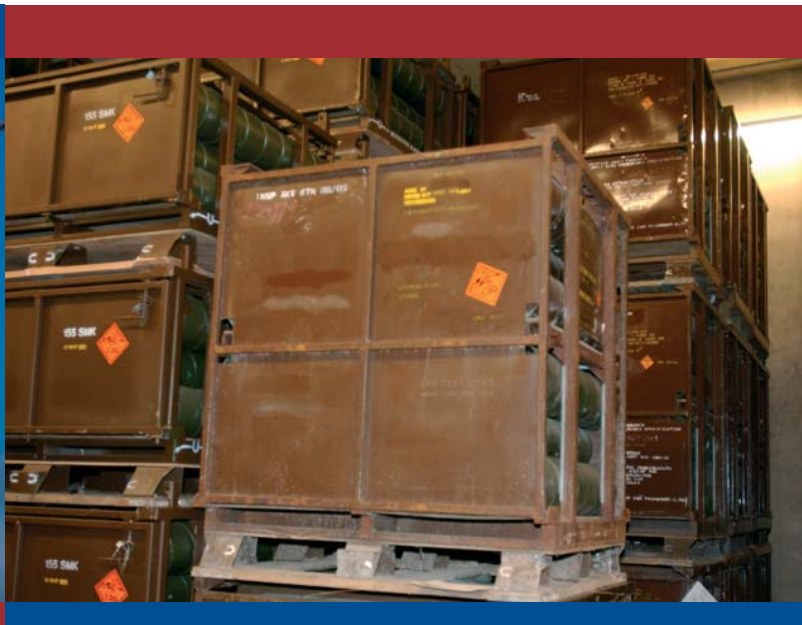




Analysis of National Legislation on Arms Exports and Transfers in the Western Balkans



SEESAC

South Eastern and Eastern Europe Clearinghouse
for the Control of Small Arms and Light Weapons





The **South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons** (SEESAC) has a mandate from the United Nations Development Programme (UNDP) and the Stability Pact for South Eastern Europe (SCSP) to further support all international and national stakeholders by strengthening national and regional capacity to control and reduce the proliferation and misuse of small arms and light weapons, and thus contribute to enhanced stability, security and development in South Eastern and Eastern Europe.

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Acronyms

AME	Arms and Military Equipment
BAFA	Federal Office of Economics and Export Control (Germany)
BIA	Security Intelligence Service (Serbia)
BICC	Bonn International Center for Conversion
BiH	Bosnia and Herzegovina
CAFAO	Customs and Fiscal Assistance Office
CoM	Council of Ministers
COMKFOR	Commander KFOR
COMTRADE	UN Commodity Trade Statistics Database
DPLA	Department of Political and Legal Affairs
DSRSG	Deputy Special Representative of the Secretary General
EAR	European Agency for Reconstruction
EC	European Commission
EU	European Union
EU CAM-A	EU Customs Mission in Albania
EUC	End-User Certificate
EUFOR	European Union Force in Bosnia and Herzegovina
EUPM	EU Police Mission
EXBS	Export Control and Border Security
FRY	Federal Republic of Yugoslavia
FYR	Former Yugoslav Republic (of Macedonia)
IPU	Integrated Policing Unit
IWPR	Institute for War and Peace Studies
KFOR	Kosovo Protection Force
KPS	Kosovo Police Service
KSIP	Kosovo Standards Implementation Plan
MANPADS	Man-Portable Air Defence Systems
MEICO	Military Export Import Company (Albania)
MFA	Ministry of Foreign Affairs
MIA	Ministry of Internal Affairs
MIER	Ministry of International Economic Relations (Serbia/Montenegro)
MOD	Ministry of Defence
MOE	Ministry of Economy
MOF	Ministry of Finance
MOFTER	Ministry of Foreign Trade and Economic Relations (Bosnia and Herzegovina)
MOI	Ministry of Interior
MOPO	Ministry of Public Order
MOS	Ministry of Security (Bosnia and Herzegovina)
MUP	Ministry of Interior (Serbia)



NATO	North Atlantic Treaty Organisation
NGO	Non-governmental organisation
NISAT	Norwegian Initiative on Small Arms Transfers
OSCE	Organisation for Security and Cooperation in Europe
PAMECA	Police Assistance Mission of the EU to Albania
PISG	Provisional Institutions of Self-Government (Kosovo)
PSC	Private Security Company
RACVIAC	Regional Arms Control Verification and Implementation Assistance Centre
RIP	Regional Implementation Plan
RSG	Regional Steering Group
SACISCG	SALW Control In Serbia and Montenegro
SALW	Small Arms and Light Weapons
SBS	State Border Services (Bosnia and Herzegovina)
SCG	State Union of Serbia and Montenegro
SECI	Southeast European Cooperative Initiative
SEE	South Eastern Europe
SEESAC	South Eastern and Eastern Europe Clearinghouse for the Control of SALW
SFRY	Socialist Federal Republic of Yugoslavia
SOP	Standard Operating Procedure
SRSR	Special Representative of the Secretary General
UK	United Kingdom
UMIER	Union Ministry of International Economic Relations (Serbia and Montenegro)
UN SCR	United Nations Security Council Resolution
UN	United Nations
UNDDA	UN Department of Disarmament Affairs
UNDP	United Nations Development Programme
UNMIK	United Nations Interim Administration Mission in Kosovo
UNPoA	UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects
US	United States
USKOK	Office for the Fight Against Corruption and Organized Crime

Executive Summary

Introduction

The European Union (EU) has long been a provider of diplomatic and technical support for the enhancement of international controls governing arms transfers. In June 1998, the EU Code of Conduct on Arms Exports (EU Code) was developed and agreed among member states. The EU Code includes a list of eight criteria designed to guide decisions on whether to grant or refuse export licence applications, as well as a number of operative provisions designed to aid its implementation, including e.g. a system for circulating reports among member states concerning both licences granted and applications denied. Subsequently, the EU has developed a number of other instruments and strategies. These include: the Joint Action on the EU's Contribution to Combating the Destabilising Accumulation and Spread of Small Arms and Light Weapons (1998); the EU Common Position on Arms Brokering (2004); the EU Council's Strategy To Combat Illicit Accumulation and Trafficking of Small Arms and Light Weapons and their Ammunition (2005); and the European Commission (EC) Western Balkans SALW Control Support Plan (2005).

Since 1998, the EU Code has since come to be seen as a progressive and effective transfer control regime, leading to its voluntary uptake by many EU accession and neighbouring states. While these commitments are a valued expression of states' desire to align themselves with regional and international norms on arms transfer controls, the context facing many EU neighbourhood states, particularly the post-conflict countries of South Eastern Europe (SEE), is one that poses significant challenges. Whether for reasons associated with past conflicts, or because of the difficulties of state-building and political transition, SEE states have struggled in the past to control the availability and transfer of arms from their territories. As a consequence, the regulation of official arms transfers from the region is an ongoing concern.

Cognisant of the above, SEESAC commissioned a series of research reports designed to provide detailed information concerning the progress that governments in the region are making in meeting their existing political and legal commitments to combat the proliferation of SALW and regulating the international transfer of arms and military equipment. At the national level, comprehensive 'SALW Surveys' have examined a wide range of SALW Control issues in nine South East European states or territories in order to identify the achievements and challenges of governments on this matter.¹ At the regional level, the 'South Eastern Europe SALW Monitor' report has provided policy makers with comparative assessments of progress at the national level from 2004 onwards² while separate issue-specific research projects have focussed on aspects of SALW Control.³

Commissioned by SEESAC, as part of the implementation of the EC 'Western Balkans SALW Control Support Plan', the research and writing of the report was undertaken by Saferworld, an independent non-governmental organisation based in London, together with a number of external research partners. Research was conducted between March and June 2006 through a combination of in-country interviews, analysis of existing laws, regulations and procedures and reviews of published information. An innovative research methodology was developed specifically for this project, which included a questionnaire of over 60 questions relating to all aspects of transfer control decision-making.

The EU has a critical role in supporting the process of security and governance sector reform across the Western Balkans. In the area of arms transfer control, agreements and initiatives such as those listed above, combined with SEE states' rhetorical commitments to abide by the content of the EU Code, presents the EU and its institutions with a unique set of opportunities for catalysing change. As a contribution to the development and

¹ Available from <http://www.seesac.org/index.php?content=&page=sr§ion=3>, accessed 20 March 2006.

² Available from <http://www.seesac.org/index.php?content=13§ion=3>, accessed 20 March 2006.

³ See for example Page, M., et al., SALW and Private Security Companies in South Eastern Europe: A Cause or Effect of Insecurity? (Saferworld, International Alert and SEESAC, 2005).



enforcement of effective arms transfer controls in the Western Balkans, and building on the extensive experience and existing work of its institutions, the EU could consider developing a targeted strategy and programme of work for supporting reform across the region. Such a strategy should offer support to Western Balkan states and focus on the following components:

Legislation and regulation

Providing examples of legislative best practice, drawn from the experiences of EU states to spur the further development and elaboration of existing laws and regulations. These examples should include *inter alia*; 1) effective means of regulating all aspects of arms transfers including extra-territorial brokering; 2) the licensed production of strategic goods overseas; 3) transit and transshipment; component parts and dual-use technologies; 4) post-shipment verification processes; and 5) information-exchange, transparency and accountability. Such examples should be translated into appropriate languages and technical expertise should be offered to transpose best practices into specific national contexts.

Implementation and enforcement

Technical support to the establishment of administrative systems and processes with a clear mandate to administer arms transfer licensing processes effectively, including establishing physical multi-disciplinary licensing agencies and electronic information storage and retrieval systems:

- a) training for officials from all relevant branches of government, including licensing (e.g. Ministries of Foreign Affairs and Defence) and enforcement Ministries (e.g. Police and Customs agencies), as well as staff in national missions abroad. This programme should address in particular the licence assessment process, with focused and in-depth reference to the EU Code criteria; and
- b) facilitating information sharing between national licensing bodies to aid decision-making, and between Customs and other agencies to support effective enforcement.


Transparency and accountability

Technical support to initiatives that promote transparency, such as the publication of national reports on arms exports:

- c) training and capacity support to national parliaments and assemblies to enable the establishment of democratic scrutiny and accountability mechanisms, including parliamentary committees with a specific mandate to examine the implementation and enforcement of relevant legislation and to scrutinise pre- and post-licensing decisions of a sensitive or precedent setting nature; and
- d) specific and targeted support for independent and constructive civil society engagement on arms transfer issues in order to monitor transfer controls policy and practice and to recommend areas for future development.

Key findings and recommendations

Each chapter of this study is based on a detailed assessment of existing national arms transfer controls and concludes with a series of recommendations for the consideration of national governments and the international community. These recommendations, if taken up, should raise standards to EU and international levels in each



case. In each case, the research findings, and by extension the recommendations are different, reflecting the different natures of the arms transfer control system as well as broader security and governance issues. Whilst the same research methodology was used in each case, the study is not intended to be used as a simple comparison between states. In a region that was, until recently, severely affected by violent conflict and lacking in basic systems of government (arising from the disintegration of Yugoslavia and Albania's period of authoritarian rule) the pace of transition and reform varies from place to place. Thus, in some cases, an urgent need for legislative progress (e.g. Kosovo) is a general reflection of the wider need for, and pace of, change; whereas in other places, for example in Croatia, where legislation has already been agreed and the system of governance is more developed, the challenge is one of implementation and enforcement.

The following section draws together some of the common findings arising from the research undertaken at a national or entity level and outlines areas in which further change is recommended. It is however, only indicative of the nature and depth of change required, and as such each chapter contains a series of detailed context-specific recommendations.

Legislative and regulatory issues

Overview of findings

Across the region, progress in addressing arms transfer challenges is easiest to detect at the legislative level. Many states have over recent years, with the support of international partners, developed new arms transfer legislation. In some cases, including Albania for example, this process is still underway and in others, including Serbia, the quality of recent progress is to be applauded. However, whilst progress is evident in all states and entities covered during research for this study, there are in all cases areas for improvement. Good initial work runs the risk of stalling if loopholes allow for the manipulation of legislation, which will seriously damage public and international confidence in its efficacy. Areas in which laws were often weak include; 1) effective control of transit and transshipment; 2) international arms brokering; 3) licensed production of military material overseas; 4) production and transfer of component parts for incorporation; 5) intangible transfers; and 6) dual-use goods and technologies. In all cases, legislative provision for monitoring delivery verification and end-use of transfers was weak, as was inclusion of measures to promote and ensure accountability and transparency in the licensing process.

Whilst in most states fairly comprehensive laws exist, it is also the case that in all more is needed to develop the regulations and guidelines required to operationalise legislative commitments. For instance, in several cases, whilst the EU Code is referenced in legislation, it is often unclear how the letter and spirit of the Code affects transfer licensing decision-making.

At the international level, progressive engagement by Western Balkan states in some aspects of conventional arms (particularly SALW) control including, for example, civilian possession of firearms, has not been reflected in the area of arms transfer controls. For example, no government has to date publicly declared its support for international legally binding controls on arms transfers, in line with the policies of the EU and many other European states.

Overview of recommendations

All states must take immediate steps to ensure that legislation is comprehensive and up to date. As well as establishing in law a case-by-case criteria based process for assessing license applications, which at a minimum reflects those contained in the EU Code, it is critical that the scope of legislation covers such issues as transit and transshipment, brokering, licensed production, components and intangible transfers and dual-use goods and



technologies. Legislation must also specifically reference military and dual-use control lists and provide for these lists to be updated on a regular basis.

All states must establish the regulations and guidelines that allow for effective and accountable implementation and enforcement of the law. This includes but is not limited to transfer verification and end-use monitoring systems and parliamentary mechanisms for monitoring and assessing transfer control policy and practice.

Implementation and enforcement

Overview of findings

Whilst legislation creates the framework within which the transfer control regime functions, there are also a series of implementation and enforcement issues that any system must confront. The states in this study have begun to various degrees to address these issues, but there is still more to be done. Crucial to the effective functioning of a modern control system is the need for thorough, rigorous and universal application of a set of restrictive criteria. Although Western Balkan states now all reference the EU Code criteria in one way or another, it is far from clear that these formal commitments are being implemented effectively, or even in some cases that they are widely understood. There is also a need for various ministries within governments to be thoroughly engaged and involved in the decision-making process. However, some of the arrangements in the region for inter-ministerial cooperation are underdeveloped, while in other instances there is concern that these arrangements could be undermined by inter-departmental rivalries. This underdevelopment of cooperative frameworks extends across borders to inter-state cooperation with neighbouring and EU member states. As arms transfers are by nature transnational, they are therefore best controlled by cooperative arrangements at this level. There are also widespread concerns that despite efforts to improve practice, the ability to enforce controls, for example through effective border control mechanisms, is lacking.

Underpinning many of these problems, and undermining the significant efforts that have been underway to improve regimes in all countries, is a chronic lack of capacity, (in terms of both personnel and technical support). This typically extends from the initial licensing function right through to enforcement mechanisms.

Overview of recommendations

In order to effectively operate the criteria-based decision-making systems that are fundamental to effective and accountable transfer control regimes, processes must be developed to facilitate decision-making on a case-by-case basis and to ensure that legislation and regulations are enforced on an operational level. Individual licensing officials must be recruited, appropriately trained, and provided with clear and detailed guidelines on the means by which to assess applications against specific criteria (i.e. how does a licensing officer assess an application against human rights criteria, who does this person speak to and what are their reference points?) Where they do not already exist, there is a need to establish administrative arrangements such as inter-ministerial bodies, providing for effective and open exchanges of information between governments and government departments, with responsibility for assessing applications and with the structural competence to make decisions. These must be supported through effective political leadership so as to address any traditional inter-ministerial rivalries and ensure that these arrangements function effectively. At the level of enforcement there is much to recommend to Customs and other law enforcement officials, including; 1) training in the content of legislation and regulations; 2) provision of support (in some cases by international donors and agencies) to enable real time information-exchange and tracking of shipments post-licensing decision; and 3) harmonisation of customs procedures in the area of international transfer controls with neighbouring states.

Transparency and accountability

Overview of findings

Perhaps, considering the rapid process of transition that the states of the Western Balkans have undergone in recent years, it is of little surprise that in many cases transparency and accountability with regard to this sensitive issue remain very poor. Publishing information on transfer control policy and practice, engaging the public through the media and NGOs and providing opportunities for policy scrutiny by national parliaments are all areas in which progress is required in order for states to demonstrate their commitment to international and regional norms in this respect. There are however some positive examples of openness. In many states, including Albania, FYR Macedonia and Serbia in particular, government officials were willing to meet with researchers and to respond to enquires. While in other states, most notably Croatia where governmental transparency has reportedly been improving, this openness was more difficult to detect. In all cases, there appears to be a tangible increase in the willingness of governments to engage with interested other parties and this is a positive development which is to be welcomed.

With few exceptions, the ability of civil society groups, including NGOs and the media, to engage in arms transfer controls issues is weak. There is no obvious formal requirement to engage with civil society in any country or territory in the region. Civil society groups often experience significant problems in accessing information that in the EU countries is considered to be open source. Even when civil society groups are aware of the relevant issues with regard to arms transfer control, they often have very weak technical or financial capacity to act. Involvement of civil society should not be seen as a gesture alone by governments. Around the world, and specifically in Europe, NGOs, academics and the media have played an important part in the process of monitoring and improving arms transfer control policy and practice and there is no reason why this should be any different in the Western Balkans.

Overview of recommendations

All governments should commit to publishing regular (at least annual) national reports on arms transfers. These reports should be publicly available and conform to EU best practice.⁴ The content of the reports should be subject to scrutiny by elected parliaments and assemblies as well as being made widely available to the public. Licence denials should be shared with applicants, demonstrating the reason for the denial as a contributor to enhancing understanding of how criteria based systems should operate. Governments should also take proactive steps to encourage civil society groups to participate in dialogue and debate regarding the development and implementation of transfer controls (i.e. through requesting public submissions as part of the process of reviewing and amending legislation). In addition, where appropriate, to aid enhanced transparency and accountability in the area of arms transfer controls, international support should be provided to assist with the development of *inter alia* parliamentary scrutiny processes, the preparation of national reports and constructive civil society engagement to monitor arms transfers and recommend areas for further improvement.

⁴ The SEESAC Arms Exports and Transfers CD provides a template and data management system to assist governments in this regard. www.seesac.org/index.php?content=10§ion=2, accessed 06 April 2006.



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Republic of Albania

1 Introduction

Until very recently, Albania's main priority with respect to arms control was the internal collection of a significant number of the half a million small arms and light weapons (SALW) looted from government stockpiles during the period of crisis in 1997. The weapons successfully recovered (around 200,000), together with other government stockpiles, have since provided Albania with a useful, but limited, source of revenue during difficult times. Albania's drive to export military surplus has not been without its problems however, with several reports of transfers from Albania reaching sensitive destinations having emerged over the last fifteen years.¹ The official trade in these weapons, which was overseen and well documented by the Albanian Ministry of Defence (MOD), was also accompanied by the illicit trafficking of many tens of thousands of weapons, including to neighbouring Kosovo and FYR Macedonia during the late 1990s. Since that time, with the encouragement of international partners such as the US and UK Governments, the EU and UNDP, Albania has begun to demonstrate a willingness to remedy some of the problems of the past, not only by collecting large numbers of weapons from the civilian population, but by reviewing arms transfer control policy, legislation and practice, with a particular view to Euro-Atlantic integration. There now seems to be broad agreement among most observers that the Albanian Government is, in principle, genuinely committed to upholding international norms on arms transfers.

However, as a result of the country's historically centralised system of government and defence procurement, the current control system is underdeveloped by European standards. Key weaknesses in the present control system include the fact that; 1) the legal basis for arms and dual-use goods transfers is provided by a number of governmental decrees rather than parliamentary legislation; 2) the issuance of arms transfer licences by a high-ranking MOD official (and in exceptional cases Ministers) after only limited consultation with the Ministry of Foreign Affairs (MFA); 3) a lack of regulation with regard to brokers, shippers and transit/transshipment; 4) an absence of established mechanisms for end-use monitoring or verification; and 5) a lack of legal basis for application of the European Union Code of Conduct on Arms Exports (EU Code)² or EU military and dual-use goods lists. There is also no institutional basis for the case-by-case assessment of licence applications and related risk assessment, and the officials responsible for administering the arms transfer control system lack detailed guidelines for their work. Finally, although there have recently been positive moves to improve transparency within Albania, there are no legal requirements for the regular dissemination of information on arms transfers to Parliament or the public, or for parliamentary scrutiny of the licensing process. This is in contrast with Albania's regular information-exchanges with international actors on these issues.

Yet these weaknesses are seldom made apparent in practice because Albania is not currently an arms producer. It deals instead in Cold War era military surplus of a type and quality that attracts few buyers (resulting in few sales), and to a lesser degree, the sale of ammunition and explosives.³ Nevertheless, should production of weapons, arms or ammunition resume on a significant scale, or should Albania prove more successful in the surplus, repair and transit trades in the future, then deficits in the control system will become much more problematic. In addition, despite its problems, the current regulatory system has its merits. Under a nationalised arms transfer control system with no private companies licensed to trade in arms, state authorities are spared the

¹ Although interviewees from the Albanian MOD contest such claims and point to the fact that transfers have been authorised in consultation with western embassies for some years, past reports by Amnesty International and also the British press indicate that between 1992 and 1997, Albanian arms reached destinations such as Rwanda and Zaire, albeit indirectly. In 2005, there were similar reports of diversions of military equipment originating from Albania to the conflict in the Democratic Republic of Congo (DRC) via Rwanda, in 2002 and 2003. Correspondence, MOD officials, March 2006; See for example Swain, J. and Johnson-Thomas, B., 'British-based airline fuelled Congo terror', *Sunday Times*, 03 July 2005, p. 27. See also, Amnesty International, *Shattered Lives: The Case for Tough International Arms Control*, (2005), pp. 10 and 62.

² Albania has declared its intention to comply with the EU Code – see below.

³ In fact ammunition and explosives exports make up a significant part of Albania's arms export trade. For example, in 2004, 10 million rounds of ammunition were exported to Iraq, 10 Tonnes of TNT to Bulgaria, while in 2003 10 million rounds of ammunition were exported to the US. Holtom, P., et al., *Turning the Page: Small Arms and Light Weapons in Albania*, (Saferworld, December 2005), pp. 81 - 82.



difficult task of liaising with and monitoring the private sector. Reforms during recent years have also brought the EU Dual-Use Goods List and Wassenaar List into use (albeit without legal foundation), and seen the introduction of a legal requirement for end-use certification.

In recognition of the considerable gaps in the present system, Albanian officials are currently preparing a new import-export law for arms and military goods for submission to the National Assembly, a fact that is to be welcomed. The Albanian MOD has solicited advice from a number of actors in drafting the new legislation, including the UK and US Governments, the University of Georgia (USA) and Saferworld. Accordingly, it is hoped that many of the failings of the present system will be addressed. Naturally the introduction of more comprehensive legislation will pose new challenges with respect to implementation and enforcement, particularly given Albania's long-standing struggle with rule of law and corruption issues.

2 International commitments and adherence

As a party to agreements such as the Stability Pact SALW Regional Implementation Plan, the UN Programme of Action on SALW (UNPoA), the OSCE Documents on SALW and Ammunition Stockpiles, and more recently by aligning itself to the EU Code, Albania has made substantial commitments towards responsible international arms transfer control (see table below).⁴

ARMS OR SALW CONTROL AGREEMENT	ALBANIA'S COMMITMENTS
EU Code of Conduct on Arms Exports	August 2003 ⁵
EU Common Position on Arms Brokering	No
OSCE Document on SALW	November 2000
OSCE Document on Stockpiles of Conventional Ammunition	December 2003
OSCE Decision on MANPADS	2003
OSCE Decision on End-user Certificates	2004
OSCE Decision on Brokering	2004
Stability Pact Regional Implementation Plan	November 2001
UN Firearms Protocol	No
UN Programme of Action on SALW	2001

Table 1: Albania's commitments to arms transfer or SALW Control agreements⁶

There seems to be broad agreement among both government officials and informed international observers that the Albanian Government is strongly and genuinely committed to upholding international norms on arms transfers, not least because bad practice might seriously jeopardise its prospects for NATO and EU membership. As noted above, this is a considerable improvement on previous practice (the Albanian Government exported arms to many sensitive destinations between 1992 and 1997).⁷ However, a great deal remains to be done to

⁴ Albania is not currently a member of the Wassenaar Arrangement and is not therefore bound by any of its commitments. It has, however, submitted an application to join.

⁵ Decision No. 604, 'For the general approval of the EU Behaviour Code on the weapons export,' 28 August 2003.

⁶ Albania is also a member of the Treaties on Chemical Weapons, Biological Weapons and the Nuclear Non-Proliferation Treaty, is preparing an application to the Australia Group, and has been invited to seminars in Bulgaria and Hungary in preparation for membership. *Op. cit.*, Holtom, P., *et al.*, pp. 84 - 85.

⁷ Further information on past and present practice is available from *op. cit.*, Holtom, P., *et al.*

move beyond rhetorical and political commitments and ensure full compliance with the above treaties and codes of conduct, as well as with international human rights and humanitarian law (including the UN Charter, Geneva Conventions, Genocide Convention and the emerging concept of a 'Responsibility to Protect'). Moreover, at the time of writing, Albania is yet to publicly clarify its position with respect to proposals from a number of other states to more strongly reference transfer controls in the text of the UNPoA, or to begin talks on the agreement of a binding international Arms Trade Treaty.

3 Legislation and regulation

With primary legislation for arms transfer control still under development, Albania does not currently have a single comprehensive law on export or import controls for military equipment and dual-use goods, instead relying mainly on secondary legislation (Government Decisions). The key Decisions of the Council of Ministers as regards the control of military equipment are as follows:

DATE	LEGAL REFERENCE	TITLE
05 October 1991	COM ⁸ No. 366	On the Foundation of the Import-Export Enterprise [depending] on the Ministry of Defence
01 May 1992	COM Decision No. 135	On the Approval of the Sale of Weapons and Ammunitions by the Ministry of Defence
25 June 1992 ⁹	COM Decision No. 275	On the Administration and Controls for Weapons of Individuals, Legal Persons and Entities
06 June 1994 ¹⁰	COM Decision No. 365	On the Destruction or Selling of Ammunitions for Which the Period of Use is Coming to an End or has Already Expired and on the Selling of Surplus Armaments and Ammunitions and its Amendments
10 August 1996	COM Decision No. 366	On Selling Armaments and Ammunition
08 January 2002	COM Decision No. 05	On the Functioning of the Army's Import-Export Company, MEICO, and its Relations with Other Departments and Units in the Ministry of Defence
04 December 2002 ¹¹	COM Decision No. 617	On the Removal of Armaments, Parts of Weapons and Military Equipment from the Armed Forces for their Destruction, Dismantling and Selling', and Related Regulations
28 August 2003	COM Decision No. 604	For the General Approval of the EU Code of Conduct on Arms Exports ¹²

Table 2: Summary of main Albanian legislation and regulations relevant to transfers of military and dual-use equipment

⁸ Council of Ministers (COM).

⁹ COM Decision No. 389, 'On some supplements to the COM Decision No. 275', 06 August 1993.

¹⁰ COM Decision No. 822, 'On an amendment to COM Decision No. 365', 09 December 1996; COM Decision No. 564, 'On an amendment to COM Decision No. 365', 22 December 1997; COM Decision 829, 'On an amendment to COM Decision No. 365', 30 December 1998; COM Decision No. 344, 'On an amendment to COM Decision No. 365', 07 July 2000; COM Decision No. 113, 'On an amendment to COM Decision No. 365', 08 March 2001; COM Decision No. 17, 'On an amendment to COM Decision No. 365', 28 January 2002; COM Decision No. 01, 'On an amendment to COM Decision No. 365', 10 January 2003.

¹¹ Regulation No. 485/1, 'On the procedure for the auction of military equipment, which have been removed from use, as defined in the COM Decision No. 617', 14 October 2003; Regulation No. 495/2, 'On the procedure for the auction of military equipment, which have been removed from use, as defined in the COM Decision No. 617', 21 October 2003.

¹² MOD regulations on the operation of MEICO also reference adherence to the EU Code.



Only one Albanian enterprise is currently legally permitted to trade in military arms, ammunition and equipment. The state-owned Military Export Import Company (MEICO) was established in 1991 and is based within the Ministry of Defence (MOD). Under the following main legal decisions and regulations, it is responsible for the marketing and sales of surplus Albanian arms and military equipment, as well as the import of military equipment and firearms for all Albanian state institutions:

DATE	LEGAL REFERENCE	TITLE
05 October 1991	COM Decision No. 366	On the Foundation of the Import-Export Enterprise [depending] on the Ministry of Defence
05 October 1991	COM Decision No. 366	On the Foundation of the Import-Export Enterprise [depending] on the Ministry of Defence
01 May 1992	COM Decision No. 135	On the Approval of the Sale of Weapons and Ammunitions by the Ministry of Defence
25 May 1992	Law No. 7566	On Weapons
06 June 1994 ¹³	COM Decision No. 365	On the Destruction or Selling of Ammunitions for Which the Period of Use is Coming to an End or has Already Expired and on the Selling of Surplus Armaments and Ammunitions', and its amendments
10 August 1996	Regulation of the Albanian Government No. 366	On Selling Armaments and Ammunition
08 January 2002	COM Decision No. 05	On the Functioning of the Army's Import-Export Company, MEICO, and its Relations with Other Departments and Units in the Ministry of Defence

Table 3: Summary of main Albanian legislation and regulations relevant to the functioning of MEICO

4 Production

In the past, Albania produced a variety of ammunition, explosives and SALW (typically modified Chinese designed AK-47s) at military production facilities in Gramsh, Mjekes and Poliçan. However, a slow and difficult transition away from communism, coupled with the crisis period of the late 1990s has seen these facilities depleted to the point where, rather than producing SALW and ammunition for sale, they are primarily involved in demilitarisation work to help fund the MOD's modernisation budget. Though Albanian law does not currently regulate the production of SALW,¹⁴ the production and repair of SALW and ammunition has taken place at military production facilities in Albania since 1990, with small-scale production of rifles and carbines in Gramsh in 2001 and occasional instances of ammunition production at the Poliçan facility for export to Turkey and the US. The Mjekes production facility is also reportedly the site of small-scale production of commercial explosives. Further, it appears that Turkey is exploring possibilities for manufacturing ammunition under licence in Albania, with media reports in

¹³ COM Decision No. 822, 'On an amendment to COM Decision No. 365', 09 December 1996; COM Decision No. 564, 'On an amendment to COM Decision No. 365', 22 December 1997; COM Decision 829, 'On an amendment to COM Decision No. 365', 30 December 1998; COM Decision No. 344, 'On an amendment to COM Decision No. 365', 07 July 2000; COM Decision No. 113, 'On an amendment to COM Decision No. 365', 08 March 2001; COM Decision No. 17, 'On an amendment to COM Decision No. 365', 28 January 2002; COM Decision No. 1, 'On an amendment to COM Decision No. 365', 10 January 2003.

¹⁴ Although penalties for illicit production are set out in the Penal Code, in the Report on the Implementation of the UNPoA, the Republic of Albania, 2004, explicitly states that SALW production is not regulated. This report reiterates statements made a year earlier in a letter dated 08 July 2003 from the Permanent Mission of the Republic of Albania to the United Nations addressed to the Department of Disarmament Affairs on the Programme of Action, A/CONF.192/BMS/2003/CRP.93.

2005 indicating that new machinery was being brought to Poliçan from Turkey.¹⁵ Under such circumstances, it seems appropriate for the Albanian Government to include provisions for regulating military production in new legislation, referencing in particular the production of strategic goods under licensed production agreements with foreign firms.

5 Licensing of transfers

Albania issues a very small number of arms transfer licences for military goods per year. For example, in 2004 three licences for export were issued and one denied, while two licences for import were granted. The legal framework for transfer controls outlined above positions MEICO as both the licensing authority for the international trade in arms and military equipment and also the sole agent for such transactions: under no circumstances can MEICO authorise another entity to transfer arms.

Following initial agreement on the terms of an import or export deal, MEICO staff compile and examine all relevant documentation before submitting an application to the political integration department of the MOD. Staff within this department are responsible for checking each application with the MFA and other agencies such as the national intelligence, foreign embassies and international organisations. They usually inform the MOD within ten days as to whether the recipient is under embargo, or the transfer poses a high risk of diversion or threat to national or international security. If no concerns are apparent then the application is submitted to the Secretary General of the MOD on whose sole approval it is finally authorised. In the case of exports of surplus military equipment, applications must also pass before a 'commission for the evaluation of information on the destruction of weapons' that approves the type, weight and quantity of munitions to be sold as well as setting the price.¹⁶

The commission is headed by the Director of the MOD Logistics Directory, and includes the following members: the head of the armament-ammunition sector; a specialist of the armaments sector; a representative of the sector for military enterprises; a representative of the planning and finance directory; a representative of the MOD's design institute; and a representative of MEICO. According to the Governmental Directive that established this commission, decisions on orders should be taken within a month of requests for sales.¹⁷ Although, according to staff working within the relevant Ministry of Interior (MOI) and MOD departments, there are no exports of hunting weapons from Albania at the present time, though a sizeable quantity of hunting and sporting weapons and ammunition imports do typically take place. These are handled exclusively by the MOI, with a small unit administering the licences and the Chief of Police acting as final signatory. A separate law regulating weapons acquisition by individuals and legal entities provides the legal basis for this, with secondary guidelines for the administrators.¹⁸ It is still unclear whether the transfer of hunting weapons will remain a MOI competency under the envisaged primary legislation on arms transfers, or whether a single system will be developed to regulate transfers of both military and civilian weapons.

There are no provisions for appeals in the event of a licence denial under the present system, though with transfers of military items being handled almost exclusively by the MOD, and no exports of civilian weapons apparently taking place, this is likely to be of little concern. Within both the MOD and MOI, the final authorising signatories for transfer licence applications (Secretary General of the MOD and Chief of Police within the MOI) are legally empowered to revoke licences under certain conditions.

¹⁵ For example, during an event to commemorate the facility's 40th anniversary in March 2005, the then Albanian Defence Minister Pandeli Majko announced that the Albanian and Turkish Governments are working towards opening a new production line at the Poliçan military production facility. *Op. cit.*, Holtom, P. et al., pp. 69 - 70.

¹⁶ Order No. 556, 'On the establishment of a Committee for the evaluation of information received on the destruction of weapons, in accordance with COM Decision No. 617', 10 December 2003.

¹⁷ Interview with MOD official, March 2006.

¹⁸ COM Decision No. 275.



Although all arms transfer licences are issued on a case-by-case basis, interviews with staff administering the control system show that the capacity required for detailed case-by-case risk assessment of licence applications in line with the EU Code is still lacking. Limited (and non-statutory) consultation between the MOD, MFA and sometimes the UK and US embassies based in Tirana, although welcome steps in this direction, are not an adequate basis for the detailed information-gathering and inter-agency analysis that full operational compliance with the EU Code requires. The dual role of MEICO as both a marketing and licensing authority, while not a serious concern under the present system in which MEICO has a monopoly on transfers of arms and military equipment, is an anomaly in European terms. A separation of sales and authorisation functions is taken to be a fundamental safeguard against any conflicts of interest by EU member states, and should Albania follow through with plans to allow the commercial trade in such items, it will be necessary to establish and oversee an administrative unit to process contracts and arms transfer licence documentation separately from any marketing organisation.

6 Exemptions

State-to-state transfers are exempt from the regular control system. Though such cases are apparently exceptional, government ministers may order MEICO to issue transfer licenses by ministerial instructions (as happened during 2005 for the transfer of helmets to the new Afghan army). In an environment of politicised governance,¹⁹ such exemptions clearly provide an unwelcome loophole, which can be overridden or circumvented by a more rigorous criteria-based system of licence application processing.

7 Brokering

There are no legal controls on brokers, financiers, insurers or shippers under the current system. However, according to MEICO, checks are made on any intermediaries involved in the proposed transfer. Though there appears to be no legal basis for the practice, if an intermediary is involved, MEICO requires the firm to present both proof of registration as a trading entity and a licence to act as a third-party broker from its home state. If there are concerns with the application, then the transfer licence will be denied by the MOD without a right of appeal.

8 Transit and transshipment

The transit and transshipment of arms and dual-use goods is not regulated at the present time either by decree or primary legislation. This leaves the May 1999 *Customs Code* as the only legal basis for the control of transiting/transhipped goods, unduly limiting the ability of other state agencies to control this form of traffic.

9 Control lists

MEICO uses the EU Common List of Military Equipment and the Wassenaar Arrangement List of Dual-Use Goods, Technologies and Munitions. There is no specific legal basis for their use (other than those governing the operation of MEICO), which means that MEICO staff are not compelled by law to use them. There is also no application of catch-all clauses.

10 End-use control and certification

In 2003, Regulation No. 9603, *On the Compilation and Documentation of Import-Export Activities [with regard to] Military Equipment* was introduced, requiring all applications for licences to import or export military equipment and weapons to include: an end-user certificate (in English), details of the company and/or state of export or

¹⁹ See for example, *op. cit.*, Holtom, P., *et al.*, pp. 14 - 15.

import, and a copy of the contract.²⁰ According to government interviewees, certificates for verification of delivery are now also used in most cases, though this is not yet a legal requirement.²¹ While these changes are positive steps forward, a lack of end-use monitoring or verification remains a serious concern. Though this problem is not typical to Albania, whatever regulatory safeguards exist within the arms transfer control system, they may be rendered ineffective on occasion since the final use or destination of particular shipments can never be known for sure. Though MOD officials point to the fact that Albania is poorly served for these purposes with only 42 embassies overseas, most of them in Europe, no alternative arrangements (such as cooperation with the embassies of other states) appear to have been made. As previously noted however, with few transfers currently leaving Albania, this does not represent an immediate concern.

11 Administrative capacity

The key agency under Albania's present arms transfer control system is MEICO. An MOD body, it currently has a staff of just over twenty, specialising in financial management, marketing and legal issues, as well as technical matters relating to arms and military equipment. MEICO administers the arms transfer licence system, as well as providing a marketing service to promote arms transfers. It liaises with other sections of the MOD (principally the Legal Department and International Cooperation Department) as well as the MFA when processing licence applications. As noted above, there is at present no institutional basis (e.g. guidelines) or capacity, for the objective case-by-case assessment of licence applications and related risk assessment within any government ministry. In order to implement the newly proposed arms transfer law and avoid conflicts of interest arising, Albania will therefore need to establish a new unit or agency dedicated to the assessment and processing of licence applications. As noted above, in order to guard against conflicts of interest, it will be crucial under the envisaged arrangements to ensure that any such unit simultaneously holds a marketing role. Despite licensing officials periodically attending training events on non-proliferation and arms transfer controls organised by other governments or international organisations, staff working within MEICO lament the fact that inappropriate participants are often selected for such courses and point to an ongoing need for training. Within the MOI unit that licenses transfers of hunting weapons, which presently has only two members of staff working in isolation from other agencies, greater capacity may also be a priority.

12 Inter-agency relationships/processes

Given the limited scope of Albania's official arms transfer trade, inter-agency communication appears to be adequate to implement the system as it stands, at least for military goods and technologies. Since most of the decisions relating to transfers of military equipment are taken within the MOD, with only a (non-statutory) consultative role for the MFA, a low level of interaction is actually required (e.g. although it routinely does so, the MOD is not legally obliged to consult other agencies such as Customs or the MOI when considering specific licence applications). Further, MEICO officials remark on the relative speed of the current decision-making process and consider this one of its virtues (though they cite occasional long delays at Customs points as a problem).

Nevertheless, the current level of inter-agency interaction and communication is likely to be insufficient when considered in the light of both poor past practice, and Albania's commitment to implement the EU Code, which requires detailed case-by-case analysis of prospective recipients and destinations on an ongoing basis. The current arrangements whereby the MFA provides MEICO with an updated list of UN and EU embargoed states every three months, whilst informing the agency of any new restrictions, are almost certainly not detailed enough.

²⁰ Article 6 of the Regulation states that licences, import-export permissions and end-user certificates cannot be transferred to other parties. If violations of the regulation are deemed to have taken place, then licences, import-export permissions and end-user certificates can be revoked. Article 8 gives the right to appeal.

²¹ An exception to this rule can be the export of trophy arms to the USA. Law No. 8671 'On the Command and Authority of the Armed Forces', 26 October 2000, also contains some provisions relevant to the re-transfer of military equipment.



13 Transparency and reporting

Since the beginning of 2003, MEICO has been required to send a detailed and confidential report of its activities to the President, Prime Minister, National Audit Office (NAO), and MOD on the 15th of every month.²² In addition, MEICO must also send a report detailing import and export shipments to the President, Prime Minister, Intelligence Services, MFA, MOD, and the NAO on a quarterly basis. Although the Parliament's security committee is not sent a copy of this quarterly report, the now defunct Defence Committee previously received bi-annual reports from MEICO on transfers that had taken place during the preceding six months.²³ Although the parliamentary oversight committee may also ask to see the records for imports and exports at any time and may call the Minister of Defence to respond to questions, there is no statutory requirement for reporting of arms transfer information to Parliament on a routine basis.²⁴ There are also no legal requirements for Albanian arms transfers to be published for public scrutiny. Despite this, in 2004, the Albanian Minister of Defence issued an Order for MEICO to compile and publish a report on all official Albanian arms transfers that took place between 1992 and 2004. The report contained full commercial contracts for imports and exports during this period, and was distributed in 2004 to the President, as well as the State Prosecutor's Office, the State Intelligence Service, several ministries, a number of parliamentarians, and several embassies based in Tirana. Although no provision was made for public access to the report, MFA personnel noted that following their attendance at a regional event on the subject, they are presently discussing with other ministries options for the future production and public dissemination of annual arms export reports in keeping with EU norms.

14 Information gathering and sharing

MEICO is currently required to keep records on arms transfer licensing for ten years,²⁵ and the inclusion of full contract details in the organisation's recent arms export report (see above) would seem to demonstrate that this requirement is being met, at least with respect to authorised deals. Documentation on denied applications is also reportedly retained, though it is unclear what use, if any, is made of such records when considering future applications or to what extent they are shared with other national agencies.

With respect to arms trafficking, officials within the General Directorate of Customs, border guards and police anti-trafficking units report that numerous bilateral agreements and joint projects allow for cooperation against all types of organised crime, including arms trafficking, with neighbouring and EU governments. The Albanian Customs authorities also reportedly hold institutionalised meetings with their counterparts in neighbouring states at least every three months, and meetings take place each month at the border points, chaired by the heads of the Customs point on each side of the border. These are treated as opportunities for exchanging information on the types of goods being trafficked, the profiles of traffickers and information on suspects. Similar arrangements are said to be in place for the border services, with multi-level contact points established at all levels from the border point to the central levels with each of Albania's neighbours. There are also said to be frequent, almost daily, communications by telephone and email between police officers on border crossing points, with exchanges being logged, archived and passed on to other agencies where relevant.

Albania is currently party to a number of regional or international agreements and fora in which it cooperates with other states on arms transfer controls issues. Principal among these are the OSCE's SALW Programme

²² Order No. 27 'On information about the surplus of weapons and ammunition in the import-export activities of MEICO', 23 January 2003.

²³ Interview with parliamentarian, 03 May 2005. In January 2005, the Albanian Parliament's Defence Committee was merged with other Committees to form the Security Committee, which covers the activities of MOD, the then MOPO and State Intelligence Services. This was part of a downscaling of parliamentary committees from 14 to seven. The Security Committee meets twice a week.

²⁴ *Ibid.*

²⁵ Interview with MOD official, *op. cit.*

information-exchange²⁶ and the limited anti-SALW trafficking operations run by the SECI Regional Centre for Combating Transnational Crime, in which Albania has played a leading role to facilitate cross-border cooperation among the governments of the region.²⁷ The consistency of reporting and participation in fora such as these appears to vary in intensity and quality. For instance, although Albania has identified a National Focal Point within the MFA as part of its commitment to the South Eastern Europe Stability Pact Regional Implementation Plan on SALW, information sharing within the Regional Steering Group mechanism that was established to guide this work has often been poor.²⁸ Reporting via UN channels has varied in regularity in recent years; since the agreement of the UNPoA in 2001, Albania has submitted reports for 2003 and 2004 only. Although supplied for other years, no reports were submitted to the UN Register of Conventional Arms in 2003 or 2001. MOD officials were however willing to release a copy of Albania's most recent submission to the OSCE. However, within the SECI Regional Centre for Combating Transnational Crime, where an Albanian official has, until recently, headed the task force tackling SALW trafficking, Albania has sponsored and participated in two information-exchange exercises on SALW seizures in SEE in recent years.²⁹ Albania is also a contributor to the UN Commodity Trade Statistics Database (UN Comtrade).

15 Enforcement

Albania currently has no specific arrangements for investigating potential abuses of the military and dual-use goods control system, and no prosecutions have been launched for breaches of the relevant laws to date. Albania does however have a developed law enforcement system for the investigation of serious crimes, including arms trafficking, which should be applicable in this area. For example, a 'Prosecution Office for Very Serious Crimes' was established in 2004, and within the MOI, the Department for the Fight Against Organised Crime and Justice Collaboration maintains a section dedicated to combating arms trafficking.³⁰ The NAO, which visits MEICO annually, also has the power to investigate past practices and is reported to have done so once during 2004.

Enforcement at border crossing points is the shared responsibility of the Border Guards and the General Customs Directorate, which, thanks to a Memorandum of Understanding between the two organisations, jointly possess the right to inspect shipments of goods. International projects such as the EU's Customs Assistance Mission in Albania (CAM-A)³¹ and the international border policing mission PAMECA³² have contributed greatly to the introduction of EU-comparable legislation such as the May 1999 *Customs Code*, and also to the training and equipping of staff from both agencies. It is reported that in 2004, around six per cent of all cargo shipments (including in some cases, transit shipments) were subjected to physical checks, excluding controls that took place at border crossing points for passenger traffic.³³ It is unclear if all legal shipments of arms and ammunition are amongst the shipments checked. As with law enforcement in other areas however, it seems that much more

²⁶ Albania is also a member of the Treaties on Chemical Weapons, Biological Weapons and the Nuclear Non-Proliferation Treaty. Interview with MOD official, 27 April 2005. Albania is also preparing an application to the Australia Group, and has been invited to seminars in Bulgaria and Hungary in preparation for membership. Interview with MFA official, 25 April 2005.

²⁷ 'Operation Ploughshares' (2002 - 2003) and 'Operation Safe Place' (2004 - 2005), two information-exchange exercises on SALW seizures in SEE were project managed by a liaison officer supplied by the Government of Albania, while political support for the latter operation was provided by the Albanian Government which hosted a launch event in Tirana. Source: 'Task Force - Combating Trafficking in Small Arms, Light Weapons and Explosives: Project I, Illicit Trafficking in Small Arms, Light Weapons and Explosives, Operation Ploughshares', Project document, SECI Regional Centre and Ministry of Public Order (Tirana, 2002).

²⁸ The MFA took on this responsibility in April 2006. Prior to this the National Focal Point was located within the MOD. Interview with Sajmir Repishti, MFA, 03 May 2006.

²⁹ 'Operation Ploughshares' (2002 - 2003) and 'Operation Safe Place' (2004 - 2005).

³⁰ Anti-trafficking activities are regulated by Articles 278/a and 282/a of the Penal Code, the former dealing with trafficking of arms and ammunition, while the latter regulates the trafficking of radioactive materials and explosives. The two Articles were amended in 2001 to include provisions on combating trafficking. Interview with Edmond Bahiti, Head of Section for Combating Trafficking, 31 March 2005.

³¹ EU Customs Assistance Mission in Albania.

³² Police Assistance Mission of the EU to Albania.

³³ *Op. cit.*, Holtom, P., *et al.*, pp. 91 - 92.



could be done to control trafficking in arms and ammunition from Albania, which is still believed to occur routinely on a low-level basis.³⁴

16 Penalties and sanctions

Given that Albania currently has a nationalised arms transfer controls arrangement in which MEICO is the only authorised commercial arms exporter, the *Penal Code* does not currently provide penalties for companies that violate arms control legislation and regulation. However, since the new introduction of new provisions in 2001, it contains sanctions for individual offenders. Article 278(1) applies to those found guilty of trafficking in weapons and munitions, and provides for a penalty of seven to 15 years imprisonment, whilst Article 279, applying to the production and illegal possession of small arms and light weapons, carries penalties ranging from a fine to five years imprisonment.³⁵ In cases where smuggled weapons have been misused and caused a fatality, a minimum sentence of five years imprisonment applies. Where the smuggler can be proven to have links with organised crime networks, penalties range from 15 to 25 years imprisonment. Further, it is now possible for life sentences to be given for the trafficking in arms in the most serious cases.³⁶ In reality, however, whether due to poor marking of weapons, or the challenges of effective intelligence-based policing and information-sharing, it is difficult to envisage circumstances under which the evidence necessary for such prosecutions could be successfully gathered and used. Thus the imposition of these harsher sentences is therefore improbable. It also remains to be seen whether these penalties will be referenced in the forthcoming law on the import-export of military goods.

17 Interaction with industry

Under the current nationalised arms transfer controls system in which MEICO is the only licensed arms trading company as well as the licensing authority, questions surrounding the interaction between state and industry for control purposes do not arise. Nevertheless, according to MEICO staff, it is envisaged that with the introduction of new primary legislation for arms transfer controls, private companies will be authorised to trade in arms for the first time. This will present the Albanian Government with major challenges in terms of industry outreach, monitoring, regulation and law enforcement, particularly in an environment where corrupt practices are all too common.

18 Conclusion

While Albania's current centralised arms transfer control system has the merit of simplicity, there is still much to be done by the Government to realise its commitment to multilateral cooperation and compliance with EU and international norms in this area. For example, without the agreement and implementation of new legislation relating to arms transfers, which includes regulation of brokering activity, transit and licensed production, as well as the establishment of a criteria-based licensing regime and the introduction of transparent reporting practice, it is difficult to imagine how the Government could consistently honour its commitment to implement the EU Code. However, it is to be hoped that many of the weaknesses of the current control regime will be addressed by the planned legislation, and provided that this occurs, a sound basis will be in place for future compliance with EU and international standards in this area.

The introduction of a new and ambitious legislative framework will naturally create new challenges with respect to implementation and enforcement, and it is to be hoped that the Albanian Government focuses appropriately on supporting key institutions and officials charged with administering any new system. In turn, outside actors should

³⁴ *Ibid.*

³⁵ Report of the Albanian Government on Implementation of UN Security Council Resolution 1373 on Combating Terrorism (undated).

³⁶ Interview with Ministry of Public Order official, 20 April 2005.



also render their assistance, particularly in view of the fact that the Government of Albania has shown willingness to collaborate with international actors whether on the development of new legislation, on information-exchange, or when considering arms transfer license applications. Naturally the introduction of more comprehensive legislation will pose new challenges with respect to implementation and enforcement, particularly given Albania's long-standing struggle with rule of law and corruption issues. That said it seems beyond doubt that the Albanian Government is genuinely committed in principle to upholding international norms on arms transfers and steps taken in past years to enhance transparency and international cooperation reinforce this view.

The table on the following pages provides a summarised assessment of Albania's present compliance, or ability to comply with, EU standards:



EU STANDARD	LEGAL OR POLITICAL BASIS	NATIONAL COMPLIANCE	LEGISLATIVE, REGULATORY OR POLITICAL REFERENCE
Criteria-based licensing system (eight criteria)	EU Code, Draft EU Common Position Defining Common Rules Governing the Control of Exports of Military Technology and Equipment (Draft Common Position)	Yes, but low internal capacity for risk assessments – reliance on external advice	Decision No. 604, 28 August 2003
Military control list	Common Military List of the European Union	Customary use of EU List	None
Controls on dual-use goods (including control list and catch-all clauses)	EU Dual-Use Regulation	Customary use of Wassenaar List – no application of catch-all clauses	None
Control of arms brokers	EU Common Position on Arms Brokering Draft Common Position	Brokers customarily required to present proof of registration as trading entity in country of origin	None
Controls on intangible transfers	Draft Common Position	Not controlled	None
Controls on transit and/or transshipment	Draft Common Position	Inspections of transiting arms and dual-use goods shipments by Customs (only as part of standard inspection practices for all goods)	No provisions other than standard Customs procedures for all goods
Control of export of production capacity (including, for example, licensed production)	Draft Common Position	Not controlled	None
End-use controls and certification requirements (including controls on re-transfers)	Draft Common Position EU User's Guide	End-use certification required, but no delivery verification or end-use monitoring	Reg. 9603, 2003 (EUCs) Law No. 8674, 26 October 2000 (re-transfers)
Power to revoke transfer licences	Best practice	Can be revoked by the issuing authority – Secretary General of MOD for military, and Chief of Police for civilian items	Decision No. 365 and subsequent amendments
Registration of actors (e.g. manufacturers, traders, shippers)	Best practice EU Common Position on Arms Brokering (recommended)	Only state-owned import-export company MEICO authorised to trade No registration requirement for producers, shippers or third-country brokers	None

EU STANDARD	LEGAL OR POLITICAL BASIS	NATIONAL COMPLIANCE	LEGISLATIVE, REGULATORY OR POLITICAL REFERENCE
Legal penalties and sanctions	Best practice EU Common Position on Arms Brokering	Sanctions for individual law-breakers but not for legal entities; only non-custodial tariffs	Penal Code Articles 278(1) and 279
Inter-departmental consultation	Best practice	Limited consultation between MOD and MFA for military transfers, none for civilian transfers	None
Information-exchange with other governments (including circulation of licensing denials among EU member states and subsequent consultations)	EU Code, Draft Common Position Best practice	Reporting to UNDDA, COMTRADE and others, but infrequently Not party to EU denial notification and consultation mechanism	See Table 1 above N/A
Industry outreach	Best practice	Limited nationalised industry	N/A
Parliamentary accountability	Best practice	Not legally required (though parliamentary committee may in principle question government officials)	2004 Parliamentary Rules of Procedure
Regular production and publication of national reports	Draft Common Position	No (except limited circulation of one-off report following government decree)	None


Table 4: Summary of national arms transfer standards versus EU obligations and practice



19 Recommendations

To the Government of Albania

- The new draft law on import-export of military goods should be passed by Parliament at the first possible opportunity and should:
 - Require all actors wishing to engage in the international transfer of arms, dual-use goods and military equipment to be registered by the Government;
 - Provide for the revocation of company registration in the event of violations and of individual arms transfer licenses where changing conditions or newly available information demonstrate that the situation at the point of receipt no longer meets the criteria according to which licenses were previously issued;
 - Consider bringing the parallel systems for the transfer of hunting weapons and arms, military goods and equipment under a single system;
 - Provide for the adoption of the EU Dual-use Goods List and Wassenaar Arrangement List into national law;
 - Require that all arms transfer licence applications be considered on a case-by-case basis by an inter-agency group drawn from a range of government ministries and departments, with detailed criteria-based assessments of the risks associated with each transfer being a core part of the decision-making process (the eight criteria provided by the EU Code should guide this work);
 - Introduce controls on transit and transshipment, brokering and associated activities, production (including licensed production and the production and transfer of components for incorporation into finished weapons systems) drawing on best practice in these areas;
 - Require each transfer to be accompanied by an end-user certificate with provision for post-delivery verification;
 - Using secondary legislation and/or guidelines for government officials, specify: the required content and format for end-use certificates; the roles and responsibilities (including information-sharing procedures) that institutions involved in the arms transfer control system must follow;
 - Require delivery verification certificates to be submitted to the authorities on delivery of particular shipments;
 - Explore workable mechanisms to put in place end-use monitoring and verification to ensure that arms transfers are used as envisaged at the point of delivery;
 - Establish in law Albania's commitment to uphold the requirements of key international agreements relevant to arms transfer control, in particular the EU Code (specifically its operative provisions), the OSCE Document on SALW and the UNPoA;
 - Expressly prohibit the breaking of embargoes put in place by international or regional bodies, with severe penalties for breaches;
 - Introduce severe maximum penalties for violation of the arms transfer control law and related international agreements/embargoes;
 - Require that definitive decisions on arms transfer licence applications be reached by the authorities within a time-limited period (with a failure to award licenses or process documentation on time resulting in denial);

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- Require the Albanian Government to publish a public annual report on all conventional arms transfers covering licensing decisions and deliveries in line with EU best practice;
 - Include provisions to ensure that government officials with interests in the defence industry are permitted to have neither an advisory nor decision-making role in the arms transfer control system;
 - Require those agencies involved in the arms transfer licensing system to retain relevant documentation for a significant period after processing particular applications (a minimum of ten years);
 - Modify the role of the state authorised arms transfer company MEICO by assigning either its marketing function or arms transfer licensing function to another agency, thereby guarding against possible conflicts of interest;
 - Require regular independent audits to be carried out on the activities of all agencies involved in the licensing and transfer of arms;
- In addition to the introduction of new primary legislation, the Government of Albania should look to:
- Upgrade the existing parliamentary committee on 'Import and Export Records' to enable it to scrutinise arms transfer decision-making, both pre- and post-licensing decision. This committee should have the statutory duty to call ministers and officials from state agencies responsible for transfer decision-making 'in camera' and should publish an annual review on the enforcement of arms transfer legislation and regulations;
 - Using secondary legislation and similar mechanisms, provide government officials with detailed guidelines to aid their work on arms transfer licensing; and
 - Ensure that the above recommendations are addressed as part of a broader national strategy for arms (particularly SALW) control.

To the international community

- Ensure relevant international and regional instruments and documents such as the EU Code are translated into Albanian and made readily available to relevant national actors;
- Provide technical support to help the Albanian Government draft the required legislation, guidelines and operative provisions to implement its stated commitments on arms transfer control;
- Support efforts by the Albanian Government and ensure that Albania has the capacity to implement its new legislation and operative provisions, especially with regard to implementing controls on brokering activities, based on a mutually-developed and prioritised set of requirements. In the first instance this support should cover training in the interpretation and enforcement of the criteria that Albania adopts under national law for judging licence applications (with a view to compatibility with the EU Code criteria), but should ultimately involve training in all aspects of control, from licensing assessments through to border control and intelligence-based policing;
- In order to effectively channel donor support and encourage inter-agency collaboration within Albania, ensure that support for the improvement of transfer controls is integrated, where possible, into a broader framework (such as a national strategy) for weapons management in Albania which might incorporate other related matters such as stockpile management, surplus destruction and civilian licensing;
- Countries with developed transfer control regimes and in particular with relatively sophisticated procedures for parliamentary oversight, should encourage information-exchange between Albanian members of parliament and their counterparts who have experience in this area;



- The donor community should provide support to NGOs and the media so as to build indigenous capacity to analyse and monitor Albania's arms export controls;
- Assist Albanian efforts to verify delivery and check compliance with end-user undertakings through their diplomatic representatives in the destination states, in those countries where Albania has no diplomatic presence;
- The EU in particular should:
 - Ensure that implementation of arms transfer controls that are consistent both with Albania's commitments under international law and with the EU Code are incorporated into ongoing formal EU-Albanian dialogue processes, and, via the EU's Tirana-based 'Chief Technical Adviser for SALW Control', form a central part of any national SALW Control strategy developed by the Government of Albania with EU backing;³⁷ and
 - Consider circulating information regarding previous denials of arms transfer licence applications to Albania in order to demonstrate how decision-making works in practice among member states.

³⁷ The recently agreed EU Strategy 'To Combat Illicit Accumulation And Trafficking Of Small Arms and Light Weapons And Their Ammunition' provides a policy framework for this.



Bosnia and Herzegovina

1 Introduction

Arms transfer control in BiH has definitely come a long way. Much of the necessary legislation is now in place and to EU standard, and key personnel within the relevant ministries appear committed to enforcing and honouring that legislation. In addition to the domestic control structures, the European Union Force in BiH (EUFOR) has an advisory function with regard to decisions relating to arms transfers. While at first glance this might suggest an additional layer of control over the issue, there are concerns that such an arrangement confuses the decision-making process and creates opportunities for buck-passing. This, and a number of additional challenges, continue to cause difficulties in terms of implementation.

Before its break-up, 55 - 60 per cent of Yugoslavia's defence manufacture was located in the territory of Bosnia and Herzegovina (BiH).³⁸ Although the wars and their aftermath had a huge impact on the capacity of industry to produce and trade, considerable expertise remains, and in recent years the value of arms exports has been on an upward path. Most arms production in BiH now takes place within the Federation of Bosnia and Herzegovina (Federation) with particular concentration on products related to ammunition and on maintenance and overhaul facilities.

In 2004, according to the latest available official figures, BiH authorities issued 191 arms and ammunition export licences, 128 arms and ammunition import licences, and 37 transit licences. In that year, BiH exported arms and/or ammunition to 39 countries to a total value of €35 million. Among BiH's most significant export markets in 2003 and 2004 were Austria, Canada, Germany, Hungary, Iraq, Kuwait, Nepal, Saudi Arabia, Serbia & Montenegro, Turkey, USA and Venezuela.³⁹ It is noteworthy that BiH has been willing to publish this data in an annual report (see the 'Transparency and reporting' section below); however some of these countries, for example Iraq, Nepal and Venezuela, raise some concerns about the quality of licensing decision-making.⁴⁰

There have also been recent occasions where the control regime in BiH has clearly not operated effectively. For example, a major scandal surfaced in 2002, when it was discovered that VZ Orazo, Bijeljina, Republika Srpska, had been involved in selling spare parts for, and working to overhaul, Iraqi MiG aircraft in breach of UN embargoes. VZ Orazo had engineers based in Iraq and was working with the Iraqi authorities to subvert international inspections. Discovery of these problems resulted in a number of resignations of senior political and military figures, and has also had a notable impact upon defence industry in Republika Srpska more generally.⁴¹

In addition to its production capacity, BiH, in common with many states of the region, has considerable problems with surplus weapons. However it is hoped that existing programmes will see all surplus destroyed by the end of 2006. It has recently been reported that BiH has already exported as many as 290,000 surplus AK-47s to Iraq, and is under pressure from the US to export more.⁴²

As touched on above in the reference to the Orazo scandal, the situation in BiH is complicated by the relationship between the state and the entities (Republika Srpska and the Federation). Responsibilities for the control of defence equipment production facilities, of ownership, of import and export, and of the transport of arms is shared among authorities at the different levels, creating opportunities for confusion of responsibility and

³⁸ Dzanić, E., 'The fall and rise of Bosnia's war machine', *Jane's Intelligence Review*, 01 January 1997; 'The Muslim Defence Industry in Bosnia and Herzegovina', *Jane's Intelligence Review*, 01 May 1994.

³⁹ National report on arms transfers and licensing for 2004, Foreign Trade and Investment Division, Ministry of Foreign Trade and Economic Relations, Bosnia and Herzegovina, February 2005.

⁴⁰ It should be noted, however, that the BiH annual report, from which these figures are taken, does not indicate what types of equipment were transferred to these countries, and that EU member states authorise transfers of defence equipment to the same destinations.

⁴¹ Kusovać, Z., 'Suspicion widens in arms to Iraq probe', *Jane's Defence Weekly*, 06 November 2002.

⁴² Amnesty International, *Dead on Time: arms transportation, brokering and the threat to human rights*, 10 May 2006, <http://web.amnesty.org/library/index/ENGA300082006>, accessed 24 May 2006; BBC Radio 4 File on Four, *Iraq arms 'leaking to insurgents'*, 23 May 2006, http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/06_06_06_iraqi_guns.pdf, accessed 24 May 2006.



interest, and undermining attempts to improve transparency. Many institutional structures are either new or fluid; there is a process underway whereby powers are being transferred from the entity to the state level (e.g. a state-level Ministry of Security was established in 2002, while reform of the Ministry of Interior from an entity-level to a state-level institution is set to get under way later in 2006), however it is not clear where this will end, which in the meantime increases uncertainty. There are also concerns that licensing decisions may be influenced by a desire for 'fairness' between the two entities, i.e. that decisions regarding export licence applications by a producer or trader in one of the entities could be based on previous licensing decisions relating to applications originating in the other entity.⁴³

Another area of concern relates to the issue of capacity. There are question marks around the number of personnel assigned to arms transfer control, their training, coordination and communication, and access to appropriate equipment. Paradoxically, the advisory role of EUFOR in the licensing process may be reducing the incentive to deal with these shortfalls. It is therefore urgent that the domestic structures and practices are upgraded so that the national authorities are capable of making independent and rigorous licensing assessments.

2 International commitments and adherence

In common with many states of the region, in the last few years BiH has shown a willingness to participate in the area of arms transfer controls as a responsible member of the international community, and has signed up to a number of conventional arms transfer and arms control regimes (see table 1 below). BiH is anxious to be seen as a good European and international player, and there is a widespread realisation that involvement in irresponsible arms transfers is damaging to its reputation in general, and its prospects for NATO and EU membership in particular. There are nevertheless other steps that BiH could take to demonstrate its commitment to international best practice at the formal or rhetorical level, such as taking steps to ratify the UN Firearms Protocol. Although BiH did align itself to the EU statement on transfer controls at the UNPoA Preparatory Committee meeting in January 2006, it has not made any national statement in support of reaching agreement on global transfer controls at the UN Programme of Action on SALW (UNPoA) Review Conference in June – July 2006, nor has it publicly expressed support for an international Arms Trade Treaty to govern international transfers of all conventional arms. Furthermore, it is not clear that there is a clear understanding at either the political or operational level of how to implement all the international or regional agreements to which BiH is now committed.

ARMS OR SALW CONTROL AGREEMENT	BIH'S COMMITMENTS
EU Code of Conduct on Arms Exports	2002
EU Common Position on Arms Brokering	-
OSCE Document on SALW	November 2000
OSCE Document on Stockpiles of Conventional Ammunition	November 2003
OSCE Decision on MANPADS	2003
OSCE Decision on End-user Certificates	2004
OSCE Decision on Brokering	2004
Stability Pact Regional Implementation Plan	November 2001
UN Firearms Protocol	No
UN Programme of Action on SALW	2001

Table 1: BiH's commitments to arms transfer or SALW Control agreements⁴⁴

⁴³ Interview with UN Development Programme official, Sarajevo, 26 April 2006.

⁴⁴ BiH is also a state party to the Biological Weapons Convention, the Chemical Weapons Convention and the Nuclear Non-Proliferation Treaty.

3 Legislation and regulation

The legal basis for BiH's arms transfer control regime is now relatively well developed, with both overarching legislation and a series of 'instructions' which set out procedures and practices for the application of that legislation.

DATE	LEGAL REFERENCE	TITLE
19 May 2003 (Last amended)	Official Gazette of BiH, 17/98, 13/03	Law on Policy in Foreign Direct Investments in Bosnia and Herzegovina
07 March 2003	No. 01-1-170/03	Instruction on Registration of Persons and Legal Entities in Trade of Armaments and Military Equipment
09 May 2003	No. 01-1-175/03	Decision on Conditions and Procedure for Registration of Contracts for Production Cooperation in the Field of Arms and Military Equipment
26 April 2004	Official Gazette of BiH, 9/04	Law on Manufacture of Arms and Military Equipment
08 June 2004	No. 01-1-50-6522-1/04	Instruction on Method of Permanent Oversight and Reporting in Production of Arms and Military Equipment
08 June 2004	No. 01-1-50-6522-2/04	Instruction on Inspection Supervision over the Production and Overhaul of Arms and Military Equipment
13 July 2004	No. 01-1-02-8249/04	Instruction on Procedure of Issuance of Licences to Legal Persons for Production and Overhaul of Arms and Military Equipment and Record Keeping Method in the Central Register
14 March 2005 (Last amended)	Official Gazette of BiH, 05/03, 33/03, 14/05	Law on Import and Export of Arms and Military Equipment and Control of Import and Export of Dual-Use Items
05 July 2005	No. 01-1-02-8702/05	Instruction on the Obligations of Customs Authorities in the Implementation of the Law on Import and Export of Arms and Military Equipment and the Control of Import and Export of Dual-Use Items
05 July 2005	No. 01-1-02-8703/05	Instruction on Regulating Export, Import, Transit and Mediation in Trade of Armaments and Military Equipment
05 July 2005	No. 01-1-02-8706/05	Instruction Regulating the Procedures of Export, Import and Transit in the Trade of Dual-Use Items and Technologies
31 July 2005	No. 01-031544-13/04	Instruction on Definition and Obligation to Comply with Deadlines on the Prohibition of Trade of Small Arms and Light Weapons of Armed Forces of Bosnia and Herzegovina

Table 2: Summary of main Bosnian legislation and regulations relevant to transfers of military and dual-use equipment



4 Production

As noted above, before its break-up, 55 - 60 per cent of Yugoslavia's defence manufacture was located in the territory of Bosnia and Herzegovina (BiH). The scale and scope of this industry was significant, providing a wide range of products and services and employing approximately 38,000 people in the Federation alone.⁴⁵

However the wars and their aftermath had a huge impact on the capacity of industry to produce and trade. The conflicts incapacitated the integrated defence production of Yugoslavia, while in more recent times the Dayton Peace Agreement and the restraint imposed on trade by external actors has meant that defence production capacity is much reduced. However, considerable expertise remains, and in recent years the value of arms exports has been on an upward path. From 1997 to 2001, the value of exports from the Federation increased tenfold to around €12 million per annum.⁴⁶ In 2004, according to the latest available official figures, BiH exported arms and/or ammunition to 39 countries to a total value of €35 million.⁴⁷

Most BiH arms production now takes place within the Federation, especially following the VZ Orao scandal in 2002 (see above). The major companies include UNIS Promex, UNIS Igman and UNIS Pretis, all of which are involved in the production of ammunition and related fuses, primers, detonators etc. These companies, together responsible for approximately 90 per cent of exports of controlled goods, are, with their focus on small and large calibre ammunition, typical of BiH defence companies. Other facilities of note include Bratstvo Novi Travnik (BNT), which produces a variety of howitzers, large guns, cannons and mobile rocket systems, and Zrak of Sarajevo, which specialises in optical devices (e.g. night sights). BiH companies have also sought to carve out niches in the area of maintenance and overhaul facilities, while some companies are seeking to provide destruction services for BiH's surplus small arms and ammunition.

Production of arms and military equipment is controlled by:

- a) the Law on Manufacture of Arms and Military Equipment;
- b) the Instruction on Inspection Supervision over the Production and Overhaul of Arms and Military Equipment; and
- c) the Instruction on Method of Permanent Oversight and Reporting in Production of Arms and Military Equipment.

The Law requires that legal persons (e.g. companies) wishing to engage in manufacture must go through a process of registration, and that they must apply for a licence for each new production plan. The Ministry of Foreign Trade and Economic Relations (MOFTER) is tasked with keeping a central register. There is also provision made for regular inspection in order to ensure compliance with any production licences, for accurate record-keeping regarding certain sensitive substances, and that various security measures are in place. There is, however, the potential for difficulties in that the state and entity-level administrations are each involved in authorising production and inspecting production facilities. The potential problems with such complicated arrangements are compounded by the fact that entity governments have traditionally been the owners of all arms and military equipment producing companies within their territory. In recent years, many production facilities have been partially privatised, however entity governments still retain majority shareholdings in most cases. Foreign ownership of arms producing or trading companies is still restricted by Article 4 of the *Law on Policy in Foreign Direct Investments in BiH* to comprise no more than 49 per cent. Entity-level regulations are obliged by law to be compliant with the national law, however there is a clear potential for conflict of interest where the owners of production facilities are also involved in their regulation.

⁴⁵ Watkins, A., 'Yugoslav industry revival: fact...or fiction', *Jane's Defence Weekly*, 25 July 2001.

⁴⁶ *Ibid.*

⁴⁷ National report on arms transfers and licensing for 2004, Foreign Trade and Investment Division, Ministry of Foreign Trade and Economic Relations, Bosnia and Herzegovina, February 2005.

It would seem that BiH Government does not control the establishment by BiH companies of production capacity in other countries, e.g. through licensed production. In the most recent BiH report on its implementations of the UN Programme of Action on SALW (UNPoA), it is stated that there is no licensed production outside BiH, and that the application of the extra-territorial principle does not apply to this activity.⁴⁸ If such practice is not regulated, it is not clear how the Government can be certain that none has taken place. In any event, this does not prevent such an occurrence taking place in future. This is a loophole that the BiH Government should address.

The maximum fine that can be levied on a legal person (e.g. a company) in technical breach of the law is only KM150,000 (approximately €75,000), while the maximum punishment for a physical person (i.e. an individual) is KM10,000 (approximately €5,000) or a 60-day term of imprisonment. There will also be circumstances where the BiH Criminal Code could be brought to bear, with the potential for multi-year prison sentences. However it is not always clear which body of law would apply (see the Penalties and sanctions Section below).

5 Licensing of transfers

While BiH is by no means a major arms exporter, it is an active supplier of defence equipment. In 2004, the last year for which official figures are available, the BiH authorities issued 191 arms and ammunition export licences and 37 transit licences. In that year, BiH exported arms and/or ammunition to 39 countries to a total value of €35 million. The key legislation regulating transfers of controlled goods and technology into, through and out of Bosnia and Herzegovina, as well as the mediation in trade (brokering) by a physical or legal person based in Bosnia is the *Law on Import and Export of Arms and Military Equipment and Control of Import and Export of Dual-Use Items (Law on Export and Import)*. There are also a number of 'instructions' that pertain to this Law, as set out in Table 2 (above).

In addition, there is currently in force a moratorium on the export of surplus SALW from BiH (the *Instruction on definition and obligation to comply with deadlines on the prohibition of trade of small arms and light weapons of Armed Forces of Bosnia and Herzegovina*, declared pursuant to Article 99, Paragraph 3 of the *Law on Administration* and Articles 14 f), 16 a), 40 c) and g) and 80 of the *Law on Defence of Bosnia and Herzegovina*). The moratorium, initially issued on 22 July 2004, after several extensions entered into force on 31 July 2005.

This legal framework is relatively comprehensive, for the most part compliant with EU standards, and covers virtually all the necessary elements of a modern transfer control system. It deals with import, export, transit and transshipment, and brokering (see below). It covers components and dual-use goods, as well as finished military products. It provides for licences for arms and military equipment to be issued on a case-by-case basis, dependent on authenticated end-use certification and following an evaluation checking that *inter alia* the issue of licences is in accord with the European Union Code of Conduct on Arms Exports (EU Code). While mention of the EU Code is extremely welcome, BiH's status as a non-EU member means that there are elements of the EU Code that BiH cannot implement (e.g. provisions mandating information-sharing among EU member states), which renders the existing language in some ways irrelevant. It would thus be preferable if the *Law on Import and Export* contained a specific reference to the criteria of the EU Code, or ideally, if it enumerated each of the criteria.

There are various licences that can be issued for the transfer of dual-use goods and technologies. Individual licences are of a type similar to those used for arms and military equipment. In addition, MOFTER issues general licences, which allow for all registered exporters/importers to transfer specified dual-use items to/from specified countries, and universal/global licences, which authorise an individual importer/exporter to transfer specified

⁴⁸ *The Government of Bosnia and Herzegovina, Reporting on the Implementation of the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons (SALW) in All Its Aspects (2005)*, <http://disarmament.un.org/cab/nationalreports/2005/Bosnia%20and%20Herzegovina.pdf>, accessed 26 May 2006.



dual-use items from/to specified countries. Only individual licences can be issued for dual-use transactions that relate to military and security purposes.

Parties must be registered for authority to manufacture, sell or trade in controlled goods. Decision-making takes place at the state level. Different government departments have been tasked to manage the regime: the system is administered by MOFTER with input from the Ministry of Defence (MOD), the Ministry of Foreign Affairs (MFA) and the Ministry of Security (MOS), all of which are required to give consent before a transfer licence can be granted. Each ministry therefore has the power of veto; there is no provision for collegiate-type decision-making. Licensing decisions are expected to be made within 30 days (though it is not clear what happens when this deadline is not met); licences are valid for one year. The legislation grants to the government the power to revoke licences. In addition to the permission granted by the Government of BiH, all decisions to grant a licence are seen by EUFOR, which can advise the national authorities if it believes the transfer may violate international norms (for more on this, see the 'Role of EUFOR' Section below).

There are, nevertheless, a number of areas of concern that need to be addressed. Despite its inclusion in law, and despite some training of officials in implementation of the EU Code, there are indications that the EU Code criteria, which should be the centrepiece of export licensing decision-making, are not particularly well understood and are not central to the process. This applies both at the formal level and in terms of day-to-day implementation. It would seem that the only ministry required to consider the EU Code is the MFA (Article 6.1 of the *Law on Export and Import*), and this is only for arms and military equipment. There is no reference in the same law to requiring similar consideration when assessing transfers of dual-use goods. Furthermore, Article 6 of the *Instruction on regulating export, import, transit and mediation in trade of armaments and military equipment* and Article 7 of the *Instruction regulating the procedures of export, import and transit in the trade of dual-use items and technologies* sets out the bases upon which MOFTER may deny licences. In neither Article are the EU Code criteria mentioned. From discussions with officials, it would appear the main factors taken into account relate to arms embargoes and the reliability of end-use documentation. While both of these issues are important, and the seriousness with which they are regarded is to be welcomed, there needs to be greater awareness and more rigorous application of the EU Code criteria. For example, in communications with the MFA (the sole ministry charged in legislation to consider the EU Code, see above), in response to questions regarding the factors considered when assessing licence applications, no mention was made of the EU Code criteria.⁴⁹

Diplomatic missions are a prime source of information regarding the situation in recipient countries. This is problematic for a number of reasons. First, BiH has only 49 overseas missions (it is not clear from where BiH draws its in-country expertise where there is no diplomatic presence); second, staff in diplomatic missions are unlikely to have an understanding of or expertise in arms transfer controls; and third, missions are also responsible for export promotion, raising the possibility of conflicts of interest.

The section of the *Law on Export and Import* that deals with dual-use items and technologies makes specific reference to controlling the intangible transfer of technology; however the section on arms and military equipment restricts itself to the regulation of physical transfers only. There is therefore a need to amend the law to ensure that intangible transfers of technology relevant to arms and military equipment is on a par with the controls of dual-use technology.

While the moratorium on the export of surplus SALW gives some cause for confidence that BiH is determined to apply rigorous controls on transfers (of SALW), recent publicity that the introduction of the moratorium was delayed to enable massive transfers to Iraq of AK-47s and associated ammunition to proceed suggest that arms export decisions may be subject to undue political pressures. Furthermore, the idea put forward that contractual obligations forced the delay of the moratorium⁵⁰ undermine assertions that the BiH Government has the power to revoke any arms transfer authorisation at any time.

⁴⁹ Email exchange and telephone conversation with MFA official, June 2006.

⁵⁰ *Op. cit.*, BBC Radio 4 File on Four.

6 Exemptions

Licences are not required to transfer equipment for the use of BiH personnel involved in internationally-sanctioned peace-support operations abroad. It is not clear whether there are other circumstances where licensing exemptions apply.

7 Brokering

Under the *Law on Export and Import*, the same rules apply to arms brokering as to direct exports, including the obligation that all who wish to engage in such activities are registered and that licences are required for all shipments. The brokering controls apply to transfers of dual-use goods and technologies, as well as arms and military equipment. Controls on arms brokers therefore go some way beyond the minimum requirements of the EU Common Position on Arms Brokering. The controls on brokering provide for some element of extra-territorial jurisdiction. Any physical or legal person temporarily or permanently resident in Bosnia must apply for a licence to trade goods, however a citizen of BiH would not need to register or apply for licences if resident elsewhere.

8 Transit and transshipment

Transits and transshipments of arms and military equipment through BiH territory usually require a licence. The transit of dual-use goods does not require a licence when the goods are not assigned customs procedures or when they are merely placed in a customs free zone; in such cases it is necessary only that they meet certain procedural standards.⁵¹ As responsibility for internal transport rests at the level of the entities or sometimes even cantons, the state-level Ministry of Security may not necessarily be aware of these movements. This increases the risk that equipment could go astray, especially in light of the capacity problems faced by Customs, State Border Service (SBS) and the Police (see below).

9 Control lists

The Common Military List of the EU is the basis for the arms and military equipment covered by the *Law on Export and Import*. The 'List of dual-use items and technology' that is mandated by the same Law is a translation of the EU Dual-Use items list provided in the Annexes of the EC Regulation No.1334/2000.

10 End-use control and certification

As is set out in Article 5.2 of the *Law on Import and Export* and in the *Instruction on regulating export, import, transit and mediation in trade of armaments and military equipment*, for the transfer of arms and military equipment, no licence can be issued without an end-user certificate issued by the importing state, or an end-user certificate issued by the end-user and a copy of an import licence issued by the importing state. Documentation shall include a description of the items, their quantity and value, and the identity of exporter, consignee and end-user. For transfers of dual-use goods under a universal/global licence, the exporter must produce end-use documentation. For transfers of dual-use items under an individual licence, end-use documentation *may* be required, however it would seem this is at the discretion of MOFTER. There is no requirement for end-use documentation for transfers of dual-use goods under a general licence.

Officials seemed committed to ensuring that all the procedural elements of the end-use certification system are followed rigorously, however there was little to suggest that the system of end-use checking is designed to identify

⁵¹ These procedural standards include: presentation of the original export authorisation from the exporting country; that the destination country is not under a UN, OSCE or EU arms embargo; that the goods leave BiH within 30 days. See Article 13 (b) 4 of the 'Law on Import and Export'.



cases where the named end-user might be complicit in diversion and/or misuse. Furthermore, the information required is less than that recommended in the User's Guide to the EU Code. For example, there is no requirement to indicate the end-use of the goods, nor is there any limitation placed on the use to which the goods may be put. EU standards also provide for the possibility of placing re-export restrictions on exported items, however there would seem to be no provision for this under BiH law.

There is no provision for any post-export follow-up, either in terms of delivery verification or end-use monitoring. BiH's capacity to carry out such activities is severely limited by its size, financial position and its (lack of) diplomatic representation abroad. Moreover, given that BiH does not place any restrictions on end-use or re-export, the concept of end-use monitoring becomes redundant. However, BiH could at least consider obliging exporters and traders to verify the delivery of their goods as a way of improving end-use controls at minimum cost to the state.

11 Administrative capacity

Significant concern was expressed by officials from several ministries that the arms transfer control function within the BiH Government is under-resourced, and that staffing levels and training are inadequate, as is the application of information technology.

Within MOFTER, the Ministry responsible for administering the system, until recently only two staff members were tasked with this function, though additional staff have recently been hired in arms export/import control section and arms production control section.

Within the Ministry of Foreign Affairs (MFA), which has primary responsibility for considering the foreign policy element of licensing decisions, assessments are made by just one person (who also has other responsibilities), though there are current plans to hire a second member of staff.

The Ministry of Defence (MOD) has only one person working part-time on transfer controls. Enforcement agencies, e.g. Customs, State Border Service and Police, also suffer from too few dedicated staff. This reflects in part the possibility that transfer controls may not be a very high priority for the various relevant ministries. For example, the MOD is still in the process of dealing with the handover of responsibilities from entity to state level, and is fully occupied with downsizing the BiH arms forces and establishing officially its levels of surplus. With regard to border control, there is little specialised knowledge among staff of how to deal with arms transfers and equipment for controlling the borders is poor, while the staff that are available are spread too thinly among far too many permitted border crossing points. Concerns were expressed that within certain enforcement agencies corruption was rife.

In terms of expertise, virtually all the involved agencies and ministries consider export licensing primarily from the point of view of BiH's domestic security.⁵² The MFA stands largely alone in being instructed to consider broader implications. This means that of all those involved in the licensing decision-making process, very few have any understanding of the EU Code criteria. Even where they do, in most cases this will be irrelevant to the factors they are expected to take into account in their own licensing assessments. When coupled with the lack of staff, this increases the risk of poor or arbitrary decision-making, and makes corruption easier (e.g. by removing appropriate internal checks and balances).

The US has made the Tracker⁵³ export control computer system available to the BiH administration, however the system is not operational, and it would appear there is no specified timetable for when it will be. There would

⁵² For example, the 'Law on Import and Export' states that the consent of MOS will be premised on the implication of the transfer for public safety and security within BiH (Article 6.2).

⁵³ Tracker is an US Government-automated system designed to process arms transfer licence applications. It acts as a central location for inputting, processing, tracking, reviewing, and deciding licence applications. For more information, see <http://www.trackernet.org>, last accessed 04 July 2006.

appear to be some confusion over why the system is not yet online. For example, according to one official, the hardware is in place and staff have undergone some training, but all the necessary software has so far not been installed.⁵⁴ Within the relevant enforcement agencies, there are serious IT shortcomings, both for internal use and with regard to information-sharing with other agencies in BiH and from other countries.

12 The role of EUFOR

EUFOR's role in the transfer licensing process is, in the first instance, to 'assess whether the movement of any weapons or ammunition in and through BiH poses a risk to the safe and secure environment of the country'.⁵⁵ This requires that EUFOR be informed, *inter alia*, of all exports and imports of controlled goods to and from BiH. This movement control procedure provides EUFOR with the opportunity to raise concerns with the BiH Government in the event that EUFOR believes the transfer may violate international norms (such as the EU Code), though the final decision regarding the transfer ultimately remains with the BiH authorities.⁵⁶

There does appear to be some confusion regarding EUFOR's role. Other international actors were of the opinion that EUFOR could veto licensing decisions, while BiH officials suggested that EUFOR wielded only an effective veto, i.e. that the BiH Government would never act against EUFOR's advice. This can create the misleading impression that there is an extra safeguard within the BiH system, and is potentially available to BiH as a means of diverting, or at least confusing responsibility, for inappropriate transfers. Furthermore, EUFOR's own ability to effectively evaluate licence applications against the EU Code criteria is far from clear. While it would seem that, on occasion, EUFOR will consult on licensing decisions with other organisations operating in BiH, such as the OSCE, UNDP and the Office of the High Representative, there is little sign of EUFOR seeking the benefit of the experience of the relevant officials from EU capitals when assessing applications against EU Code criteria, nor does it appear to have access to the operative machinery of the EU Code (e.g. the denial notification and consultations database).⁵⁷

This system creates an environment ripe for the avoidance of responsibility in the event of poor decisions. BiH can always claim that any decision was based on the advice of EUFOR, even though there are questions about EUFOR's expertise in this area. EUFOR can legitimately point to the fact that it has only an advisory role, and that therefore all decisions remain the responsibility of BiH. This confusion of responsibilities is likely to operate as an impediment to both effective decision-making and to the national bureaucracy building its own capacity and expertise to the point where it is capable of rigorously applying EU transfer control standards: where resources are limited, it is rational to make savings on functions that are in any event performed by someone else. EUFOR and the rest of the international community would therefore be better placed seeking to develop the capacity of the national authorities to make truly independent and rigorous licensing assessments.

13 Inter-agency relationships/processes

In October 2005, the Coordination Board for Control of SALW was formally established. The Coordination Board has since agreed a National Strategy for SALW Control, approved by the Council of Ministers in May 2006. However, with regard to controls of international arms transfers, there is currently no provision for collaborative decision-making. At a formal level, each ministry involved (MOFTER, MFA, MOS and the MOD) arrives at its decision for each licence independently, and forwards that decision to MOFTER. Each ministry has the power of veto.⁵⁸ While it seems that there are informal contacts among relevant officials from different ministries, and there is formal

⁵⁴ Interview with Ministry of Defence official, Sarajevo, 27 April 2006.

⁵⁵ Correspondence with EUFOR official, 25 July 2006.

⁵⁶ *Ibid.*

⁵⁷ EUFOR did not respond to questions regarding its expertise in playing this advisory role, so information on this issue has therefore been drawn from other sources.

⁵⁸ Until 2005, the MOD was required to give an 'opinion' on licence applications, however this opinion was not binding. This changed in 2005, and now the MOD has the same status as MOFTER, MFA and MOS, i.e. it must give its 'consent'.



contact via official letters, such a process risks arbitrary decision-making and ‘back-room deals’, and fails to take maximum advantage of the natural checks and balances that flow from a collegiate style of decision-making. A process whereby official cross-ministry meetings are held to consider individual licence applications would help to share experience and develop broader understandings of the factors to be considered (e.g. EU Code criteria). It would also improve rigour, as individuals would be forced to defend their decisions in front of their peers. Such a process is of particular value where the licensing function is relatively underdeveloped, as is the case in BiH.

As mentioned above, the US has provided BiH with the Tracker export control system; however this system is not operational as yet. When Tracker goes live, this should go some way to improving cooperation and consequently capacity and the quality of decision-making. However, this should not be seen as an alternative to collaborative decision-making, but rather as one element of it.

Coordination among enforcement agencies is complicated by the involvement of agencies at both state and entity levels (and sometimes even at the level of the canton). Responsibilities are in the process of shifting from entity to state levels (the SBS and Customs both operate at the level of the state, whereas policing (Ministry of Interior) and transport are still managed by entities). Prosecution can be led at any level, depending on the nature and gravity of the case. But as this process of evolving responsibilities is ongoing, the system is not currently a settled one.

14 Transparency and reporting

The *Law on Import and Export* obliges MOFTER to maintain a database on licences and to provide a report on licences issued to the BiH Parliament every six months. The parliamentary body tasked to hold the BiH Government to account on this issue is the Joint Commission for Defence and Security Policy. While Parliament has shown some interest in overseeing Government practice regarding transfer controls, stricter and more frequent oversight would be welcome.

Although under no legal obligation to do so, in February 2005 MOFTER published a summary report on arms and ammunition export and import, including information on transfer licences issued and deliveries made during 2004 (with some comparative data from 2003). Although the information contained on licences and physical transfers was not particularly detailed, it was released with minimal delay (before virtually any EU member state published a report for 2004), and it should be recalled that of those states that joined the EU in 2004, only the Czech Republic published a national report before BiH. Unfortunately, at the time of writing (June 2006), no report for 2005 had been published.

15 Information gathering and sharing

BiH has demonstrated a strong willingness to share information where possible with other governments and their agents. In the first instance, the current arrangement whereby all licence approvals must be seen by EUFOR means that the EU has comprehensive knowledge of BiH arms transfers (though not necessarily regarding licence refusals).

Article 11 of the *Law on Import and Export* mandates the MFA to collect various data from MOFTER so as to be able to fulfil reporting obligations to the UN and the OSCE, without actually obliging the MFA to lodge these reports with these respective bodies. However, BiH does generally fulfil its reporting commitments, for example to the OSCE Information Exchange on SALW, and to the UN on national implementation of the UNPoA (in 2004 and 2005) and for the Register of Conventional Arms.

Also noteworthy in the *Law on Import and Export* is that permission, though not obligation, is granted for the MFA to inform other states regarding any licence refusals by BiH (Article 11.3). In addition, if MOFTER is aware that an

OSCE state has refused to issue a license for a similar transaction over the past three years, it shall request that MFA consult with the refusing country so as to factor their concerns into the licensing decision (Article 11.4).

BiH is a fully participating member of the SECI Regional Centre for Combating Transnational Crime, which includes anti-SALW trafficking within its mandate. BiH has not applied to join the Wassenaar Arrangement. As mentioned above, the Co-ordinating Board for Control of SALW, which is based within the MFA, was established last year. It operates as national focal point as part of its commitment to the South Eastern Europe Stability Pact Regional Implementation Plan on SALW.

BiH has signed a number of bilateral agreements with neighbouring states expressing commitment to jointly combating illegal activities including organised crime.⁵⁹ The SBS states that the service maintain regular contact and exchange relevant information with authorised police institutions from neighbouring countries.⁶⁰ The SBS training programme includes activities aimed at preventing the flow of SALW across state borders. This necessitates enhanced cooperation with equivalent services in neighbouring states with the aim of a coordinated approach to countering the illegal arms trade and related types of criminal activity. Toward this end, BiH seconds a law enforcement officer to the Bucharest-based SECI Centre, which provides a forum for South East European states to share information on arms trafficking, and the SBS has recently established a collaborative project with EUPM (the EU Police Mission). Nevertheless, there was a general feeling that cooperation was underdeveloped, and that BiH would benefit from better cross-border information systems and more joint-training exercises.

16 Enforcement

Mobile units from the Armed Integrated Policing Unit (IPU) work with EUFOR and alongside the SBS and local police services, and have been successful in disrupting significant potential illegal arms shipments, for example: 'Operation Tarcin' (December 2004), which uncovered an arms cache including 24 rocket propelled grenades, 120 hand grenades, and 15,625 M40 grenades: and 'Operation Strike' (February 2005), which recovered 310 assault rifles and led to several arrests.⁶¹ However the main police focus with regard to arms transfers is managing the security of authorised physical movements of arms and ammunition. In terms of identifying transgressions, the approach appears to centre on locating irregularities at the point of crossing the border.

The SBS is responsible for controlling movements of people and vehicles; Customs is responsible for controlling movements of goods. Opinion about the quality of cooperation between the two agencies and the effectiveness of this division of labour is divided. Neither the SBS nor Customs will have access to the Tracker system.

17 Penalties and sanctions

The *Law on Import and Export* and the *Law on Manufacture of AME* provide for only relatively minor sanctions in the event of breaches of the law, up to KM10,000 (approximately €5,000) or 60 days imprisonment for an individual or up to KM200,000 for a legal entity (KM150,000 for a legal entity under the *Law on Manufacture of AME*). However, there are provisions within the BiH Criminal Code, which may also have application. These include Illicit Trafficking in Arms and Military Equipment and Products of Dual-Use (Article 193), Illicit Trade (Article 212), Illicit Manufacturing (Article 213), Illicit Possession of Weapons or Explosive Substances (Article 371) and Illegal Manufacturing and Trade of Weapons or Explosive Substances (Article 399). These Articles carry a range of maximum penalties, depending upon the precise nature of the offence, ranging from one to ten years imprisonment. It is not clear how the actual imposition of penalties has so far compared with the maximum possible. In addition, although in some cases it is clear that the Criminal Code would be applied (e.g. where an

⁵⁹ For example, the May 2005 Agreement between BiH and Turkey to fight terrorism and organised crime.

⁶⁰ *Ibid.*

⁶¹ For more information on these and other IPU operations, see the EUFOR website <http://www.euforbih.org/sheets/fs050225a.htm>, last accessed 05 July 2006.



arms export takes place without a licence), in others (e.g. where a person violates some of the conditions on a licence) it is not clear whether a prosecution would be on the basis of 'minor offences' (as per the laws particular to arms manufacture and trade) or on the basis of a breach of the Criminal Code.

18 Interaction with industry

As a rule, public ownership of arms producers raises concerns about potential conflict of interest, as this effectively requires self-regulation by an actor with a direct commercial interest in pursuing a sale. In BiH however, the unusual situation exists whereby regulation takes place at a different level of government to ownership, as the arms industry in BiH is owned predominantly by the entity-level governments. Concerns have been expressed however, that in the interests of political balance, the central government may be inclined to award transfer licences on the basis of recent decisions made with respect to companies in the other entity. Foreign ownership of arms producing or trading companies is restricted by Article 4 of the *Law on Policy in Foreign Direct Investments in BiH* to no more than 49 per cent.

Relevant ministries or agencies will respond to informal enquiries from industry regarding the likelihood of being granted a licence or licences in particular circumstances. No records are kept of the informal contacts. There are no restrictions on movement of staff from industry to regulating agency (and vice versa), as long as individuals are not employed in both capacities at the same time.

19 Conclusion

Impressive steps have been taken by the BiH authorities to bring the BiH arms transfer control system into line with EU standards. Although further improvements could and should still be made, BiH legislation is now relatively well developed. Most relevant activities have been brought within the regulatory framework, and for the most part the legislation compares well with that of many existing EU states. Of greater concern is the lack of capacity across the various relevant ministries, in terms both of staff and of technology, to effectively implement and enforce laws and regulations, while procedures for intra-departmental cooperation are also underdeveloped. In addition, it would seem that despite a formal commitment to apply EU Code transfer criteria, actual implementation is patchy, with the main focus on ensuring that documentation is in order, at the expense of rigorous assessment of licence applications against the EU Code criteria.

The table on the following pages provides a summarised assessment of BiH's present compliance, or ability to comply with, EU standards:

EU STANDARD	LEGAL OR POLITICAL BASIS	NATIONAL COMPLIANCE	LEGISLATIVE, REGULATORY OR POLITICAL REFERENCE
Criteria-based licensing system (eight criteria)	EU Code Draft EU Common Position Defining Common Rules Governing the Control of Exports of Military Technology and Equipment (Draft Common Position)	Applies to arms and military equipment, though with low internal capacity for risk assessments, but no reference to the EU Code in the Articles referencing dual-use items	Law on import and export of arms and military equipment and control of import and export of dual-use items (Law on import and export) (OG BiH, 05/03, 33/03, 14/05)
Military control list	Common Military List of the European Union	Yes	Law on import and export
Controls on dual-use goods (including control list and catch-all clauses)	EU Dual-Use Regulation	Yes	Law on import and export
Control of arms brokers	EU Common Position on Arms Brokering Draft Common Position	Yes	Law on import and export
Controls on intangible transfers	Draft Common Position	For dual-use goods but not arms and military equipment	Law on import and export
Controls on transit and/or transshipment	Draft Common Position	Yes	Law on import and export
Control of export of production capacity (including, for example, licensed production)	Draft Common Position	No	None
End-use controls and certification requirements (including controls on re-transfers)	Draft Common Position EU User's Guide	End-use certification required, but no limits on re-export, delivery verification or end-use monitoring	Law on import and export
Power to revoke transfer licences	Best practice	Yes, but the rationale for revocation does not include circumstances where the situation in-country has changed subsequent to the licence being issued	Instruction regulating the procedures of export, import, transit and mediation in trade of armaments and military equipment (No. 01-1-02-8703/05); and instruction regulating the procedures of export, import and transit in the trade of dual-use items and technologies (No. 01-1-02-8706/05).



EU STANDARD	LEGAL OR POLITICAL BASIS	NATIONAL COMPLIANCE	LEGISLATIVE, REGULATORY OR POLITICAL REFERENCE
Registration of actors (e.g. manufacturers, traders, shippers)	Best practice EU Common Position on Arms Brokers (recommended)	Yes	Law on import and export
Legal penalties and sanctions	Best practice EU Common Position on Arms Brokers	Yes, though not always clear which activities would be classed as 'minor offences' (as per the laws particular to arms manufacture and trade) as opposed to breaches of the criminal code (which carry much more severe penalties, e.g. custodial sentences up to 10 years), nor is it clear how the actual imposition of penalties has so far compared with the maximum possible	Law on import and export, Law on manufacture of arms and military equipment (OG BiH, 9/04), and BiH criminal code
Inter-departmental consultation	Best practice	By correspondence only. Responsibilities of various ministries are set out, along with an obligation to communicate decisions to the administering ministry (MOFTER)	Law on import and export
Information-exchange with other governments (including circulation of licensing denials among EU member states and consequent consultations)	EU Code Draft Common Position Best practice	Reporting to UNDDA, UN Register of Conventional Arms (usually), COMTRADE, and OSCE. Provision to share information on licence denials with other states and to request consultations with other OSCE states that have refused licences. Not party to EU denial notification and consultation mechanism.	Law on import and export N/A
Industry outreach	Best practice	Very limited	N/A
Parliamentary accountability	Best practice	Every six months must report to Parliament on issued licences.	Law on import and export
Regular production and publication of national reports	Draft Common Position	Has voluntarily produced national report	None

Table 3: Summary of national arms transfer standards versus EU obligations and practice

20 Recommendations

To the Government of BiH

- The BiH regulatory framework should be reviewed to ensure that:
 - The controls on intangible transfers of technology as currently applied to dual-use items also cover arms and military equipment;
 - There is specific reference to the criteria of the EU Code, and preferably enumeration of each of the criteria, rather than the existing generic reference to the EU Code as a whole;
 - The application of the references to the EU Code (criteria) are extended to include dual-use items;
 - The extra-territorial application of the controls on arms brokering is extended, so that a citizen of BiH resident outside BiH territory would still need to register or apply for licences if brokering controlled items;
 - New controls are introduced to regulate the transfer of production capacity, e.g. through licensed production, by BiH companies or persons;
 - The move toward state-level (as opposed to entity- or canton-level) decision-making for all aspects of production and transfer of arms and military equipment and dual-use items is hastened;
 - A system of collegiate-style inter-departmental cooperation and decision-making is introduced, with detailed criteria-based assessments of the risks associated with each transfer being a core part of the decision-making process, so as to better develop cross-government understanding of the main transfer control issues;
 - Where the 30-day decision-making deadline for responding to a licence application is not met, the application is in effect denied;
 - The Government is obligated to publish report on all transfers of controlled goods covering licensing decisions and deliveries in line with EU best practice (building on existing BiH practice);
 - End-use certification requirements include notification of the end-use of the goods and re-export restrictions;
 - Exporters and traders are obligated to verify the delivery to the stated end-user;
- In addition to improvements to legislation, the Government of BiH should look to:
 - Assign greater political priority to the issue of arms transfer controls;
 - Devote more resources to transfer controls, for example in terms of personnel (across all the relevant ministries) and information technology. Developing and instituting appropriate information technology systems, e.g. the Tracker system, should be regarded as a matter of urgency;
 - Develop a comprehensive training programme on transfer controls for officials from all relevant branches of government, including licensing and enforcement ministries, as well as staff in BiH missions abroad. This training programme must address *inter alia* the licence assessment process, with particular and in depth reference to the EU Code criteria;
 - Work with Parliament to develop a procedure for parliamentary scrutiny, drawing on best practice from EU member states and others. Any system should establish an institutional framework, which would require responsible ministers and officials to answer relevant questions from an institution of the Parliament (e.g. an appropriate committee) that would publish its own review of Government policy



and practice. Consideration should be given to establishing a process for pre-licensing information-provision and consultation;

- Develop outreach programmes to ensure that defence manufacturers, exporters and traders are aware of their rights, obligations and responsibilities;
- In order to bring the BiH transfer control system up to EU best practice, in consultation with the EU and its member states, elaborate and communicate a set of prioritised requirements for assistance from the international community; and
- Ensure the above recommendations are addressed as part of a broader national strategy for conventional arms (particularly SALW) control.

To the international community

- Ensure all relevant international and regional instruments and documents are translated into Bosnian and made readily available to relevant national actors;
- Assist the BiH authorities in developing a set of prioritised requirements for assistance, so as to ensure that BiH is as soon as possible capable of implementing its legislative commitments and of bringing its transfer control system up to EU best practice. On the basis of these agreed priorities, provide appropriate assistance (financial and technical). Particular areas at which this assistance could be targeted include:
 - Resources for hiring more staff and more information-technology support;
 - Training of officials from all relevant branches of government, including those in charge of licensing (e.g. MOFTER) and enforcement (e.g. Customs), as well as staff in BiH missions abroad. This training programme must address *inter alia* the licence assessment process, with particular and in-depth reference to the EU Code criteria. This would ideally form part of a Western Balkans-wide, sustained outreach programme, which would help spread EU best-practice and develop a stronger arms-transfer-control culture throughout the sub-region;
- In order to effectively channel donor support and encourage inter-agency collaboration within BiH, ensure that support for transfer control improvements is integrated where possible with the BiH SALW Co-ordination Board into the broader strategy for weapons management in BiH, incorporating other related matters such as stockpile management, surplus destruction and civilian possession;
- Commit to assisting BiH in their licence-assessment process and delivery verifications (once instituted) where internal capacity is limited (e.g. for destinations where BiH does not have a diplomatic presence);
- Countries with developed transfer control regimes and in particular with relatively sophisticated procedures for parliamentary oversight should encourage information-exchange between BiH parliamentarians and their counterparts from other states who have experience in this area;
- The donor community should provide support to NGOs and the media so as to build indigenous capacity to analyse and monitor BiH's arms export controls;
- The EU in particular should:
 - Clarify and make public the exact role of EUFOR in the transfer licensing process, ensure that EUFOR has the capacity to fulfil all its mandated functions effectively, and work towards EUFOR's disengagement from the licensing decision-making process once the national authorities are demonstrably capable of conducting fully independent and rigorous assessments;



- Include transfer controls as a key element of its overall formal dialogue with the BiH Government; and
- Consider circulating information regarding previous denials of arms transfer licence applications to BiH in order to demonstrate how decision-making works in practice among member states.





Croatia

1 Introduction

Over the last few years Croatia has introduced a number of new laws and regulations which have gone a considerable way to bringing the Croatian system of arms and military equipment (AME)⁶² and dual-use goods transfer controls into line with best practice, however there is still some more work to be done. There was a formal decision taken in 2002 to apply the criteria of the EU Code, however there are indications that the on-the-ground implementation of this decision may need further work, while the scope of the transfer control regime is still too narrow (neglecting, for example, the need to regulate intangible transfers of AME and the activities of arms brokers). Croatia suffers from a history of inter-agency rivalry, and a culture, reinforced in legislation, of excessive secrecy. Of particular concern is the central, multi-faceted role played by government-owned Agencija Alan in the Croatian AME sector, i.e. as principle, regulator, agent and advisor, which creates myriad opportunities for problematic conflicts of interest. However, Croatia's efforts to deal with these difficulties have been hampered by the capacity constraints under which the system operates.

Excluding the period when Croatia was at war in the 1990s, the Croatian AME industry has not been significant in macroeconomic terms. Pre-war military production in Croatia made up only seven per cent of the Yugoslav total, while after the war the role of AME has once again become peripheral to the economy as a whole. In terms of its contribution to the overall value or scale of the global arms trade, Croatia is insignificant. Nevertheless, Croatia does export some arms, it maintains a domestic AME production capacity and it holds significant surplus stocks. It seems that, in light of recent experience, Croatia is determined to maintain and keep tight control over AME production. But, in common with many other countries, Croatia has sought out new export opportunities as its domestic market has shrunk.

Official figures for Croatian trade in AME are difficult to come by; Croatia does not produce a national report on its AME exports and/or imports. Croatian reports to the UN Register of Conventional Arms⁶³ state that there have been no exports in the categories of weapons covered by the register (major conventional weapons) since the transfer of 40 120mm mortars to Guinea in 2000, while examination of Comtrade data as compiled by the Norwegian Initiative on Small Arms Transfers (NISAT) shows a strong upward trend in exports of small arms and light weapons (SALW) from Croatia, from US\$2.2 million in 1999 to US\$13 million in 2004.⁶⁴

There is some speculation that arms smuggling networks established in order to supply Croatia during the war in the 1990s may still, to some extent, be active and involved in illicit transfers. While border police continue to confiscate weapons on a small scale, there have been various media reports in recent years of SALW being smuggled to organised criminal groups and groups engaged in politically-motivated violence in Europe and the Middle East. There are also fears that in some cases there may be complicity within certain elements of the bureaucracy and/or established defence companies. For example, it has been reported that many Ministry of Defence (MOD) officials were aware of a highly dubious and concealed transfer (arranged by Agencija Alan) of 5,100 rockets to FYR Macedonia, while in late 2005, owners of the largest Croatian producer of small arms, HS Produkt, were accused in court of involvement in smuggling thousands of pistols to overseas buyers (for more on these cases, see the Enforcement Section below).

In addition to new production, Croatia has the problem of large surplus stocks of AME with which it is struggling to cope, and which, at current rates, would take more than one hundred years to destroy (see below). Croatia has

⁶² The term 'arms and military equipment' (AME) is the term used in Croatian legislation to describe defence items. It includes *inter alia* small arms and light weapons, major conventional weapons, and their components. It should be noted, however, that AME is not fully consistent with the EU Military List (see the Section on Licensing of transfers).

⁶³ UN Register of Conventional Arms, available at <http://disarmament.un.org/cab/register.html>, accessed 24 March 2006.

⁶⁴ Comtrade is the UN Commodity Trade Statistics Database, which compiles data based on trade figures submitted by national Customs authorities. The NISAT database, which separates out customs data on SALW, can be found at <http://www.nisat.org>.



signed up to international and regional agreements, which state that SALW destruction is the preferred mode of surplus disposal, however it appears to display more interest in sale than destruction.

The challenges, therefore, are considerable. However, Croatia has made significant progress in the last few years on improving its AME and dual-use items transfer control system at both the regulatory and operational levels. This commitment to change should be maintained and outstanding issues tackled effectively in line with Croatia's commitment to the EU Code and more broadly to its aspirations regarding full EU membership.

While every effort has been made to substantiate all the information contained in this report, there were a number of questions addressed to ministries within the Croatian Government to which no answers were received. In such cases, other sources have been used where available. Where information was consequently partial or lacking this is made clear in the text.

2 International commitments and adherence

Croatia has in recent years taken a number of steps to ensure that it is participating fully in the relevant regional and international arms transfer control agreements. The twin prospects of EU and NATO membership would seem to have been prime motivating factors in this progress.

Particularly noteworthy was Croatia's statement in 2002 that it accepted the principles contained in the EU Code, and the adoption at the end of 2004 of the *Law on International Restrictive Measures*, which sought to place the implementation of international sanctions (e.g. UN arms embargoes) within domestic legislation. In 2005 Croatia ratified the UN Firearms Protocol and became a member of the Wassenaar Arrangement and the Nuclear Suppliers Group.

Furthermore, at the UNPoA Preparatory Committee in January 2006 and the UNPoA Review Conference in June-July 2006 Croatia aligned itself to the EU statement on transfer controls, and in its national statement to the UNPoA Review Conference, Croatia declared that '[m]inimum common standards for arms transfers should be used to ensure that they will not stimulate conflict, suppress human rights or reverse development'.⁶⁵ However, Croatia has so far made no national statement of support for an international Arms Trade Treaty. There are also doubts about Croatia's capacity and inclination to implement all the commitments contained in these agreements.

ARMS OR SALW CONTROL AGREEMENT	CROATIA'S COMMITMENTS
EU Code of Conduct on Arms Exports	2002
EU Common Position on Arms Brokering	No
OSCE Document on SALW	November 2000
OSCE Document on Stockpiles of Conventional Ammunition	December 2003
OSCE Decision on MANPADS	2003
OSCE Decision on End-user Certificates	2004
OSCE Decision on Brokering	2004
Stability Pact Regional Implementation Plan	November 2001
UN Firearms Protocol	Ratified February 2005
UN Programme of Action on SALW	2001
Wassenaar Arrangement	June 2005

Table 1: Croatia's commitments to arms transfer or SALW Control agreements⁶⁶

⁶⁵ Croatia Statement to the UNPoA Review Conference, June-July 2006.

⁶⁶ Croatia is also a state party to the Biological Weapons Convention, the Chemical Weapons Convention and the Nuclear Non-Proliferation Treaty, and has been a member of the Nuclear Suppliers' Group since June 2005.

3 Legislation and regulation

Croatia regulates the production and transfer of AME and dual-use items through a series of laws, decisions, regulations and rulebooks.

DATE	LEGAL REFERENCE	TITLE
N/A	Official Gazette of Croatia 46/1997	Law on Arms
N/A	Official Gazette of Croatia 27/1999, 12/2001, 19/2002	Law on Amendments to the Law on Arms
N/A	Official Gazette of Croatia 147/1999	Rules of Procedure Concerning the Usage of the Single Administrative Document in the Customs Clearance Process
25 March 2002	Official Gazette of Croatia 33/2002	Law on the Production, Overhaul and Trade in Arms and Military Equipment
9 May 2002	N/A	Decision on Accepting the Principles Contained in the EU Code of Conduct for Arms Exports
29 July 2002	Official Gazette of Croatia 95/2002	Rulebook on the Sale of Redundant Arms and Military Equipment of the Ministry of Defence and Armed Forces of the Republic of Croatia
January 2003	Official Gazette of Croatia 5/2003	Regulation on Special Measures for Securing and Protecting the Production, Overhaul and Trade in Arms and Military Equipment
N/A	Official Gazette of Croatia 67/2003	Regulation on Special Conditions for Defence Equipment Development
10 April 2003	Official Gazette of Croatia 67/2003	Decree on Goods Subject to Import and Export Licensing
21 October 2003	Official Gazette of Croatia 173/2003	Law on Amendments and Supplements to the Law on Manufacturing, Overhaul and Trade in Armaments and Military Equipment
Adopted July 2004. Entry into force 01 January 2005	Official Gazette of Croatia 100/2004	Law on the Export of Dual-Use Goods
N/A	Official Gazette of Croatia 166/2004	Regulation on Form of the Request for the Issuance of the Export Licence for Dual-Use Goods
Adopted 24 December 2004	N/A	Law on International Restrictive Measures
Effective 01 January 2005	Official Gazette of Croatia 184/2004	Decree on the List of Dual-Use Goods

Table 2: Summary of main Croatian legislation and regulations relevant to transfers of military and dual-use equipment



4 Production

Pre-war, military production in Croatia made up only seven per cent of the Yugoslav total. This increased dramatically during the war: at its height, 15 per cent of the Croatian budget was spent on defence, and 10,000 people were employed in military production.⁶⁷

Within a few years of the end of the war, direct government involvement and investment in defence production had declined markedly, with considerable privatisation of the defence industry,⁶⁸ and public spending on the defence sector slashed to around US \$30 million per annum.⁶⁹ Production decisions are now focused more on potential markets than on the requirements of the security services, while the scale of production is no longer significant in terms of the economy as a whole.

According to the website of Agencija Alan, the Government agency whose mission is 'to create material conditions for increasing efficiency of the armed forces of the Republic of Croatia'⁷⁰ (for more on Agencija Alan see below), companies in Croatia produce *inter alia* small arms and light weapons (including pistols, sniper rifles, sub-machine guns, mortars and multiple rocket launchers), combat helmets, protective clothing, optical equipment, communication devices, main battle tanks, patrol boats, corvettes, landing assault craft and demining equipment.⁷¹ Though according to Agencija Alan, while all of the advertised items can be produced upon request, only 30 per cent of them are currently produced in Croatia.⁷²

The most well known producer of AME in Croatia is HS Produkt, which specialises in civilian small arms, most notably pistols. Following several lean years, the performance of the company is on an upward path, primarily due to orders from the US. Other companies of note⁷³ include:

- 3-Maj Tibo: anti-aircraft missile systems, rocket systems and munitions;
- Brodarski Institute: design and production of naval vessels;
- Đuro Đaković Specijalna Vozila: main battle tanks (the M-84A and the Degman), rocket-launchers and minesweepers; and
- Elmech Razvoj: ammunition up to 155 mm calibre.

Production of AME is controlled by the *Law on Manufacturing, Overhaul and Trade in Arms and Military Equipment*, amended by the *Law on Amendments and Supplements to the Law on Manufacturing, Overhaul and Trade in Armaments and Military Equipment*. The Law requires that all legal persons (manufacturers) wishing to engage in manufacture or overhaul of AME must be registered. A list of licensed manufacturers is kept by the Government of the Republic of Croatia. Manufacture for export is supervised by the MOD. The Law does not cover the transfer of production capacity or knowledge from Croatia to other countries, be it via establishing production facilities elsewhere or a simple transfer of intellectual property. In addition, the *Regulation on special conditions for defence equipment development* sets out a set of rules to apply to the selection of developers of new AME and to the procedures such developments should follow.

In cases where the AME in question is determined to be 'of special importance for the defence of the Republic of Croatia', where production is in abeyance or export permits are refused, the manufacturer can claim pecuniary

⁶⁷ Hirst, C., and Mariani, B., *South Eastern Europe Small Arms and Light Weapons Monitor 2004*, (Saferworld-SEESAC, 2004), p. 83.

⁶⁸ Foreign ownership is also allowed, though all proposed investment programmes must be explicitly approved by the Ministry of Economy (MOE).

⁶⁹ *Op. cit.*, Watkins, A.

⁷⁰ Agencija Alan Mission, <http://www.aalan.hr/default.asp?ID=23>, accessed 22 June 2006.

⁷¹ Agencija Alan Product Catalogue, <http://www.aalan.hr/default.asp?ID=26>, accessed 22 June 2006.

⁷² Bonn International Center for Conversion (BICC) interview with Ivica Nekić, General Manager, Agencija Alan, Zagreb, 21 March 2006, cited in Pietz, T., *et al.*, *SALW Survey of Croatia*, (BICC-SEESAC, forthcoming), Section 1.6.

⁷³ Note that it is unclear whether all these companies are currently maintaining these production capacities, or whether they fall within the 70 per cent identified by Agencija Alan as available for production upon request.

compensation.⁷⁴ In event of war or ‘immediate threat to the independence and integrity of ... Croatia’ (note that ‘immediate threat’ is not defined), additional measures to ensure tight governmental control over AME production are to be applied.⁷⁵

There is provision for the MOD, the Ministry of Internal Affairs (MIA) and the State Standards and Measures Office to ensure compliance and product quality, including through on-site inspections, by manufacturers and overhaulers with their legal obligations. However, information about *inter alia* production (planned and actual), manufacturing capacity, and research and development is described as ‘secret defence information’.⁷⁶

5 Licensing of transfers

Croatia is not a major arms exporter, however it does maintain a domestic AME production capacity and hold significant surplus stocks. Unfortunately, information on import and export of AME is classified as ‘secret defence information’⁷⁷ (see above), and although Agencija Alan is obliged to maintain a database on all Croatian AME imports and exports, Croatia does not publish a national report on these activities.

Some information is available through other sources. Croatian reports to the UN Register of Conventional Arms state that there have been no exports in the categories of weapons covered by the register (major conventional weapons) since the transfer of 40 x 120mm mortars to Guinea in 2000. According to the Norwegian Initiative on Small Arms Transfers (NISAT) database (which uses Comtrade data)⁷⁸, the value of SALW-related exports from Croatia for the period 1999 - 2004 totalled US\$39.8 million. These exports are on an upward trend, from US\$2.2 million in 1999 to US \$12.9 million in 2004. For the more recent data, these SALW exports would seem to be dominated by sales of pistols to the US by HS Produkt.

As with production, the key legislation regulating imports and exports of AME is the *Law on Manufacturing, Overhaul and Trade in Arms and Military Equipment*, amended by the *Law on Amendments and Supplements to the Law on Manufacturing, Overhaul and Trade in Armaments and Military Equipment 2003*. The Law prescribes that all exports of AME must be licensed. ‘Permits’ for imports for the requirements of the Armed Forces or the Ministry of Internal Affairs (MIA) are issued by the MOD or MIA. Permits for imports and exports for ‘commercial purposes’ are issued by the MOE subject to the prior approval of all members of the Licensing Authority for Import and Export Control of Weapons for Commercial Purposes, i.e. the MOD, MIA, MOE and MFA. This Authority, which meets at least twice a month (or more frequently as necessary) and must consider every licence application, can seek the advice of the Directorate for Bilateral Contacts, and/or intelligence agencies. This is most welcome; however it is worth noting that at no point does the primary legislation refer to an obligation to consider transfers on a case-by-case basis, which is at the core of EU and US best practice in this area.

The primary legislation makes no reference to the factors that should be taken into account when making licensing decisions, and there is no reference to the need to authenticate or check end-use. However, in May 2002 Croatia announced a *Decision on accepting the principles contained in the EU Code of Conduct for Arms Exports*, which states that Croatia ‘shall follow the criteria and principles contained in the Code, which shall guide it in its arms control export policies.’ There are also end-use certification procedures to be followed (see below). According to MFA officials, once procedural end-use requirements have been checked, they will look at international obligations, the EU Code criteria, bilateral obligations and the national interest. It is the MFA that has prime responsibility for ensuring that the EU Code criteria are considered.

⁷⁴ ‘Law on Manufacturing, Overhaul and Trade in AME’, Article 12.

⁷⁵ *Ibid.*, Chapter 7.

⁷⁶ *Ibid.*, Article 24.

⁷⁷ *Ibid.*

⁷⁸ The NISAT database can be found at <http://www.nisat.org>, last accessed 03 July 2006. Comtrade is the UN Commodity Trade Statistics Database, which compiles data based on trade figures submitted by national Customs authorities.



However, from discussions with government officials it would appear that most attention is focussed on ensuring that end-use procedures are followed and on international and bilateral commitments (e.g. arms embargoes), which are relatively straightforward. Application of criteria that involve more complicated and less black-and-white judgements, e.g. many of the EU Code criteria, may receive less attention. Concerns about the relative significance of the EU Code were supported by the way the EU Code is referenced in official documents. For example, it does not feature in the 2003 *Law on Amendments and Supplements to the Law on Manufacturing, Overhaul and Trade in Armaments and Military Equipment*. In the excerpt quoted above from the *Decision on accepting the principles contained in the EU Code for Arms Exports*, the language is only of 'arms', not of 'arms and military equipment', which is the standard language in Croatian laws. This, on a literal interpretation, provides for the criteria to be ignored for exports of 'military equipment'. In Croatia's 2006 report on implementation of the UNPoA,⁷⁹ the EU Code is not referred to in the sections stipulating the bases for licence decision-making for each relevant department (although it is mentioned elsewhere in the document).

Also of note in this context is Article 12 of the *Law on Manufacturing, Overhaul and Trade in AME*, which states that manufacturers can claim pecuniary compensation for refused export permits if the AME in question is 'of special importance for the defence of ... Croatia'. There are fears that this provision could encourage a more permissive approach to such exports, on the grounds that licence refusals could constitute an extra cost to the state.

In addition to these concerns, there are a number of other weaknesses in the Croatian law. There is no reference to controls on intangible transfers of AME technology, and no possibility of revoking licences after they have been granted. Transit controls are weak, there are no controls on arms brokers (for more on these, see below), while the list of AME to which the law applies does not tally with the EU Military List.

Agreeing a new military list is apparently a priority, and there are reports that the MoE is currently working on new primary legislation that will *inter alia* address intangible transfers and arms brokering, however the timetable for introducing and adopted this new law is unknown.

The export of dual-use goods is regulated by the *Law on the Export of Dual-Use Goods*, which applies from 01 January 2005. The MOE is the administering ministry, and issues (or refuses) licences on the recommendation of an inter-agency commission, the Committee for the Export of Dual-Use Goods Licence Issuing. The Committee is made up of representatives of the MFA, MIA, MOD, Customs, MOE, and other bodies as appropriate. In some ways, the regulation of dual-use goods is closer to EU practice than controls on AME transfers: the primary legislation controls intangible transfers of technology; it contains relatively thorough provisions for the possible revocation of licences; it also includes catch-all clauses relating to, for example, nuclear, biological and chemical equipment and embargoed destinations that are roughly consistent with the EU dual-use regulation. It stipulates that licences should as a matter of routine be issued on a case-by-case basis, requiring a separate licence for each transaction; however the MOE has apparent discretion to issue general licences (i.e. a single licence for multiple shipments to more than one destination) as it sees fit.

There are nevertheless some areas where controls on dual-use transfers could be improved. There is at the moment no company registration requirement, as there is for manufacturers of AME. While licence applications are required to include information about end-users, there is no requirement in the primary legislation for specific end-use certificates or documents. Further, while licensing decisions are to take into account a range of factors including *inter alia* international obligations and implications for armed conflict, public security and human rights, the *Decision on accepting the principles contained in the EU Code for Arms Exports* does not apply to dual-use goods.

⁷⁹ Government of the Republic of Croatia, *Report of the Republic of Croatia on the Implementation of the United Nations Programme of Action to Prevent, Combat and Eradicate Trade in Small Arms and Light Weapons (SALW) in All Its Aspects for 2005*, (2006), <http://disarmament.un.org/cab/nationalreports/2006/croatia.pdf>, accessed 23 June 2006.

Special rules apply to the disposal of surplus AME, as set out in the 'Rulebook on the sale of redundant arms and military equipment of the Ministry of Defence and Armed Forces of the Republic of Croatia'. The MOD is responsible for determining which AME are surplus and its suitability for sale. Once such a decision has been taken, Agencija Alan is tasked to find potential buyers (though it would seem that Agencija Alan may also proactively seek buyers for possible Croatian surplus).⁸⁰ Once a likely buyer has been identified, this is referred to the Military Security Agency (MSA), which, in cooperation with the MFA and MOI (and other, unspecified, state authorities if determined necessary), 'perform[s] the security control of the potential buyers.' It is not specified how this 'security control' compares to a standard export licensing assessment, or if the EU Code criteria are considered. If it is agreed that the sale should proceed, the MOD concludes the deal. Information on sales of surplus AME is classified as 'military secret - top secret'.⁸¹

There appears to be a general atmosphere that the preferred method of disposal of surplus is sale (contrary to the reference in the OSCE Document on SALW, to which Croatia is party, which states that 'the preferred method for the disposal of small arms is destruction',⁸² and to a commitment in the UNPoA⁸³). This is of concern, given that at current rates of destruction it would take a century to destroy all existing MOD surplus stocks. In 2005, Croatia destroyed 1,905 weapons (of which almost all were rifles), compared to a total MOD surplus alone of approximately 190,000 pieces⁸⁴ (in addition, the MOD is holding in storage approximately 170 million rounds of ammunition, of which a significant proportion is likely to be surplus⁸⁵).

6 Exemptions

The research team was unable to ascertain whether there are any exemptions to the licensing process, but there are concerns that different standards apply to different types of transactions. Transfers of AME intended for the Croatian Armed Forces do not have to go through the same process as transfers for commercial purposes, nor are as many government agencies involved. It is not clear how the process followed for the sale of surplus compares to standard exports.

7 Brokering

There are no controls on the brokering of AME or of dual-use goods in Croatia. The 2006 Croatian Report on the UNPoA states that new legislation is being drafted on this issue and will enter governmental procedure in 2006,⁸⁶ however there is no sign of this at the time of writing.

8 Transit and transshipment

All transits of AME through Croatia must be licensed, which is to be welcomed; however the procedures are not on a par with those for exports. The MIA is responsible for issuing transit licences, based only on the production of an import certificate and approval from the MOD. There is no indication of what other factors these two ministries might consider, though given their respective areas of expertise and responsibilities within the overall licensing regime it seems unlikely that restrictive criteria such as those contained in the EU Code would feature. If this is the case, it is unfortunate, as Croatia's physical position in Europe makes it an important transit state. Croatia has 189 official border crossing points (and many more unofficial), of which 20 are considered very important. It

⁸⁰ Interviews, February 2006.

⁸¹ Rulebook on the sale of redundant AME of the MOD and Armed Forces of the Republic of Croatia (OG 95/2002), Article 12.

⁸² 'OSCE Document on SALW', 24 November 2000, Section IV, C, 1, http://www.osce.org/documents/fsc/2000/11/1873_en.pdf, accessed 21 June 2006.

⁸³ UNPoA, Section II, Paragraph 18, <http://disarmament.un.org/cab/poa.html>, accessed 26 May 2006.

⁸⁴ *Op. cit.*, Pietz, T., *et al.*, Section 1.5.

⁸⁵ *Ibid.*

⁸⁶ *Op. cit.*, Government of the Republic of Croatia, section A.8.i.



is therefore incumbent upon Croatia to exercise effective, not partial, controls on transit, especially in light of the jurisdictional and capacity problems faced by Customs and the police (see below).

9 Control lists

The *Decree on goods subject to import and export licensing* contains lists all goods for which export and import licences are required. This, unfortunately, differs from the EU Military List. There are apparently plans to adopt the EU list, but it is not clear when. The *Decree on the List of Dual-Use Goods* adopts the EU dual-use list as contained in the EU end-use regulation.

10 End-use control and certification

End-use issues for transfers of AME are addressed in the *Decree on goods subject to import and export licensing*, whereby exports for commercial purposes require an original import certificate and an original end-use statement notarised by state authorities in the country of import. As part of its end-use procedures, Croatia requires buyers to request permission before re-export. From discussions with MFA officials, end-use procedures are taken very seriously. However, it is not clear if Croatian end-use documentation requirements are fully compliant with the standards set out in the EU User's Guide.

Confirmation of the signatory can be pursued through diplomatic channels. Croatian diplomatic staff abroad may be involved in checking on end-use, though given certain capacity issues (see below), it is not clear how useful their involvement might be. The MFA is responsible for carrying out end-use checks.

For dual-use goods, exporters must keep record of the name and address of the consignee and the intended end-use and the name and address of the end-user(s).⁸⁷ However there is no requirement in the primary legislation for specific, officially authenticated end-use certificates or documents to be provided.

There is no provision for any post-export follow-up, either in terms of delivery verification or end-use monitoring. Croatia's capacity to carry out such activities is severely limited by its size, financial position and its limited diplomatic representation abroad. However, Croatia could at least consider obliging exporters and traders to verify the delivery of their goods as a way of improving end-use controls at minimum cost to the state. Without measures to check actual end-use or possession, the requirement that recipient states do not re-export without permission will be of limited effect.

11 The role of Agencija Alan

Agencija Alan is organised as a limited liability company, however it is described as an agency of the Government and its 'Assembly', or Board of Directors, comprises Government Ministers from the MOD, MOI, MFA, MOE and Ministry of Finance (MOF). It is understood that the lead ministry in the Agency is the MOD.⁸⁸ Agencija Alan seems to have a wide range of functions, but there appears to be some confusion regarding the precise extent of its remit, and the way it fulfils that remit. According to its website, the mission of the agency is to 'create material conditions for increasing efficiency of the armed forces of the Republic of Croatia [; search] for optimal ways of exploiting financial resources for purchase of defence equipment [and] by allocating financial means from its business activities, [help to settle] the guidelines for development.'⁸⁹ In interviews with officials, Agencija Alan was described as merely facilitating contacts between industry and Government, and assisting companies to file licence applications (e.g. by advising on documentation). However the Law on Amendments and Supplements to the Law on Manufacturing, Overhaul and Trade in AME states that 'the Agency' (Agencija Alan) will maintain a

⁸⁷ 'Law on the Export of Dual-Use Items', Article 13.

⁸⁸ Interview, June 2006.

⁸⁹ See Agencija Alan website, <http://www.aalan.hr/default.asp?ID=23>, accessed 22 June 2006.

database on AME imports and exports, and 'shall conduct, on request of the Armed Forces ... and the [MIA], the activities of selling the redundant AME.'⁹⁰ The Agency's website lists its services as including *inter alia* 'import and export of armament for Army and Police requirements, import and export of armament for commercial purposes, sale of army stock surpluses, marketing and market research of production and trade of armament, consulting and agency for production and trade of armament, and technology transfer'.⁹¹ It also lists its tasks as including 'supervising the production of armament for export, [controlling] the production of armament for export, [negotiating and stipulating] contracts with foreign buyers for export deliveries, [constituting] the meeting point for producers and potential foreign buyers of armament.'⁹² From this diverse list of functions it would seem that the Agency's apparently ubiquitous involvement as principle in, regulator of, agent for, and advisor to, the Croatian defence sector creates myriad of opportunities for problematic conflicts of interest.

Historically, the Agency was involved in assisting the Croatian war effort, including sourcing arms by clandestine means, which has led to expressions of concern about its continuing role. Recently, the Agencija has been reported as being involved in and profiting from a concealed transfer of thousands of 128 mm rockets to FYR Macedonia (see Enforcement Section below).

The existence of Agencija Alan appears to be an unwelcome legacy from Croatia's position in the 1990s as a country at war, with limited options for arming itself. Its continued existence is extremely difficult to justify in a country with aspirations to membership of the EU. Combined with a culture of secrecy, such an institution raises the prospect of an uncomfortably close relationship between the defence industry and Government. It encourages the Government to align its interests with those of industry, at the potential expense of a properly responsible AME transfer control regime. Closing down Agencija Alan as part of the normalisation of industry-Government relations would be a sign of good faith that Croatia is intent on establishing a system of transfer control consistent with EU standards.

12 Administrative capacity

There were a number of indications that the AME and dual-use transfer control function within the Croatian Government is under-resourced, with inadequate staffing levels and training. For example, within MOE, the Ministry responsible for administering the system, no more than two staff members are tasked with this function. Within the MFA, which has primary responsibility for considering the foreign policy element of licensing decisions, including making assessments of the EU Code criteria, it was estimated that these tasks are performed by the equivalent of 40 per cent of a single full-time staff member. AME transfer licence applications are not on-line, and although it is understood that moves are afoot to introduce the Tracker⁹³ export control computer system, for the moment the different information technology systems in place in the various relevant ministries cannot 'talk' to each other.

In terms of expertise, almost all the involved agencies and ministries are obliged to look at this primarily from the point of view of Croatia's domestic security. It was suggested that this is most marked in the MOD, and that the general staff wield too much influence and that there is inadequate civilian oversight. The MFA is unusual in the Croatian system in its formal obligation to consider other, external factors, such as the EU Code. This has implications for developing a broad culture of restraint; it limits the drive to change attitudes across the civil service. The MFA would be expected to be the key driver within the Croatian Government for the promotion of EU transfer control concepts and standards, but the lack of dedicated staff resources would seem to undermine their capacity to do so. Further, while Croatia has diplomatic missions in approximately 80 states, staff in these

⁹⁰ 'Law on Amendments and Supplements to the Law on Manufacturing, Overhaul and Trade in AME', Article 3, accessed 22 June 2006.

⁹¹ See <http://www.aalan.hr/default.asp?ID=32>, accessed 22 June 2006.

⁹² See <http://www.aalan.hr/default.asp?ID=31>, accessed 22 June 2006.

⁹³ Tracker is an US Government-automated system designed to process arms transfer licence applications. It acts as a central location for inputting, processing, tracking, reviewing, and deciding licence applications. For more information, see <http://www.trackernet.org>, last accessed 04 July 2006.



missions are not trained to deal with this issue and it is unlikely that, were they required to do so, they could perform an effective end-use verification function.

Croatia does not have the necessary capacity to adequately manage licit or illicit arms flows across its long and geographically challenging borders. Interviews with border control agencies report ongoing difficulties with at least some of the country's 189 crossing points. Shortages of personnel (e.g. only 4,000 out of 8,500 border police posts are filled⁹⁴), skills, technology and equipment are at the root of these problems. According to the Croatian Customs Service, many crossing points are not adequately equipped and search equipment such as radiation detectors and X-ray vehicles for cargo scanning are particularly lacking. In response to these problems, Croatia has undertaken a number of measures under the EU CARDS programme to improve skills and capacity; however problems still exist. For example, it appears that Customs procedures for checks of military goods shipments and related documentation are still not adequately covered in training programmes.⁹⁵

13 Inter-agency relationships/processes

At a formal level, as mentioned above, inter-agency structures have been established for decision-making on transfer licences for AME and dual-use goods. These structures consider jointly all licence applications and each ministry wields the power of veto. Transfers of AME for 'commercial purposes' are considered by the Licensing Authority for Import and Export Control of Weapons for Commercial Purposes, which comprises the MOE, MOD, MIA and MFA, and which can seek the advice of the Directorate for Bilateral Contacts and/or intelligence agencies. Licence applications for transfers of dual-use items are considered by the Committee for the Export of Dual-Use Goods Licence Issuing, which comprises the MOE, MIA, MOD, Customs, MFA and other bodies as appropriate.

With regard to issues surrounding SALW, Croatia established a National SALW Control Commission in early 2005. It comprises assistant ministers from the MFA, MOI, MOD, MOE, Ministry of Finance/Customs Administration and Ministry of Justice, as well as representatives from the National Intelligence Agency, Counter-intelligence Agency and Agencija Alan. It is mandated to develop a national strategy and action plan for combating problems related to arms and ammunition, and to coordinate the activities envisaged by the action plan.

There is, however, a history of competition and poor inter-agency coordination within the Croatian Government, which is compounded by a culture of excessive secrecy, and which threatens to undermine the processes established to deal with AME issues. For example, the National SALW Control Commission has barely met since it was established and is not yet fully functional. There is reportedly some confusion among members about their roles and over leadership within it.⁹⁶ Only in March 2006 was the leadership issue resolved, with the MFA being assigned this role. Withholding of information by key ministries such as the MOD and MOI (e.g. concerning the level of surplus SALW stocks) is also said to be commonplace, hindering intra-governmental attempts at cooperation.⁹⁷ There are also concerns that the relationship between the border police and Customs, crucial in dealing with illicit arms trafficking, is problematic, even to the extent of the border police wanting to take over customs clearance duties.

14 Transparency and reporting

Lack of transparency is a significant problem concerning AME transfers in Croatia. In part this is to be expected given capacity constraints, however the *Law on the Production, Overhaul and Trade in AME* explicitly states that information about *inter alia* production and production capacity, research and development, import and export and cooperation with foreign partners regarding AME is classified as 'secret defence information' (Article

⁹⁴ European Commission, *Croatia 2005: Progress Report*, (09 November 2005), p. 91.

⁹⁵ Correspondence with P. Simunovic, Assistant Minister, Ministry of Foreign Affairs and European Integration, February 2006.

⁹⁶ Interviews, February 2006.

⁹⁷ Interview with Croatian Government official, February 2006.

24). Information regarding sales of surplus AME is classified as 'military secret - top secret'. Even the role and function of Agencija Alan is far from clear (for more on the Agencija, see below). Croatia does not publish any national reports on AME and/or dual-use transfers or licences.

This level of secrecy cannot be justified. The lack of possibility of parliamentary or public oversight is highly likely to undermine the quality of decision-making in this area. Indeed there is no systematic parliamentary scrutiny of Croatia's AME transfer record, nor is there any provision for it in legislation.

15 Information gathering and sharing

While detailed information on AME transfers may not be publicly available, companies are required to pass information about transfers to the authorities, and Agencija Alan is required by Article 3 of the *Law on Amendments and Supplements to the Law on Manufacturing, Overhaul and Trade in AME* to maintain a database on imported and exported AME. This is to consist of data on the types of transferred AME, the number of units, the country of origin, the end-user and possible export and import transit points.

Croatia has proved itself willing to honour its regional and international reporting obligations. It is a regular contributor to the UN Register of Conventional Arms, and has produced yearly reports to the UN on national implementation of the UNPoA and to the OSCE Information Exchange on SALW, and in 2006 has given considerable access to external researchers conducting a national survey of the SALW situation.⁹⁸

Croatia is committed to the South Eastern Europe Stability Pact Regional Implementation Plan on SALW. It supports efforts at building cooperation between SEESAC and the Zagreb-based Regional Arms Control Verification and Implementation Assistance Centre (RACVIAC), established in 2000 under Working Table III of the Stability Pact 'as a forum for regional dialogue and cooperation in different Arms Control and Confidence and Security Building Measures, as well as to provide assistance in all matters of Arms Control and its implementation.'⁹⁹ Croatia is a member of, and is represented at, the SECI Regional Centre for Combating Transnational Crime, which includes anti-SALW trafficking within its mandate.

Customs cooperation (including information-exchange and training activities) takes place with neighbouring states. Bilateral cooperation agreements have been established with Albania, BiH, Bulgaria, Czech Republic, Hungary, Italy, Moldova, Serbia, Slovakia, Slovenia and Turkey.

16 Enforcement

Control of Croatia's borders is the responsibility of the border police and of Customs. The border police are tasked to check persons and documents, and must grant approvals for movements of AME. Customs' responsibilities include checking goods against import and export licences. As mentioned above, there have been reports that the relationship between the two agencies is uncomfortable. When this is combined with long and geographically-difficult borders and the previously-mentioned capacity constraints (see Section on Administrative capacity, above), it is clear that Croatian border control presents major challenges.

Steps are being taken to address these challenges though. The border police task force is now mandated to actively pursue illegal firearms, and conducts random, unannounced inspections of crossing points. A National Border Management Information System was set up under the EU CARDS programme in 2002, and in 2003 Croatia introduced an *Instruction prescribing the single methodology for mutual cooperation and coordinated conduct of police officers and authorised customs officers*, which provides for regular meetings, information-exchange and joint activities. Cooperative arrangements have been established with customs agencies in

⁹⁸ *Op. cit.* Pietz, T., *et al.*

⁹⁹ See <http://www.racviac.org/index/index.asp?id=../root/mission.asp&title=RACVIAC%20Mission&main=0&parent=MISSION>, accessed 18 April 2006. Note that AME transfer controls is only one part of the work covered by RACVIAC.



neighbouring states (see previous Section), while Austria and the US have been active in attempting to boost Croatia's technical capacity to confront cross-border trafficking. Nevertheless, it seems the relationship between the border police and Customs remains difficult.

According to the MOI, in 2004-2005 the border police confiscated approximately 120 weapons and 11,300 rounds of ammunition in 72 incidents (on average, less than two weapons and approximately 160 rounds of ammunition per confiscation).¹⁰⁰ For several reasons, there are concerns that border policing may only be scratching the surface. The size of the individual confiscations suggests the level of sophistication of the intercepted illicit transfers is low. Yet during the wars in the 1990s Croatians gained expertise in arms-smuggling networks as they sought to arm Croatian forces through clandestine means. There have also been a number of media reports of problematic transfers over the last few years which dwarf the successful interdictions, including claims that SALW were smuggled to the Basque Homeland and Freedom (ETA) in Spain, the Real Irish Republican Army (Real IRA) in Northern Ireland and to organised criminal groups in the UK,¹⁰¹ and claims that the Croatian mafia is supplying arms to Middle Eastern groups, such as Hezbollah, and traders connected with Al Qaida.¹⁰²

There are encouraging signs, however, of a greater willingness to try to combat illicit arms trafficking, with a number of arrests made over the last year. The Office for the Fight Against Corruption and Organized Crime (USKOK), for example, pressed charges in 2005 against former owners of HS Produkt for the illegal export of 3,810 HS-2000 firearms in four shipments,¹⁰³ and was involved in the arrest of 11 people on charges of illegal arms dealing and the recovery of a large quantity of AME, including SALW.¹⁰⁴

17 Penalties and sanctions

Penalties within the legislation controlling AME and dual-use transfers for breaches of those laws are relatively minor. The maximum fine that can be levied on a 'legal person' (e.g. a company) for breaching the rules on manufacture, overhaul and trade of AME is 100,000 Kuna (HRK) (approximately €13,800).¹⁰⁵ No provision exists in this law for prosecuting individuals. An individual exporting dual-use goods without the necessary licence is to be fined between HRK50,000 (approximately €6,900) and 250 per cent of export business value. The 'responsible person' in a company exporting dual-use goods without the necessary licence will be fined from HRK10,000 to 50 per cent of the export business value for exports exporting dual-use goods without the necessary licence.¹⁰⁶ In no circumstances do these laws refer to the possibility of freezing or confiscating assets, or to incarceration.

Article 298 of the *Criminal Law Act* provides for the offence of 'evasion of customs control' with a maximum punishment of eight years' imprisonment, however it is not clear in which circumstances the different statutes would be applied, nor how actual sentencing has so far compared to the maximum allowable.

While in cases of breaches of dual-use regulations there may be occasions where the guilty party does not know the goods are intended for a military end-use (and thus that serious penalty would be undeserved), in the case of AME transfers, using ignorance as a mitigating factor is far less convincing. It is therefore of particular concern that penalties under the *Law on the Production, Overhaul and Trade in AME* are so weak.

¹⁰⁰ Reply of the MOI to a BICC questionnaire on SALW, June 2006, cited in *op. cit.*, Pietz, T., et al.

¹⁰¹ 'Real IRA arms purchasing in Croatia indicates a change of tactics', *Jane's Terrorism and Security Monitor*, 23 August 2003, www.janes.com, accessed 23 June 2006.

¹⁰² Despot, Z., 'Palestinski teroristi kupuju oružje od hrvatske mafije,' *Večernji list*, 18 September 2005, <http://www.vecernji-list.hr/newsroom/news/croatia/377556/index.do>, accessed 23 June 2006.

¹⁰³ Borovac, M., 'MUP u poslu 'staro za novo' sa okrivljenicima za šverc 3810 pištolja,' *Večernji list*, 09 October 2005, <http://www.vecernji-list.hr/newsroom/news/croatia/392744/index.do>, accessed 23 June 2006.

¹⁰⁴ HINA (Hrvatska izvještajna novinska agencija), 'Zagreb: Privedeno 11 osoba zbog ilegalne prodaje oružja', *Večernji list*, 05 July 2005, <http://www.vecernji-list.hr/home/igre/test/testspec/325306/index.do>, accessed 23 June 2006.

¹⁰⁵ 'Law on the Production, Overhaul and Trade in AME', Article 39.

¹⁰⁶ 'Law on the Export of Dual-Use Items', Article 18.

18 Interaction with industry

Croatian law places relatively little control on private ownership, and even foreign ownership, of defence manufacturers. However legislation controlling the activities of the defence industry seems to be intended to ensure extremely tight government control, irrespective of ownership structures. It is understood that informal lines of communication are maintained between industry and the Government, which extends to pre-licence application discussions regarding the prospects that any particular licence would be issued were an application to be lodged. While this need not be problematic, and indeed is often sensible as a way of avoiding expensive and time-consuming efforts to secure a sale which the Government could never countenance, there should be some way of recording these contacts and an oversight process to ensure their appropriateness. This does not seem to be the case in Croatia.

Coupled with the level of legislative control over defence equipment production in Croatia, the multi-faceted and apparently pervasive, but relatively opaque role played by Agencija Alan, and the general lack of transparency and accountability regarding AME and dual-use transfers, there are concerns that the relationship between the Government and industry in this area is not healthy and would benefit from further distance and greater disclosure.

Perhaps as a consequence of the complications created for the relationship between Government and industry by the existence and role of Agencija Alan, there seems to be little formal outreach to industry by the Government, through which defence manufacturers could be made aware of their responsibilities. The sense is that there is an expectation that manufacturers should, through their own efforts and via their contacts with Agencija Alan, ensure their compliance with regulatory requirements.

19 Conclusion

Over the last few years Croatia has introduced a number of new laws and regulations which have gone a significant distance toward bringing the Croatian system of AME and dual-use transfer controls into line with EU and US best practice, however there is still some way to go. While the Government appears determined to exercise tight control over production and sale, the impression is given that this is driven as much by the memory of the wars of the 1990s and the implications of any repeat as by an acknowledgement of the need to keep defence equipment out of the hands of irresponsible end-users. There has been a reluctance to fully embrace EU-equivalent systems of control, which can be seen by *inter alia* the unenthusiastic and only partial adoption of the EU Code criteria, the failure to introduce the EU military list, and the absence of controls on arms brokers and on intangible transfers of AME.

Other areas of concern include a lack of capacity across the Croatian civil service to implement transfer controls effectively, a history of difficult inter-agency relations which threatens to undermine the official inter-agency structures set up to deal with licence applications, and a cultural and legislative bias toward secrecy in this issue area. Of particular concern is the multi-faceted and central role played by Agencija Alan in the Croatian AME sector.

Given the overall (lack of) scale of the Croatian defence-equipment industry, and the fact that most production now is for the US market, the benefits of completing the transformation of the Croatian transfer control regime would significantly outweigh any cost. It is therefore to be hoped that this transformation will be completed in the very near future.

The table on the following pages provides a summarised assessment of Croatia's present compliance, or ability to comply with, EU standards:



EU STANDARD	LEGAL OR POLITICAL BASIS	NATIONAL COMPLIANCE	LEGISLATIVE, REGULATORY OR POLITICAL REFERENCE
Criteria-based licensing system (eight criteria)	EU Code Draft EU Common Position Defining Common Rules Governing the Control of Exports of Military Technology and Equipment (Draft Common Position)	Applies to arms and military equipment. Concerns that implementation is compromised by lack of capacity and in-depth understanding beyond one or two officials. Does not apply to dual-use items	Decision on accepting the principles contained in the EU Code of Conduct for Arms Exports (09 May 2002)
Military control list	Common Military List of the European Union	No. Has unique national list	Decree on goods subject to import and export licensing (10 April 2003, OG 67/2003)
Controls on dual-use goods (including control list and catch-all clauses)	EU Dual-Use Regulation	Have not adopted dual-use regulation into national law, but relevant law includes references to catch-all situations; decree adopts EU dual-use list	Law on the export of Dual-Use Goods (01 January 2005, OG 100/2004)
Control of arms brokers	EU Common Position on Arms Brokering Draft Common Position	No	None
Controls on intangible transfers	Draft Common Position	For dual-use goods but not arms and military equipment	Law on the Production, Overhaul and Trade in Arms and Military Equipment (AME) (25 March 2002, OG 33/2002)
Controls on transit and/or transshipment	Draft Common Position	Yes, but abridged procedure compared to exports	Law on the production, overhaul and trade in AME
Control of export of production capacity (including, for example, licensed production)	Draft Common Position	No	None
End-use controls and certification requirements (including controls on re-transfers)	Draft Common Position EU User's Guide	End-use certification required; no re-export without permission (unclear how this prohibition is implemented); no delivery verification or post-export monitoring	Decree on goods subject to import and export licensing
Power to revoke transfer licences	Best practice	Only for dual-use items	Law on the Export of Dual-Use Goods
Registration of actors (e.g. manufacturers, traders, shippers)	Best practice EU Common Position on Arms Brokering (recommended)	Manufacturers of AME are required to register; no requirements regarding manufacturers of dual-use items	Law on the Production, Overhaul and Trade in AME

EU STANDARD	LEGAL OR POLITICAL BASIS	NATIONAL COMPLIANCE	LEGISLATIVE, REGULATORY OR POLITICAL REFERENCE
Legal penalties and sanctions	Best practice EU Common Position on Arms Brokering	Yes, though penalties for breaches of AME and dual-use goods laws are insignificant. Crime of 'evasion of customs control' under Criminal Law Act has maximum penalty of eight years' imprisonment, but not clear when this can be used, nor is it clear how the actual imposition of penalties has so far compared with the maximum possible	Law on the Production, Overhaul and Trade in AME and Law on the Export of Dual-Use Goods
Inter-departmental consultation	Best practice	Yes. For AME, the Licensing Authority for Import and Export Control of Weapons for Commercial Purposes, For dual-use items, the Committee for the Export of Dual-Use Goods Licence Issuing. Both meet regularly. All represented ministries must agree; effectively veto system	Law on the Production, Overhaul and Trade in AME and Law on the Export of Dual-Use Goods
Information-exchange with other governments (including circulation of licensing denials among EU member states and subsequent consultations)	EU Code Draft Common Position Best practice	Regular reporting to UNDDA, UN Register of Conventional Arms (usually), COMTRADE, OSCE Not party to EU denial notification and consultation mechanism	None N/A
Industry outreach	Best practice	Official outreach is very limited. Reliance on informal contacts and arbitrary role of Agencija Alan	N/A
Parliamentary accountability	Best practice	No systematic parliamentary scrutiny of Croatia's AME transfer record; no provision for parliamentary engagement in legislation. Extensive reference to 'secret defence information' in legislation	None
Regular production and publication of national reports	Draft Common Position	No. Extensive reference to 'secret defence information' in legislation	None

Table 3: Summary of national arms transfer standards versus EU obligations and practice



20 Recommendations

To the Government of Croatia

- The Croatian regulatory framework should be reviewed to ensure that:
 - The controls on intangible transfers of technology as currently applied to dual-use items are extended to also cover arms and military equipment;
 - The EU military list is incorporated into Croatian law;
 - The primary legislation on AME transfers is amended to include reference to the criteria of the EU Code, and preferably enumeration of each of the criteria;
 - The application of the references to the EU Code (criteria) are extended to include dual-use items;
 - Controls are introduced to regulate arms brokering, and that these controls apply extra-territorially, so that a Croatian citizen resident outside Croatian territory would still need to register and apply for licences if brokering controlled items;
 - Procedures for assessing licences for transits of AME are the same as for direct exports;
 - New controls are introduced to regulate the transfer of production capacity, e.g. through licensed production, by Croatian companies or persons;
 - The Government can revoke or amend licences for AME transfers at its discretion;
 - References to 'secret defence information' are removed from the relevant legislation and the Government is obligated to publish reports on all transfers of controlled goods covering licensing decisions and deliveries in line with EU best practice;
 - The penalty structures for breaches of AME and dual-use transfer laws are adjusted to allow for the potential severity of offences;
 - End-use certification requirements are reviewed to ensure they meet EU best practice as set out in the User's Guide to the EU Code;
 - OSCE and UNPoA commitments, whereby the preferred method of disposing of surplus SALW is destruction, is reflected in legislation and is extended to all conventional AME;
 - In the event that a sale of surplus is arranged, standard licensing procedures are followed;
 - Exporters and traders are obligated to verify the delivery of AME to the stated end-user;
 - All references to Agencija Alan or an equivalent ('the Agency') are removed from legislation, and that the task of maintaining a database on AME imports and exports is handed to a relevant ministry (probably the MOE);
- In addition to improvements to legislation, the Government of Croatia should look to:
 - Assign greater political priority to the issue of arms transfer controls;
 - Close Agencija Alan;
 - Devote more resources to transfer controls, for example in terms of personnel (across all the relevant ministries) and information technology. Developing and instituting appropriate information technology systems, for example to ensure that all relevant ministries can 'talk' to each other electronically, should be regarded as a matter of urgency;
 - Develop a comprehensive training programme on transfer controls for officials from all relevant branches of government, including licensing and enforcement ministries, as well as staff in Croatian

missions abroad. This training programme must address *inter alia* the licence assessment process, with particular and in-depth reference to the EU Code criteria;

- Work with Parliament to develop a procedure for parliamentary scrutiny, drawing on best practice from EU member states and others. Any system should establish an institutional framework that would require responsible ministers and officials to answer relevant questions from a parliamentary body (e.g. an appropriate committee), which would publish its own review of government policy and practice. Consideration should be given to establishing a process for pre-licensing information-provision to, and consultation with, an appropriate parliamentary body, though decision-making powers would continue to rest solely in the hands of Government (Parliament's pre-licensing role would be advisory only);
- Develop outreach programmes to ensure that defence manufacturers, exporter and traders are aware of their rights, obligations and responsibilities;
- Elaborate and communicate, in consultation with the EU and its member states, a set of prioritised requirements for assistance from the international community so as to bring the Croatian transfer control system up to EU best practice; and
- Ensure the above recommendations are addressed as part of a broader national strategy for conventional arms (particularly SALW) control.

To the international community

- Ensure all relevant international and regional instruments and documents are translated into Croatian and made readily available to relevant national actors;
- Assist the Croatian authorities in developing a set of prioritised requirements for assistance, so as to ensure that Croatia is as soon as possible capable of implementing its legislative commitments and bringing its transfer control system up to EU best practice. On the basis of these agreed priorities, provide appropriate assistance (financial and technical). Particular areas at which this assistance could be targeted include:
 - Support for improving access to, and use of, information technology and increasing staffing levels;
 - Training of officials from all relevant branches of government, including licensing (e.g. MoE) and enforcement (e.g. Customs and border police) ministries, as well as staff in Croatian missions abroad. This training programme must address *inter alia* the licence assessment process, with particular and in-depth reference to the EU Code criteria. This would ideally form part of a Western Balkans-wide, sustained outreach programme, which would help spread EU best-practice and develop a stronger arms transfer control culture throughout the sub-region;
- In order to effectively channel donor support and encourage genuine inter-agency collaboration within Croatia, ensure that support for transfer control improvements is integrated where possible with the National SALW Control Commission into the broader strategy for weapons management in Croatia, incorporating other related matters such as stockpile management, surplus destruction and civilian possession;
- Commit to assisting Croatia in its licence-assessment process and delivery verifications (once instituted) where internal capacity is limited (e.g. for destinations where Croatia does not have a diplomatic presence);
- Countries with developed transfer control regimes and in particular with relatively sophisticated procedures for parliamentary oversight should encourage information-exchange between Croatian parliamentarians and their counterparts from other states who have experience in this area;
- Provide support to NGOs and the media so as to build indigenous capacity to analyse and monitor Croatia's arms export controls;



- The EU in particular should:
 - Include transfer controls as a key element of its overall formal dialogue with the Croatian Government; and
 - Consider circulating information regarding previous denials of arms transfer licence applications to Croatia in order to demonstrate how decision-making works in practice among member states.



Former Yugoslav Republic of Macedonia¹⁰⁷

1 Introduction

Previous statements by the Government of FYR Macedonia indicate that arms transfer control, together with the domestic regulation of SALW, is an issue of high priority.¹⁰⁸ Several steps taken during 2004-2005 suggest that this is indeed the case. For example, on 16 June 2005, the Government adopted its first National Strategy on SALW Control, one of the few South East European states to do so. Prior to that, in 2004, FYR Macedonia unilaterally aligned itself with the European Union Code of Conduct on Arms Exports (EU Code); a move that indicated a willingness to improve the country's transfer control procedures. The single most significant development in the field of transfer controls has been the adoption of the *Law for Controlling Export of Goods and Technologies with Dual-Use* in October 2005. The Law established a Commission to oversee the export of goods and technologies with dual-use (as distinct from the over-arching National SALW Control Commission) presided over by the Ministry of Defence (MOD) and including, among others, representatives from the Ministries of Interior, Economy and Foreign Affairs and the Customs Agency.

However, although FYR Macedonia has clearly avowed intentions to align itself with EU and international standards on arms and dual-use goods transfer controls, the introduction of national legislation and the administrative systems required to uphold such commitments is not yet complete.¹⁰⁹ Remaining gaps in the transfer controls legislation include the lack of a legal basis for the control of brokering activities; a lack of provision for the control of re-transfers and intangible transfers; and the fact that the military control list currently in use is not to EU standard. There are also attendant challenges in terms of administrative capacity: effective support is still required in areas such as assessing the potential risk of proposed transfers against the EU Code's eight criteria, interpreting new laws, or conducting post-export verification checks. Although FYR Macedonia is not a significant arms exporter, the existence of three separate arms transfer control processes, one for military items, one for civilian arms and one for dual-use goods, adds additional difficulties in terms of coordination.

Problems also remain in areas such as government transparency and accountability and the enforcement of border controls. For example, since transfers of arms and military equipment are designated as 'secret' under the *Law on Public Procurement* and no legal requirements exist for the dissemination of information on arms transfers to the Parliament, transparency within the system is significantly lacking. A lack of transparency of such transfers is a key concern, particularly in a context like that in FYR Macedonia where military reforms are expected to generate significant numbers of surplus SALW in the near future. Ongoing difficulties with border management, particularly in the west and north-west of the country where the smuggling of SALW and other contraband are known to occur with some frequency, are also of concern.

Creating and maintaining effective and comprehensive arms transfer control system clearly presents difficulties for transitional states such as FYR Macedonia. However, these challenges are limited to an extent by the small scale of production and export activity by FYR Macedonia at the present time.

¹⁰⁷ Hereafter referred to as 'FYR Macedonia'.

¹⁰⁸ See for example *Republic of Macedonia, National Report on the Implementation of the United Nations Programme of Action to Prevent, Combat and Eradicate Trade in Small Arms and Light Weapons (SALW) in All Its Aspects*, (2005), <http://disarmament.un.org/cab/nationalreports/2005/Macedonia%202005.pdf>.

¹⁰⁹ For example, the '*Law on Weapons*', (Official Gazette 07/05) was designed to bring Macedonian legislation into line with EU standards, was presented to parliament in January 2005. However, the Government decided in 2006 to delay the passing of the Law to 2007 because it lacked the capacity to implement it.



2 International commitments and adherence

FYR Macedonia aligned itself with the EU Code in November 2004, indicating a willingness to improve the country's transfer controls procedures.

ARMS OR SALW CONTROL AGREEMENT	FYR MACEDONIA'S COMMITMENTS
EU Code of Conduct on Arms Exports	November 2004
EU Common Position on Arms Brokering	May 2005
OSCE Document on SALW	November 2000
OSCE Document on Stockpiles of Conventional Ammunition	December 2003
OSCE Decision on MANPADS	2003
OSCE Decision on End-user Certificates	2004
OSCE Decision on Brokering	2004
Stability Pact Regional Implementation Plan	November 2001
UN Firearms Protocol	No, but intention to sign declared in an official statement at the Biennial Meeting of States on the UNPoA in July 2005
UN Programme of Action on SALW	July 2001

Table 1: FYR Macedonia's commitments to arms transfer or SALW Control agreements

While certain of the EU Code's provisions (e.g. in terms of brokering or re-transfers) are not yet incorporated into the national regulatory framework and procedures, there are strong indications from officials working within FYR Macedonian Government institutions, foreign embassies and international organisations that the Government has a strong political commitment to EU and international norms. As noted elsewhere in this chapter, further work is needed to secure FYR Macedonia's full compliance with the above agreements and codes of conduct as well as with international human rights and humanitarian law (e.g. the UN Charter, Geneva Conventions, Genocide Convention and the emerging concept of a 'Responsibility to Protect'). At the present time, although FYR Macedonia has defined its position with regard to proposals from a number of other states to develop international transfer controls in the context of the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (UNPoA), its position with respect to proposals for a binding international Arms Trade Treaty remains unclear.

3 Legislation and regulation

FYR Macedonian legislation covers import, export, transit/transshipment, components of military goods, dual-use goods, technical assistance, transportation and end-use. Laws also lay down the procedures for implementing legal requirements (often referred to in other countries as secondary legislation). The table on the next page lists the main legislation currently in force in this area:

DATE	LEGAL REFERENCE	TITLE
1972, 1976	Official Gazette of SRM 41/72 and 19/76	Legal Guide of Format of License, Evidencing of Weapons and Ammunition, Keeping and Storing of Weapons
1973	Official Gazette of SRM 37/73	Law on Examination, Marking of Different Firearms and Ammunition
1973	Official Gazette of SRM 38/73	Legal Guide on Examination of Weapons
1992	Art. 22-32, Official Gazette of RM 36/92, 66/92	Law of Passing State Borders and Movement in the Border Area
1992	Official Gazette of RM No. 74/92	Legal Guide of Executing Control of Passing State Borders and Movement in the Border Area and Evidencing
1992	Official Gazette of RM No. 78/92	Legal Guide of Movement, Stay, Settlement and Regime of Hunting and Fishing in the Border Area
2002	Official Gazette of RM No. 30/85, 6/89, 53/91, 54/02	Law on Manufacture and Trade in Weapons and Military Equipment
June 28, 2002 05 May, 2003	Official Gazette of RM, No. 45/02; corrections in Official Gazette No. 05/05/03	Law on Foreign Trade
2005	Official Gazette of RM No. 05/05	Law on Weapons
December 2005	Official Gazette of RM, No. 113/05 Chapter 2 Stocks marked as D7 are the ones that need a licence from the MOI or the MOD	Governmental Decree on Stocks for Import and Export
September 2005	Official Gazette of RM No. 82/05	Law for Controlling Export of Goods and Technologies with Dual-Use

Table 2: Summary of main FYR Macedonian legislation and regulations relevant to transfers of military and dual-use equipment

At the present time, FYR Macedonia operates three parallel systems for regulating transfers of arms and dual-use goods, each grounded in different legislation and controlled by different ministries. The systems are subject to varying degrees of inter-agency coordination and transparency. Exports of military equipment are controlled by the Ministry of Defence (MOD), in line with the 1985 *Law on Manufacture and Trade in Weapons and Military Equipment*, and a regulation supplementary to the Law.¹¹⁰ This Law also governs production and transport by the defence industry. Meanwhile the Ministry of Interior (MOI) leads the licensing process on commercial exports of weapons in line with the *Law on Foreign Trade*, and a Commission headed by the MOD but administered by the Ministry of Economy (MOE) administers new controls over dual-use goods and technologies.

A significant recent development in the field of transfer controls was the adoption of the *Law for Controlling Export of Goods and Technologies with Dual-Use* in September 2005. Following the adoption of supplementary regulations, a Commission was established to implement the Law and implementation began in January 2006. A

¹¹⁰ Interview with Dragan Arnaudovski, Head of Unit, Ministry of Interior; Lt. Col. Stojan Stefanoski, Head of Development of Armament and Military Equipment Department, Ministry of Defence; Vaedin Dauti, Deputy Head, Department of WTO and Foreign Trade Regime, Ministry of Economy; Elizaveta Nikolovska, Head of Department for Nontariff Measures, Ministry of Finance Customs Administration and Fani Mangarovska, Head of Unit, Department of WTO and Foreign Trade Regime, Ministry of Economy, 28 June 2006.



representative of the MOD acts as the president of the Commission that includes, among others, representatives from the Ministries of Interior, Economy and Foreign Affairs, the Customs Agency and the Secretariat of Legislations.¹¹¹ Article 5 of the Law tasks the Government with the adoption of the list of goods and technologies with dual-use to be proposed by the Commission. Following the proposal of the Commission, the list established and in use is a verbatim translation of the list of dual-use goods in use under the current EU regulation and its annex (1504/2004).¹¹² The Law also contains catch-all provisions requiring a licence to be obtained for exports to destinations under UN Security Council, OSCE or EU embargo. Non-listed goods must also be licensed if they are or may be intended for use in military systems.¹¹³

The *Law on Arms* which was designed to bring FYR Macedonian legislation into line with EU standards was adopted by parliament in January 2005. Although subsequently suspended until January 2007 because of concerns about the capacity of key institutions to implement it, the new Law covers some aspects of production, export, import and transit in cases where weapons transfers do not involve the military. Until January 2007, previous legislation remains in place. Key current laws are the *Law on Foreign Trade* (governing commercial transfers) and the *Law on Manufacture and Trade in Weapons and Military Equipment* (governing military transfers). Marking and tracing is covered by Section VI of *Law on Weapons (Trade with Weapons, Ammunition and Parts of Weapons)*, and again the primary responsibility for this area lies with the MOI.

A number of other laws, decrees and regulations are also pertinent, including the Customs administration law and the *Governmental Decree on Stocks for Import and Export*, Chapter D7 of which contains regulations on the trade in weapons. Chapter 93 of the Customs administration law also obliges each actor to possess a licence.

As noted above however, the legislative and regulatory framework governing international arms transfers is problematic in some respects, and is not yet fully congruent with European and international norms. Gaps include the lack of a legal basis for the control of brokering activities, and a lack of provision for the control of re-transfers such as pre- or post-delivery verification of the end-user and delivery. There is also no legislation governing production under licence outside of FYR Macedonia, and there is very little awareness among officials of the kinds of concerns that could potentially be raised by any such production.¹¹⁴ However, given that exports of arms from FYR Macedonia are currently negligible, underdeveloped transfer control legislation does not at the moment raise significant concerns. However, the fact that FYR Macedonia is committed to abide by the provisions of the EU Code, together with the Government's plans to increase its capacity for arms production, import and export in the future, necessitate the development of legislation and enforcement frameworks in this area. A second potential concern is FYR Macedonia's underdeveloped controls of brokering, a situation that might well encourage either national or foreign brokers to operate there in future.

4 Production

Although imports are rare,¹¹⁵ FYR Macedonia is a net importer of weapons and dual-use goods, and engages in only minimal production for export.¹¹⁶ There are two known producers of SALW in FYR Macedonia: 11 Oktomvri Eurokompozit in Prilep, which is currently working on a contract to enhance 150 armoured vehicles (TM170 with Cupola Type M2A) by adding armour, machine guns drawn from existing state stocks (PKT 7.62 mm x 54 R) and smoke shell launchers (902B) for the FYR Macedonian police and army; and Suvenir Metal Products Equipment. Under the *Law on Manufacture and Trade in Weapons and Military Equipment*, all arms manufacturers must be registered by the MOE.

¹¹¹ *Ibid.* Also, 'Law for Controlling Export of Goods and Technologies with Dual-Use', Article 4, Paragraph 1.

¹¹² Interview with Dragan Arnaudovski *et al.*

¹¹³ 'Law for Controlling Export of Goods and Technologies with Dual-Use', Article 6, Para. 4 - 5.

¹¹⁴ Interview with Dragan Arnaudovski *et al.*

¹¹⁵ The UK Defence Attaché could recall only one import of military SALW (sniper rifles) in recent years, and this took place before August 2004. Interview with Col. Steve English, UK Embassy, Skopje, 28 June 2006.

¹¹⁶ Interview with Col. Steve English.

According to the assessment of an international observer, the MOD has had very little surplus weaponry to market in recent years, and in any case there would be little interest from purchasers in any surplus weaponry that was designated for sale, because of its age.¹¹⁷ However, the handling of surplus SALW generated by the downsizing of the FYR Macedonian military could offer a key test of the status of transfer controls in the months to come. As of 15 June 2004, the FYR Macedonian military had 6,000 officers, non-commissioned officers and professional soldiers, 5,000 conscripts and a 44,000-strong reserve. By the end of 2007, the reformed military is set to consist of 7,600 professional soldiers and 2,500 reserves. This reduction from 55,000 to 10,100 members could create a sizeable surplus from the 85,446 SALW that were in MOD stocks in August 2003.¹¹⁸

5 Licensing of transfers

All companies wishing to transfer (import, export or transit) weapons to or from FYR Macedonia are legally required to be registered and to apply subsequently for a licence to undertake specific transfers. In cases of refusal, applicants have a right of appeal. However, refusals are apparently rare, as applicants tend not to apply if they are not confident of meeting the criteria.¹¹⁹

As the national export control mechanism is being upgraded to fulfil EU standards, at present parts of the licensing apparatus are more developed than others. As stated above, there are effectively three separate decision-making mechanisms and procedures to authorize transfers related to military procurement, transfers of weapons for civilian use and transfers of goods and technologies with dual-use.

In relation to military transfers of weapons, the MOD is able to designate MOD holdings as surplus, and this must then be confirmed by the Government. Following that, a Commission within the MOD decides whether the surplus is to be sold or destroyed. In the case of surplus weapons that are converted to civilian use, the MOD can issue a licence that goes through the MOI system described below. For military transfers, the transfer would be authorized by a Government Decision that requires the signature of the Prime Minister. Although interviewees from the Government stated that no surplus SALW have been exported in recent years, MOD interviewees stressed that when this does take place, the matter is discussed with a private US company funded by the US Government, as well as with a NATO advisory team embedded within the MOD. However, according to officials, the decision to undertake transfers of MOD equipment is a discretionary right of the Government, regardless of the law in other areas.¹²⁰

Each transfer of weapons other than those related to military procurement requires a licence issued by the MOI in coordination with the MFA and the MOD. Companies wishing to trade in arms are issued a permit by the MOI following assessment of the firm's storage capacity and the individuals who would be involved in trading at the company.¹²¹ Subsequently the firm must also seek a licence for each individual transfer of arms, valid for six months, and a permit for the movement of the goods over the border, valid for three months. In practice, the transfers regulated under this part of the system almost exclusively relate to the import of hunting weapons.

When an application is received by the MOI, it contacts the MFA and the MOD in writing to seek a written opinion on the licence application. The MOD makes a decision as to whether the quantity of weapons involved presents a threat to national security. The MOI advises on the credibility of the exporter/importer from/to FYR Macedonia. Meanwhile, the MFA decides whether the origin/destination country is permissible, taking into account relations

¹¹⁷ *Ibid.*

¹¹⁸ The figure for 2003 holdings is given in Grillot, S., *et al.*, *A Fragile Peace, Guns and Security in Macedonia*, (Small Arms Survey, BICC and SEESAC, 2004), p.15 citing MOD Officials, Skopje, August 2003.

¹¹⁹ Only one refusal could be recalled by interviewees: Dragan Arnaudovski *et al.*

¹²⁰ This was contradicted, however, by an experienced international observer, who stated that any Government Decision in this area would be made within the provisions of the *Law on manufacture and trade in weapons and military equipment*, and would necessarily involve the same kind of inter-ministerial consultation as for transfers of commercial weapons and dual-use goods and technologies. Interview with Alain Lapon, UNDP PCSS Macedonia, 28 June 2006.

¹²¹ Interview with Zarko Sanojevski, Head of Sector for Weapons, Explosives and Dangerous Materials, Ministry of Interior, 30 March 2006.



with the other state and international embargoes (using regularly updated lists as described below). Officials also stated that a new *Law on Restrictive Measures* that would also cover weapons is being planned. It would establish in law restrictions on exports to destinations under embargo by the UN Security Council and other international bodies. This Law has been drafted and submitted to Brussels for comment. In the interim, embargoes are observed under the authority of a Government Decision. Each ministry consulted has a veto on any transactions and detailed reasons are given to failed applicants for any refusals. It might be preferable to establish face-to-face meetings to consider such applications, as is already the case when applications for licences to export dual-use goods and technologies are considered. This collegiate approach, which provides for concerns to be shared in an open and collective forum, can improve the capacity for identifying, and acting on, concerns. However, no detailed guidelines appear to be in use to guide those personnel charged with assessing the risks associated with proposed end-users and destinations, and it appears that assessments are made subjectively according to the collective knowledge of each department.

As noted above, following the passing of the *Law for Controlling Export of Goods and Technologies with Dual-Use* and its supplementary regulations, a Commission was established to oversee the import and export of goods and technologies with dual-use. Although the MOD presides over the Commission, the Law ascribes responsibility for 'administrative and technical matters' within the Commission's competence to the MOE.¹²² Thus for dual-use goods, it is the MOE which convenes the licensing process and seeks opinions on particular licence applications from the MOI, the MOD, the MFA, Customs, the Secretariat of Legislation and the Ministries of Environment and Health. The Commission meets once per month to discuss licensing decisions. Licences for export of dual-use goods and technology are valid for a period of one year, with the possibility of extension.

This licensing system does aim to take account of the risk of diversion, in that the Government has aligned itself with the EU Code. However, it is difficult to see in practice how a credible assessment of the risk of diversion and other concerns would be fed into the decision-making process in each case. In practice, the process remains *ad hoc* because there are only a few transfers of weapons and dual-use goods for military or commercial purposes.

It is further questionable how the separation of the three parallel processes of authorization could lead to full compliance with the EU Code. The existence of three separate processes, coupled with the requirement of increased capacity to administer a complex decision-making process, may lead to duplication of labour and, ultimately, to failure to identify problematic destinations and end-users.

6 Exemptions


The Government's discretionary power to export MOD stocks through the issuance of a Government Decision, as described above, could be viewed as an exemption from the usual decision-making processes. The degree of concern raised by this discretionary power depends on the extent to which such decisions would be constrained in practice by the legal framework in other areas. Further, although all transits of arms and ammunition through the territory of FYR Macedonia require a licence, transshipments of weapons have however passed through FYR Macedonia from Thessaloniki to NATO forces in Kosovo.¹²³ In such cases, special certificates authorise the transfer to be in line with International Agreements on Peacekeeping Forces.

7 Brokering

The Government of FYR Macedonia has formally aligned itself with the EU Council Common Position on the Control of Arms Brokering of 23 June 2003. The current *Law on Foreign Trade* also contains provision for the regulation of brokering, under which the MOE is obliged to maintain a database of firms engaged in brokering. The current

¹²² 'Law for Controlling Export of Goods and Technologies with Dual-Use', Article 4.

¹²³ Interview with Col. Steve English.



perception among Government officials is that no brokering activity is being conducted in FYR Macedonia.¹²⁴ However, there are no provisions for the issuance of specific permits to companies wishing to trade as brokers or individual brokering transactions to be licensed. Further, there are no direct provisions for extra-territorial control of brokers. Officials did draw attention to provisions in current criminal law restricting the activity of FYR Macedonian citizens committing offences in other countries. The new *Law on Weapons* will include restrictions on brokering activity, but the definition of brokering under the proposed law has yet to be agreed. However, there is currently only a rudimentary understanding among FYR Macedonian officials responsible for transfer controls of the responsibilities and control mechanisms that enforcement of the EU Council Common Position could potentially require. It therefore remains to be seen how the proposed legislation will be implemented.

8 Transit and transshipment

Transits are regulated in the same way as arms imports in accordance with the *Law on Military Equipment* and the *Law on Foreign Trade*. In the case of transit through FYR Macedonia, as was the case for example with supplies for NATO forces in Kosovo, the MOI is responsible for providing escorts. The MOI provides escorts to individual transits on the basis of an assessment of the risks associated with the type and quantity of weapons and their proposed route.

9 Control lists

The recent passing of the *Law for Controlling Export of Goods and Technologies with Dual-Use* has led to the adoption in law of the EU's list of dual-use goods and technologies.¹²⁵ Similarly, government officials report that the process of adopting the common military list of the EU, for incorporation into both the *Law on Foreign Trade* and the *Law on Manufacture and Trade in Weapons and Military Equipment*, is underway, though the timeframe remains unclear.

10 End-use control and certification

End-user certificates (EUCs) are currently required for transfers of arms and dual-use goods. It was stated by officials that, for both exports and imports their format is defined in FYR Macedonian law according to international best practices. To gain an export licence, the exporting firm is required to submit an EUC from the recipient, stamped by the Government of the destination country. The system for checking EUCs is established but experience is being developed in this area from scratch: for example, officials involved in developing these procedures cited having recently received training on internet-based investigation of end-users (a method which in itself is not sufficient for verifying the integrity of an end-user). Officials also stated that the authenticity of an end-user could also be checked through diplomatic channels. Since no applications for licences to export dual-use goods or technologies have been received since the passing of the recent law, no practical examples could be offered of how the authenticity of end-users had been checked in practice, or of the detection of fraudulent EUCs.

When it comes to imports, EUCs are issued by the MOI for civilian weapons and the MOD for military weapons. The MOI is tasked with monitoring the use and preventing the re-sale of imported weapons.

11 Administrative capacity

There are typically two or three arms export licence applications made to the MOI each year. There are around 20 firms registered to carry out internal trade in weapons in FYR Macedonia, and approximately five commercial

¹²⁴ Interview with Dragan Arnaudovski et al.

¹²⁵ *Ibid.*



entities are registered to be able to import weapons into FYR Macedonia. In the first six months after the implementation of the *Law for Controlling Export of Goods and Technologies with Dual-Use* began in January 2006, there were roughly five queries submitted by companies asking for a decision on whether their goods require licences under the law. No applications for licences have yet been received. A number of officials interviewed for this research would welcome further training on how to apply the law, especially given the extensive list of goods to be controlled.

FYR Macedonia has just over 40 diplomatic missions around the world. Countries where FYR Macedonia has no presence are covered through diplomatic posts in the EU, NATO, UN in New York and Geneva. MFA staff working within the licensing system are reportedly well trained. However, no specific details were provided regarding training on key issues such as pre/post shipment end-use verification or assessment of exports according to the EU Code.

At present, end-use controls cannot be assessed in great detail because of the lack of cases that could demonstrate the quality of the nascent control system. Although it is important that the Government has capacity in relation to potential future increases in export activity, it should be recognised that FYR Macedonia rarely engages in the export of military and dual-use goods. As such, no licence applications have been received to date from countries where there was no diplomatic presence to establish the end-user's authenticity. While additional competency is required in this area, in practice such a capacity is unlikely to be frequently used.

There are currently seven officials engaged in export control functions in the MOI, and five in both the MOD and the MOE. All these officials also have responsibilities in other areas. Five regional Customs offices each have five coordinators, and a further three staff work in headquarters on the implementation of non-tariff measures (related to customs legislation in the field of health, safety, the environment, intellectual property and cultural heritage).

Officials recommended an increase in personnel for the MOI and MOE, and noted with concern the escalation in the burden of work resulting from the new legislation on transfers of dual-use goods.¹²⁶ Increased training would be desirable in the MOD, MOI and MOE, while more equipment could be of use to the MOI, MOD and Customs. The Department for Arms Control, Non-proliferation and Disarmament at the MFA is administered by only one person, who is also assigned other duties within the Ministry. More training on the implementation of the EU Code was highlighted as a priority area, with interest expressed in the User's Guide to the EU Code as a basis for training. One interviewee from the Customs service also noted the need for more training on border security control and software for tracking dual-use goods.

12 Inter-agency relationships/processes

As noted above, the only body responsible for transfer controls that meets regularly face-to-face is the Commission established to implement the *Law for Controlling Export of Goods and Technologies with Dual-Use*. The Commission will soon be linked by the US Tracker technology¹²⁷, which will be operational by the end of 2006. The MOI coordinates the licence decision-making process for non-military weapons transfers by hard copy correspondence.¹²⁸ Ministers are not required to sign individual licence applications. Although Macedonia's two other transfer control systems (those for civilian weapons and for dual-use goods) operate by correspondence only, given that the vast majority of transfer applications are simple in nature this does not appear to have impaired their functioning to date.

¹²⁶ Interview with Zarko Sanojevski.

¹²⁷ Tracker is a US Government-automated system designed to process arms transfer licence applications. It acts as a central location for inputting, processing, tracking, reviewing, and deciding licence applications. For more information, see <http://www.trackernet.org>, last accessed 04 July 2006.

¹²⁸ Interview with Dragan Arnaudovski et al.

13 Transparency and reporting

There is very little domestic transparency regarding arms transfers or about decision-making in this field. Although there is a Parliamentary Commission on Security with sufficient competency to review the less sensitive aspects of arms transfer control decision-making, according to Chapter 3 of the *Law on Public Procurement*, all trading in weapons and military equipment by the MOD is a state secret, and no legal requirements exist for the dissemination of information to the Parliament on MOD export activity or other arms transfers. The Parliamentary Commission on Security has also shown no direct interest in questions relating to arms transfers in the past. Thus transparency within the system for reporting domestically to Parliament and the general public is significantly lacking. No national reports have been published to date on arms or dual-use goods transfers.

The lack of transparency in this area may soon be a thing of the past. For example, the Commission for implementing the *Law for Controlling Export of Goods and Technologies with Dual-Use* is now being obliged to submit an annual report on its activities to the Government for consideration by ministers. In a further promising development, a report on exports of weapons, ammunition and dual-use goods is reportedly scheduled to be submitted to the EU before the end of July 2006.¹²⁹ According to FYR Macedonia Government officials, the report has been compiled with a view to the practices of EU member states in this area, and indicates the destination of goods, their value, the amount of weapons by type, and the number of licences issued. Further, there has for some time been an overall drive within FYR Macedonia towards transparency in the international arena, as described below.

14 Information gathering and sharing

The procedures for inter-agency communication during decision-making on the authorisation of arms transfers is described above. In addition, officials stated that updates to international norms with implications for the export controls process (such as changes to lists of embargoed countries) are disseminated regularly in hard copy by the MFA.¹³⁰

Although the body responsible for licensing arms transfers is not required to report to the Government or Parliament, at the international level, FYR Macedonia currently reports to the UN Department for Disarmament Affairs on its implementation of the UNPoA and to the UN register of Conventional Arms and Interpol/Europol. At the regional level, FYR Macedonia participates in the exchange of information through the South Eastern Europe Co-operative Initiative (SECI) and the OSCE.

An interviewee from the MOD further drew attention to the presence of embedded NATO advisers in the MOD. An international observer was confident that any exports of arms from FYR Macedonia would be known to Defence Attachés of NATO member states in Skopje, who would seek to know the destination and rationale for the export.¹³¹ In particular, it was stated that the UK, US, France, Germany and Italy share information and would cooperate to try to prevent any undesirable transfer from taking place.

15 Enforcement

All governmental officials consulted for this research stated that there have been no breaches of the system for transfer controls, and that such a breach would not be possible under present arrangements.¹³² Enforcement of the transfer control system is accomplished through close cooperation between the MOI and the Customs Authority. When issued with a permit to transport weapons, companies must notify the MOI 48 hours before the

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*

¹³¹ Interview with Col. Steve English.

¹³² Interview with Dragan Arnaudovski et al. If this is the case, the FYR Macedonian system would be unique.



weapons are due to be transported. The MOI then provides an escort for the weapons from the point of storage to the border, and checks that the contents of the shipment match the permit. All transfers of goods, which have been classified as arms and dual-use goods and licensed as such, must also pass through the 'red channel' for goods to be declared, and are subject to the most stringent level of checks conducted by the Customs Authority. Customs officials have a list of dual-use goods against which to check consignments. The Customs Police is independent from FYR Macedonia's main policing service. It has the authority to unseal a shipment, regardless of whether it is for import, export or transit, and civilian or military use. Government officials stated that Customs has the capacity to check 20 per cent of all shipments out of FYR Macedonia. A risk analysis mechanism is used so that any firm with a record of any kind of offence is obliged to pass through the 'red channel' at Customs, which entails a full check on the contents of the shipment.

In terms of capacity to check shipments, an international observer commented that the capacity and skills already exist, and noted improvements in border control since the police took over responsibility from the military.¹³³ The imposition of effective checks on import, export and transit shipments is said to be dependent partly on whether there are adequate resources to carry out the task, and also on the motivations of staff: embedded corruption is an ongoing problem at both the senior level where operations are planned as well as at the implementation level.¹³⁴

These difficulties go some way towards explaining why FYR Macedonia has been both a destination and transit point for weapons trafficking in the past.¹³⁵ While there is scope for improvement in border controls, recent changes to the border control system have increased control over illicit weapons trafficking include the synchronisation of the new integrated border management strategy adopted in October 2005 (covering the operational procedures at the border crossings and the handover from the army border guards to the border police) with the National SALW Strategy;¹³⁶ the establishment of a unit for the fight against illegal trade and possession of SALW in January 2005 within the MOI Organised Crime Sector; increased involvement by the Government in intelligence cooperation (with SECI Centre and Interpol); and cooperation between the FYR Macedonian Public Prosecutor's office and the Slovenian State Prosecutor's office in the fight against serious criminal offences, including organised crime and weapons trafficking (formalised in a memorandum of understanding in March 2006).¹³⁷

16 Penalties and sanctions

Penalties are established under the penal code for violation of laws related to arms exports, and also under the *Law on Manufacture and Trade in Weapons and Military Equipment* which provides for graduated fines of up to 500,000 Macedonian Denars for breaches of the laws on arms production or transfer.¹³⁸ Customs and the police are responsible for identifying and investigating violations of the law, although no prosecutions could be cited by officials interviewed for this research. There are however no provisions for custodial sentences under the legal framework, a fact that is highly problematic.

17 Interaction with industry

Companies that are registered to trade in weapons are issued all relevant information on the process and criteria for obtaining a licence at the point of registration. Following recent legislative reform described above, the list

¹³³ Interview with Col. Steve English.


¹³⁴ *Ibid.*

¹³⁵ This Section draws on Richards, A., *et al.*, *South East and Eastern Europe SALW Monitor 2006*, (Saferworld-SEESAC, 2006), pp. 55 - 64.

¹³⁶ Government of FYR Macedonia presentation at the RIP Steering Group meeting, Belgrade, 16 May 2006.

¹³⁷ 'FYR Macedonia, Slovenia sign agreement on combating crime', *STA News Agency*, 30 March 2006, http://www.seesac.org/wms2006/2006-03-31.htm#Macedonia,_Slovenia_sign_agreement_on_combating_crime, accessed 03 July 2006.

¹³⁸ Articles 48 - 51 of the law specify graduated fines according to the severity of the offence, ranging between 50,000 and 500,000 Macedonian Denars.



of dual-use goods and technologies has been disseminated to companies through the Chamber of Commerce. Most companies, in the opinion of officials, also have a legal officer whose responsibility it is to establish the company's obligations in relation to current law. Documents related to dual-use goods and the licensing process are also disseminated in the Official Gazette, to which most companies subscribe, and which is available through the MOE website.

The MOE contains a sector, which, together with the State Marketing Inspectorate, has the authority to perform spot inspections on manufacturers and companies. Companies are required to keep records of all exports requiring a licence for five years. These are subject to checks on storage conditions and documentation. However, until now the volume of transfers has been so small that no regular timeframe has been established for such inspections.

18 Conclusion

Although progress towards EU and international arms transfer norms has been genuine and tangible in FYR Macedonia, there are many areas that will need to be the focus of concerted attention by the Government of FYR Macedonia in the coming years. Key areas for development include the passing and implementation of delayed legislation and increasing attention to the development of administrative systems which are needed for responsible legislation to translate into stringent practice. In areas such as brokering, the focus does not need to fall on the need for adequate controls, but training and awareness-raising aimed at the relevant officials will be necessary in order to build the capacity requested for delivering political commitments. Structurally, it is advisable to unify FYR Macedonia's three independent licensing systems to minimise the risk of inconsistency between different controlling authorities, and to reduce duplication of labour. Further, measures aimed at increasing transparency in military and civilian trade must extend beyond the international level to the domestic plane, with increased information-sharing with the Parliament and the public. This will allow the public and its elected representatives to have a proper role in overseeing the Government's responsible trade in military and dual-use goods and technologies.

Although it is important that the Government has capacity in relation to potential future increases in export activity, it should be recognized that FYR Macedonia is rarely engaged in export of military and dual-use goods. A balance must therefore be struck when attempts are made to address the current failings of FYR Macedonia's control system since such a capacity is unlikely to become extensively used in practice. Undue pressure may even prove counter-productive in cases such as FYR Macedonia, where there is a high degree of openness and real willingness to address outstanding problems. For its part, the international community will need to be a responsive and willing supporter of FYR Macedonia, recognising that while specific areas of the control system require improvement, an EU-standard arms transfer control system is difficult to achieve, and presents challenges to the resources of a small nation engaged only rarely in arms production and trade.

The table on the following pages provides a summarised assessment of FYR Macedonia's present compliance, or ability to comply with, EU standards:



EU STANDARD	LEGAL OR POLITICAL BASIS	NATIONAL COMPLIANCE	LEGISLATIVE, REGULATORY OR POLITICAL REFERENCE
Criteria-based licensing system (eight criteria)	EU Code Draft EU Common Position Defining Common Rules Governing the Control of Exports of Military Technology and Equipment (Draft Common Position)	Adopted but weak capacity for assessing risk	Official Gazette 80/2004
Military control list	Common Military List of the European Union	Planned introduction of new EU compatible list	Process underway for incorporation into Law on Foreign Trade, Law on Manufacture and Trade in Weapons and Military Equipment
Controls on dual-use goods (including control list and catch-all clauses)	EU Dual-Use Regulation	Yes	Law for Controlling Export of Goods and Technologies with Dual-Use
Control of arms brokers	EU Common Position on Arms Brokering Draft Common Position	Adopted; partial regulation in current law to be extended in new Law on Weapons	Law on Foreign Trade, draft Law on Weapons
Controls on intangible transfers	Draft Common Position	No	None
Controls on transit and/or transshipment	Draft Common Position	Yes Inspections of transiting arms and dual-use goods shipments by Customs	Law on Military Equipment Law on Foreign Trade Law on Customs
Control of export of production capacity (including, for example, licensed production)	Draft Common Position	Not controlled	None
End-use controls and certification requirements (including controls on re-transfers)	Draft Common Position EU User's Guide	Yes, but weak capacity	Law on Foreign Trade
Power to revoke transfer licences	Best practice	Yes	MOI internal regulations
Registration of actors (e.g. manufacturers, traders, shippers)	Best practice EU Common Position on Arms Brokering (recommended)	Yes, primary control by MOI but also by MOD and MFA	Law on Weapons (will be amended in 2007) Law on Foreign Trade Governmental Decree on Stocks for Export and Import Regulation on forms and contents of trade companies for production of arms, Official Gazette 17/05

EU STANDARD	LEGAL OR POLITICAL BASIS	NATIONAL COMPLIANCE	LEGISLATIVE, REGULATORY OR POLITICAL REFERENCE
Legal penalties and sanctions	Best practice EU Common Position on Arms Brokering	Only non-custodial tariffs	Criminal Law of RM (Penal Code) Law for Controlling Export of Goods and Technologies with Dual-Use
Inter-departmental consultation	Best practice	For civilian and dual-use transfers	Law for Controlling Export of Goods and Technologies with Dual-Use
Information-exchange with other governments (including circulation of licensing denials among EU member states and subsequent consultations)	EU Code Draft Common Position Best practice	Reporting to UNDDA, COMTRADE and others, but infrequently Consultation with NATO member states Not party to EU denial notification and consultation mechanism	See table 1 above
Industry outreach	Best practice	Yes, limited	Law on Production and Trade in Arms and Military Equipment
Parliamentary accountability	Best practice	Only for dual-use goods and technologies	Law for Controlling Export of Goods and Technologies with Dual-Use
Regular production and publication of national reports	Draft Common Position	First report to EU to be submitted July 2006	No

Table 3: Summary of national arms transfer standards versus EU obligations and practice



19 Recommendations

To the Government of FYR Macedonia

- Quicken the pace of legislative alignment with EU norms and standards in the field of arms transfer controls:
 - Pass the *Law on Weapons* as envisaged to ensure that controls in key areas such as brokering enter into national legislation;
 - Pass the *Law on Restrictive Measures* to formalise in legislation FYR Macedonia's current commitment not to transfer arms and dual-use goods and technologies to destinations under international embargo;
 - Complete the incorporation of the common military list of the EU into transfer control legislation;
 - Develop legislation to effectively regulate production under licence by FYR Macedonian companies operating outside national territory;
 - Introduce a system of collegiate-style inter-departmental cooperation, involving face-to-face meetings among relevant ministries to consider applications for relevant permits and licences to trade in arms, with detailed criteria-based assessments of the risks associated with each transfer being a core part of this decision-making process (the eight criteria of the EU Code should guide this work). This will help officials to develop their capacity in implementing new legislation effectively and increase the likelihood that concerns are raised openly and taken properly into account by all relevant departments;
 - Using secondary legislation and/or guidelines for government officials, specify the required content and format for end-use certificates, consistent with the recommendations in the User's Guide to the EU Code;
 - Using secondary legislation and similar mechanisms, provide government officials with detailed guidelines to aid their work on arms transfer licensing;
- Improve and streamline the structures for regulating transfers:
 - Assess, and where necessary increase the numbers of personnel engaged in transfer controls (for example in the MOI, MOE and MFA), especially where legislative reform has altered the burden of work of licensing agencies;
 - Assess, and where necessary increase the availability of equipment in key agencies within the arms transfer control system, for example in the MOI, MOD and Customs;
 - Assess, and where necessary increase the level of training for officials engaged in transfer controls, for example on border security for Customs and the User's Guide to the EU Code for all licensing agencies. Develop capacity to exercise pre- and post-shipment checks on end-users, and request training and support in this area from international partners;
 - Require delivery verification certificates to be submitted to the authorities on delivery of particular shipments;
 - Explore workable mechanisms to put in place end-use monitoring and verification to ensure compliance with end-use undertakings;
 - Continue and extend the practice of reporting on arms and dual-use goods and technologies so that the public and parliament is kept informed of government policy and activity in this area;
 - Upgrade the existing parliamentary committee on 'Import and Export Records' to enable it to scrutinise arms transfer decision-making. This committee should have the statutory duty to call ministers and

officials from state agencies responsible for arms transfer decision-making 'in camera' and should publish an annual review on the enforcement of arms transfer legislation and regulations. Consideration should be given to establishing a process for pre-licensing information-provision to, and consultation with, the appropriate parliamentary body; though decision-making powers would continue to rest solely in the hands of Government (Parliament's pre-licensing role would be advisory only);

- Ensure that transfers by the MOD are as rigorously controlled in law and in practice as those by non-state actors, and in particular that transfers conducted by the MOD only take place after inter-ministerial consultations among officials experienced in administering EU-standard transfer controls; and
- Ensure the above recommendations are addressed as part of a broader national strategy for conventional arms (particularly SALW) control.

To the international community

- Ensure all relevant international and regional instruments and documents are translated into Macedonian and made readily available to relevant national actors;
- Assist the FYR Macedonian authorities in developing a set of prioritised requirements for assistance with a view to bringing the national transfer control system into line with EU best practice, and provide assistance on the basis of these agreed priorities;
- Continue to monitor the practices of the Government of FYR Macedonia in the field of arms transfers, offering encouragement and support particularly in the area of responsible disposal of the newly emerging surplus of SALW created by ongoing military reforms;
- Offer training for officials with core objectives of:
 - Increasing knowledge and understanding of the importance of controlling arms brokering, including extra-territorial controls;
 - Improving understanding of how to apply the EU Code criteria (with the User's Guide as a basis);
 - Increasing capacity and systems for assessing the risk of supply to particular end-users and checking the authenticity of the end-users;
 - Improving technical understanding among licensing officials of what constitutes dual-use goods and technologies with a focus on the EU List recently adopted by FYR Macedonia;
- Countries with developed transfer control regimes and in particular with relatively sophisticated procedures for parliamentary oversight should encourage information-exchange between parliamentarians from FYR Macedonia and their counterparts from other states who have experience in this area;
- Provide support to FYR Macedonian civil society so as to build indigenous capacity to analyse and monitor FYR Macedonia's arms export controls;
- The EU in particular should:
 - Include transfer controls as a key element of its overall formal dialogue with the Government of FYR Macedonia; and
 - Consider circulating information regarding previous denials of arms-transfer licence applications to FYR Macedonia in order to demonstrate how decision-making works in practice among member states.





Republic of Montenegro¹³⁹

1 Introduction

Following the results of a referendum on independence in the Republic of Montenegro in May 2006, the Montenegrin Parliament declared independence from the State Union of Serbia and Montenegro (SCG) on 03 June 2006. The dissolution of the State Union will create new opportunities and challenges with respect to arms transfer control in Montenegro, simultaneously allowing Montenegrin exporters to compete on the world market while also requiring a great deal from the national authorities in terms of control measures. Previously, the State Union had responsibility for many aspects of arms control in SCG, including for example the maintenance of military SALW stocks, but also that of regulating international arms transfers. Though it is to be hoped that Montenegrin independence simplifies the complex and often ineffective workings of what were SCG Federal level institutions,¹⁴⁰ the division of SCG's two constituent republics presents some potential difficulties. While the situation in Serbia, the legal successor state to SCG is much clearer, it is not immediately obvious how international arms transfers to and from Montenegro will be regulated in future. It is likely that new primary and secondary legislation will need to be created in Montenegro in order to introduce and operationalise controls formerly resident in Belgrade. In keeping with regional and international norms, Montenegro will also be expected to align itself with international and regional agreements on arms control and information-exchange: at the present time only the SCG Union is party to these.

As an emerging state, Montenegro's capacity to fulfil any such commitments is at best unclear. Immediate challenges relate to the transfer of competencies for arms transfer control from former State Union institutions (the Ministry of Defence (MOD), Ministry of International Economic Relations (UMIER) and Ministry of Foreign Affairs (MFA)) to Republic-level institutions. Following the adoption or introduction of legislation in this area, capacities will need to be built almost from scratch within some bodies (e.g. MFA), and provision made to enforce regulations.

2 International commitments and adherence

Over recent years, SCG became party to a number of international and regional SALW agreements (see the table on the next page). With Serbia acting as the successor state to SCG in international affairs, Montenegro will now need to clarify its intentions with respect to these agreements at the earliest opportunity, and seek to accede or align itself with them when possible and appropriate in order to provide an effective overarching framework for arms transfer control and international information-exchange.

¹³⁹ Following the results of the May 2006 referendum on independence in the Republic of Montenegro the State Union of Serbia and Montenegro (SCG) has dissolved with the declarations of independence by the Republic of Montenegro and the Republic of Serbia. The research for this study was conducted immediately after the recognition and establishment of Montenegro. As such, the information contained within should be regarded as preliminary: it was unfortunately not possible to obtain clear and detailed information on many aspects of arms transfer control because of the immediacy of Montenegro's separation from the State Union and an overall lack of clarity on how controls will be applied.

¹⁴⁰ In December 2004, the State Union of Serbia and Montenegro (SCG) created a National Strategy for the Control of SALW, *The State Union of Serbia and Montenegro Strategy for the Control of Small Arms and Light Weapons (SALW)*, Belgrade, December 2004, (hereafter SCG SALW Strategy). Among other things, the strategy provided for the establishment of an inter-ministerial SALW Commission to implement the Strategy and to monitor the implementation of an accompanying SALW action plan. The Strategy contained three annexes: an Action Plan for the Control of SALW at the federal level (SCG), and two strategies for implementation of SALW Control at the republic level. However, during 2005/06, despite protracted negotiations in Belgrade and Podgorica, only the Republic of Montenegro adopted its strategy.



ARMS OR SALW CONTROL AGREEMENTS	NEW COMMITMENTS
EU Code of Conduct on Arms Exports	
EU Common Position on Arms Brokering	
OSCE Document on SALW	
OSCE Document on Stockpiles of Conventional Ammunition	
OSCE Decision on End-user Certificates	
OSCE Decision on Brokering	
OSCE Decision on MANPADS	
Stability Pact Regional Implementation Plan	
UN Programme of Action on SALW	
UN Firearms Protocol	

Table 1: Possible future commitments to arms transfer and SALW Control agreements by Montenegro

Just as work is needed to secure Serbia's full compliance with the above agreements and codes of conduct, so considerable effort will need to be expended in Montenegro's case. In addition, international human rights and humanitarian law (e.g. the UN Charter, Geneva Conventions, Genocide Convention and the emerging concept of a 'Responsibility to Protect') and international discussions on the best means to arrive at a global agreement on international transfer controls, whether in the context of the UN Programme of Action on SALW (UNPoA), or a binding international Arms Trade Treaty, should be taken into account.

3 Legislation and regulation

In SCG, military production and transfers were regulated at the State Union level, by the 2005 *Law on Foreign Trade in Arms, Military Equipment and Dual-Use Goods*.¹⁴¹ With the recent break up of the State Union, the Republics of Serbia and Montenegro have decided to retain at Republic level the legislation that was in place at the State Union level, with Republic-level ministries assuming responsibilities previously held by State Union Ministries.¹⁴² The 2005 *Law on Foreign Trade*, introduced in part to bring SCG into line with EU transfer control norms (*Law on Foreign Trade in Arms, Military Equipment and Dual-Use Goods*),¹⁴³ may provide a useful basis on which to introduce controls in Montenegro.¹⁴⁴

The 2005 Law defines the following as controlled goods: arms, military equipment and related technologies included in the Common Military List of the EU; and dual-use goods and technologies included in the EU Dual-Use Goods and Technologies List. It also tasked the SCG Council of Ministers (now dissolved) with defining national

¹⁴¹ Official Gazette of Serbia and Montenegro No. 7, 18 February 2005.

¹⁴² Mladen Mijović, Directorate for Weapons Control, Ministry of Foreign Affairs, Republic of Serbia, noted in an interview on 04 July 2006 that all agreements, commitments and international organisation memberships of the State Union had been assumed immediately by Serbia, and that a government Decree had established the name change and transfer to Republic level of SCG Ministries. See also 'Statement of Dr. Parivodic, Minister of International Economic Relations,' *Second Meeting of the Working Party for the Accession of the Republic of Serbia to the World Trade Organisation*, Geneva, 08 June 2006, in which the Minister stated that 'The laws passed on level of the State Union shall shortly be incorporated into Serbian legislation by virtue of a special law'; likewise the report on the MFA website, 'Decision on transferring jurisdictions from Serbia-Montenegro to Serbia', 05 June 2006, which states that: '...Serbian parliament has adopted today the Decision on obligation of Serbian state bodies in carrying out Serbia's jurisdictions as successor of the state union of Serbia-Montenegro. The Decision obliges the Serbian government and other Serbian state bodies to pass necessary documents within 45 days and take measures aimed at the realisation of Serbia's international and legal subjectivity as legal successor of Serbia-Montenegro. The Decision primarily refers to execution of jurisdictions in the fields of foreign affairs and defence until necessary laws regulating foreign affairs and defence are passed'.

¹⁴³ Official Gazette of Serbia and Montenegro, No. 7, 18 February 2005.

¹⁴⁴ The Law obligates the SCG MFA to consider the EU Code when assessing export licence applications.

control lists that are harmonised with those of the EU. The import and export of controlled goods, provision of technical assistance and exchange of intellectual property, representation of foreign companies, brokering and maintenance, as well as non-commercial activity are all covered by the law. The most obvious remaining gaps in the legislative framework for arms transfer control provided under the 2005 Law are an absence of any extra-territorial controls on brokering or of production under licence.¹⁴⁵

As noted above, the legal position following the dissolution of the State Union is that both Republics will adopt and continue to apply federal legislation. It seems likely that revisions and amendments will be necessary in future in order for Montenegro (and possibly Serbia) to operate a law designed for use within a federation. In accordance with the Republic of Montenegro's 'National Strategy and Action Plan for SALW Control' of August 2005,¹⁴⁶ the Montenegrin Ministry of Interior (MOI) is designated as the lead agency in the area of legislative and regulatory issues.¹⁴⁷ While the MOI should play a role in the development of any legislation on these issues, other ministries and departments such as the MFA would provide a more natural lead on an issue with an important international dimension. Since the lead responsibility for arms transfer control actually fell to the UMIER in SCG, it is to the Ministries of International Economic Relations of the Republics of Serbia and Montenegro (MIER) that the responsibility for administering the system will go.

4 Licensing of transfers

Under the 2005 Law all arms transfer transactions require a licence, with a partial exception for transits (see below). The Law obliges entities wishing to engage in controlled activities to register (with UMIER), and to apply for licences for each specific transaction. It also specifies the contents of applications to register to engage in controlled activities, applications for licences, end-user certificates and import and export licences. The Law also requires the consideration of the EU Code's eight criteria.

In terms of the exact power of the individual government agencies that participate in decision-making on arms transfer licence applications, the Law is ambiguous in stating that the MOD and MFA have the right to deny a licence application, but that in the event where there is disagreement (presumably regarding interpretation of the EU Code criteria – as this must be the only basis for decision-making if the reference to the Code in legislation is going to be operable in practice) the SCG Council of Ministers has the final decision. Further, as the Council of Ministers at the State Union level has now been abolished, it is unclear how any such disagreements would now be resolved.

With the break-up of the State Union, Serbia is in the process of transferring the competency for administering arms transfer licenses from the UMIER to the MIER. Similar arrangements will need to be made in Montenegro. The Law specifies the right of the UMIER under certain circumstances to revoke a licence without obligation to the entity to which it has been granted.

5 Exemptions

No exemptions are provided for in the *Law on Foreign Trade in Weapons, Military Equipment and Dual-Use Goods*. According to Serbian officials interviewed for this research, even when MOD weapons are to be exported, registered arms trading companies are still required to seek licences from the MIER (formerly the UMIER) under the regular licensing process.

¹⁴⁵ Interview with Ana Blagojević, Assistant Minister, Ministry of International Economic Relations, Republic of Serbia, 07 July 2006.

¹⁴⁶ The Strategy was officially launched at a press conference in Podgorica in October 2005. *SAC/SCG Interim Report*, p.4.

¹⁴⁷ See: *Ibid*, Annex B.



6 Brokering

Although registration of brokers is required under the 2005 *Law on Foreign Trade in Weapons, Military Equipment and Dual-Use Goods*, it is not yet clear how this issue will be dealt with. There are no provisions under the federal law for extra-territorial controls on brokering activity.

7 Transit and transshipment

The 2005 *Law on Foreign Trade in Weapons, Military Equipment and Dual-Use Goods* requires that goods in transit through SCG's constituent republics be authorized not by a full import/export licence, but instead by a similar permit to that required for transportation of arms exports and imports. The Law states that the permit is to be issued by the MOI (or the competent authority in charge of air traffic in the case of transport by air), with MOD and MFA consent. Transport and transit permits last for two weeks, a fact that has given rise to complaints from exporting companies because it allows them insufficient time to arrange transport properly.¹⁴⁸

8 Control lists

The 2005 *Law on Foreign Trade in Weapons, Military Equipment and Dual-Use Goods* requires control lists to be harmonised with the EU Common Military List and List of Dual-Use Goods and Technologies. Within Serbia, the MIER (formerly the UMIER) has the responsibility to disseminate updates to this list, a task that is reported to present some challenges.¹⁴⁹ The situation is likely to be similar for Montenegro.

9 End-use control and certification

End-user certificates (EUC) are required to accompany all arms export licence applications under the 2005 *Law on Foreign Trade in Weapons, Military Equipment and Dual-Use Goods*. The Law specifies the required contents of EUC. The SCG MFA has in the past been responsible for verifying EUC, and has reportedly established a database of competent persons authorised to issue EUC in destination countries. MFA representatives based in Belgrade report that SCG (now Serbian) embassies abroad are an essential prop when performing checks on EUCs and end-users. As an emerging state, Montenegro is not furnished with sufficient foreign embassies to undertake this task. International assistance as well as staff training will doubtless be required.

10 Administrative capacity

Unlike Serbia, which has some 91 entities registered to trade in arms and military equipment, Montenegro will require less administrative capacity to apply a similar standard of control to fewer actors. The short-term challenge at the time when this research was conducted was the transfer of licensing responsibilities from Ministries at the State Union level to their counterparts at Republic level. Although the commitment has been made to retain the laws, and an effort is being made to ensure continuity of licensing officials in the same jobs, retaining the offices and equipment previously in use, there were fears among interviewees that key technically competent officials would not retain posts at the Republic level.¹⁵⁰ Potentially, Montenegro will face a greater challenge developing its licensing capacity than will Serbia, since Serbia will retain equipment and premises that were based in State Union Ministries in Belgrade. Some capacity should already exist however, particularly since

¹⁴⁸ Interview with Hans Risser, UNDP SALW Project Manager, 04 July 2006.

¹⁴⁹ Interview with Mladen Mijović, Directorate for Weapons Control, Ministry of Foreign Affairs, Republic of Serbia, 04 July 2006. Interview with Ana Blagojević, Assistant Minister, and Ms Simovic, Republic of Serbia Ministry of International Economic Relations, 07 July 2006.

¹⁵⁰ Interviews with Ana Blagojević, Assistant Minister, Ministry of International Economic Relations, Republic of Serbia, 07 July 2006 and Hans Risser, UNDP SALW Project Manager, 04 July 2006.

Montenegrin officials have been beneficiaries, along with their Serbian counterparts, of training courses run by a number of actors.¹⁵¹

11 Inter-agency relationships/processes

Within the overall timeframe of 30 days for considering particular arms transfer licenses, the MFA and MOD have seven days to indicate their approval. Whereas under the former MOD-led process, inter-ministerial consultation on licensing decisions was possible but not mandatory, the ministries who consider applications for licences and transport permits are now obliged to make decisions collectively, and communicate by letter to do so. Tracker technology supplied by the US has been installed with the UMIER (thus available to MIER, whose offices are in the same building as the former State Union Ministry), MFA, MOI and Customs, and will apparently be operational in the near future.¹⁵² Paper communication will continue to be in use for a time after the Tracker system begins to be used. There are no regular face-to-face meetings of responsible officials from the relevant ministries, however the establishment of an inter-ministerial body for transfer licensing is said to be under consideration.

12 Transparency and reporting

Serbia and Montenegro previously showed an interest in developing its own national reporting capacity as well as cooperating with other governments in the region on this topic.¹⁵³ Unfortunately a past commitment by UMIER to produce a report on arms exports by March 2005 for adoption by the State Union Council of Ministers was disrupted by the break-up of the State Union (whereby the Council of Ministers and UMIER were dissolved).¹⁵⁴ Serbia now plans to issue this report sometime in 2007. Given that prior to Montenegrin independence the legal competency to undertake arms transfers was at State Union Level, and that Serbia will be the legal successor to SCG, it seems unlikely that the issuance of a similar report by Montenegro would be meaningful or worthwhile. Within the near future however, Montenegro would do well to follow Serbia's lead in compiling such reports and could go further by making their publication a statutory requirement. This would provide the information needed by Parliament to oversee Government activity in this area.

13 Information gathering and sharing

Information concerning arms control in Montenegro was previously submitted by the State Union MFA to those fora in which it had membership, including the OSCE secretariat under the OSCE Document on SALW, and to UNDDA on implementation of the UNPoA as well as to the UN Register of Conventional Arms.¹⁵⁵ Although a report was submitted to the UN Register of Conventional Arms in May 2006, the break-up of the State Union and the

¹⁵¹ In terms of international assistance to enhance export control capacity, the majority of the assistance provided has come through the US Government's Export Control and Border Security (EXBS) programme. In recent months EXBS activities to build State Union/Serbian Government capacity have included: a seminar on control of dual-use goods and a training needs assessment (October 2005); two licensing workshops (December and April 2005); inter-border interdiction training (January and February 2006); workshops on annual reporting and technical control for licensing authorities (February 2006); a Tracker installation workshop (April 2006); two industrial outreach seminars (April and June 2006); customs training (May 2006); as well as further activities related to counter-proliferation and WMD. Further initiatives by EXBS are planned including work to improve brokering controls (with the MIER, MOD and MFA, October 2006) and international investigations (February 2007). Germany's Federal Office of Economics and Export Control (BAFA) sponsored a one-week seminar for 10 Serbian and Montenegrin licensing officials in May 2006. UNDP has likewise supported a visit by one MOD and two UMIER officials to Poland to observe a functional EU-standard export control system in May 2006.

¹⁵² Interview with Mladen Mijović, Directorate for Weapons Control, Ministry of Foreign Affairs, Republic of Serbia, 04 July 2006.

¹⁵³ In Belgrade in February 2006, UMIER jointly opened and participated in a seminar entitled 'Arms Export Reporting in the Western Balkans'. The seminar was co-sponsored by the US Department of State through the EXBS programme and organised by SEESAC as part of the European Commission (EC) Second Pilot Project on SALW (SPP) in an attempt to encourage and standardize arms export reporting to fulfil the requirements of the EU Code. SEESAC, 'Arms exports reporting in the Western Balkans' (Activity Report 064), 09 February 2006.

¹⁵⁴ Interview with Mladen Mijović, Directorate for Weapons Control, Ministry of Foreign Affairs, Republic of Serbia, 04 July 2006.

¹⁵⁵ During 2005 - 2006, SCG submitted reports to UNDDA on implementation of the UNPoA and to the OSCE as required by the OSCE Document on SALW.



transition from UMIER to the Republic level MIER within Serbia is known to have delayed the submission of some reports such as that under preparation by UMIER for the OSCE.¹⁵⁶

It is not known what preparations if any Montenegro is now making for similar reporting. However, once Montenegro is accepted for membership of the various international organizations it will become committed to a number of international instruments that require information-exchange. In doing so Montenegro will likely take on the responsibility for regular and detailed reporting to the following:

- UNDDA on implementation of the UN the Programme of Action and also the UN Register of Conventional Arms;
- INTERPOL/EUROPOL (criminal intelligence);
- OSCE (under the OSCE Document on SALW of 2000);
- EU (information-exchange on arms transfer decision-making);
- SECI Regional Centre (as part of periodic intelligence exchanges on police seizures of SALW).

In time Montenegro may also wish to apply for membership of other fora regimes such as the Wassenaar Arrangement. At the national level, it will also be advisable for Montenegro to introduce the practice of issuing public annual arms export reports in line with EU norms. Officials working within the transfer control system have previously attended a training event on this subject that may stand them in good stead.¹⁵⁷ The information required to compile such reports has until now been held by UMIER since the 2005 *Law on Foreign Trade in Arms, Military Equipment and Dual-Use Goods* obliges the institution to maintain a database of all licences issued, denied and revoked. Within Serbia, this responsibility is to be taken on by the MIER. It is not known whether similar arrangements will be made in Montenegro.

14 Enforcement

In March 2006, the effectiveness of the control procedures was tested over a shipment of MOD surplus weapons being sold to an undisclosed destination (reportedly the Iraqi Government) via Jugoimport Montenegro. Reportedly, over 1,000 Zastava M70B1 7.62 mm assault rifles and 100 M72B1 light machine guns were seized by Montenegrin Police. It seems that the seizure was made because the transporter changed the vehicle from that specified in the documents accompanying the transport, creating an anomaly in the paperwork.¹⁵⁸

The 2005 *Law on Foreign Trade in Arms, Military Equipment and Dual-Use Goods* gives responsibility for control under the law to the UMIER, which is tasked to carry out its role in cooperation with the MOD, MOI, Customs, Intelligence services and other relevant agencies. Agencies cooperating to enforce controls are obliged to report to the UMIER. The Federal Customs Administration has the authority to stop and seize transfers of controlled goods under the Law, and members of the service are stationed at the borders to conduct physical checks on shipments. Under this arrangement a special 'Sector for Controlling the Application of the Law' within Customs can be notified by any other units (such as those for intelligence, smuggling and investigations) if anything unusual is detected during their monitoring work.

As is the case elsewhere in the region, inadequate capacities among border control institutions, coupled with difficult terrain, pose enforcement challenges: Montenegro has experienced illicit cross-border arms trafficking

¹⁵⁶ Interview with Ana Blagojević.

¹⁵⁷ In February 2006, UNDP Serbia and Montenegro and SEESAC provided an international consultant to UMIER to instruct officials on best EU practice on annual reporting on arms exports. SACISCG Interim Report, 01 June 2005 - 28 February 2006, p. 6.

¹⁵⁸ 'Montenegro Police Seize Truckload of Small Arms', *VIP News Service - Defence and Security*, No. 151, 16 March 2006, p. 4.



in the past. EU Customs and Fiscal Assistance Office (CAFAO) and US-run (EXBS) programmes to enhance border controls are however on offer to both Serbia and Montenegro.¹⁵⁹

15 Penalties and sanctions

The 2005 *Law on Foreign Trade in Arms, Military Equipment and Dual-Use Goods* specifies a fine of one to five times the value of goods involved in the transactions, and removal from the registry of entities authorised to trade in arms and dual-use goods and technologies, for those who violate its provisions. No provision is made in the Law for custodial sentences in case of serious offences.

16 Interaction with industry

UMIER has until now maintained a website on which information relevant to importing and exporting companies is published. This will now pass to MIER within Serbia, and it is not clear if an equivalent service will be provided by the Montenegrin MIER.

17 Conclusion

The 2005 *Law on Foreign Trade in Arms, Military Equipment and Dual-Use Goods* provides a sound basis from which Montenegro can develop arms transfer controls to EU and international standards. Clearly though, there are questions relating to the administration or amendment of the Law that need to be addressed. Furthermore, Montenegro will now have to establish workable mechanisms to implement this and other relevant legislation and provide a means for departments charged with that task to cooperate effectively with one another. The task of establishing an administrative service capable of processing arms transfer licence applications in accordance with the EU Code, which in turn requires sophisticated assessments of the risk associated with proposed transfers is a difficult one that should not be underestimated. Provision will have to be made for Montenegro's alignment with international agreements in this area, and for the detailed and regular exchange of information that entails. In the longer term, Montenegro may wish to address remaining gaps the lack of provision in the present law for extra-territorial controls on brokering or on the production of arms and military equipment under. Questions of transparency, parliamentary accountability and the public reporting of arms transfer decisions on a regular basis should also be addressed.

18 Recommendations

To the Government of Montenegro

- Revise the Republic of Montenegro SALW Control Strategy to take account of new responsibilities in terms of arms transfers that were previously at the old State Union level; and
- Building on existing parliamentary structures and competencies, introduce mechanisms that allow parliamentarians to scrutinise arms transfer decision-making, both pre- and post-licensing decision, such as providing a suitable committee with the statutory duty to call ministers and officials from state agencies responsible for transfer decision-making 'in camera', and requiring it to publish an annual review on the enforcement of arms transfer legislation and regulations.

¹⁵⁹ CAFAO's area of focus includes legislation, enforcement, intelligence, detection, excise, post-clearance audit and human resources. Examples of recent assistance include the provision of contraband detection kits, radiation and metal detectors by EXBS and training in railroad inspection conducted in May 2006 by CAFAO. See for example, SACISCG Interim Report, 01 June 2005 - 28 February 2006, p. 3.



To the international community

- Commission further research into arms transfer control questions in Montenegro at an appropriate future date to determine the exact legal and institutional arrangements that have been put in place following independence from the State Union, and to identify any remaining challenges with respect to policy or capacity;
- Ensure relevant international and regional instruments and documents such as the EU Code are translated into Serbian and made readily available to relevant national actors;
- EU member states should commit to assisting Montenegro in the licence assessment process and delivery verifications (once instituted) where internal capacity is limited (e.g. for destinations where Montenegro does not have a diplomatic presence);
- Encourage the sustainable and democratic acceptance of international transfer control norms by supporting advocacy on the issue in public debate as well as via diplomatic channels;
- Countries with developed transfer control regimes and in particular with relatively sophisticated procedures for parliamentary oversight should encourage information-exchange between parliamentarians and their counterparts who have experience in this area; and
- The donor community should provide support to NGOs and the media so as to build indigenous capacity to analyse and monitor Montenegro's arms export controls.



Republic of Serbia

1 Introduction

Having voluntarily aligned itself with the European Union Code of Conduct on Arms Exports (EU Code) in March 2005, and having introduced ambitious new arms transfer controls legislation that is broadly in accordance with EU standards on this issue, Serbia (formerly a constituent Republic within the State Union of Serbia and Montenegro (SCG)),¹⁶⁰ is well positioned to attain full compliance with EU and international standards.

Despite this welcome progress, challenges remain, with Serbia's immediate problems in this area relating to the administration and enforcement of transfer controls regulations in the future. In the immediate term, the dissolution of the State Union requires careful handling: continuity needs to be guaranteed both in terms of the application of legislation and in the handover of responsibilities regarding transfer controls, from the former State Union Ministries (the Ministry of Defence (MOD), Ministry of International Economic Relations (UMIER) and Ministry of Foreign Affairs (MFA)) to their Republic-level successors. Structural pressures in favour of an aggressive export policy are also likely to be felt by the system in the coming years; a sizeable surplus of MOD SALW (over 450,000 units) that will continue to grow as a result of defence reforms has been earmarked for foreign sale by the Serbian Government despite commitments to the contrary made to the OSCE and UN.¹⁶¹ Further, the sector for producing military and related goods, which is thought to employ up to 32,000 workers,¹⁶² will be fighting for its economic survival.

It is hoped that political will and administrative capacities will remain sufficiently high in Serbia over the coming months and years to allow the rigorous implementation of newly-introduced legislation. In view of the fact that contemporary standards of transparency on defence and security matters have not fully kept pace with changes to arms transfer legislation, some difficulties may still exist: it has not, for example, so far proven possible for Serbia to release a report on arms exports. Further, questions surrounding the management, disposal and transfer of military stocks, long a secret within SCG, still appear to be treated in the utmost confidence by the MOD.¹⁶³ Moreover, the recent dismissal of a high-level staff member working within the MOD on arms control issues, including international reporting and contract management is surely cause for concern.¹⁶⁴ However, it is to be hoped that these remaining problems can be overcome and that the legislative framework, now harmonised with EU standards in many areas, will be amended to cover additional questions such as extra-territorial controls on international arms brokering and the production of arms under licence.

2 International commitments and adherence

Over the past few years Serbia has voluntarily aligned itself with a number of international instruments relating to arms transfer controls, including the EU Code in March 2005 (see the table on the next page). Further, progress was made in 2006 with SCG's ratification of the UN Firearms Protocol.¹⁶⁵

¹⁶⁰ Following the results of the May 2006 referendum on independence in the Republic of Montenegro the State Union of Serbia and Montenegro (SCG) has dissolved, with declarations of independence by the Republic of Montenegro and the Republic of Serbia.

¹⁶¹ In July 2006 the Defence Minister of Serbia announced that a push to market surplus weaponry would begin from September 2006. While surplus stocks may contain various weapon types, the UNPoA and OSCE Document on SALW to which Serbia is committed stipulate that destruction rather than sale is the preferred method for disposal of surplus SALW. See, 'Serbia's cash-strapped army to sell extra weapons', *Associated Press Worldstream*, 18 July 2006.

¹⁶² Rynn, S., et al., *South Eastern Europe SALW Monitor 2005*, (Saferworld-SEESAC, 2005), pp. 145 - 7.

¹⁶³ Unlike other Serbian Ministries, the MOD, although approached well in advance for this research, declined to offer an interview.

¹⁶⁴ 'Head of Army Management under Investigation', *VIP News Service*, 27 June 06.

¹⁶⁵ Published in the Official Gazette of SCG - International Agreements No. 11/05. It entered into force in May 2006.



ARMS OR SALW CONTROL AGREEMENT	SERBIA'S COMMITMENTS
EU Code of Conduct on Arms Exports	March 2005
EU Common Position on Arms Brokering	June 2006
OSCE Document on SALW	November 2000
OSCE Document on Stockpiles of Conventional Ammunition	December 2003
OSCE Decision on MANPADS	2003
OSCE Decision on End-user Certificates	2004
OSCE Decision on Brokering	2004
Stability Pact Regional Implementation Plan	November 2001
UN Firearms Protocol	May 2006
UN Programme of Action on SALW	July 2001

Table 1: Serbia's commitments to arms transfer or SALW Control agreements


It is important to recognise that Serbia's main legislation governing arms transfer controls, the *Law on Foreign Trade in Arms, Military Equipment and Dual-Use Goods*, was designed in part to bring Serbia and Montenegro into line with EU transfer control norms. In addition to the obligation under the Law for the MFA to consider the EU Code when assessing export licence applications, the *Decree on Criteria for Issuing Licenses for the Export of Weapons, Military Equipment and Dual-Use Goods* (17 March 2005) establishes the eight criteria of the EU Code as those on which export licence decisions will be made, with respect to arms, military equipment and dual-use goods. The criteria include the requirement to implement UN embargoes and OSCE recommendations.

As noted elsewhere in this chapter, further work is needed to secure Serbia's full compliance with the above agreements and codes of conduct and also with international human rights and humanitarian law (e.g. the UN Charter, Geneva Conventions, Genocide Convention and the emerging concept of a 'Responsibility to Protect'). Lastly, at the time of writing, Serbia has not yet publicly defined its position with regard to proposals from a number of other states to develop international transfer controls in the context of the UN Programme of Action on SALW (UNPoA), or to begin talks on the agreement of a binding international Arms Trade Treaty.

3 Legislation and regulation

The *Law on Foreign Trade in Arms, Military Equipment and Dual-Use Goods* was passed by the Parliament of Serbia and Montenegro in February 2005 and entered into force on 31 March 2005. With the recent dissolution of the State Union, the Republics of Serbia and Montenegro have decided to retain, at the Republic level the legislation that was in place at the State Union level, with Republic-level ministries assuming responsibilities previously held by State Union Ministries.¹⁶⁶ This entails the transfer of lead responsibility from UMIER to the Ministry of International Economic Relations of the Republic of Serbia (MIER).

¹⁶⁶ All agreements, commitments and international organisation memberships of the State Union have been automatically assumed by Serbia. A Government Decree has established the name change and transfer to Republic level of SCG Ministries. Interview with Mladen Mijović, Directorate for Weapons Control, Ministry of Foreign Affairs, Republic of Serbia, 04 July 2006. See also 'Statement of Dr. Parivodic, Minister of International Economic Relations, *Second Meeting of the Working Party for the Accession of the Republic of Serbia to the World Trade Organisation*, Geneva, 08 June 2006, in which the Minister stated that 'the laws passed on level of the State Union shall shortly be incorporated into Serbian legislation by virtue of a special law.' Likewise, the report on the MFA website, 'Decision on transferring jurisdictions from Serbia-Montenegro to Serbia', 05 June 2006, states that: 'the Serbian Parliament has adopted today the Decision on obligation of Serbian state bodies in carrying out Serbia's jurisdictions as successor of the State Union of Serbia-Montenegro. The Decision obliges the Serbian government and other Serbian state bodies to pass necessary documents within 45 days and take measures aimed at the realisation of Serbia's international and legal subjectivity as legal successor of Serbia-Montenegro. The Decision primarily refers to execution of jurisdictions in the fields of foreign affairs and defence until necessary laws regulating foreign affairs and defence are passed'.



The Law defines controlled goods as: arms, military equipment and related technologies included on the Common Military List of the EU and dual-use goods and technologies included in the EU Dual-Use Goods and Technologies List. Under the Law, the Council of Ministers is tasked with defining national control lists that are harmonised with those of the EU. The Law covers all imports and exports of controlled goods, the provision of technical assistance and exchange of intellectual property, representation of foreign companies, brokering and maintenance, and other, non-commercial, activities. All transactions require a licence under the Law, with the exception of transfers through Serbia, which require only a transit permit issued by the Ministry of Interior (MOI). As already noted, the Law requires the consideration of EU Code's eight criteria.

The Law obliges entities wishing to engage in controlled activities to be registered with the MIER, and to apply for separate licences for each specific transaction. It also specifies the contents of applications for engagement in controlled activities, applications for licences, end-user certificates and import and export licences.

Other legislation relevant to transfer controls includes: the *Law on Testing, Marking and Labelling Firearms and Ammunition*, which requires all companies to mark firearms, ammunition, components and devices that they produce; the *Rules on Closer Conditions Governing the Method of Storing and Safeguarding the Arms and Ammunition* which establishes storage conditions applicable to entities trading in arms; the *Law on Transit of Hazardous Substances* which among other things regulates the transport of arms and dual-use goods; and the *Law on Trade and Production of Weaponry and Military Equipment*. The foreign trade aspects of this Law have been replaced by the new Law of March 2005, but it continues to regulate the production of armaments and military hardware, and requires companies producing these goods to be licensed by the MOD. According to SCG's 2005 report on implementation of the UNPoA,¹⁶⁷ a new *Law on Arms and Military Equipment Production* was being drafted for adoption by Parliament by the end of 2005, but it has not yet been approved.

The most obvious gaps remaining in the legislative framework for arms transfer controls concern extra-territorial controls on brokering and production under licence.¹⁶⁸

¹⁶⁷ Government of the State Union of Serbia and Montenegro, *Report on Small Arms and Light Weapons in Serbia and Montenegro for 2004 and 2005*, (2005), <http://disarmament.un.org/cab/nationalreports/2005/Serbia%20and%20Montenegro.pdf>, accessed 03 July 2006.

¹⁶⁸ Interview with Ana Blagojević.



DATE	LEGAL REFERENCE	TITLE
1980	Official Gazette of the SFRY, No. 14/80	Regulation on Control of Crossing State Border and Movements, Stay, Residence, Hunting and Fishing in Border Land
1995	Official Gazette of the Republic of Serbia, No 46/95	Law on Testing, Marking and Labelling Firearms and Ammunition
29 May 1996	Official Gazette of the Republic of Serbia No. 110-00-3/96-01	Regulation to Stipulate Closer Conditions on the Manner and Procedures of Testing, Stamping and Labelling Fire Arms and Ammunition
1996	Official Gazette of FRY, No. 41/96	Law on Trade and Production of Weaponry and Military Equipment [replaced by the March 2005 Law]
1998	Official Gazette No. 011-13/98	Rules on Closer Conditions Governing the Method of Storing and Safeguarding the Arms and Ammunition
1999	Official Gazette of the Republic of Serbia, No. 1/99	Regulations on the Formats for Requests, Clearances, Weapon Permits and other Documents and Records Specified by the Law on Weapons and Ammunition
2003	Official Gazette of the Republic of Serbia, No. 73/2003	Customs Law
2003	Official Gazette of the Republic of Serbia, No. 117/2003	Regulations for Conditions and Methods of Carrying Weapons and Ammunition by Authorized Customs Officers
1992, 1993, 1994, 1998, 2003	Official Gazette of the Republic of Serbia, 9/92, 53/93, 67/93, 48/94, 44/98, 39/2003	Law on Weapons and Ammunition
2004	Official Gazette of Serbia and Montenegro, No 31, 02 July 2004	Law on Hand-held Firearms, Devices and Ammunition Testing
17 March 2005	Council of Ministers, Record No. 68	Decree on Determining the National Control List of Weapons and Military Equipment
17 March 2005	Council of Ministers, Record No. 67	Decree on Determining the National Control List of Dual-Use Goods
17 March 2005	Council of Ministers, Record No. 69	Decree on Criteria for Issuing Licenses for the Export of Weapons, Military Equipment and Dual-Use Goods
In force 31 March 2005	Official Gazette of Serbia and Montenegro No 7, 18 February 2005	Law on Foreign Trade in Weapons, Military Equipment and Dual-Use Goods

Table 2: Summary of main Serbian legislation and regulations relevant to transfers of military and dual-use equipment

4 Production

Producers of defence-related products were badly effected by the sanctions placed on the Federal Republic of Yugoslavia (FRY) throughout much of the 1990's, as well as by the NATO air strikes in 1999.¹⁶⁹ The manufacturing sector once had a privileged position of supplying the Yugoslav National Army, but most companies are now operating at a fraction of their potential production capacity. Production in 2004 was reported to be at 35 per cent of the pre-1989 levels, although the sector is still thought, as noted above, to provide up to 32,000 jobs. The survival of remaining companies now depends on orientation towards new export markets. While the MFA emphasises the predominance of the US and EU states as destinations for arms exports in 2005,¹⁷⁰ other sources suggested that the primary market for Serbian arms exports lies in Africa and Asia.¹⁷¹ Tight restrictions on export activity are therefore politically sensitive in the context of a fragile but economically significant commercial sector.

There are reportedly six key firms that are significantly engaged in weapons manufacturing in Serbia: Zastava Oruzje, Prvi Partizan, Prva Iskra, Sloboda, Milan Blagojevic and Krusik. There appear to be a further five firms which have the capacity to manufacture arms and one or two with the capacity to produce dual-use goods and technologies currently registered with the MIER for production activity. Additionally, approximately 80 other firms are engaged only in trade.¹⁷² The close relationship between the MOD and the companies involved in production and trade in arms previously presented cause for concern when the licensing process was controlled by the MOD. It has been alleged that the personal interest of MOD officials in the success of particular companies presents the risk that undesirable transfers will be pursued in the future.¹⁷³ Despite attempts to arrange interviews, the MOD was unavailable for comment on these issues during research for this study.

If current plans under the draft Strategic Defence Review are adopted, the size of the Army would be significantly reduced in the coming years, which would further increase the already sizeable surplus of weaponry.¹⁷⁴ As in other countries, though the Serbian Government may value revenue that the sale of surpluses can generate, the surplus weapons in question are unlikely to attract the interest of purchasers that would receive licenses if their applications were assessed against the criteria of the EU Code. It is hoped therefore, that the licensing system can demonstrate its ability to overcome pressures to do otherwise in the years to come.

5 Licensing of transfers

Whereas the MOD was previously in charge of the arms transfer licensing process, the introduction of the new *Law on Foreign Trade in Arms, Military Equipment and Dual-Use Goods* entailed the transfer of this role to UMIER. With the break-up of the State Union, this competency is now being assumed by the Serbian MIER. While the handover of such responsibilities to a non-military institution is in many respects a step forward, allowing for a more balanced assessment of the potential risks associated with proposed arms transfers, MIER's dual role as both a promoter of Serbian arms exports and a licensing authority, represents a structural conflict of interest.

¹⁶⁹ Interview with Ljubodrag Perković, Republic of Serbia Chamber of Commerce, 08 July 2006. Also, Taylor, Z. and Phillips, C., *Living With The Legacy: SALW Survey, Republic of Serbia*, (Saferworld-SEESAC, 2005), p. 21.

¹⁷⁰ *Op. cit.*, Rynn, S., *et al.*, p. 147, citing Jugoimport SDPR Annual Report 2004. Interviews with Aleksandar Radić, Editor, VIP News Service - Defense and Security, 08 July 2006 and Ljubodrag Perković. Interview with Mladen Mijović.

¹⁷¹ Interview with Aleksandar Radić.

¹⁷² Interviews with Ljubodrag Perković and Ana Blagojević.

¹⁷³ See, for example, the interview with General Ninoslav Krstić in 'Crime is Flourishing in the Army', *VIP Daily News Report*, No. 3130, 27 July 2005, pp. 4 - 5, which contains the following allegations: 'The problem is that the entire system of selling weapons is established in a manner that creates favourable conditions for various types of abuse. The defence minister, regardless of who he is, is the one who decides what is to be sold as unnecessary weapons and military equipment. This is to be confirmed by the Supreme Defence Council (VSO), which mostly approves this, because it is coming from the responsible minister. The company through which the weapons are sold is Jugoimport, in which the minister is the management board chairman. That same minister is the chairman of the management board of the Fund for reforming the army[...]'

¹⁷⁴ The Army will apparently be downsized from 14 brigades to 4 according to Aleksandar Radić. The MOD surplus was estimated at 477,514 units of SALW in *op. cit.*, Taylor, Z. and Phillips, C., p. 1.



UMIER maintains a database of those legal entities registered to carry out controlled activities (i.e. trade in arms and dual-use goods).¹⁷⁵ During the registration process, the MOI is tasked with conducting checks on the personal profile and activities of the responsible individuals within the company. Companies may be registered to trade for up to five years, but in contrast, licenses to perform particular arms transfers may only be granted for a maximum of one year.

When an application is made to the MIER (and previously UMIER) for a licence, it is obliged to provide a response within 30 days. Upon receipt of application, MIER ensures that it is complete and accurate, and before seeking the approval of the MOD and the MFA, and the opinion of the MOI. When considering a licence application, the MFA is obliged by law to consider relevant UN Security Council resolutions and OSCE recommendations, the EU Code, the international foreign policy obligations and interests of Serbia and the level of respect for human rights in the country of final destination. Meanwhile, the MOD considers how far the proposed export accords with questions of national security, while the MOI considers the potential effects of granting the licence for internal security, including transport safety and the life, property and security of citizens. Before the break-up of the State Union, the State Union Minister for International Economic Relations used to sign individual licences, but during the transition phase, licences are now temporarily being signed at the level of Assistant Minister in the MIER of the Republic of Serbia.

In terms of the exact power of the individual government agencies that participate in decision-making on arms transfer licence applications, the law is ambiguous. It states that both the MOD and MFA have the right to deny a licence application, but in the event there is disagreement (presumably regarding interpretation of the EU Code criteria, as this must be the only basis for decision-making if the reference to the Code in legislation is going to be operable in practice) the final decision rests with the Council of Ministers. Further, as the Council of Ministers at the State Union level has now been abolished, it is unclear how a disagreement between the MFA and MOD would presently be resolved. However, officials at the MIER noted that in practice such disputes are avoided through regular communication between the competent Ministries, and by the practice of advising companies in advance where it is unlikely that a licence will be granted.

The Law specifies the right of the MIER, under certain circumstances, to revoke a licence without obligation to the entity to which it has been granted. Further, cases where a 'significant change' had taken place after the licence has been issued (such as if a UN Security Council embargo enters into force or licensing criteria turn out not to have been met) would reportedly raise the possibility of a revocation.¹⁷⁶

Under the *Law on Foreign Trade in Arms, Military Equipment and Dual-Use Goods*, once a licence has been issued, the transportation of weapons also requires a permit from the MOI (or the competent authority in charge of air traffic in the case of transport by air). The MOI can issue such a permit only on the basis of an import or export licence and this requires the consent of the MOD and the MFA. The MOI currently has a period of 15 days in which to reply to an application for a permit, and the decision to grant a permit must take into account: the profile and competence of the transporting company; the nature of the goods; the route and destination; and compliance with the two regulations and seven laws relevant to the transportation of weapons. Full details of the drivers and vehicle numbers of the proposed transport must also be supplied. Final approval for the permit's issue rests with the Cabinet of the Director of the MOI.

6 Exemptions

The MOD in Serbia does not directly own its arms and equipment; ownership instead rests with the Government. Further, it does not have the right to sell military or other equipment directly for export. For MOD weapons to be exported, registered arms trading companies have to seek licences from the MIER under the regular licensing

¹⁷⁵ Interview with Zlatko Stefanović, Control of Hazardous Materials, Republic of Serbia Ministry of Interior, 06 July 2006.

¹⁷⁶ Interview with Ana Blagojević.

process established by the *Law on Foreign Trade in Weapons, Military Equipment and Dual-Use Goods*; officials stated that they knew of no circumstances under which weapons, military equipment or dual-use goods could legally leave Serbia except under the provisions of this Law. In March 2006, the effectiveness of the control procedures was tested over a shipment of MOD surplus weapons being sold to an undisclosed destination (reportedly the Iraqi Government) via Jugoimport Montenegro. Reportedly, over 1,000 Zastava M70B1 7.62 mm assault rifles and 100 M72B1 light machine guns were seized by Montenegrin police officers. According to the Serbian MOD, the shipment was not technically illegal, but the transporter changed the details of the vehicle specified in the documents accompanying the transport, thus creating an anomaly in the paperwork.¹⁷⁷

One potentially grey area relates to the agreements to maintain goods sold under previous legislation;¹⁷⁸ for example it is believed that maintenance of weapons previously sold to Myanmar, a country with a terrible human rights record may be licensed during 2006.¹⁷⁹ Should this occur, it would represent a clear rejection by the Government of Serbia of an existing EU Arms Embargo, an EU Common Position and a Council Regulation prohibiting the transfer of arms and associated materiel to Myanmar, thus once again setting Serbia outside acceptable EU standards and norms in the area of arms transfer controls once more.

7 Brokering

Although registration of brokers is required under the *Law on Foreign Trade in Weapons, Military Equipment and Dual-Use Goods*, there are, at present, no extra-territorial controls on brokering activity. The registration with the MIER of roughly 80 entities for trade in rather than production of arms and dual-use goods suggests a need for careful scrutiny and control of activities in this area.

8 Transit and transshipment

The *Law on Foreign Trade in Weapons, Military Equipment and Dual-Use Goods* requires that goods in transit through Serbia be authorised not by a full import/export licence, but instead by a similar permit to that required for transportation of arms exports and imports. The Law states that the permit is to be issued by the MOI (or the competent authority in charge of air traffic in the case of transport by air), with MOD and MFA consent. Transport and transit permits last for two weeks, a fact that has given rise to complaints from exporting companies because it allows them insufficient time to arrange transport properly.¹⁸⁰

Transport and transit by land and water are to be conducted under armed escort as prescribed under special regulations. The MOI informs Customs and the border police of the permit's issue following the event, and then receives a return report from the border police when the shipment has passed the border. The company arranging the transport must also make a written announcement that the shipment is taking place. Companies are meant to hire and finance transport protection themselves, which often implies the use of private security companies. Alternatively, the MOI can arrange a police escort, and in any case notifies any fire stations along the planned route. The MOI keeps a record of the transport for two years in routine cases, and longer in the case of shipments bound for unusual destinations or carried out in abnormal circumstances. Given that the Serbian private security sector has not been well regulated in the past and is known to include companies with records of bad conduct, the use of private firms to secure transports could be problematic.¹⁸¹ Even under optimum circumstances, the use of commercial actors creates additional challenges for coordination, and commercial firms are realistically less likely to be able to provide the necessary guarantees when transporting sensitive cargoes.

¹⁷⁷ 'Montenegro Police Seize Truckload of Small Arms', *VIP News Service-Defence and Security*, No. 151, 16 March 2006, p. 4.

¹⁷⁸ See Serbia and Montenegro Report to UN Register of Conventional Arms 2004, submitted 18 May 2005. Interview with Hans Risser, UNDP SALW Project Manager, 04 July 2006.

¹⁷⁹ Interview with international organisation representative, July 2006; also, interview with civil society representative, July 2006.

¹⁸⁰ Interview with Hans Risser.

¹⁸¹ See *op. cit.* Page, M., *et al.* pp. 77 - 95.



9 Control lists

As stated above, national control lists under the *Law on Foreign Trade in Weapons, Military Equipment and Dual-Use Goods* are to be harmonised with the EU Common Military List and List of Dual-Use Goods and Technologies. MIER has the responsibility to disseminate updates to this list. This presents a challenge to current capacity because MIER does not have its own unit of technical translators, while the EU lists are long, technically demanding documents.¹⁸²

Officials interviewed in the Customs Administration also note the challenges posed by the long EU lists. In relation to dual-use goods in particular, there is confusion as to whether certain products require licences. Further training in this area, to ensure that front-line officials are fully able to identify controlled goods, would be beneficial.¹⁸³

10 End-use control and certification

End-user certificates (EUCs) are required to accompany all arms export licence applications. The Law specifies the required contents of an EUC, which must not be more than six months old and be submitted with an official translation. The MFA is responsible for verifying EUCs, and has reportedly established a database of competent persons authorised to issue EUCs in destination countries. If an EUC is received which contains any discrepancies when compared with the MFA's information, then a check is conducted by the local Serbian Embassy. Serbia has 50 to 60 embassies around the world, and where there is no embassy, a check is conducted through diplomatic channels. Alternatively, international assistance can be requested to help assess the authenticity of an end-user, something that has been done in relation to Afghanistan, for example.¹⁸⁴ According to MFA representatives, great emphasis is placed on end-use control, particularly if the country is near to an area of instability or where fraud is likely. MFA interviewees were also keen to point out that embassy staff are competent to carry out appropriate checks and operate under clear instructions.

The Government also only grants a licence on the condition that a delivery verification certificate is sent by the importer. The MFA acknowledged that it would be desirable to check on delivery *in situ*, but that the resources and capacity to do so do not exist.¹⁸⁵ Nevertheless, the assistance of foreign governments in verifying end-use has previously been used.

11 Administrative capacity

At present, MIER has inherited from UMIER a list of 91 entities registered under the *Law on Foreign Trade in Weapons, Military Equipment and Dual-Use Goods*. Eleven of these are producers of weapons, one or two of dual-use goods, and the rest are simply trading companies. According to interviewees from MIER and the MFA, during the first nine months following the introduction of the new law (31 March to the end of 2005), 300-350 applications were made to trade in arms and dual-use goods. 93 licences to a value of US \$18 million were issued in this period for the export of SALW (as opposed to other arms and dual-use goods) to 28 destinations, with most SALW exported to the EU or the US. According to MIER officials, there have been roughly ten licence applications rejected since the March 2005 Law came into force.

The short-term challenge at the time of writing was the transfer of licensing responsibilities from the State Union Ministries to their counterparts at Republic level. Although the commitment has been made to retain the laws, and an effort is being made to ensure the continuity of licensing officials, offices and equipment previously in use, there were fears among interviewees that the key, technically competent officials would not retain their posts

¹⁸² Interview with Mladen Mijović and Ana Blagojević.

¹⁸³ Interview with Vesna Jeremić, Deputy Director General, and Slobodan Nikolić, Customs Administration, Republic of Serbia Ministry of Finance, 06 July 2006.

¹⁸⁴ Interview with Mladen Mijović.

¹⁸⁵ *Ibid.*

at the Republic level.¹⁸⁶ Potentially it is Montenegro that will face the greater challenge developing its licensing capacity, as Serbia will retain equipment and premises that were based in State Union Ministries in Belgrade. However, even in Serbia, a backlog of licence applications has accumulated in the climate of uncertainty, and the first annual report on arms transfers, initially expected in mid 2005, has been delayed.

In terms of international assistance to enhance export control capacity, the majority of assistance provided has been channeled through the US Government's Export Control and Border Security (EXBS) programme. In recent months, EXBS activities to build State Union/Serbian Government capacity have included: a seminar on the control of dual-use goods and a training needs assessment (October 2005); two licensing workshops (December and April 2005); inter-border interdiction training (January and February 2006); workshops on annual reporting and technical control for licensing authorities (February 2006); a Tracker installation workshop (April 2006); two industrial outreach seminars (April and June 2006); customs training (May 2006); as well as further activities related to counter-proliferation and WMD. Further initiatives by EXBS are planned, including work aimed at improving brokering controls (with the MIER, MOD and MFA, October 2006) and international investigations (February 2007).

Germany's Federal Office of Economics and Export Control (BAFA) sponsored a one-week seminar for ten Serbian and Montenegrin licensing officials in May 2006. Further, UNDP has provided assistance to the UMIER including industrial outreach workshops and supported a visit by one MOD and two UMIER officials to Poland to observe a functional EU-standard export control system in May 2006. However, problems resulting from a high turnover of qualified personnel were highlighted; two of the three officials who participated in the visit were removed from their posts within two months of the initiative.

12 Inter-agency relationships/processes

Within the overall timeframe of 30 days for the consideration of particular arms transfer licenses, the MFA and MOD have seven days to indicate their approval. Whereas under the former MOD-led process, inter-ministerial consultation on licensing decisions was possible but not mandatory, the ministries that consider applications for licences and transport permits are now obliged to make decisions collectively, communicating by letter in the process. Tracker technology supplied by the US has been installed with the UMIER (and thus available to MIER, whose offices are in the same building as the former State Union Ministry), MFA, MOI and Customs, and will apparently be operational in the near future,¹⁸⁷ though paper communication will continue to be in use for a period of time. There are however no regular face-to-face meetings of responsible officials from the relevant ministries, though the establishment of an inter-ministerial body for transfer licensing is said to be under consideration.

13 Transparency and reporting

SCG showed initiative both in developing its own national reporting capacity and cooperating to enhance the reporting capacity of partner governments in the region. In February 2006, UMIER jointly opened and participated in a seminar entitled 'Arms Export Reporting in the Western Balkans' in Belgrade. The seminar was organised by SEESAC as part of the European Commission (EC) Second Pilot Project on SALW (SPP)¹⁸⁸ in an attempt to encourage and standardize arms export reporting to fulfil the requirements of the EU Code. The seminar was co-sponsored by the US Department of State through the EXBS programme, as noted above. The key result was the commitment by governmental representatives of Western Balkans countries to work on producing annual export reports, which are in keeping with EU norms.

¹⁸⁶ Interviews with Ana Blagojević and Hans Risser.

¹⁸⁷ Interview with Mladen Mijović.

¹⁸⁸ The First Pilot Project was implemented by UNIDIR and was designed to support the development of an EU/EC Strategy on SALW, ERW and WMD. SEESAC, 'Arms exports reporting in the Western Balkans' (Activity Report 064), 09 February 2006.



An obligation under the 2005 *Law on Foreign Trade in Arms, Military Equipment and Dual-Use Goods* upon UMIER to produce a report on arms exports by March 2005 for adoption by the Council of Ministers was not met due to the dissolution of the State Union (whereby the Council of Ministers and UMIER were dissolved).¹⁸⁹ Although this is disappointing, the report has been partially prepared and is expected to be completed and presented to the Serbian Government at some stage in 2007. The Government would have the power to make the report a public document, but is not obliged to do so, and it would therefore be an important indicator of the Government's commitment to transparency if publication were undertaken when the first report is finalised. There is an absence of legislative grounding for a parliamentary oversight role with regard to government activity in terms of arms export licensing, although the *Law on Foreign Trade in Arms, Military Equipment and Dual-Use Goods* does stipulate that the Council of Ministers should inform the Parliament of its adoption of the annual report. In this event, Parliament would then be entitled to ask questions about particular destinations.

However, it should also be noted that the public has, according to an experienced observer of media coverage on security issues, very little knowledge of or interest in arms export activity at present.¹⁹⁰ Therefore true public oversight would also depend on work to build public understanding of the impact of transfers to sensitive destinations.

14 Information gathering and sharing

As a UN and OSCE member, SCG previously submitted regular reports to the OSCE Secretariat under the OSCE Document on SALW, to UNDDA on its implementation of the UNPoA and to the UN Register of Conventional Arms.¹⁹¹ Although a report was submitted to the UN Register of Conventional Arms in May 2006, the dissolution of the State Union and the transition from UMIER to the Republic level MIER has delayed or complicated the submission of some information such as the latest report prepared by UMIER to the OSCE.¹⁹²

In February 2006, UNDP Serbia and Montenegro and SEESAC provided an international consultant to UMIER to instruct officials on best EU practice on annual reporting on arms exports.¹⁹³ The information required to compile such reports is readily available within UMIER/MIER since, under the *Law on Foreign Trade in Arms, Military Equipment and Dual-Use Goods*, the UMIER is obliged to maintain a database of all licences issued, denied and revoked. Again, responsibility in this area is set to be assumed by MIER and, according to officials interviewed, this information would be kept for a period of ten years.

15 Enforcement

The *Law on Foreign Trade in Arms, Military Equipment and Dual-Use Goods* gives responsibility for enforcement control to the UMIER, which is in the process of transferring this competence to MIER. Under the Law, UMIER is tasked to carry out its role in cooperation with the MOD, MOI, Customs, intelligence services and other relevant agencies. The agencies cooperating to enforce legislative controls are obliged to report on their activities in this area to the UMIER. The Customs Administration has the authority to stop and seize transfers of controlled goods under the Law, and its staff are stationed at the borders to conduct physical checks on shipments. Further, a special 'Sector for Controlling the Application of the Law' within Customs can be notified by any other units (such as those for intelligence, smuggling and investigations) if anything unusual is detected during the monitoring of trade activity and whilst conducting checks.


¹⁸⁹ Interview with Mladen Mijović.

¹⁹⁰ Interview with Aleksandar Radić.

¹⁹¹ During 2005 - 2006, SCG submitted reports to UNDDA on implementation of the UNPoA and to the OSCE as required by the OSCE Document on SALW.

¹⁹² Interview with Ana Blagojević.

¹⁹³ SACISCG Interim Report, 01 June 2005 - 28 February 2006, p. 6.



The equipment and expertise of the Customs Administration has been as a result of the EXBS programme's assistance, as well as the EU's Customs and Fiscal Assistance Office (CAFAO). CAFAO's areas of focus include legislation, enforcement, intelligence, detection, excise, post-clearance audit and human resources. Examples of recent assistance include the provision of contraband detection kits, radiation and metal detectors by EXBS and training in railroad inspection conducted in May 2006 by CAFAO. One particular area where it is reportedly difficult to develop awareness amongst customs officials is the identification of the wide variety of dual-use goods, and this has therefore been the subject of trainings organised by the EU and the US.

Such measures are certainly necessary in Serbia, which has long experienced (along with neighbouring states), the cross-border trafficking of SALW.¹⁹⁴ Vulnerabilities at Serbia's border crossing points are attributable to a number of factors, including difficult terrain, low resources and previous organisational difficulties within the border police. However, after periods spent under UN sanctions in recent years, the legacy of corruption and widespread grey economic activity makes customs reform a significant challenge. Low salaries among officials create a strong temptation to supplement income through bribes. According to one well-placed observer, who did not wish to be named, there are no checks preventing senior Customs officials from having extensive commercial interests in areas under their regulatory control. There have, however, been positive reforms undertaken in recent years, including the introduction of performance appraisals for Customs officers.

16 Penalties and sanctions

For those who violate its provisions, the *Law on Foreign Trade in Arms, Military Equipment and Dual-Use Goods* specifies a fine of one to five times the value of goods involved in the transactions, and removal from the registry of entities authorised to trade in arms and dual-use goods and technologies. According to the Law, the responsibility for enforcement lies with the Republics of Serbia and Montenegro. No provision is made in the Law for custodial sentences in case of serious offences however, and neither does the Criminal Code of Serbia provide for sanctions against those violating the arms transfer Law, despite a proposal having been made by the MIER to this effect.

17 Interaction with industry

Legislation is published and disseminated to companies trading in arms and dual-use goods in the 'Official Gazette', while other information relevant to importing and exporting companies is made available on the UMIER website (and will continue to be made available by MIER as it assumes its new responsibilities from UMIER). The *Law on Foreign Trade in Arms, Military Equipment and Dual-Use Goods* requires companies to assess for themselves whether goods they are engaged in trading constitute controlled goods. Companies are also required to keep documentation related to trade in controlled goods for ten years.

Although the situation has now apparently improved, when the new legislation on foreign trade was first passed, companies were reportedly vocal in expressing their dissatisfaction.¹⁹⁵ In July 2005, and February and June 2006, UNDP co-organised three seminars with UMIER in order to engage with entities trading in arms and dual-use goods, and educate them about their legal responsibilities. However, an interviewee at the Chamber of Commerce recommended the provision of further training to assist companies in the assessments of the suitability of exports to particular destinations.¹⁹⁶ Updates to relevant norms such as control lists and newly embargoed destinations are apparently disseminated to businesses only on an informal basis.

¹⁹⁴ An insight into the scale of this trade can be gained from figures provided by the Security Intelligence Service (BIA), which showed that in the first four months of 2004, €300,000 worth of 'weapons, army equipment and crude oil derivatives were seized'. Website of the BIA: http://www.bia.sr.gov.yu/Eng/frameset_e.html, accessed 04 May 2005: see *op. cit.*, Rynn, S. *et al.*

¹⁹⁵ 'Makers Unhappy With New Firearms Law', *VIP - Defence and Security*, 07 July 2005.

¹⁹⁶ Interview with Ljubodrag Perković.



18 Conclusion

The legislation currently in force in Serbia represents an encouraging level of commitment to EU norms in the sphere of transfer controls. There are welcome signs of growing capacity to enforce the legislation to the full. These include: the establishment of functional inter-ministerial dialogue on licensing decisions; the steady growth in the capacity of the Customs Service; the conduct of several initiatives to build acceptance and understanding of the new legislation among the business community; plans to install new technology; partnership with international allies to assess the suitability of exports, and to build the capacity of Customs and licensing bodies; plans to fulfil the legal commitment to report to the Government on arms transfers; and participation in regional initiatives to improve transfer controls elsewhere in the region.

However, it is now desirable to place increased emphasis on tightening legislation in key areas, implement the planned advances in reporting and technological advancement, and to continue to seek support in areas where capacity is weak. It is also going to be critical to support the implementation and enforcement of new legislation where progress to date is difficult to assess. For example, whilst the EU Code criteria are incorporated into law at present, it is not clear how this important commitment has been operationalised in practice. If it were the case that other means are also in use when making arms transfer licence applications, the efficacy of the new Law would be seriously questioned. Crucially, attention should be turned to areas where there is cause for concern, such as identifying and tackling corruption and conflicts of interest among officials, and reviewing the use of private security companies in securing transports of goods.

The table on the following pages provides a summarised assessment of Serbia's present compliance, or ability to comply with, EU standards:

EU STANDARD	LEGAL OR POLITICAL BASIS	NATIONAL COMPLIANCE	LEGISLATIVE, REGULATORY OR POLITICAL REFERENCE
Criteria-based licensing system (eight criteria)	EU Code Draft EU Common Position Defining Common Rules Governing the Control of Exports of Military Technology and Equipment (Draft Common Position)	Yes	Law on Foreign Trade in Arms, Military Equipment and Dual-Use Goods; Decree on Criteria for Issuing Licenses for the Export of Arms, Military Equipment and Dual-Use Goods (17 March 2005)
Military control list	Common Military List of the European Union	Yes, but updating is problematic	Decree on Determining the National Control List of Arms and Military Equipment (17 March 2005)
Controls on dual-use goods (including control list and catch-all clauses)	EU Dual-Use Regulation	Yes	Law on Foreign Trade in Arms, Military Equipment and Dual-Use Goods; Decree on Criteria for Issuing Licenses for the Export of Arms, Military Equipment and Dual-Use Goods (17 March 2005)
Control of arms brokers	EU Common Position on Arms Brokering Draft Common Position	Yes but not extra-territorial	Law on Foreign Trade in Arms, Military Equipment and Dual-Use Goods
Controls on intangible transfers	Draft Common Position	Yes	Law on Foreign Trade in Arms, Military Equipment and Dual-Use Goods
Controls on transit and/or transshipment	Draft Common Position	Yes, but transits only require transport permits rather than full import/export licences	Law on Foreign Trade in Arms, Military Equipment and Dual-Use Goods
Control of export of production capacity (including, for example, licensed production)	Draft Common Position	No	
End-use controls and certification requirements (including controls on re-transfers)	Draft Common Position EU User's Guide	Yes	Law on Foreign Trade in Arms, Military Equipment and Dual-Use Goods
Power to revoke transfer licences	Best practice	Yes	Law on Foreign Trade in Arms, Military Equipment and Dual-Use Goods



EU STANDARD	LEGAL OR POLITICAL BASIS	NATIONAL COMPLIANCE	LEGISLATIVE, REGULATORY OR POLITICAL REFERENCE
Registration of actors (e.g. manufacturers, traders, shippers)	Best practice EU Common Position on Arms Brokering (recommended)	Yes	Law on Foreign Trade in Arms, Military Equipment and Dual-Use Goods
Legal penalties and sanctions	Best practice EU Common Position on Arms Brokering	Yes, but penalties insignificant	Law on Foreign Trade in Arms, Military Equipment and Dual-Use Goods
Inter-departmental consultation	Best practice	Yes but not face-to-face	
Information-exchange with other governments (including circulation of licensing denials among EU member states and subsequent consultations)	EU Code, Draft Common Position Best practice	Consultation with US, UK and OSCE reporting	
Industry outreach	Best practice	Yes	
Parliamentary accountability	Best practice	Yes, but postponed	Law on Foreign Trade in Arms, Military Equipment and Dual-Use Goods
Regular production and publication of national reports	Draft Common Position	Yes, but postponed	Law on Foreign Trade in Arms, Military Equipment and Dual-Use Goods

Table 3: Summary of national arms transfer standards versus EU obligations and practice

19 Recommendations

To the Government of Serbia

- Continue the process of legislative alignment with EU agreements in the field of transfer controls:
 - Introduce legislation to establish effective controls over production under licence and extra-territorial controls on brokering;
 - Develop effective measures to remove conflicts of interest which bar all officials from commercial activities in the area in which they have regulatory competence or decision-making power;
 - Give both the MOD and the MFA full powers of veto over licensing decisions;
 - Substantially increase penalties for violating the *Law on Foreign Trade in Arms, Military Equipment and Dual-Use Goods* to reflect the seriousness of the damage which illicit transfers cause, and the financial incentives available to those who break arms transfer controls;
 - Building on existing parliamentary structures and competencies, and drawing on best practice from EU member states and others, introduce mechanisms that allow parliamentarians to scrutinise arms transfer decision-making. This should consist of a suitable committee with the statutory duty to call ministers and officials from state agencies responsible for transfer decision-making 'in camera', which would publish reports on the enforcement of arms transfer legislation and regulations. Consideration should be given to establishing a process for pre-licensing information-provision to and consultation with such a committee, though decision-making powers would continue to rest solely in the hands of Government (Parliament's pre-licensing role would be advisory only);
 - Using secondary legislation and similar mechanisms, to provide government officials with detailed guidelines to aid their work on arms transfer licensing – specifically in the operationalisation of the criteria-based system for decision-making;
- Proceed to finalise the envisaged annual report on arms transfers, and make the report available to the public;
- Establish face-to-face meetings for the ministries involved in transfer controls decision-making and constitute them as an inter-ministerial commission. This will increase the opportunities for problems to be raised and considered collectively, and therefore improve the level of scrutiny applied to licence applications;
- Retain and offer career development to qualified officials in the sphere of transfer controls so that expertise is sustained over the long term;
- Work to phase out subsidy to the arms industry, as the practice will not increase the economic viability of the sector or increase jobs in the long term;
- The MOI should develop the capacity for police to escort and oversee transportation of arms and dual-use goods and technologies, as this is an important control function in which private actors cannot provide the necessary guarantees. The use of private security companies to secure transports of weapons is a cause for concern;
- Ensure that all companies registered for foreign trade in arms and dual-use goods are routinely notified of emerging standards in arms transfer controls, including any changes to laws, embargoed destinations, control lists, and EU transfer controls norms; and
- Develop capacity to exercise pre- and post-shipment checks on end-use and end-users, and where necessary request training and support in this area from international partners.



To the international community

- Ensure relevant international and regional instruments and documents such as the EU Code are translated into Serbian and made readily available to relevant national actors;
- Assist the Serbian authorities in developing a set of prioritised requirements for assistance with a view to bringing the national transfer control system into line with EU best practice, and provide assistance on the basis of these agreed priorities;
- Provide support for the training of officials from all relevant ministries in all aspects of controlling transfers, from licensing assessments through to border control and intelligence-based policing;
- Assist the Government of Serbia to update its lists of controlled goods and disseminate timely information about new embargoes and EU norms to officials and companies, whilst also encouraging development of government responsibility for funding and executing these responsibilities;
- Continue to assist Serbia in assessing the authenticity of end-user certificates and the risk of re-transfer;
- Commit to assisting Serbia in the licence assessment process and delivery verifications (once instituted) where internal capacity is limited (e.g. for destinations where Serbia does not have a diplomatic presence);
- Encourage the sustainable and democratic acceptance of international transfer control norms by supporting advocacy on the issue in public debate as well as via diplomatic channels;
- Countries with developed transfer control regimes and, in particular with relatively sophisticated procedures for parliamentary oversight, should encourage information-exchange between parliamentarians and their counterparts who have experience in this area;
- The donor community should provide support to NGOs and the media so as to build indigenous capacity to analyse and monitor Serbia's arms export controls;
- The EU in particular should:
 - Include transfer controls as a key element of its overall formal dialogue with the Serbian Government; and
 - Consider circulating information regarding previous denials of arms transfer licence applications to Serbia in order to demonstrate how decision-making works in practice among member states.



The UN administered territory of Kosovo

1 Introduction

Given its turbulent history and the attendant widespread availability of SALW within the territory, the efforts of the international military and security presence in Kosovo with respect to arms control have been focussed on controlling the illicit possession of and trafficking in SALW. More recently however, as legislative and regulatory progress has been made in other areas and awareness of the issue of arms transfers has grown, limited controls have been introduced on the transfer of arms to and from Kosovo. Yet given that the power to regulate in this area, as in most other aspects of the security sphere, is still a reserved power of the international military and security presence in Kosovo, the controls that do exist are rudimentary in nature, primarily reflecting the immediate concerns of these agencies.

The existing regulatory framework for arms transfer controls in Kosovo consequently has many gaps. And in many respects, for reasons associated with the difficulties of effective and coordinated law enforcement and policy development in Kosovo, where regulations do exist, the capacity of relevant agencies to enforce it is also weak. Yet, given that talks are currently ongoing to determine the 'final status' of Kosovo, and that a wide-ranging 'Internal Security Sector Review' is underway in the territory, unique opportunities exist to address these problems in the near future.

2 International commitments and adherence

Though it officially remains part of Serbia, Kosovo's status as a UN administered territory prevents its formal participation in most inter-governmental organisations, decision-making fora and international agreements. In the current context, international agreements and frameworks governing arms transfers do not for the most part apply to Kosovo, nor can Kosovo accede to them under current circumstances. A partial but important exception is international law in the area of Responsibility to Protect, for while UNMIK does not have responsibilities to implement specific arms control agreements or initiatives, those who administer Kosovo on the UN's behalf are responsible for their actions under international law. However, with changes to the territory's status expected to be agreed in 2007 at the latest, this situation may change.

3 Legislation and regulation

Since June 1999, the power to legislate in Kosovo has rested with the UN Mission in Kosovo (UNMIK). UN SCR 1244 and its annexes provide the international legal and diplomatic framework for law-making in Kosovo, while UNMIK Regulation 2001/9, *A Constitutional Framework for Provisional Self-Government in Kosovo*, sets out the details of the legislative, executive and judicial framework of the interim administration. The Constitutional framework has established the Provisional Institutions of Self-Government (PISG) in Kosovo, including an elected Kosovo Assembly. With the creation of the Assembly, and gradual transfer of competencies to it by UNMIK, a complex law-making structure has developed. The Office of the Special Representative of the Secretary General (SRSG) promulgates all legislation, in the form of UNMIK Regulations (primary) and Administrative Directives (secondary). The Assembly prepares, discusses and passes laws in the areas of its competency, which then have to be examined and signed by the SRSG before they can enter into force. However, security and arms related issues remain a 'reserved power' of UNMIK, and thus largely outside the remit of PISG.

The transfer of arms into Kosovo from outside the Republic of Yugoslavia was regulated externally between 1998 and 2001 by the UN SCR 1160, which imposed a comprehensive arms embargo on arms exports into the Federal Republic of Yugoslavia, including Kosovo (para. 8). In 1999, an exemption to the embargo was granted by the UN SCR 1244 to allow for arms and related material for the use by the newly established international civil and



security presences in Kosovo (para. 16). The embargo was lifted in March 2001 by UN SCR 1367, but by this time Belgrade had ceased to have an executive role in the governance of Kosovo.

Internal regulation of the import of arms into Kosovo was introduced for the first time in August 2005, with the adoption of UNMIK Regulation 2005/41 amending the original 1999 UNMIK Regulation *On the Establishment of the Customs Service*. The Regulation, which entered into force in September 2005, prohibits the importation into Kosovo of any weapon, as defined by UNMIK Regulation 2001/7, its parts or ammunition, unless authorised by UNMIK or the Kosovo Force (KFOR). Exceptions for certain classes of weapons may be granted by the SRSG upon the recommendation of the Customs Service by means of issuing an Executive Decision (Annex IV), but the regulation does not further specify which classes of weapons it applies to. The amendment further bans the importation of any explosives (as defined by UNMIK Regulation 2001/7) into Kosovo, and of any vehicles classified as tanks or other armoured vehicles (whether fitted with a weapon or not), or parts of such vehicles, by anyone except KFOR. However, the definition of ‘weapon’ contained in the UNMIK Regulation 2001/7¹⁹⁷, though sufficiently broad and detailed for the every-day use of the international security forces, is no substitute for the more developed military and dual-use control lists in use elsewhere and in the EU.

All internal supply, transportation, exchange or sale of weapons without authorisation is prohibited by the *Provisional Criminal Code* (UNMIK Regulation 2003/25), Article 327. There are no licensed gun shops or other retailers in Kosovo at the moment, and thus no authorised importation of any weapons into Kosovo for sale on the civilian market. UNMIK Regulation 2005/41 focuses specifically on the import of weapons and does not address any other aspects of arms transfers, such as export, brokering, transit and transshipment. The only regulation relating to export of weapons from Kosovo is KFOR’s internal Standard Operating Procedure 3009, titled *Weapons policy for Kosovo*, which states that commanders at all levels have a legal obligation to ensure that weapons and military articles exported from Kosovo are correctly documented and their end-use is subject to adequate control and account (Section 11f). Unfortunately no further codification of the terms ‘control’ and ‘account’ is provided, leaving considerable scope for interpretation by the different national KFOR contingents and individuals within them. Given that national traditions and regulations for end-use control and certification vary widely, this language is unlikely to provide a sufficient basis on which stringent and consistent end-use controls can be maintained. Moreover, as this is an internal KFOR regulation, it is not part of Kosovo’s general legal framework.

Unauthorised production of weapons is banned under the *Provisional Criminal Code* (Article 327), and there currently is no authorised production in Kosovo that could constitute a basis for exports abroad. While official export of arms from other sources (such as any surplus) does not appear to take place, neither does there appear to be any publicly available regulation that would prohibit this.

DATE	LEGAL REFERENCE	TITLE
10 August 2005	UNMIK Regulation 2005/41	Amending UNMIK Regulation 1999/3 on the Establishment of the Customs and Other Related Services in Kosovo
Last updated 28 April 2005	KFOR SOP 3009	Weapons Policy for Kosovo

Table 1: Summary of main Kosovan legislation and regulations relevant to transfers of military and dual-use equipment

¹⁹⁷ ‘Weapon’ is defined as ‘an instrument designed or used or usable for inflicting bodily harm. It shall include, but not be limited to, all forms of ammunition, crossbows, bows and arrows, pepper spray, CS gas, blank firing weapons, replica weapons, stun guns, tasers and all categories of weapons set out in Schedule A annexed to the present regulation or similar weapons’ (Section 1f). Schedule A, ‘Weapons categories’, contains types of small arms and light weapons (SALW) such as rifles, machine guns, pistols and mortars. Explosives, tanks and other armoured vehicles are also included.

4 Licensing of transfers

As arms and ammunition appear on the Customs Services' List of Prohibited Items (Annex IV of UNMIK Regulation 2005/41), all imports of arms into Kosovo by agencies authorised to possess weapons (other than KFOR), need first to receive an 'Exemption Certificate' from the SRSG or the Police Commissioner.¹⁹⁸ Thus an official agency wishing to procure arms from abroad needs to receive such a certificate before the import can be accomplished.¹⁹⁹ Each weapon also has to be registered with the Weapons Authorisation Section of the Kosovo Police Service (KPS).²⁰⁰

According to officials from the UNMIK Customs Service, no official exports or transit of weapons (apart from KFOR weapons) has taken place in Kosovo since the establishment of the Service.²⁰¹ According to the Service, in principle any weapon legally held in Kosovo can be exported abroad, if authorised by the SRSG. However, the research team was unable to locate a publicly available regulation that stipulates this requirement. The situation seems to be similar with respect to the transit of weapons, which according to the Customs Service is not permitted without appropriate authorisation.

Administrative Directive No. 2001/7, *On the Implementation of UNMIK Regulation No. 1999/3 On the Establishment of the Customs Service*, stipulates that all importers, exporters and forwarding agents are required to register at the UNMIK Customs House, based in Prishtinë/Priština (though this makes no specific reference to importers or exporters of weapons, it is assumed that it would apply to trade in all commodities). UNMIK Customs will register a new company upon the presentation of relevant documents, such as the evidence of identity of the authorised representative, and name and address of the company. Upon completion, the Customs House will issue a certificate of registration, while the registered forwarding agents shall receive an identification card to allow them to access and to function at Kosovo's border crossing points. As these provisions apply to the importers, exporters and forwarding agents regardless of the traded commodity, it is assumed that anyone wishing to import or export armaments to or from Kosovo, would need to register in the same fashion. No further specific requirements for companies wishing to import or export armaments are currently in place.

Weapons transferred by KFOR are not subject to UNMIK regulation, but are regulated by internal KFOR procedures.²⁰² Section 11 of UNMIK Administrative Directive 2001/7 stipulates that KFOR shipments transported by private KFOR contractors are to be carried out in accordance with rules and procedures established by UNMIK Customs in close coordination with KFOR, taking into account UNMIK Regulation 2000/47 *On the Status, Privileges and Immunities of KFOR and UNMIK and their personnel in Kosovo*. Any such rules and procedures are to be issued after negotiation with KFOR Headquarters.²⁰³ As the Directive does not state explicitly that transfers of arms are excluded from these provisions, it is assumed that they also apply to transfers of weapons.

The regulations governing KFOR's actions in this area are of key importance given that it is the most proactive security agency in Kosovo with respect to the seizure of unregistered weapons from civilians and criminals: hundreds of weapons are typically seized in any given month. Yet, no detailed information is made publicly available on the fate of these weapons. It cannot therefore be known with any certainty what proportion are destroyed and whether in addition, some are re-used or even exported. Since KFOR, like other elements of the international administration and security forces in Kosovo, is not responsible to the Kosovo Assembly, no obvious means is open to require fuller disclosure on this matter.

¹⁹⁸ Interview with Ekrem Hajdari, Deputy Director of Law Enforcement Department, UNMIK Customs, 14 July 2006.

¹⁹⁹ This is also the case for international private security companies, which after registering with UNMIK need to obtain the Exemption Certificate before importing any weapons for use by their staff.

²⁰⁰ This also applies to private security companies. As of June 2006, there were 13 weapons, mostly hand guns, registered to international private security companies in Kosovo. Data from Weapons Authorisation Section's records received from Giulio Torresi, Senior Advisor to the Head of DPO, UNMIK, 22 June 2006.

²⁰¹ Interview with Ekrem Hajdari.

²⁰² *Ibid.*

²⁰³ Administrative Direction No. 2001/7, Section 11.



5 Exemptions

N/A.

6 Brokering

Brokering is not regulated by the current arms transfer control system.

7 Transit and transshipment

There are no specific legal provisions for the control of arms transit or transshipment at present.

8 Control lists

In the absence of a control list specifically relating to arms transfers, the extensive definition of 'weapon' contained in the UNMIK Regulation 2001/7, to which the main instrument regulating arms imports (UNMIK Regulation 2005/41) refers, serves as a control list for imports only. As noted above, the Customs Service may exempt certain weapon types from control in order to facilitate a particular transfer.

9 End-use control and certification

Section 11(f) of KFOR Standard Operating Procedure 3009, *Weapons Policy for Kosovo*, provides the only known controls relating to end-use in Kosovo. The document requires commanders at all levels to ensure that weapons and military articles exported from 'the theatre' are correctly documented and their end-use subject to 'adequate control and account'.

10 Administrative capacity

Given the peculiarities of arms transfer control in Kosovo at present, it is difficult to assess administrative capacity in a meaningful way. The minimal (and confused) regulatory arrangements currently in place are easy in many respects to administer, with the few transfers taking place basically consisting of imports of a small number of items by international security agencies. The linked issues of final status discussions for Kosovo, and handovers of competencies from UNMIK to PISG institutions do however suggest that enhanced capacity will be required in future. First and foremost, Kosovo will need to acquire a settled policy on arms transfer issues, dictated by genuine economic and security needs in line with its future status. The capacity to implement that policy should then naturally be developed.

11 Inter-agency relationships/processes

There appear to be no fixed procedures for inter-agency communication and liaison under the current control system with the exception of KFOR/Customs Service dialogue (see previous section).

12 Transparency and reporting

As noted above, the scale of official transfers to and from Kosovo has been minimal in recent years (with the exception of KFOR), and restricted to importation of SALW for official agencies. UNMIK Customs have readily provided information to the research team. However, currently the general standards of record keeping and

information sharing in Kosovo are quite poor and confused.²⁰⁴ It is thus necessary that the standards and procedures for record keeping and dissemination of information between institutions and with the wider public is improved in tandem with transfer control policy. However, although most security agencies in Kosovo make information available on request regarding arms transfers (and SALW Control), no such information is made available by KFOR. This situation will however change over time as the transfer of competencies from UNMIK to PISG institutions gathers pace, and in particular as new institutional arrangements are agreed within the 'final status' process. The Assembly of Kosovo has already begun to develop skills necessary to exercise new competencies in this area with the support of international trainers. There is certainly scope to enhance the engagement of parliamentarians in overseeing arms transfer decisions in the future.

13 Information gathering and sharing

There appear to be no fixed procedures for information gathering and sharing under the current control system, a fact that is partly dictated by Kosovo's inability to join institutions such as the OSCE, SECI and UN in which the majority of such information-exchanges take place.

14 Enforcement

The task of enforcing the existing arms transfer control system rests in the first instance with those agencies responsible for border control in Kosovo, namely the Border Police and the Customs Service, as well as the Department of Rural Affairs and Forestry and the Ministry of Agriculture and Spatial Planning. Kosovo's 605 km of mountainous border perimeter presents obvious challenges for border management, and in the past concerns have been raised about the porosity of each of its borders with Albania, FYR Macedonia and Montenegro and the administrative boundary with Serbia.²⁰⁵

Work has also now been ongoing for several years to provide the territory's border management agencies with the skills and resources to police its 16 crossing points (plus Prishtinë/Priština airport), and to facilitate joint working between them and their counterparts abroad. Through its implementing agency, the European Agency for Reconstruction, the EU has played a leading role in this, providing strategic advice, equipment and training worth €6-8 million per annum since March 2005.²⁰⁶ Together with other interested parties such as the EC and US Government, EAR has tried to promote the adoption of a single Integrated Border Management strategy for Kosovo in keeping with the 'Ohrid Regional Conference on Border Security and Management' of May 2003.²⁰⁷ To the extent that these programmes enhance capacities to combat trafficking, they are of benefit for arms transfer control purposes.

Although problems with cooperation and joint working certainly remain among agencies tasked with border management and the combating of SALW trafficking, the declining frequency with which cases of SALW trafficking are reported, coupled with a progressive improvement of capacity and collaboration among relevant agencies both within and across borders, suggests that cross-border trafficking of SALW to and from Kosovo is not the

²⁰⁴ Sokolová, J., et al., *Small Arms and Light Weapons Survey of Kosovo*, (SEESAC-Saferworld, forthcoming).

²⁰⁵ Accounts of interceptions of trafficked SALW can be found with relative ease. See for example, 'Investigation: Kosovo's wild west', *Balkan Crisis Report No 542*, IWPR, 18 February 2005; Mustafa, M., 'The Black market offers all kinds of light weapons', *Koha Ditore*, 06 February 2005 (translated by the KFOR public information office).

²⁰⁶ Annual Action Programme for 2005 for Community assistance to Kosovo-Integrated Border Management, <http://www.ear.eu.int/kosovo/main/documents/2005Borders.pdf>, accessed 20 March 2006.

²⁰⁷ In the absence of a coherent management policy or strategy for the work of the above institutions, EAR has sought the formal agreement of the roles and responsibilities of each agencies, compatible standard operational procedures, and the revision of problematic legislation. EAR has also identified a need to train Border Police in integrated border management techniques. EAR, *European Agency for Reconstruction Quarterly Report to the European Parliament: October to December 2005*, <http://www.ear.eu.int/kosovo/kosovo.htm>. See also: EAR, *Annual Action Programme for 2005 for Community assistance to Kosovo-Integrated Border Management*, <http://www.ear.eu.int/kosovo/main/documents/2005Borders.pdf>, accessed 29 March 2006.



concern it once was.²⁰⁸ There are however broader concerns relating to law enforcement and judicial capacity in Kosovo that raise questions as to the effective capacity of security agencies, both KPS and international, to investigate and prosecute serious crimes such as those relating to arms trafficking. The record of Kosovo's law enforcement bodies is poor in such areas, while flaws in the justice system mean that many crimes are not prosecuted. Capacities therefore need developing across the criminal justice sector in future if controls are to be adequately maintained.

15 Penalties and sanctions

The *Provisional Criminal Code of Kosovo* (UNMIK Regulation 2003/25) stipulates penalties for unauthorized supply, transport, exchange or sale of weapons, ranging from a fine of up to €7,500 to imprisonment of one to ten years (Article 327). UNMIK Customs regulations also provide generic sanctions for the smuggling of controlled or prohibited goods.

16 Interactions with industry

No private arms export or production industry exists in Kosovo at the present time.

17 Conclusion

Until now, the international administration in Kosovo has justifiably concerned itself with matters other than arms transfer control, relying on a combination of military regulations, UN SC Resolutions and occasional pieces of make-shift legislation primarily designed to limit the availability of SALW in Kosovo. With the changing status of the territory and the ever-increasing importance of arms transfer control on the international agenda, this must surely change. The development of appropriate policy, legislation, administrative capacity, as well as arrangements for information sharing and cooperation in this area should all be undertaken in the near future. While it is recognised that progress in this field must take place within a framework laid down by the broader political settlement on Kosovo's final status, now widely expected in 2007, a number of important considerations should also apply. One the one hand, the framework by which international arms transfers are regulated and overseen must be appropriate to the task at hand. It must also serve the needs of Kosovo's developing security and justice institutions, as defined by the Internal Security Sector Review, while at the same time remaining sensitive to capacity limitations.

In these respects the requirements for arms transfer control may differ in Kosovo from those of neighbouring territories, particularly those states that are more advanced in terms of EU accession. At bottom though, EU and international norms and agreements on arms transfer control are concerned to prevent the occurrence of transfers that breach international law, and this fact should fundamentally dictate the shape of Kosovo's control system in future. Dependent on the outcomes of Final Status negotiations, appropriate legislation and operative provisions to ensure that the system in Kosovo is at a minimum, compatible with the EU Code, should be developed in the near future. Provisions for regulating transits, transshipment, international arms brokering and imports will also be required, though the implications in terms of decentralisation and inter-ethnic relations will need to be taken into account when preparing them. Finally, steps should be taken to ensure that a high degree of transparency exists on decision-making on such matters, whether at the national level (e.g. within the Kosovo Assembly), or by would-be end-users such as the KPS.

The table on the following pages provides a summarised assessment of Kosovo's present compliance, or ability to comply with, EU standards:

²⁰⁸ *Op. cit.*, Richards, A., *et al.*

EU STANDARD	LEGAL OR POLITICAL BASIS	NATIONAL COMPLIANCE	LEGISLATIVE, REGULATORY OR POLITICAL REFERENCE
Criteria-based licensing system (eight criteria)	EU Code Draft EU Common Position Defining Common Rules Governing the Control of Exports of Military Technology and Equipment (Draft Common Position)	Not applicable	None
Military control list	Common Military List of the European Union	No	None
Controls on dual-use goods (including control list and catch-all clauses)	EU Dual-Use Regulation	No	None
Control of arms brokers	EU Common Position on Arms Brokering Draft Common Position	No	None
Controls on intangible transfers	Draft Common Position	No	None
Controls on transit and/or transshipment	Draft Common Position	N/A (theoretically permissible with authorisation)	None (theoretically permissible with authorisation)
Control of export of production capacity (including, for example, licensed production)	Draft Common Position	None	None
End-use controls and certification requirements (including controls on re-transfers)	Draft Common Position EU User's Guide	No	KFOR's Standard Operating Procedure 3009
Power to revoke transfer licences	Best practice	N/A (though the Office of the SRSG retains the authority to provide authorisation as well as retract it)	N/A
Registration of actors (e.g. manufacturers, traders, shippers)	Best practice EU Common Position on Arms Brokering (recommended)	Yes	Administrative Directive No. 2001/7
Legal penalties and sanctions	Best practice EU Common Position on Arms Brokering	Yes (though a lack of clarity in other legislative areas is likely to render enforcement difficult)	Provisional Criminal Code of Kosovo (UNMIK Regulation 2003/25 Generic prohibitions on smuggling in Customs regulations)
Inter-departmental consultation	Best practice	N/A	N/A



EU STANDARD	LEGAL OR POLITICAL BASIS	NATIONAL COMPLIANCE	LEGISLATIVE, REGULATORY OR POLITICAL REFERENCE
Information-exchange with other governments (including circulation of licensing denials among EU member states and subsequent consultations)	EU Code Draft Common Position Best practice	N/A	N/A
Industry outreach	Best practice	N/A	N/A
Parliamentary accountability	Best practice	None due to 'reserved power' arrangements	2001 Constitutional Framework for Kosovo
Regular production and publication of national reports	Draft Common Position	N/A	N/A

Table 2: Summary of Kosovan arms transfer standards versus EU obligations and practice

18 Recommendations

To the UN Mission in Kosovo and PISG

- Ensure that due consideration is given to the development of appropriate and effective arms transfer controls, based on EU best practice and on international law, within the ISSR process;
- Maintain a focus on arms transfer control and transparency issues when establishing structures and policies intended to enhance SALW Control in Kosovo, such as a national SALW Control strategy and inter-agency SALW Control working group;
- Develop the primary and secondary legislation necessary to control arms transfers in a manner compatible with the best EU and international standards (including the EU Code) over the coming months and years, using the Kosovo Assembly wherever possible to review detailed legislation and ensure its relevance and suitability. Provide for coverage of issues such as direct export, transit, transshipment, brokering, licensed production, end-use control and case-by-case risk assessment of license applications in line with international humanitarian and human rights law in such legislation;
- Conduct a needs assessment among institutions and individuals tasked with maintaining transfer controls prior to seeking international assistance to build adequate capacity;
- Ensure that developments in this field appropriately reference the framework laid down by the broader political settlement on Kosovo's final status, providing adequate means to deal with politically sensitive issues such as the import of weapons, while at the same time providing adequate safeguards to ensure transfers are regulated in accordance with international law;
- Give due consideration to questions relating to governmental decentralisation and inter-ethnic relations within Kosovo when developing policy on transit, transshipment and import; and
- Ensure that a high degree of transparency exists on decision-making on such matters, whether at the national level (e.g. within the National Assembly), or by would-be end-users such as the KPS.

To the international community

- Continue to monitor arms transfer control practice by actors within Kosovo, both those of PISG and international administration;
- Offer training and technical support to officials within key institutions who are likely to be tasked with administering any future arms transfer control systems, with a view to the graduated upgrade of capacity and knowledge towards EU and international standards; and
- Existing international actors (including KFOR) should publicly clarify their existing policy and practice with regard to the disposal of surplus and seized SALW and also provide details of any transfers from Kosovo, in line with the best EU and international standards on transparency and accountability relating to arms transfer controls.

To the EU

- In line with the EU SALW Strategy, develop a specific and context-sensitive programme in Kosovo to address all aspects of transfer control in a strategic fashion, drawing on the existing experiences of member states. This programme should look to:
 - Support the development of appropriate legislation;
 - Build the capacity of institutions to enforce it;



- Develop the capacity of the Kosovo Assembly to hold the executive to account for the development and implementation of the transfer control system;
- Support the development of specialist civil society capacity to act as a generator of policy ideas and monitor the actions of the executive in this area;
- Ensure that the EU Mission in Kosovo regularly updates and seeks advice from COARM and CODUN as well as from relevant commission officials in this area; and
- Ensure that the EU Partnership Agreement with Kosovo explicitly references the above recommendations and that progress in this area becomes an official and regular part of EU/Kosovo dialogue.



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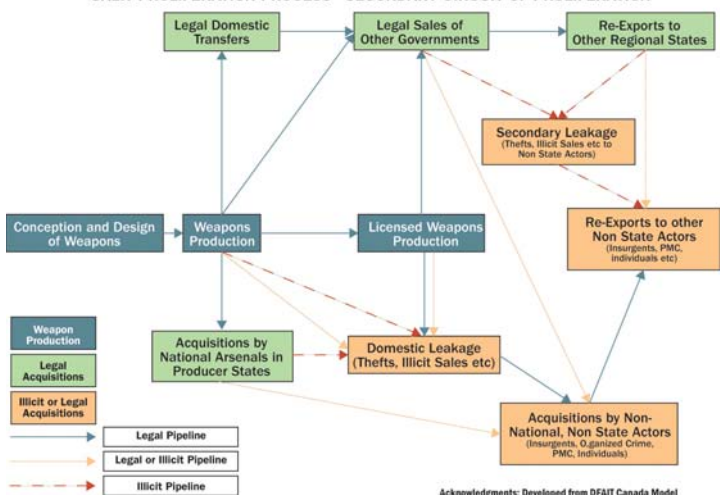
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