

## EU Common Position review: Post-shipment controls

This briefing offers recommendations on the issue of post-shipment controls (PSC) as a contribution to the current ongoing review of European Union (EU) [Common Position 2008/944/CFSP](#) as amended by Council Decision (CFSP) 2019/1560.

The previous review of the EU Common Position, concluded in 2019, did not substantively address the issue of PSC. However, in the context of the current review, this briefing considers the scope for, and benefits of, the wider adoption of PSC among EU member states.

In an effort to enhance their capacity to prevent and combat arms diversion and misuse, an increasing number of EU member states and partner countries are adopting PSC as part of an enhanced suite of arms transfer controls. Indeed, EU member states are not alone in understanding and pursuing the benefits that can accrue from PSC implementation. For example, States Parties to the Arms Trade Treaty have also shown a keen desire to prevent and combat diversion of conventional arms transfers, as reflected by the establishment of the Diversion Information Exchange Forum and the discussions on post-shipment cooperation that took place during the German presidency of the Eighth Conference of States Parties (CSP8).

There is therefore a strong case for arguing that the EU Common Position and the associated User's Guide be updated to include standards and guidance for the implementation of PSC measures.

### **The role of PSC in effective arms transfer control**

PSC encompass a range of control measures relevant to exports of conventional arms which can help reduce the scope for their diversion and misuse. These can serve as an important adjunct to pre-authorisation procedures involved in export licensing that include, for example: arms export risk assessment; documentary requirements and

verification – including end-use(r) certificates (EUCs); non-re-export assurances; and customs controls. Decades of experience underline that in too many cases such pre-export measures, on their own, are insufficient to safeguard against diversion or misuse of conventional arms exports.

While preparations for PSC measures are made in the pre-licensing phase, they are put into operation once a shipment has cleared customs in, and departed the jurisdiction of, the exporting state. Such measures include, but are not limited to: using technology to track shipments; obtaining delivery verification certificates (DVCs); and undertaking on-site inspections in the recipient country.

DVCs are requested by some, but not all, arms exporting states. While the information they provide can help confirm the safe arrival of a consignment of arms, it provides little in the way of assurance that all or part of the shipment in question will not subsequently be re-exported, diverted to an unauthorised end-user in-country, or misused. The same can be said of the use of technology for tracking a shipment of exported arms until it arrives, either in the importing state or with the end-user.

On-site inspection of the location and assignment of an arms shipment weeks/months/years later represents the most unequivocal mechanism for verifying that exported arms have not been re-exported, diverted to an unauthorised end-user in-country, or misused. In order to facilitate a future on-site inspection, prior to authorising the shipment an exporting state should – as part of the relevant end-use undertakings – come to a detailed agreement with the importing authorities as to the legitimacy, scope, time-frame and modalities of such an exercise. For example, it is possible that on-site inspections may be carried out: i) in response to information suggesting that arms in a shipment have been diverted or re-exported (based on intelligence or open-

source information); ii) as a routine measure in relation to exports of specific arms and/or to specific end-users; or iii) as part of a system of random checks on exports of specific arms and/or to specific end-users. These options are not mutually exclusive: routine or random checks can also be informed by relevant intelligence and information sources that point to the possible misappropriation or misuse of exported arms.

Arranging post-shipment inspections will require the agreement of the importing state, which may not always be immediately forthcoming. It may therefore require negotiations between exporter and importer, but as more states apply PSC, the more it will become accepted practice. This can also deliver direct benefit for the importing state, for example, where appropriate, forming part of a wider effort to support physical security and stockpile management of weapons.

The scope of weapons to be covered in an on-site inspection regime varies among states – Germany has so far focused its inspections on exports of small arms and light weapons (SALW), while others have taken a broader approach. Ultimately, it is arguable that any system of on-site inspections should be set up with a view to covering a range of equipment exported to a range of end-users.

There is no suggestion that member states would carry out in-country inspection for all (or many) of their arms exports – in most cases there would be no need. Rather, decisions to inspect would be taken selectively on the basis of perceived risk.

Capacity constraints will be another limiting factor. It may be infeasible for some EU member states to send officials from their capital cities to carry out investigations, while several lack a global consular presence. They do, however, have options to help address this issue. Member states could pool their respective resources (for example, one member state with in-country representation could take on this task for another member

state without); they could employ consultants (for example, retired officials) to carry out specific inspections; and/or EU delegations could provide support where necessary. It is worth noting that the experience of states that have adopted on-site inspections as a part of their PSC is overall a very positive one, suggesting that, if carried out openly and transparently on the basis of a pre-export agreement, such measures can also serve as a valuable confidence-building exercise between exporter and importer states.

### **Implications for the review of the EU Common Position**

The text of the EU Common Position on arms exports, as it currently stands, does not address the issue of PSC. However, given the increasing number of EU and other states adopting PSC, there is a clear case for arguing that the Common Position should set the standard by incorporating a provision that reflects the current direction of travel. In practical terms, this could be done by integrating an additional paragraph on PSC into either Article 5 or Article 7 or by adding a separate Article 5 *bis* or an Article 7 *bis*.

Operationalisation of new references in the Common Position would inevitably require further elaboration in an updated version of the User's Guide, which currently has minimal references to PSC (under the heading of Post-shipment Verification). It could be expanded to contain much more detail, including, for example:

- the rationale for PSC/on-site inspections – such as to prevent re-export, diversion and/or misuse of exported arms
- the key principles of PSC/on-site inspections – including the need to obtain the willing consent of the importing state
- practical considerations relating to the planning and operationalisation of PSC/on-site inspections<sup>1</sup>

<sup>1</sup> See SIPRI (2022), '[Good Practice Guide on Post-shipment On-site Inspections of Military Materiel](#)', August