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# Measuring up?

**Arms transfer controls in Bosnia and Herzegovina**

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# 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 for example 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 come to be seen as a progressive and effective transfer control regime, leading to many EU accession and neighbouring states announcing their intention to abide by the principles set out therein. 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, for example the post-conflict countries of South Eastern Europe (SEE), poses significant challenges. Whether for reasons associated with past conflicts, or because of the difficulties of state-building and political transition, many EU neighbourhood states have struggled 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, Saferworld has undertaken a detailed analysis of the arms transfer control regimes currently in operation in numerous states or territories located in Central, Eastern and South Eastern Europe and the Caucasus.<sup>1</sup> This forms part of Saferworld's broader programme of work in the region, which in addition to arms transfer controls covers a wide range of SALW, Security and Justice Sector Development (SJSD) and conflict issues.<sup>2</sup>

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<sup>1</sup> The first seven of these surveys (Albania, Bosnia and Herzegovina, Croatia, FYR Macedonia, Montenegro, Serbia and the UN administered territory of Kosovo) were carried out by Saferworld (working with a number of external research partners) on behalf of the South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC), as part of the implementation of the European Commission's *Western Balkans SALW Control Support Plan*.

<sup>2</sup> Other outputs from Saferworld's work across the region include: 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 (available from <http://www.seesac.org/index.php?content=&page=sr&section=3>). 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 onwards (available from <http://www.seesac.org/index.php?content=13&section=3>) while separate issue-specific research projects have focussed on aspects of SALW Control (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)).

Research conducted in 2006 and 2007 combined 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 arms transfer control decision-making.

The EU plays a critical role in supporting the process of security and governance sector reform across the region. In the area of arms transfer control, agreements and initiatives such as those listed above, combined with states' rhetorical commitments to abide by the principles contained in the EU Code, present the EU and its institutions with unique opportunities for catalysing change. As a contribution to the development and enforcement of effective arms transfer controls in the region, 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 the states in question 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 apply to components and dual-use goods and technologies as well as to complete weapons and weapon systems, and should provide for the effective means of regulating all aspects of arms transfers including *inter alia*: 1) extra-territorial brokering; 2) the licensed production of strategic goods overseas; 3) transit and transshipment; 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:

- a) 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 licensing decisions, particularly when they are of a sensitive or precedent setting nature; and

- b) 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. The research findings, and by extension the recommendations, are different for each country, reflecting the different arms transfer control systems as well as broader security and governance issues. While 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 includes countries which have in recent times been severely affected by violent conflict and/or lacking in basic systems of government (arising from the disintegration of Yugoslavia and the collapse of central authority in Albania) 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 change. In others, for example in Romania, which has recently acceded to the EU and 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 territory 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, this process is still underway and in others, including Serbia and Romania, the quality of recent progress is to be applauded. However, while progress is evident in all states and territories 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 materiel 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.

While in most states fairly comprehensive laws exist, it is also the case that in all more is needed to develop the regulations, guidelines and administrative capacity required to operationalise legislative commitments. For instance, in several cases, while the EU Code is referenced in legislation, it is often unclear how the letter and spirit of the Code affect transfer licensing decision-making. More also needs to be done to address difficult or contentious questions such as the control of brokers and parliamentary scrutiny of licensing decisions.

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, is slowly being reflected in the area of arms transfer controls. For example, it is encouraging to note that the vast majority of states in this study either co-sponsored or supported the resolution calling for an international Arms Trade Treaty that was passed by the United Nations General Assembly in December 2006. Nevertheless, this is a very small step in a protracted process, and it is to be hoped that this engagement with proposed international arms transfer regulations is sustained throughout the region.

### 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 licence 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. 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

While legislation creates the framework within which the transfer control regime functions, there are also several implementation and enforcement issues that any system must confront. Most 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 reference to the EU Code criteria in one way or another is becoming more commonplace, 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 co-operation are underdeveloped, while in other instances there is concern that these arrangements could be undermined by inter-departmental rivalries. This underdevelopment of co-operative frameworks extends across borders to inter-state co-operation with neighbouring and EU member states. As arms transfers are by nature transnational, they are best controlled by co-operative arrangements at this regional 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 underway to improve regimes in the region, 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 operate effectively 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 (e.g. 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 region 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 non-governmental organisations (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. Romania, for example, has decided to produce quarterly reports on licences issued according to destination, type and value of weapon and actual weapons transfers. For the most part government officials were willing to meet with researchers and to respond to enquiries, although in some countries the level of co-operation was disappointing and indicative of a general reluctance to engage fully with civil society on this issue. Nevertheless, across the region there appears to be a tangible increase in the willingness of governments to engage with interested other parties, a 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 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 solely be seen as a gesture 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 states surveyed in this study.

### 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.<sup>3</sup> 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.

<sup>3</sup> The SEESAC Arms Exports and Transfers CD provides a template and data management system to assist governments in this regard. <http://www.seesac.org/index.php?content=10&section=2>

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 (e.g. 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.

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# Bosnia and Herzegovina

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## 1 Introduction

**ARMS TRANSFER CONTROL IN BOSNIA AND HERZEGOVINA** (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 avoiding responsibility. This and a number of additional challenges continue to cause difficulties in terms of implementation.

Before its break-up, 55–60 percent of Yugoslavia's defence manufacture was located in the territory of Bosnia and Herzegovina.<sup>1</sup> 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 growing. 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.<sup>2</sup> 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.<sup>3</sup>

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 Orao, Bijeljina, Republika Srpska, had been involved in selling spare parts for, and working to overhaul, Iraqi MiG aircraft in breach of UN embargoes. VZ Orao had engineers based in Iraq and was working with the Iraqi authorities to subvert international inspections. Discovery of these problems resulted

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<sup>1</sup> Džanić, 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

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.<sup>4</sup>

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.<sup>5</sup>

As touched on above in reference to the Orao 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 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), 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.<sup>6</sup>

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, co-ordination 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.

<sup>4</sup> Kusovač, Z., 'Suspicion widens in arms to Iraq probe', *Jane's Defence Weekly*, 06 November 2002.

<sup>5</sup> 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](http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/06_06_06_iraqi_guns.pdf), accessed 24 May 2006.

<sup>6</sup> Interview with UN Development Programme official, Sarajevo, 26 April 2006.

**Table 1: BiH's commitments to arms transfer or SALW Control agreements<sup>7</sup>**

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

### 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.

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

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 Co-operation 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

<sup>7</sup> BiH is also a state party to the Biological Weapons Convention, the Chemical Weapons Convention and the Nuclear Non-Proliferation Treaty.

## 4 Production

As noted above, before its break-up, 55–60 percent of Yugoslavia's defence manufacture was located in the territory of 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.<sup>8</sup>

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 increasing. From 1997 to 2001, the value of exports from the Federation increased tenfold to around €12 million per annum.<sup>9</sup> 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.<sup>10</sup>

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 percent 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, but 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 percent. Entity-level regulations are obliged by law to be compliant with the national law, but there is a clear potential for conflict of interest where the owners of production facilities are also involved in their regulation.

<sup>8</sup> Watkins, A., 'Yugoslav industry revival: fact...or fiction', *Jane's Defence Weekly*, 25 July 2001.

<sup>9</sup> *Ibid.*

<sup>10</sup> 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.<sup>11</sup> 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 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 sale and 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.

<sup>11</sup> *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.

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 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.<sup>12</sup>

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

<sup>12</sup> Email exchange and telephone conversation with MFA official, June 2006.

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 moratorium<sup>13</sup> undermine assertions that the BiH Government has the power to revoke any arms transfer authorisation at any time.

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## 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.

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## 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.

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## 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.<sup>14</sup> 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).

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## 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.

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<sup>13</sup> Op. cit., BBC Radio 4 File on Four.

<sup>14</sup> 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'.

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## 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 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.

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## 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.<sup>15</sup> 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 Tracker<sup>16</sup> export control computer system available to the BiH administration, but the system is not operational, and it would appear there is no specified timetable for when it will be. There would 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 had not been installed at the time of research.<sup>17</sup> 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'.<sup>18</sup> 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.<sup>19</sup>

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).<sup>20</sup>

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

<sup>15</sup> 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).

<sup>16</sup> 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.

<sup>17</sup> Interview with Ministry of Defence official, Sarajevo, 27 April 2006.

<sup>18</sup> Correspondence with EUFOR official, 25 July 2006.

<sup>19</sup> *Ibid.*

<sup>20</sup> 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.

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 Co-ordination Board for Control of SALW was formally established. The Co-ordination 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.<sup>21</sup> While it seems that there are informal contacts among relevant officials from different ministries, and there is formal 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 co-operation 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.

Co-ordination 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 with holding 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.

<sup>21</sup> 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'.

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 research (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 in 2005. 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 combating jointly illegal activities including organised crime.<sup>22</sup> The SBS states that the service maintain regular contact and exchange relevant information with authorised police institutions from neighbouring countries.<sup>23</sup> The SBS training programme includes activities aimed at preventing the flow of SALW across state borders. This necessitates enhanced co-operation with equivalent services in neighbouring states with the aim of a co-ordinated 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 co-operation was underdeveloped, and that BiH would benefit from better cross-border information systems and more joint training exercises.

<sup>22</sup> For example, the May 2005 Agreement between BiH and Turkey to fight terrorism and organised crime.

<sup>23</sup> Ibid.

## 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.<sup>24</sup> 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 co-operation 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 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 percent.

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

<sup>24</sup> 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.

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 co-operation are also under-developed. 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:

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

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 Brokering (recommended)	Yes	Law on import and export
Legal penalties and sanctions	Best practice EU Common Position on Arms Brokering	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 administrating ministry (MOFTER)	Law on import and export
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, 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

## 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 co-operation 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 reports 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; and
- 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.