bought, sold or mediated abroad. In Austria and Germany therefore, monitoring of arms brokers and brokering activities is much more limited.

Given this diversity of approaches to monitoring arms brokering among even the few countries that operate such a mechanism, there is certainly a good case to be made to work towards a general reporting obligation for arms brokers and those engaging in brokering-related activities in all EU member states. The regular reports to be provided by brokers in France could be taken as the basis for a high common standard among EU member states. Such reports should further be extended to include an obligation to provide documentary evidence for the correct delivery of brokered goods to the authorised end-user in the country of final destination. Such an obligation would also seem to

40. France, *Décret n° 95-589*, §16-1.2.

41. *Ibid.*, §16-2.

42. *Ibid.*, §16-3.

43. *Ibid.*, §102.

44. Sweden *Military Equipment Act*, Section 11.1-2.

45. Sweden, *Military Equipment Ordinance*, Section

46. Austria, *Verordnung 252*.

47. Germany, *Kriegswaffenkontrollgesetz*, §12.2.

48. Germany, *Zweite Verordnung*, §9.

49. *Ibid.*, §10.

50. Germany, *Kriegswaffenkontrollgesetz*, §14.3.

be one of the few mechanisms available to allow for the verification of the correct execution of individual arms transfers.

However, certain governments voice concern that a reporting obligation for arms brokers and those engaged in brokering-related activities would be too cumbersome to be effectively implemented. Nevertheless, the Swedish practice of requiring companies and individuals to provide regular information on their marketing activities abroad shows that even countries without a registration requirement may establish useful monitoring mechanisms. Also, experience from those countries operating a reporting obligation suggests that the actual number of people involved in brokering activities is often considerably lower than sometimes assumed. Administrative burdens might therefore be less than sometimes feared by certain governments.

Recommendations

- Governments should consider which information additional to that provided in applications for brokering licenses they may require for improving their monitoring capacities of brokers operating from their territory.
- Governments not yet requiring regular reports by arms brokers and those engaging in related activities should seriously consider the introduction of such a requirement for anyone who has applied for a brokering license and, where applicable, who is registered to engage in the arms trade.
- These reports should contain information on parties to a contract even if the contract was not successfully concluded, on the weapons or goods in question, as well as on transfers of weapons in the ownership of brokers within the EU or abroad.

6. Promoting co-operation

As governments rightfully point out, brokering controls can only make a significant contribution to the combat of undesirable arms transfers if national measures are complemented by further measures on regional and international levels. A welcome development in this respect is the commitment by EU member states to 'establish a system for exchange of information on brokering activities among themselves as well as with third states'. This will include information on national legislation and records of brokers, but also on denials of brokering licenses. The General Secretariat of the Council of the EU will support information exchanges between member states on denials of brokering licenses through the creation of a centralised electronic database.

It will be important in this context that governments not only exchange such information, but that they also work towards a common application of controls. Information exchanges on brokering licenses should therefore be fully integrated into the mechanisms of the EU Code of Conduct on Arms Exports. EU member states should, as a general rule, not grant a brokering license that has previously been denied by another member state. If a EU member state nevertheless contemplates the issuing of a brokering license that was previously denied by another EU member state, it should have to consult with the state that previously denied the license. Moreover, EU member states could consider clearly identifying in the information submitted to the General Secretariat of the Council of the EU those arms brokers they consider lacking trustworthiness and credibility. EU member states could also integrate statistical information on granted brokering licenses, including the origins and destination of brokered weapons, as well as on denied licenses, in their yearly reports on the implementation of the EU Code of Conduct.

Looking further abroad, EU member states should consider how best to assist countries requesting support for the development of national legislation and effective enforcement mechanisms on arms brokering. The EU could, for example, consider the integration of assistance for the development of national brokering regulations in its Joint Action on Combating the Destabilizing Accumulation and Spread of

Small Arms and Light Weapons.⁵¹ In addition, EU member states might consider offering assistance on a bilateral basis. To elaborate, there are still some 160 countries which do not operate brokering controls. The development of relevant controls in these countries will be key to creating the international mechanisms required for combating and preventing undesirable arms brokering.

The development of national regulations on brokering can also be supported by agreements on further regional and sub-regional levels. In this context, it is encouraging to note that the development of national control systems on brokering is suggested in, for example, the OSCE Document on Small Arms and Light Weapons, the Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons, the Protocol on the Control of Firearms, Ammunition, and other Related Materials in the Southern African Development Community Region, and the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials.⁵² Efforts to arrive at common understandings between states on the problem of undesirable arms brokering and means to combat the phenomenon are also promoted in, for example, the Wassenaar Arrangement, and by the Dutch-Norwegian Initiative on Enhancing International Co-operation on Combating Illicit Arms Brokering.⁵³

The need for greater coherence

However, stipulated controls in these regional and sub-regional initiatives either only take the form of recommendations or address arms brokering in a partial manner. Moreover, there remain significant differences in the scope and depth of proposed controls. Seen from an international perspective, brokering controls therefore remain fragmented. A further elaboration of controls in these regions is consequently highly desirable. A welcome development in this respect is the current effort by the Organisation of American States to elaborate model brokering regulations for OAS member states.⁵⁴

51. European Union, 2002.

52. See, for example, www.grip.org (Thèmes de Recherche: Commerce des armes) for copies of these instruments.

53. See, for example, www.nisat.org (Brokering Theme Page).

54. United Nations, 2003, p.18f.

It is the support of such efforts to introduce, or where they already exist, to strengthen brokering controls on regional and sub-regional levels that should be one of the current priorities for governments. The EU and its member states should therefore fully support the present efforts of, for example, the Norwegian and Dutch governments to promote the principles underlying the EU Common Position as a possible basis for national regulations outside the EU. Regional and sub-regional organisations that have already expressed their interest in discussing these principles include the Economic Community of West African States and the Southern African Development Community. Further relevant organisations might include the Association of Southeast Asian Nations, the Pacific Island Forum and the Arab League.

Indeed, further regional and sub-regional efforts might, in time, turn out to be important building blocks for greater international or global efforts to counter undesirable arms brokering. Such international efforts have, up to now, been hampered by a lack of commonly shared understandings and perceptions regarding the need for global controls on arms brokering. As a result, encouragements to work towards brokering controls contained in, for example, the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects and the UN Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition remain highly limited. Moreover, they even fail to provide for the measures that are needed to combat the most evident case of illicit arms brokering, that is, brokering of weapons to governments or non-state actors that are under a mandatory UN arms embargo. Efforts undertaken so far within the framework of the UN therefore do not remove the need for a comprehensive international instrument on the control of arms brokering.⁵⁵

Towards an international instrument

An international instrument will be essential to reinforcing national legislation and (sub-) regional agreements on brokering controls by defining internationally accepted understandings and common controls on brokering activities. Such an instrument should also provide for mechanisms to support international co-

operation and the effective implementation of national brokering controls. Encouragingly, there is already some support for the creation of an international instrument on arms brokering. The EU, for example, clearly recognised the need for, and called for, the adoption of a legally binding multilateral instrument to combat illicit arms brokering at, for example, the 2001 and 2003 UN meetings on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects.⁵⁶ Against this background, governments should be encouraged to take notice of and take as a basis for international negotiations the 'Model Convention on the Registration of Arms Brokers and the Suppression of Unlicensed Arms Brokering' that has been drafted by The Fund for Peace.⁵⁷ Main points of this model convention for an international, legally-binding instrument include national registers on arms brokers, obligatory licensing systems for brokering activities, the interdiction of brokering transfers leading to violations of international standards such as UN embargoes, international terrorism, genocide, or crimes against humanity, as well as penal sanctions and penalties for violations of national legislation on arms brokering.⁵⁸

Recommendations

- EU member states should ensure that the planned information exchanges under the EU Common Position make the best possible contribution to preventing arms brokers exploiting differences in national regulations and policies.
- The EU and its member states should consider ways to further promote regional and international efforts to establish greater controls on arms brokering, and to assist countries requesting support for the development of relevant national legislation.
- The EU and its member states should be encouraged to take note of and promote the principles underlying the Model Convention on Arms Brokering as a basis for international negotiations.

55. Bondi, 2002.

56. Trezza, 2003.

57. See fn. 28.

58. Ibid.

Part B : National controls on arms brokering

7. Austria

Legislation stipulating a licensing requirement for arms brokering exists both with respect to war materials, covered since 2001 in the War Materials Act, and to other military goods that are covered by the Foreign Trade Act and its related Ordinance.⁵⁹ Controlled goods under this ordinance include certain small arms and light weapons with a calibre of 12,7 mm or less, certain such weapons with a larger calibre, and related ammunition.⁶⁰ Brokering is defined as the activity where a person resident or registered in Austria allows or effects the transfer of goods from one country outside the customs union of the European Union to another country outside the customs union of the European Union.⁶¹

Licenses for brokering war materials are granted by the Federal Ministry of the Interior in consensus with the Federal Ministry for Foreign Affairs and after consultation with the Federal Ministry for National Defence.⁶² The granting of a license can be made conditional on the submission of an end-use declaration.⁶³ When considering applications, criteria taken into account include: weapons transfers shall not be authorised if they contravene Austria's obligations under international law or its foreign policy interests; transfers shall not be authorised to a region in which there is an armed conflict, where there is a threat that such a conflict will break out or other dangerous tensions exist; transfers shall not be authorised to a country of final destination in which, because of serious and repeated violations of human rights, there exists the danger that the delivered war material will be used in violations of human rights; and respect for arms embargo decisions by the Security Council of the United Nations.⁶⁴

A different licensing process exists under the 1997 Foreign Trade Ordinance. The brokering of military goods covered by the Ordinance that are located outside the EU customs union requires a license by the Minister for Economic Affairs.⁶⁵ Applicants have to provide all necessary information for the evaluation of their application⁶⁶ and the minister will not grant a license if this would contravene Austria's international obligations. The minister will further reject a license if there is a risk to world peace and international security, to Austria's security and foreign relations, or if exports would go to an area in which there exists an armed conflict.⁶⁷ Licenses both for the brokering in war materials and in other military materials can only be given for individual transactions or on a temporary basis, and may be withdrawn if the conditions under which they were granted no longer exist.⁶⁸ Violations, even if caused by negligence, of the Austrian War Materials Act and the Foreign Trade Act and Ordinance, including their provisions on arms brokering, may be punished by a monetary fine or imprisonment of up to 2 years.⁶⁹

59. *Austria, Kriegsmaterialgesetz*, §1.1; *Außenhandelsgesetz*, §3.3 and §5.3.3; and *Außenhandelsverordnung*, §6.1.

60. *Austria, Außenhandelsverordnung*, Anlage 1, 0001-0003.

61. *Austria, Kriegsmaterialgesetz*, §1.4.

62. *Ibid*, §3.1.

63. *Ibid*, §3.2.

64. *Ibid*, §3.1.1-6.

65. *Austria, Außenhandelsverordnung*, §6.1.

66. *Austria, Außenhandelsgesetz*, §9.1.

67. *Ibid*, §8.1.2.

68. *Ibid*, §9.3 and §9.5; and *Austria, Kriegsmaterialgesetz*, §3.3.

69. *Austria, Kriegsmaterialgesetz*, §7.1 and *Austria, Außenhandelsgesetz*, §17.1.

8. Belgium

Brokering activities in Belgium are regulated, since its amendment in March 2003, by the 1991 Law on the Import, Export, Transit and Combat against Trafficking in Arms and Ammunition. Weapons covered by this law include military small arms and light weapons as well as related ammunition.⁷⁰ Belgians as well as foreign residents and dealers in Belgium require a license to negotiate, export or deliver abroad, or possess to this end, military equipment, or intervene as intermediary in these operations, irrespective of the origin or destination of goods and whether or not the goods enter Belgian territory. An intermediary is whoever, for profit or free of charge, creates the conditions for the conclusion of a contract entailing the above operations, or whoever concludes such a contract if the transport is undertaken by a third party.⁷¹ All persons and entities wishing to trade arms and ammunition require a prior registration.⁷²

License applications are assessed by the Minister of Justice and can be requested for an indeterminate period of time or for a specific transaction. The minister can only grant such licenses to those who are authorised to trade in military weapons, who have given no cause to doubt their moral reputation, and who have paid a deposit to guarantee the correct and legal execution of the operation in question.⁷³ Applicants for brokering licenses have to include a copy of their authorisation to trade in weapons and documents that allow for the identification of the potential buyer.⁷⁴ Applications are assessed against the Belgian arms export criteria, which largely follow the criteria set out in the EU Code of Conduct on Arms Exports.⁷⁵

The minister may limit, suspend or withdraw a license and seize the deposit if the license holder ceases to fulfil the conditions under which the license was granted, fails to respect the relevant laws and regulations, does not use the license for more than a year, or engages in activities, which, in conjunction with the li-

censed activities, present a risk to public order. The minister may act likewise if the license was granted on grounds of incorrect information provided by the license applicant. The deposit payable for brokering transactions is paid back after the completion of the operation and the receipt of an end-user certificate or after the voluntary cessation of operations under an indeterminate license.⁷⁶

The Belgian jurisdiction has the competence to hold trial over persons accused of having violated Belgian legislation on arms brokering outside Belgian territory if the accused is found on Belgian territory. This competence also exists if the Belgian authorities have not received a complaint or official notification by the authorities in the country in which the alleged violation took place as well as if the activity is not punishable in the country where it was carried out.⁷⁷ Violations and attempted violations of the Belgian legislation on arms brokering are punishable by imprisonment of up to 5 years and/or a monetary fine.⁷⁸

70. Belgium, *Arrêté du 2 avril 2003*, Annexe, 2e catégorie, Section 1.A.1-3.

71. Belgium, *Loi du 25 mars 2003*, §15.

72. See Belgium, *Arrêté du 16 mai 2003*, §1.1.

73. Belgium, *Loi du 25 mars 2003*, §15. The deposit for an indeterminate license is 10.000 EUR. For licenses for specific operations, the deposit is 1% of the value of the operation with a minimum amount of 1.000 EUR (See Belgium, *Arrêté du 16 mai 2003*, §3).

74. Belgium, *Arrêté du 16 mai 2003*, §1.1-3.

75. Belgium, *Loi du 26 mars 2003*, §2.

76. Belgium, *Loi du 25 mars 2003*, §15.

77. *Ibid.*

78. *Ibid.*

9. Finland

Brokering controls came into force in Finland in December 2002 following an amendment to the 1990 Act on the Export and Transit of Defence Material.⁷⁹ Defence materials covered by this act include military small arms and light weapons with the exception of non-automatic rifles, carbines, revolvers, pistols and smooth-bore weapons considered civilian firearms in Finland.⁸⁰ The Act defines brokering as an activity where parties are brought together in order to conclude a contract concerning export or transfer of defence material between third countries.⁸¹ In practice, this definition applies to private persons or legal entities engaged in acquisitions and transfers where products enter into the legal possession of the broker as well as to mediation without direct acquisition of goods.⁸² These brokering activities, including the assignment and transfer to third countries of manufacturing know-how and rights, machine tools and equipment as well as computer software related to the manufacture or use of defence materials⁸³, require a license.⁸⁴ This licensing requirement also applies to Finnish citizens, corporations or foreigners considered permanent residents of Finland wishing to engage outside Finnish territory in brokering defence materials between third countries.⁸⁵ Further, there is an obligation to keep arms registers, which, however, pertains only to civilian firearms.⁸⁶

Requests for brokering licenses and prior enquiries have to be submitted to and are decided on by the Advisory Committee for Exports of Defence Material.⁸⁷ License applicants may also be required to provide an end-use certificate, issued by the competent authority in the

country of final destination.⁸⁸ License applications are assessed on a case-by-case basis and licenses may not be granted if they jeopardise Finland's security or contradict Finland's foreign policy.⁸⁹ Violations of the Defence Material Act, including its provision on brokering controls, may entail a fine or imprisonment of up to 4 years.⁹⁰

The Ministry of Defence further keeps a database of all granted licenses. They are public documents and can be consulted at the ministry. It also plans to publish annual statistics on all granted licenses. Legislation stipulating a register on arms brokers is currently in preparation.⁹¹

79. *Finland, Act on the Export and Transit of Defence Material*.

80. See Republic of Finland, 2003, p.5f.

81. *Finland, Act on the Export and Transit of Defence Material*, Section 1.1. See also Republic of Finland, 2003, p.11.

82. Finnish Ministry of Defence, 2003.

83. *Finland, Act on the Export and Transit of Defence Material*, Section 1.2.

84. *Ibid*, Section 2a.1.

85. *Ibid*, Section 2a.2.

86. Republic of Finland, 2003, p.5.

87. The committee is chaired by the Ministry of Defence and includes representatives from the Ministry of Foreign Affairs, the Ministry of Trade and Industry, the Ministry of the Interior, the Board of Customs and the Security Police. See Republic of Finland, 2003, p.7.

88. *Finland, Act on the Export and Transit of Defence Material*, Section 4.3.

89. *Ibid*, Section 3.1.

90. *Ibid*, Section 7.1.

91. Finnish Ministry of Defence, 2003, p.3.

10. France

Brokering controls in France were adopted in January 2002 through a modification of the secondary legislation pertaining to the 1939 Decree on War Materials, Weapons and Munitions.⁹² Under this secondary legislation,⁹³ brokering controls are integrated in those on the manufacture and trade⁹⁴ in war materials, which include military small arms and related ammunition but exclude hunting, sport shooting and historical small arms.⁹⁵ Entities engaging in the manufacture or trade of these materials, including the activities of their intermediaries or sales agents, must register with the relevant state authorities.⁹⁶ Intermediary activities are defined as all commercial or profit oriented operations which aim at bringing together persons wishing to conclude a contract for the buying or sale of war materials or with the aim of concluding such a contract on behalf of one of the parties.⁹⁷

Registration requests have to be submitted to the Ministry of Defence, which files these requests⁹⁸ and decides on them after consultation with other relevant ministries.⁹⁹ Intermediaries also have to maintain a register in which they note, from the first contacts, the name of the entities brought in contact, the contents of the operation and its status. This obligation to maintain a register equally applies to operations involving the buying or selling of war materials located outside France.¹⁰⁰ The registers are subject to controls by the relevant authorities¹⁰¹ and authorisation holders must provide a six-monthly report on their activities to the Ministry of Defence.¹⁰²

Insofar as mediation activities with a view to negotiating or arranging arms exports from France are concerned, secondary legislation from October 1992 is applicable.¹⁰³ Following its amendment in March 2002, the distribution of war materials and their presentation to obtain

foreign orders, the submission and acceptance of offers and the negotiation of contracts entailing the cession or delivery of war materials abroad, including industrial property rights, require a preliminary license.¹⁰⁴ These licenses are granted by the prime minister after receiving an opinion by the Inter-ministerial Committee for the Study of Exports of War Weapons.¹⁰⁵ If so authorised by the prime minister, the minister of defence may decide on these authorisations directly.¹⁰⁶ Once a contract involving the export of war materials from France has been successfully negotiated, an export license is required.¹⁰⁷ This export authorisation¹⁰⁸ may be made conditional on a non-re-exportation certificate¹⁰⁹, and is usually delivered by the ministry in charge of customs.¹¹⁰ Both preliminary and export licenses can take the form of either global licenses, covering operation without limitations to quantity or total amounts during the period necessary for the realisation of, for example, an industrial co-operation programme, or individual licenses.¹¹¹ Violations of the laws governing the manufacture and trade in war materials can carry a prison sentence of 5 to 7 years and fines of 4.500 to 10.000 EUR.¹¹²

Not included in the French control system so far are brokering activities involving mediation of contracts and buying and selling relating to war materials located abroad. Thus, brokers need not presently apply for licenses for specific operations involving war materials located abroad once they registered with the relevant authorities. A law project to establish a licensing requirement on a case-by-case basis for the brokering of war materials located outside France by persons or entities resident or established in France will be considered by the French parliament in the near future.¹¹³

92. *France, Décret du 18 avril 1939.*

93. *France, Décret n° 95-589.*

94. *Ibid*, §6.

95. *Ibid*, §2, categories 1-4.

96. *Ibid*, §6.3.

97. *Ibid*, §1.

98. *Ibid*, §11. See also *France, Arrêté du 15 janvier 2003*. It stipulates the creation of an electronic database for the collection of information submitted by those requesting an authorisation.

99. *France, Décret n° 95-589*, §12.

100. *Ibid*, §16.1.2.

101. *Ibid*, §16.2.

102. *Ibid*, §16.3.

103. *France, Arrêté du 2 octobre 1992.*

104. *Ibid*, §3.

105. The 'Commission interministérielle d'étude des exportations de matériels de guerre' (CIEEMG) meets once a month and brings together the Ministries of Defence, Foreign Affairs and Finance.

106. *France, Arrêté du 2 octobre 1992*, §4.

107. *Ibid*, §7.

108. Autorisation d'exportation de matériels de guerre (AEMG).

109. *France, Arrêté du 2 octobre 1992*, §10.

110. *Ibid*, §9. The prime minister or a relevant ministry may however requests a prior review of the export license by the Inter-ministerial Committee on War Weapons Exports. In this case the export license is decided on by the prime minister.

111. *Ibid*, §3 and §7.

112. Republic of France, 2003, p.5.

113. *Ibid*, p.8.

11. Germany

Brokering controls were included in the 1961 Law on the Control of War Weapons by an amendment in 1978.¹¹⁴ Weapons covered by this legislation include machine and sub-machine guns, automatic and semi-automatic guns and rifles (with the exception of hunting and sport shooting rifles), grenade launchers and related munitions and components.¹¹⁵ Persons and entities wishing to mediate a contract involving the acquisition or transfer of war weapons located outside German territory or wishing to show that the opportunity for the conclusion of such a contract exists require a license.¹¹⁶ The license requirement equally applies to persons and entities wishing to conclude a contract involving the transfer of war weapons located outside German territory.¹¹⁷ The transport of war weapons on ships sailing under German flag or on air carriers registered in Germany also requires a license if these weapons are loaded and unloaded outside German territory and do not transit Germany.¹¹⁸

License requests for brokering are assessed by the Ministry of Economics and Labour, which decides on applications in close consultation with the Foreign Office and the Ministry of Defence.¹¹⁹ Applicants for mediation activities must provide information about themselves, on the persons or entities between which a contract is mediated, on the type and quantity of war weapons, and the country in which the weapons are located. Authorities may further request information on the expected end-use, end-user and country of final destination of the brokered goods.¹²⁰ A license may be denied if this would contravene Germany's interest in the maintenance of good relations with other countries. Further, a license will be denied if there is the risk that the war weapons will be used in a peace disturbing action, if it would violate Germany's international obligations, or if there is reason to assume that the license applicant lacks reliability.¹²¹ Licenses may be limited to a specific transaction (individual license), or may cover transactions for a specific period of time

(general license).¹²² Licenses will be recalled if, subsequent to their granting, it emerges that the conditions under which they have been granted no longer apply¹²³, or, in the case of general licenses, if there is the risk that the transferred weapons will be used in a peace-disturbing act or violate Germany's obligations.¹²⁴ Arms dealers further have to keep a register on weapons they have exported or that are in their possession.¹²⁵

For controls to be applicable, at least one element of the brokering operation has to be linked to German territory. Such a linkage exists if, for example, the interested contract parties meet with the broker on German territory, or if telephone calls or faxes related to the transfer in question are sent from or are received in Germany.¹²⁶ Violations of the law, including its provisions on brokering activities, may entail a prison sentence of 1 to 5 years, and in particularly grave cases up to 10 years.¹²⁷

114. Germany, *Kriegswaffenkontrollgesetz*.

115. Germany, *Kriegswaffenkontrollgesetz*, Anlage Kriegswaffenliste, Sektion V.

116. Germany, *Kriegswaffenkontrollgesetz*, §4a.1.

117. *Ibid.*, §4a.2.

118. *Ibid.*, §4.1.

119. See Federal Republic of Germany, 2003, p.23.

120. Germany, *Zweite Verordnung*, §5a.1 and §5a.3.

121. Germany, *Kriegswaffenkontrollgesetz*, §6.2-3.

122. *Ibid.*, §8.1. Applicants for transporting war weapons on ships sailing under German flag or in aircraft registered in Germany will, depending on the country of final destination, usually receive a general license. See Germany, *Erste Verordnung über Allgemeine Genehmigung*, §3.

123. Germany, *Kriegswaffenkontrollgesetz*, §7.2.

124. *Ibid.*, §8.3.1-2. The trade in military materials not covered by the *Kriegswaffenkontrollgesetz* is regulated by the 1961 Foreign Trade Act (*Außenwirtschaftsgesetz*). As there are no provisions on brokering in this act, it has been excluded from this review.

125. Germany, *Kriegswaffenkontrollgesetz*, §12.2.

126. See Federal Republic of Germany, 2003, p.29f.

127. Germany, *Kriegswaffenkontrollgesetz*, §22a.1-2.

12. The Netherlands

While not explicitly mentioned in the 1997 Arms and Ammunition Act, in practice, brokering activities relating to transfers of arms covered by this act require a license.¹²⁸ Weapons falling under this law include automatic firearms and therefore certain military small arms and light weapons. Also covered is related ammunition.¹²⁹ Those wishing to engage in the trade in such weapons must obtain a prior registration.¹³⁰ These licensing and registration requirements apply to Dutch citizens resident in The Netherlands, legal bodies and corporations established in The Netherlands, and corporations outside Dutch territory but with their main establishment in The Netherlands.¹³¹ Weapons not falling under the 1997 Act are covered by the 1963 Decree on the Export of Strategic Goods.¹³² The brokering of weapons falling exclusively under this Decree neither requires a license nor a prior registration. However, the involvement by Dutch residents in financial transactions related to transfers of strategic goods taking place outside the EU requires a license.¹³³

Licenses for the brokering of weapons falling under the 1997 Act are assessed on the same grounds as exports of strategic goods.¹³⁴ In practice therefore, brokering licenses are considered by the Import and Export Licensing Office of the Ministry of Finance while the licenses themselves are issued by the Ministry of Economic Affairs. The Ministry of Foreign Af-

fairs has a consultative role in the decision-making process and, based on the criteria of the EU Code of Conduct on Arms Export, advises on the political expediency of the license.¹³⁵ The Import and Export Licensing Office also assesses applications and delivers licenses for financial operations related to the transfer of strategic goods from one country outside the European Community to another country outside the European Community.¹³⁶ Generally, applicants for a brokering transaction must provide an end-user certificate.¹³⁷ Licenses for brokering and financial operations may cover specific operations (individual license), or operations to one or several destinations (global license).¹³⁸ Licenses may be revoked if information provided in the application is incorrect or if there are serious reasons such as the threat of war.¹³⁹ Violations of Dutch legislation on arms control may be fined and/or carry a prison sentence of up to 6 years.¹⁴⁰

128. *The Netherlands, Wet van 5 juli 1997*. §9.1 of the law bans the manufacture and trade of arms and ammunition without a license. See also Kingdom of the Netherlands, 2003, p.6.

129. *The Netherlands, Wet van 5 juli 1997*, §2.1, Category II.2 and §2.2, Category II.1.

130. Information provided to the author by the Dutch Ministry of Economics, August 2003.

131. Kingdom of The Netherlands, 2003, p.6.

132. The list of military goods that is covered by this Decree reflects the Common List of Military Equipment covered by the EU Code of Conduct on Arms Exports, and therefore includes the therein contained military small arms and light weapons.

133. *The Netherlands, Besluit van 24 oktober 1996*. As this Decree only applies to strategic goods, there is no licensing requirement for financial transactions related to transfers of small arms that are exclusively covered by the 1997 Arms and Ammunition Act (Information provided to the author by the Dutch Ministry of Economic Affairs, August 2003). See also Centrale Dienst voor In- en Uitvoer, 2003, p.13.

134. Specifically, this is the 1962 Import and Export Law and the 1963 Decree on the Export of Strategic Goods. See Kingdom of The Netherlands, 2003, p.6.

135. *Ibid*, p.5.

136. Centrale Dienst voor In- en Uitvoer, 2003, p.13.

137. *Ibid*, p.8. Licenses and end-use declarations are not required for transfers of strategic goods to Belgium and Luxembourg. *Ibid*, p.1.

138. *Ibid*, p.15.

139. SIPRI data (www.sipri.se).

140. See Kingdom of The Netherlands, 2003, p.5.

13. Sweden

The framework for brokering controls in Sweden is given by the 1992 Military Equipment Act and its related Military Equipment Ordinance, both of which entered into force in January 1993.¹⁴¹ Small arms covered by this legislation include rifles and carbines designed for combat purposes, fully automatic sub-machine guns, light machine guns and machine guns, hand and rifle grenades, as well as related ammunition.¹⁴² The act stipulates that the supply, defined as the sale, transfer, offer for sale, loan, gift or intermediation, of military equipment as well as of inventions concerning military equipment and methods for the production of such equipment, requires a license.¹⁴³ This licensing requirement also pertains to Swedish authorities, companies and persons who are resident or permanently domiciled in Sweden wishing to engage in supply activities abroad.¹⁴⁴ Likewise, a license is required for the supply of controlled goods located abroad to a person or entity located abroad.¹⁴⁵

License applications are assessed by the National Inspectorate of Strategic Products (ISP), which regularly consults with the Ministry for Foreign Affairs and the Ministry of Defence. Applications for licenses for the supply of controlled goods located abroad to a buyer located abroad must include information on the applicant, on the equipment in question, on the person or entity making the equipment available, on the buyer and end-user of the supplied equipment as well as the intended supply date.¹⁴⁶ Insofar as equipment is exported from Sweden, an end-user certificate is required. This usually takes the form of an assurance by the government of the recipient country that the equipment will not be re-transferred without a prior authorisation by Sweden.¹⁴⁷ Licenses are assessed on a case-by-case basis and may be granted for a specified period of time or until further notice.¹⁴⁸ Decisions of principal signifi-

cance or of otherwise special importance are submitted to the government.¹⁴⁹ Licenses may only be granted for security and defence policy reasons and provided they do not conflict with Sweden's foreign policy.¹⁵⁰ Before applying for a license for the supply of military equipment, the defence industry may also request a non-binding advisory opinion from the ISP on whether a potential activity or contract would be permitted under the Swedish arms export controls. Such requests may either be raised and answered verbally in the regular meetings that take place between defence companies and the ISP, or may take the form of a written request for advanced notification.¹⁵¹ Such requests and other decisions on license applications deemed potentially controversial can be submitted to the Export Control Council (ECC), which brings together members from all political parties represented in the parliament. While decisions by the ECC are non-binding, in practice the ISP has not granted a license that was rejected by a majority in the ECC.¹⁵²

Licenses for the supply of military equipment from Sweden may be cancelled if the license holder has disregarded relevant regulations or if there are other special reasons for such cancellation.¹⁵³ Companies and persons holding a license for supply activities have to notify the ISP prior to submitting tenders¹⁵⁴, and are further obliged to submit regular reports to the ISP on their marketing activities conducted abroad.¹⁵⁵ License holders for the supply of equipment from Sweden are subject to inspections by the ISP.¹⁵⁶ The ISP also keeps records of all applications for brokering licenses, which, in practice, means that all legally active brokers are registered.¹⁵⁷ Violations of the Military Equipment Act, including the provisions regarding the supply of equipment located abroad to a recipient located abroad, may result in a fine or imprisonment of not more than two years.¹⁵⁸

141. Sweden, *Military Equipment Act*, and Sweden, *Military Equipment Ordinance*.

142. See Sweden, *List of Military Equipment for Combat Purposes in accordance with the Military Equipment Act*, Categories 1-4.

143. Sweden, *Military Equipment Act*, §2 and §4.1.

144. *Ibid*, Section 4.2.

145. *Ibid*, Section 5.

146. Sweden, *Military Equipment Ordinance*, Section 7.

147. See www.isp.se

148. Sweden, *Military Equipment Act*, Section 15.

149. *Ibid*, Section 1a.

150. *Ibid*, Section 1.

151. See www.isp.se

152. Information provided by the National Inspectorate for Strategic Products, August 2003.

153. Sweden, *Military Equipment Act*, Section 16.

154. *Ibid*, Section 12.

155. *Ibid*, Section 11.1.

156. *Ibid*, Section 20.

157. See Kingdom of Sweden, 2003, p.6.

158. Sweden, *Military Equipment Act*, Section 25.

14. United Kingdom

At present, there are no controls on arms brokering involving transfers of weapons from one third country to another third country in force in the UK.¹⁵⁹ However, the British government is currently finalising the adoption of secondary legislation that will complement the 2002 Export Control Act.¹⁶⁰ This Act stipulates new regulations on the trade in restricted and in controlled goods, including their acquisition or disposal, their movement, and activities which facilitate or are otherwise connected with the acquisition, disposal or movement of controlled goods.¹⁶¹ Controlled goods include military small arms and light weapons such as rifles, carbines, revolvers, pistols, machine pistols, machine guns and smooth-bore weapons with a calibre of less than 20 mm, mortars, projectile launchers and recoilless rifles with a calibre of 20 mm or more, as well as related ammunition.¹⁶² Restricted goods are defined as long-range missiles and equipment used in torture.

In 2003, the British government published the relevant draft orders which it intends to adopt as implementing secondary legislation. The final adoption of this secondary legislation is expected for May 2004. The Draft Trade in Controlled Goods (Control) Order foresees the establishment of a licensing requirement for, among other activities, the supply, delivery, acquisition and disposal of controlled goods that will or may result in the removal of these goods from one third country to another third country.¹⁶³ This licensing requirement explicitly covers the activities of arranging or negotiating contracts involving the transfer of controlled goods abroad¹⁶⁴ and it applies to any person acting within the United Kingdom.¹⁶⁵ Explicitly excluded from this licensing requirement for

controlled goods are related brokering activities such as transportation, financing and insurance services.¹⁶⁶ The Draft Control Order does not foresee controls on arms brokers operating from abroad. However, the Draft Embargoed Destination (Sanctions) Order will, if adopted in its present form, ban the supply or delivery, as well as agreements or any act calculated to promote the supply or delivery, of controlled goods to embargoed destinations or end-users. This ban would extend to any United Kingdom person, irrespective of whether that person acts in or outside the United Kingdom.¹⁶⁷ Extraterritorial brokering controls will therefore exist with respect to UN, EU, OSCE and national embargoes.¹⁶⁸

In contrast to controls on controlled goods, brokering controls regarding restricted goods will be more extensive. Brokering of restricted goods will generally be prohibited, including the provision or arrangement of transport and the provision of financial and insurance services related to transfers of restricted goods. Irrespective of the destination of restricted goods, this prohibition will apply to activities of UK persons anywhere in the world.

159. One exception relates to anti-personnel landmines and the ban on assisting, encouraging or inducing other persons to participate in the acquisition or transfer of anti-personnel landmines, as well as on making arrangements for transfers or contracts on transfers of anti-personnel landmines. See [United Kingdom, Landmine Act 1998](#), §2.1-8. This ban covers such activities within the United Kingdom as well as abroad. *Ibid.*, §3.1-6.

160. [United Kingdom, Export Control Act](#).

161. *Ibid.*, §4.2.a-c.

162. [United Kingdom, Schedule 1 to the Export of Goods \(Control\) Order 1994](#), as amended on 13 August 2002, p. 8. The schedule has not yet entered into force.

163. [United Kingdom, Draft Trade in Controlled Goods \(Control\) Order](#), §3.2-3 and 4.1-3.

164. *Ibid.*, §4-2.a-b.

165. *Ibid.*, §1.3.

166. *Ibid.*, §4.5.a-d.

167. [United Kingdom, Draft \[Embargoed Destination\] \(Sanctions\) Order](#), §3.2 and §3.4. See also [United Kingdom, 2003](#), p.3.

168. [United Kingdom, Consultation Document on Draft Orders](#), p.28.

15. Conclusion

As this study sought to demonstrate, governments are increasingly accepting the need for national controls on arms brokering so as to contribute to the combat against illicit or otherwise undesirable arms transfers. Ideally, there would have emerged consensus on a uniform approach based on the registration of arms brokers, the licensing of brokering and brokering-related activities, and the establishment of extraterritorial jurisdiction to punish those found having violated national or international law and arms embargoes. Regrettably, differences in national arms control systems and legal traditions have prevented the emergence of a common comprehensive approach to brokering control.

This is certainly not to say that governments therefore should not continue to strive for high common standards. Rather, when deciding on which elements of brokering controls to include in their legislation, governments should bear in mind in how far their different national approaches will allow unscrupulous brokers to continue exploiting the lack of consistent national, regional and international controls. In short, effective responses to the problem of undesirable arms brokering are still being constructed, and much more effort is necessary to put an end to the phenomenon of undesirable arms brokering. This in turn will be an essential element for broader efforts to limit and put an end to the grave human suffering associated with undesirable arms transfers and weapons misuse.

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Belgium

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- *Loi du 26 mars 2003 modifiant la loi du 5 août 1991 relative à l'importation, à l'exportation, au transit et à la lutte contre le trafic d'armes, de munitions et de matériel devant servir spécialement à un usage militaire et de la technologie y afférente,*
- *Loi du 25 mars 2003 modifiant la loi du 5 août 1991 relative à l'importation, à l'exportation et au transit d'armes, de munitions et de matériel devant servir spécialement à un usage militaire et de la technologie y afférente,*
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Finland

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France

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Décret n° 95-589 du 6 mai 1995 relatif à l'application du décret du 18 avril 1939 fixant le régime des matériels de guerre, armes et munitions, publié au J.O. n° 108 du 7 mai 1995 et modifié par Décret 2002-933 du 13 juin 2002, Décret 2002-23 du 3 janvier 2002, Décret 2000-376 du 28 avril 2000, Décret 98-1148 du 16 décembre 1998 et Décret 96-831 du 20 septembre 1996.

Arrêté du 15 janvier 2003 portant création d'un traitement automatisé d'informations nominatives relatif à la gestion par la délégation aux affaires stratégiques des autorisations de fabrication, de commerce et de courtage d'armes, de munitions et de matériels de guerre, publié au J.O. n° 29 du 4 février 2003.

Arrêté du 2 octobre 1992 relatif à la procédure d'importation et d'exportation des matériels de guerre, armes et munitions et des matériels assimilés, publié au J.O. n° 232 du 6 octobre 1992 et modifié par Arrêté 2002-03-28, Arrêté 2000-08-25 et Arrêté 1999-12-20.

Germany

Kriegswaffenkontrollgesetz vom 20. April 1961 (KrWaffKontrG), BGBl I 1961, 444, last amended by §3 Gesetz vom 11.10.2002, I 3970.

Erste Verordnung über Allgemeine Genehmigung nach dem Gesetz über die Kontrolle von Kriegswaffen vom 30. Juli 1961, Bundesanzeiger Nr. 150 vom 8.8.1961, last amended by Verordnung vom 8. Januar 1998, BGBl. I S.59.

Zweite Verordnung zur Durchführung des Gesetzes über die Kontrolle von Kriegswaffen vom 1 Juni 1961, BGBl I 649, last amended by § 18 Gesetz vom 21.12.1992, I 2150.

Italy

Legge 09/07/1990 n° 185 Nuove norme sul controllo dell'esportazione, importazione e transito dei materiali di armamento, Gazz. Uff. 14 luglio, n. 163.

The Netherlands

Wet van 5 juli 1997, houdende regels inzake het vervaardigen, verhandelen, vervoeren, voorhanden hebben, dragen enz. van wapens

en munitie, Staatsblad van het Koninkrijk der Nederlanden, Jaargang 1997, n° 292.

Besluit van 24 oktober 1996, houdende regelen inzake het financieel verkeer strategische goederen, Staatsblad van het Koninkrijk der Nederlanden, Jaargang 1996, n° 552.

Sweden

Military Equipment Act 1992:1300, last amended by Law 2000:1248.

Military Equipment Ordinance 1992:1303, last amended by Law 2001:506.

United Kingdom

Export Control Act 2002, 2002, Chapter 28.

Draft Trade in Controlled Goods (Control) Order, draft of an Order to be made under sections 4, 5 and 7 of the Export Control Act 2002, UK Department of Trade & Industry, 2003.

Draft [Embargoed Destination] (Sanctions) Order, draft of an Order to be made under sections 4, 5 and 7 of the Export Control Act 2002, UK Department of Trade & Industry, 2003.

Schedule 1 to the Export of Goods (Control) Order 1994 (EG(C)O 1994), as amended 13 August 2002 (Not yet in force).

Consultation Document on Draft Orders to be made under the Export Control Act 2002, UK Department of Trade & Industry, 2003.

Landmine Act 1998, 1998, Chapter 33.

Appendix

EU COUNCIL COMMON POSITION 2003/468/CFSP of 23 June 2003 on the control of arms brokering

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the European Union, and in particular Article 15 thereof,

Whereas:

- (1) In implementing the European Union Code of Conduct on Arms Exports Member States have agreed to address the problem of control of arms brokering.
- (2) Member States have continued and deepened their discussions on arms trafficking and brokering activities and have reached agreement on a set of provisions for controlling these activities through national legislation, as set out below.
- (3) Most Member States already have in place or are in the process of adopting national legislation on the subject.
- (4) In the Fourth Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports Member States have agreed to continue deliberations in the area of arms brokering on the basis of the guidelines already approved, with a view to adopting a Common Position on the subject.
- (5) In the Wassenaar Arrangement Participating States agreed on a Statement of Understanding to consider the adoption of national measures regulating arms brokering activities.
- (6) The United Nations Programme of Action on Small Arms and Light Weapons (SALW) commits States to develop adequate national legislation or administrative procedures to regulate small arms and light weapons brokering activities, and undertake further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering of small arms and light weapons.
- (7) The United Nations Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against transnational organised

crime requires States Parties to establish a system for regulating the activities of those who engage in brokering,

HAS ADOPTED THIS COMMON POSITION:

Article 1

1. The objective of this Common Position is to control arms brokering in order to avoid circumvention of UN, EU or OSCE embargoes on arms exports, as well as of the Criteria set out in the European Union Code of Conduct on Arms Exports.
2. In order to achieve this objective, Member States will ensure that their existing or future national legislation on arms brokering is in conformity with the provisions set out below.

Article 2

1. Member States will take all the necessary measures to control brokering activities taking place within their territory. Member States are also encouraged to consider controlling brokering activities outside of their territory carried out by brokers of their nationality resident or established in their territory.
2. Member States will also establish a clear legal framework for lawful brokering activities.
3. For the purposes of paragraph 1, brokering activities are activities of persons and entities:
 - negotiating or arranging transactions that may involve the transfer of items on the EU Common List of military equipment from a third country to any other third country;
 - or
 - who buy, sell or arrange the transfer of such items that are in their ownership from a third country to any other third country.

This paragraph shall not preclude a Member State from defining brokering activities in its national legislation to include cases where such items are exported from its own territory or from the territory of another Member State.

Article 3

1. For brokering activities, a licence or written authorisation should be obtained from the competent authorities of the Member State

where these activities take place, and, where required by national legislation, where the broker is resident or established. Member States will assess applications for a licence or written authorisation for specific brokering transactions against the provisions of the European Union Code of Conduct on Arms Exports.

2. Member States should keep records for a minimum of 10 years of all persons and entities which have obtained a licence under the terms of paragraph 1.

Article 4

1. Member States may also require brokers to obtain a written authorisation to act as brokers, as well as establish a register of arms brokers. Registration or authorisation to act as a broker would in any case not replace the requirement to obtain the necessary licence or written authorisation for each transaction.
2. When assessing any applications for written authorisations to act as brokers, or for registration, Member States could take account, *inter alia*, of any records of past involvement in illicit activities by the applicant.

Article 5

1. Member States will establish a system for exchange of information on brokering activities among themselves as well as with third States, as appropriate. A specific arrangement for such exchange of information will be established. This arrangement will take particular account of the case where several Member States are involved in the control of the same brokering transaction(s).
2. Information will be exchanged, *inter alia*, in the following areas:
 - legislation,
 - registered brokers (if applicable),
 - records of brokers,
 - denials of registering applications (if applicable) and licensing applications.

Article 6

Each Member State will establish adequate sanctions, including criminal sanctions, in order to ensure that controls on arms brokering are effectively enforced.

Article 7

This Common Position shall take effect on the date of its adoption.

Article 8

This Common Position shall be published in the *Official Journal of the European Union*.

Done at Brussels, 23 June 2003.

For the Council
The President
G. PAPANDREO