

Outline for discussion of 'Report on implementation of the EU Common Position on the control of arms brokering'

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This report provides an overview of the implementation of the EU Common Position on the control of arms brokering (2003/468/CFSP) by EU member states and states in the Western Balkans. It highlights some of the approaches that have been taken by a selection of these states to implement the mandatory and optional provisions of the Common Position. The report is intended to demonstrate the range of possibilities that have been exercised at the national level to implement the Common Position. It is hoped that amongst these possibilities are approaches for implementing the provisions of the Common Position that can be utilised by the former Yugoslav Republic of Macedonia in the drafting of legislation to implement the Common Position.

The Common Position requires EU member states to implement its provisions to control arms brokering activities to prevent the circumvention of UN, EU or OSCE arms embargoes or the criteria of the EU Code of Conduct on arms exports. The provisions include requirements for states to licence specific brokering transactions, assess licence applications for brokering as stringently as export licence applications, introduce mechanisms for information exchanges and sanctions to ensure that controls are effectively enforced.

The first part of the report provides an overview of the provisions of the Common Position. This part of the report identifies those provisions that are considered mandatory requirements and those that are included in the Common Position as options for exercising more effective controls of arms brokering. Each provision is briefly described and where deemed relevant, references are made to other international commitments:

- OSCE Document on Small Arms and Light Weapons (2000).
- UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in SALW in All its Aspects (2001).
- UN Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (2001).
- OSCE Principles on the Control of Brokering in Small Arms and Light Weapons (2004).
- OSCE Principles for Export Controls of Man-Portable Air Defence Systems (MANPADS) (2004).

It has been recommended that controls on arms brokering should be consistent with, if not integrated into, the national framework of arms transfer controls to provide a coherent and comprehensive system.¹ Although not explicitly stated in the Common Position, it is implicitly evident that the Council of the EU encourages such an approach because the provisions that are being proposed are comparable with those for arms export controls. The export control frameworks of EU member states differ with regard to some of their elements, and one has also witnessed different approaches to, and elements contained within, EU member states' national controls on arms brokering. The Common Position provides mandatory and optional provisions for controlling arms brokering, but does not provide a model or template for legislative uniformity for all member states.

The second part of the report therefore provides examples from a selection of EU member states to show how they have implemented the mandatory and the optional provisions of the EU Common Position on the

¹ Best Practice Guide on National Control of Brokering Activities, OSCE Handbook of Best Practices on Small Arms and Light Weapons, FSC.GAL/63/03/Rev.2, 19 Sept. 2003, p. 4.

control of arms brokering. It also considers elements on the control of arms brokering that are not explicitly stated in the EU Common Position. Legislation on the control of arms brokering should provide clarity on the key elements of the control system. This part of the report considers what activities EU member states have defined as brokering activities, the activities that are subject to licensing and those which are prohibited, what is required of state parties and the brokers to fulfill their obligations under the law, what kinds of actions and behaviours constitute violations of the law and are subject to sanctions, and what kind of sanctions are to be imposed. This part of the report provides excerpts from, and commentaries on, the legislation on the control of arms brokering of a selection of EU member states with regard to: definitions, scope and jurisdiction, licensing criteria and procedures for brokering transactions, licensing and registration of brokers, sanctions and transparency.

At the time of writing, 22 EU member states have national legislation that contains provisions on the control of arms brokering; with 18 of these states reporting that they have completed legislation to implement the EU Common Position on the control of arms brokering.² References will be made most frequently to the legislation on the control of arms brokering implemented by the following EU member states: Belgium, Bulgaria, Estonia, Germany, Spain, Sweden and the UK (to be discussed). These states have been chosen as they provide a variety of options for implementing the mandatory and optional provisions of the EU Common Position on the control of arms brokering, as well as elements for the control of arms brokering that are not explicitly stated in the EU Common Position.

The third part of the report considers the implementation of the EU Common Position on the control of arms brokering by Albania, Bosnia and Herzegovina, Croatia, Montenegro and Serbia. Country profiles are provided for each case, outlining their approach to the elements: definitions, scope and jurisdiction, licensing criteria and procedures for brokering transactions, licensing and registration of brokers, sanctions and transparency. A fresh look at the regional state of play is deemed useful as there have been developments with regard to controls on arms brokering in several of the states of the region since a comprehensive review was carried out in 2006.³ Further, the inclusion of an overview of the state of play with regard to the control of arms brokering in the west Balkans provides the former Yugoslav Republic of Macedonia with states that have some shared experiences with regard to legislation on arms export controls.

The fourth part of the report provides recommendations for the elements for national controls on arms brokering that seem most appropriate for the former Yugoslav Republic of Macedonia. The recommendations should be based upon the elements presented in preceding sections of the report and discussions with officials from the former Yugoslav Republic of Macedonia.

The report also provides an appendix that presents a table showing the mandatory and optional provisions of the Common Position on the control of arms brokering that have been implemented by states in the western Balkans.

² The remaining 5 EU member states are preparing legislation or have submitted draft legislation to parliament (Cyprus, Greece, Italy, Luxembourg and Portugal).

³ *Analysis of National Legislation on Arms Exports and Transfers in the Western Balkans* (Belgrade: SEESAC, 2006).

Draft outline: 'Report on implementation of the EU Common Position on the control of arms brokering'

1. Overview of the provisions of the EU Common Position on arms brokering

- Objective
- Mandatory Provisions
 - a. Definition of brokering activities
 - b. Mandatory requirement for a licence or written authorization for brokering transactions
 - c. Mandatory requirement for record-keeping
 - d. Jurisdiction
 - e. Mandatory requirement for the exchange of information within the EU
 - f. Mandatory requirement for adequate sanctions to be in place to ensure that controls are effectively enforced
- Optional Provisions
 - a. Option for requirement for a licence or written authorization to be a broker
 - b. Option for establishment of a register of arms brokers

2. Elements of national controls on arms brokering

Objectives

- To regulate the activities of arms brokers to:
 - a. Prevent the circumvention of UN, EU or OSCE embargoes
 - b. Prevent the circumvention of the eight criteria of the EU Code of Conduct on Arms Exports
 - c. Meet other national objectives

Definitions

- Definition of activities to be controlled
 - a. Core brokering activities
 - b. Additional brokering activities
 - c. Brokering-related services
- Definition of goods to be subject to controls
 - a. Military list
 - b. Sub-categories of types of goods

Scope and jurisdiction

- Scope
 - a. Third party only (i.e. not for transfers to or from EU member states)
 - b. For all states (including EU member states)
- Jurisdiction
 - a. national territory only
 - b. extraterritorial controls: applying also to citizens and residents active in another state
 - c. 'Competent' state: options for controls on brokers that could also be subject to the controls of another state

Licensing criteria and procedures for brokering transactions

- Licensing assessment criteria
 - a. EU Code of Conduct criteria
 - b. Other multilateral commitments
 - c. Other national criteria
- Requirements for licence applications
 - a. Information to be submitted with licence applications
 - b. Be a licensed or registered broker (see below)
 - c. Other requirements (e.g. deposits and fees)
 - d. Grounds for refusal of applications for licences for brokering transactions
- Types of licences
 - a. Case-by-case
 - b. Options for trusted brokers

- c. Based on types of goods
- d. Licences for brokering-related services
- Record-keeping
 - a. State records
 - b. Broker records

Licensing and registration of brokers (and related service providers)

- Option for licensing and/or registration of brokers before granting licences for brokering transactions
- Requirements for applications to be a broker: licences and registration
 - a. Information to be submitted with applications
 - b. Other requirements (e.g. deposits and fees)
 - c. Grounds for refusal of applications to be a broker

Sanctions

- Activities and types of behaviours which could be considered subject to sanctions
 1. Criminal offences
 2. Administrative offences
- Sanctions
 - a. Custodial sentences
 - b. Fines
 - c. Rescind licence and bar future applications

International cooperation

- International information exchanges
 - a. Brokering legislation
 - b. Licensed/registered brokers
 - c. Records of licenses issued
 - d. Records of license denials
 - e. Licence applications that concern other states
- International cooperation to enforce
 - a. Border, customs and law enforcement
 - b. Investigations
 - c. Prosecutions

Parliamentary and public transparency

- Parliamentary and public transparency of brokering activities
 - a. Report to parliament on brokering licences issued and denied
 - b. Report to public on brokering licences issued and denied
 - c. Publish register of brokers

3. Implementation of the EU Common Position on the control of arms brokering in the Western Balkans

The subheadings used in section 2 above will be used in each of the case studies for the following states in the western Balkans:

- Albania
- Bosnia and Herzegovina
- Croatia
- Montenegro
- Serbia

4. Recommendations

Appendix 1: Implementation of the EU Common Position on the control of arms brokering in the Western Balkans