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**COARM
CFSP/PESC**

WORKING PAPER

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CONTRIBUTION

From:	IE Delegation
To:	Working Party on Conventional Arms Exports
Subject:	Ireland's Comments - Providing military technology and equipment in the framework of the EPF: Basic principles for compliance and control

Ireland's comments for COARM review of EEAS paper,

Providing military technology and equipment in the framework of the EPF: Basic principles for compliance and control

Submitted 25 May 2020

Ireland welcomes the EEAS paper, *Providing military technology and equipment in the framework of the EPF: Basic principles for compliance and control* as a valuable contribution to the discussion on EPF safeguards and to EPF discussions more broadly. The development of a robust set of safeguards will be vital before the EPF can become operational.

Ireland is pleased to present the following general comments on the paper. Further comments can be found in track changes in the text below. We will be happy to discuss any of our comments and stand ready to continue in this important effort with colleagues.

Ireland retains its concerns regarding the provision of weapons and ammunition and these comments are without prejudice to the final decision on whether the EPF should provide these kinds of equipment or not.

General Comments

- It is essential that EPF safeguards are suitably robust for EPF AMs that will operate in contexts of instability, where risks of diversion and breaches of IHRL and IHL are heightened. Sanctions for breaches (suspension or termination of AM) should be definitive. The paper should provide for whether and how the EU can seek the return of equipment already issued, in the event of such breaches. It should also be recognised that even the most robust safeguards may not provide adequate reassurance in severe situations and in certain circumstances, an assistance measure involving the transfer of military technology and equipment may not be possible.
- It is important that the paper presents a clear and consistent understanding of the EU Common Position on arms exports, in particular in relation to the extent to which the EU can expect adherence to the Common Position by the beneficiaries of an EPF AM (e.g. para 17).
- It would also be helpful to have a consistent conceptualisation of the EPF. At various times in the paper, the EU, the EEAS, the EPF and the AM are referenced as actors, e.g. paras 14 and 33 the AM is contributing to the situation in-country, para 30 the EPF delivers equipment, and para 34 the EU is informed of breaches, while the EEAS keeps records in para 41. Are these distinctions intentional and if so, what implications do they have?
- There is a need to clarify the role of the EU (and Council Decisions on EPF AMs) and of national licencing authorities in the paper. This distinction will be particularly important in the context of discussions on EPF decision-making and the conduct of export assessments. As discussed at COARM and as referenced by other EU MS in their submissions, Ireland would welcome the

opportunity for COARM to consider and provide input to the proposed future paper on decision-making in the context of EPF AMs.

- The paper will benefit from clarification on whether an EU-body or an EU training mission would be tasked with conducting the controls referenced in Section V, in addition to or where relevant, in place of, national post-transfer or -shipment control measures. It is important to note in this consideration that the range of options available to EU Member States on a national basis is resource-dependent. Nonetheless, it is important that any Council Decision mandating EPF AM does allow for post-transfer controls.
- In Section II, paragraph 5, we propose to include two additional principles:
 - the **principle of proportionality**, such that the minimum necessity of goods/equipment is transferred in the context of an AM, to avoid the risk of destabilising accumulations in sensitive contexts. We believe that this principle would chime well with the point made by NL, FR and other EU MS in their position paper, as to the need for “prior examination of possible alternatives to ‘Train & Equip’ assistance measures, to achieve the same goals”. Paragraph 37 would also benefit from a link to the principle of proportionality, to ensure consistent logic when discussing the provision of military equipment to a beneficiary context in which there may already be excess accumulations of SALW or other military list items.
 - the **principle of protection**, which underscores the need for robust, qualitative, informed risk assessments of destination contexts and end-users ahead of decisions on transfers, based on the understanding that transfers to conflict or emergency contexts pose heightened risks.
- Ireland supports the language proposals put forward by Belgium with regard to ensuring that information on any cases of diversion under the scope of an EPF AM is fed back to COARM for consideration (BE proposals as circulated, in paragraphs 22, 34 and 35).
- It is important that a gender perspective is included in relevant sections on risk analyses (e.g. paras 6, 16, 24), in line with the EU cross-cutting priority on the promotion of gender equality, including through the prevention of gender-based violence and commitment to UNSCR 1325 and the Women, Peace and Security Agenda.
- Actions 22 (secure excessive and poorly maintained stockpiles) and 35 (increase engagement with regional organisations) of the UN Secretary-General’s Agenda for Disarmament, as supported by the EU, are relevant in this context. We have included a reference to these actions in para 12.

Brussels, 28 April 2020

Providing military technology and equipment in the framework of the EPF Basic principles for compliance and control

I. INTRODUCTION

1. A key objective of the European Peace Facility (EPF) is to provide the EU with an instrument to finance, inter alia, assistance measures that could strengthen the military and defence capacities of third States, regional and international organisations¹. EPF assistance measures (AM) could potentially include the supply of equipment to foreign State or regional/international organisation military or defence actors including equipment and/or technology on the EU common military list (hereafter military equipment²).
2. It is therefore essential that provision of military equipment through the EPF is in accordance with the highest international standards for the export of such equipment, in full respect ~~foref~~ international law, including international human rights law (IHRL) and ~~I~~international ~~H~~humanitarian ~~L~~law (IHL) and with adequate assurances regarding its end-use. Breaches by the beneficiary of those conditions ~~could~~ will lead to the suspension or termination of the EPF AM. In addition, the supply of military equipment by the EU to third States or regional or international organisations will continue to be subject to relevant Union, national and international arms export control laws and rules, and is ~~without prejudice~~ to the competences of exporting States and national export licence authorities as regards export licenses. The annexes to the paper provide illustrative lists of some of the most relevant international instruments and European acquis applicable to the provision of military equipment, dual use goods and civil firearms.
3. This paper sets out guiding principles regarding the provision of military equipment. More specifically, it addresses the issue of compliance and conditionality, as well as control and accompanying measures, in relation to the supply and transfer of ownership of military equipment to the beneficiary. Specific procedures for decision-making in relation to an EPF AM will be set out in an additional paper supporting to follow the the Council Decision establishing the EPF.

¹ Article 1.b.2 and 47c of the draft Council Decision establishing a European Peace Facility, REV 2 (doc. WK 14172/2019 ADD 1 of 13 December 2019).

² The same principles could also apply to either civilian goods or technologies or items for dual use. Exports items under these categories are subject to specific laws and regulations according to their category (military, dual use, civil firearms).

Commented [IE DNP1]: What is the process for investigating alleged breaches? Who determines that a breach has occurred?

Commented [IE DNP2]: As breaches involve serious issues such as violations of IHRL or IHL, or diversion of military equipment, it is difficult to envisage the continued transfer of military equipment under the EPF AM framework.

Whether or not the AM is suspended in total; certainly the provision of military equipment as part of the AM should be stopped. A sentence should be added on this.

Furthermore, the paper provides for suspension or termination of the AM in the event of breaches but does not address whether or how the EU could seek the return of equipment already issued. Clarity would be welcome.

Commented [IE DNP3]: We consider this to be a minimum provision. EPF AM will likely operate in contexts of instability, where risks of diversion and breaches of IHRL and IHL are heightened. EPF safeguards need to be suitably robust.

Commented [IE DNP4]: Further clarity will be required on how EU laws and rules will apply, without prejudice to national export licencing competences.

Commented [IE DNP5]: We support Germany's proposal in this regard, and further suggest this amendment to clarify which specific procedures are referred to. We have removed to reference to following the CD – it would be useful to have procedures developed alongside the CD.

4. It provides an overview of existing best practices and recommendations in the field of arms exports and post-shipment safeguards. It is based on a review of EU Member States' arms export policies as reflected in the National Reports to Parliament and Council³, inputs from Member States in the COARM Council Working Party⁴, EU funded export control and counter diversion projects⁵ and activities, UN and OSCE best practices and recommendations⁶, US arms export control programmes⁷, NGOs and CSOs suggestions⁸. It also takes account of the EU legal framework, international treaties and standards, the Council User's Guide to Council Common Position 2008/944, the 2018 EU Strategy against small arms and light weapons (SALW) and their ammunition strategy⁹, and the practices of EU Member States' Armed Forces.

Commented [IE DNP6]: We welcome this list of relevant legal and other sources of guidance. Further important sources are listed in paragraph 11. We suggest to include them here too i.e. ATT, UNPOA and ITI.

Commented [IE DNP7]: What is intended with this reference? Should it read "best practices of EU Member States export licencing authorities"?

II. GENERAL PRINCIPLES AND CONSIDERATIONS

5. The implementation of AMs involving the supply of military equipment should be based on the following key principles:

- a) **compliance** with all relevant legal instruments and best practices based on national, international and EU rules and standards in the area of the supply of military equipment, and respect for international law, including international human rights law (IHRL) and International Humanitarian Law (IHL) by the beneficiary;
- b) protection, which underscores the need for robust, qualitative, informed risk assessments of destination contexts and end-users ahead of decisions on transfers, based on the understanding that transfers to conflict or emergency contexts pose heightened risks.
- c) proportionality, such that the minimum necessity of goods/equipment is transferred in the context of an AM, to avoid the risk of destabilising accumulations in sensitive contexts;
- d) **control after delivery to the beneficiary**, to the extent deemed required in accordance with the relevant provisions of the Council decision establishing the EPF and of subsequent Council decisions on AMs;

Commented [IE DNP8]: Important to clarify whether control after delivery is an obligation that falls on the State responsible for processing the export licence relevant to the EPF AM, or whether another entity is envisaged for post-delivery controls, mandated by an EPF AM Council Decision.

Or is this saying that the beneficiary is required to demonstrate sufficient control of the items after delivery? If so, this would likely be too weak.

³ Council reports according to Article 8(2) of Council Common Position 2008/944/CFSP defining Common Rules governing the control of exports of military technology and equipment.

⁴ Online Tour de table on national practices regarding the framing of transfers of materials covered by the EU common military list, in particular lethal equipment, exported to third countries in the framework of a specific (bi- or multilateral) cooperation, Feb. to Apr. 2020.

⁵ Including EU ATT Outreach Project, iTrace.

⁶ In particular : UN Human rights due diligence policy on UN support to non-UN security forces (2013) and guidance note (2015), UN OHCHR internal working paper on Human rights and international humanitarian law compliance framework of the G5 Sahel Joint Force, and OSCE Handbook of Best Practices on Small Arms and Light Weapons (Decision N° 5/03).

⁷ Blue Lantern (compliance of direct commercial sales of defence articles, defence services, and related export data), Golden Sentry End User Monitoring (Golden Sentry's execution include obtaining pre-delivery end-user assurances from the beneficiary governments and international organizations regarding authorized end-use, re-transfer restrictions, and protection of U.S.-origin defence equipment.) and Military Assistance Program (monitoring of military equipment provided to US allies between 1952 and 1990).

⁸ *Inter alias*: SIPRI, GRIP, Small arms survey, Conflict Armament Research, Geneva International Centre for Humanitarian Demining, PAX for Peace, Saferworld.

⁹ Council Conclusions on the Adoption of an EU Strategy against Illicit Firearms, Small Arms and Light Weapons and their Ammunition, 19 November 2018, 13581/18.

6. The specific control and safeguards measures could be included on a case-by-case basis in the proposals for Council decisions on the supply of military equipment, as each AM will be tailored to a specific context. Therefore, beyond the common elements that should feature in every assessment for EPF AMs as set out above (notably respect of international law, including human right law (IHRL) and International Humanitarian Law (IHL), the country specific environment and its implications, including the risk that equipment be used to commit or facilitate serious acts of gender-based violence, evidence of the beneficiary's commitment on ~~correct~~ proper use, and provisions on non-diversion and preservation of the EPF-supplied equipment, safe storage, stockpile management and – as required – legacy surplus disposal in the beneficiary country, should also be taken into account.

Commented [IE DNP9]: Proposed language in line with EU Common Position Users Guide and ATT

7. EPF AMs for the provision of military equipment will be implemented in a different context than the commercial exports of such equipment. The EU will therefore have full political and technical control of the definition and scope of the AM, of the specification of equipment as well as of the supply and logistical chain until the handover to the beneficiary, and be fully entitled to set conditions for ~~appropriate~~ proper use and safekeeping of the equipment after the delivery to the beneficiary.

Commented [IE DNP10]: What is the different context? Is it through a different structure or mechanism? Or is this saying that export of military equipment through a commercial transaction is too risky and would be rejected by EU MS, but the EPF provides a 'safe' framework to allow this export proceed. If so, we should ensure the standards go beyond what would normally apply to a commercial export.

8. This will offer enhanced opportunities for reinforced conditions, accompanying mitigating measures and monitoring. Arrangements with the beneficiary partner presented in this paper are envisaged as options to be further explored¹⁰, and which will have to be adapted to each specific context.

9. EPF AMs should be conflict sensitive to ensure that activities will have a mitigating impact on conflict dynamics and be able to respond to external crises by strengthening the capacities of third countries or regional or international organisations with a view to ~~to~~ attaining EU goals and objectives as defined in EU global, thematic, regional and country strategies. They should reinforce the EU's political standing and the implementation of multi-faceted approaches. They should fill existing gaps by helping to establish adequately equipped partner country security forces that can safeguard, promote and strengthen peace, security and human rights, and sustainable development ~~and, where required, prevent terrorist violence~~.

10. Each EPF AM should always ~~ideally~~ constitute support provided within the framework of the overall EU policy towards the beneficiary and, seek coordination, coherence and complementarity with relevant actions undertaken by EU Member States. They should be implemented, in line with an integrated approach, rather than as stand-alone measures. This could reinforce the incentive for the beneficiary to comply with conditions and provide

guarantees, thereby contributing to offer a more secure legal and operational environment for the implementation of a given AM.

~~10-11.~~ Alongside discussions on the delivery of military equipment, when required, the beneficiary country should be strongly encouraged invited to commit to take steps to sign, ratify and comply with the arms control and disarmament agreements listed in the Common Position.

Commented [IE DNP11]: Former para 15 moved up, as it fits better in the context of setting out the 'bigger picture' for the EPF, and how EPF AM will contribute to the framework of overall EU policy.

~~11-12.~~ EPF AMs should also contribute to the overall goal of implementing the European Union Guidelines on promoting compliance with IHL¹¹, the European Union Strategy against illicit firearms, Small Arms & Light Weapons and their ammunition (2018)¹² and to strengthen capacities of beneficiary States in the implementation of the UN Programme of Action on Small Arms (UN PoA), the International Tracing Instrument (ITI), the ATT, and the 2030 Agenda for Sustainable Development (in particular Goal 16, target 16.4)¹³. the Women Peace and Security Agenda, the Youth Peace and Security Agenda, and the UN Secretary-General's Agenda for Disarmament (in particular, EU-supported actions 22 and 35).

III. LOCAL CONTEXT OF EPF ASSISTANCE MEASURES

~~12-13.~~ EPF AMs will require careful identification and assessment of the conditions for providing the support. Case-by-case arrangements as regards commitments from the beneficiary to respect specific conditions should be developed in dialogue with the beneficiary country. These conditions should as required be set out in the Council Decision¹⁴ approving an AM.

Commented [IE DNP12]: Should be plural, in light of draft language on having two CDs in cases where this equipment is to be supplied.

~~13-14.~~ In a beneficiary country, EPF AMs should seek to improve the governance and hands-on management of conventional ammunition and arms in line with international best practices. Specific flanking measures could be implemented either by the EPF, under other EU instruments, by EU Member States and/or by international organisations or by other partners.¹⁴ They should also contribute to the overall arms control effort by promoting the implementation of international standards and best practices that have been developed within the framework of the Modular Small Arms Control Implementation Compendium (MOSAIC) and the International Ammunition Technical Guidelines (IATG), and wherever appropriate OSCE and regional organisation guidelines, NATO¹⁵ and relevant international standard setting systems (such as the International Organization for Standardization/ISO) system.

¹¹ OJ C 303, 15.12.2009, pp.12-17.

¹² ST 13581/18.

¹³ Goal 16 of the Sustainable Development Goals is dedicated to the promotion of peaceful and inclusive societies for sustainable development, the provision of access to justice for all, and building effective, accountable institutions at all levels. Target 16.4 refers to the combatting of organized crime and illicit financial and arms flows.

¹⁴ Such measures might comprise, for instance, political dialogue or specific assistance programmes.

¹⁵ NATO AASTP: NATO Guidelines for the storages of military ammunition and explosives; NATO MSIAC: Munitions Transport and Storage Safety.

~~14-15.~~ Where relevant to verify the post-shipment use and sustainability of the equipment provided by the EPF, additional flanking measures may need to be implemented to help third countries to improve their physical security and stockpile management (PSSM) of state-held weapons by strengthening relevant national legislative and administrative frameworks (especially with regard to marking and record-keeping) and to promote and assist in the responsible disposal of surplus, seized and otherwise retrieved SALW, ammunition and other sensitive military equipment¹⁶. In the EPF context, destruction is the preferred method of disposal.

~~15. Alongside discussions on the delivery of military equipment, when required, the beneficiary country should be invited to commit to take steps to sign, ratify and comply with the arms control and disarmament agreements listed in the Common Position.~~

IV. GUIDELINES FOR ASSESSMENT, COMPLIANCE AND CONTROL MEASURES

1) Aspects of the assessment and control process

a) Preparatory phase

16. During the preparatory phase of an AM involving the delivery of military equipment, the High Representative, assisted by the EEAS, and in close consultation with the relevant administrator for AM as regards any contractual implications, should conduct an assessment of the beneficiary including context and gender sensitive analysis, impact assessment, and prepare possible measures and arrangements for monitoring and evaluation¹⁷.

17. This assessment should as required review compliance with the criteria identified in Common Position 2008/944/CFSP (as last amended by Council Decision (CFSP) 2019/1560), the Arms Trade Treaty (ATT), and analyse the context of the foreseen EPF assistance and potentially related accompanying measures, as set out below.

18. Before proposing an AM for the supply of military equipment, sufficient assurances on the correct-proper use of military equipment must be provided by the declared end-user. Ex-ante assessments, final compliance evaluations of the commitment of the beneficiary as well as post-shipment monitoring should be undertaken as required. All available information on the appropriate-proposed end-user¹⁸ should be assessed and verified.

19. If a ~~Agreements~~ with the beneficiary for the supply of equipment are needed, they could ~~will be required and could~~ be formalized using different formats and instruments, depending on the scope, the volume and the sensitivity of technology and/or equipment that would be provided, and the corresponding need for guarantees from the beneficiary.

¹⁶ ~~In the EPF context, destruction is the preferred method of disposal.~~

¹⁷ This assessment ~~could-should~~ be submitted with the concept note pursuant to Article 48 of the EPF CD or then after with the proposal for CD.

Commented [IE DNP13]: Amended footnote as the assessment by the HR should factor into the Concept Note and ultimately a Council Decision on an EPF AM. Of course, the assessment by the national licencing authority of the exporting State should at that later stage still uphold the authority to pass assessment on an EPF mandated transfer, independent of a Council Decision or HR's assessment with regard to the proposed EPF AM in question.

Commented [IE DNP14]: Clarify what "final compliance evaluations" are, how and by whom they are conducted, etc.

Commented [IE DNP15]: From where? Are all EUMS to contribute the information they have available?

Commented [IE DNP16]: Proposed amendments on the assumption that agreements will always be required.

20. The following formats and instruments could be considered, depending on requirements in the specific case:

- End User Certificate (EUC), which can incorporate all requirements for supply. On the beneficiary side, the signature would be at the level of the minister of defence, vice minister or chief of armed forces.
- Exchange of letters between the Minister of Foreign Affairs of the beneficiary State and the HR.
- International agreement between the EU and the beneficiary State. Such an agreement could be based on a standard text to be adapted as required.

21-20. As a minimum condition, an EUC (with the acceptance of a non-re-export clause) should be mandatory. Subsequently, practical arrangements on modalities to implement and monitor the conditions set out in the EUC (verification and control) might be required, in consultation with the competent authorities of the beneficiary country and of the country having granted the export licence.

b) Suspension/termination of measures

22. Furthermore, Council decisions establishing EPF AMs should foresee the necessity ~~possibility~~ to suspend or terminate the AM in the case of misuse, misconduct or breach of the initial agreement by the beneficiary. For example, possible causes of suspension or termination could be, inter alia, diversion of equipment, lack of compliance with conditions of delivery, infringement to, and evidence of violation of IHRL and IHL, and in the case of political developments in the beneficiary State contrary to international commitments, rules and standards. The practical and contractual consequences of such a decision with regard to the administrator for AM and the implementing actor(s) need to be further explored.

c) Transparency

23-21. When requested by PSC but not less than ~~Once~~ a year, in the first semester as part of the HR report to PSC provided in accordance with Article 51.c (1) of the draft EPF CD, the EEAS should present consolidated data from EPF administrators on military equipment delivered the year before in the framework of AM, summarising the implementations of the principles of EPF delivery policy during the previous calendar year, as well as providing a breakdown of EPF related export licences. That part could possibly be attached to the EU annual report on arms exports.

2) **Criteria to be applied before implementing an AM**

a) Compliance with export control criteria

Commented [IE DNP17]: It would be important to distinguish whether the End User Certificate considered here is a new additional document, specific to the context of an EPF AM, or whether it is the same document that is normally submitted by the applicant to a national licencing authority.

What are the mechanisms to allow the EU to request/review/consider an End User Certificate? Would such an EUC differ from the EUC required by the national exporting authority? What mechanism would allow/require the exporting licence authority to share an EUC with others? If the export takes place via a Third Country (as seems possible), then it is possible that no EUMS nor EU institution has had sight of the EUC.

Furthermore, an EUC normally has a number of undertakings, which the signatory accepts. Para 20 suggests that this is an opportunity to specify the additional safeguards, which could be welcome.

Ongoing COARM discussions on good practices for EUCs will be very relevant in this context.

Commented [IE DNP18]: What contract are we referencing here? Between what parties?
It would be useful to specify the option to suspend the AM pending further investigation if breaches are suspected. It would also be useful to clarify who is authorised to adjudicate whether a breach has occurred? The State who issued the licence, the EEAS, another EU MS? And what happens in case of dispute?
It needs to be clear that contractual undertakings should never be allowed to override suspension/termination of the EPF AM, should breaches be found.

Commented [IE DNP19]: This reference to "implementing actor(s)" is the first such reference in this paper. Greater clarity should be provided on the meaning behind this term.

Commented [IE DNP20]: Considerable further detail is required on timing and specifics of transparency.

Does each individual AM have its own transparency mechanism or is this the only transparency measure?

The legal criteria are those provided in national arms export control laws and regulations, in line with [Common Position 2008/944/CFSP](#) defining common rules governing control of exports of military technology and equipment (as last amended by Council Decision (CFSP) 2019/1560), and the [Arms Trade Treaty \(ATT\)](#).

Commented [IE DNP21]: The EU Common Position only applies to EU MS. How can we ensure that these standards are applied by the relevant licencing authority if export is from a Third Country?

b) Respect for international law and international guidelines and policies as regards IHRL and IHL

~~24-22.~~ A beneficiary's respect for IHRL and IHL, and ~~correct proper~~ end-use must be given particular importance when deciding on supplying military equipment. ~~Evaluating Assessing~~ the human rights situation and compliance with IHRL and IHL in the beneficiary country (including in particular by its security and defence forces), ~~and the consequence of providing or not providing EPF support~~ is essential. ~~Risk assessments should consider the risk that military equipment transferred in the context of an EPF AM is used to commit or facilitate serious acts of gender-based violence. Such an a~~ Assessments should take into account policies and guidelines elaborated by the EU, the Council of Europe, the United Nations (UN), as well as relevant regional and other international organizations. Factual reports and evidence gathered, including from international human rights and other relevant civil society organisations should also be considered. IHRL and IHL expertise could also ~~be~~ sought be among all relevant sectors (e.g. political, diplomatic, security/military, humanitarian, etc.). In line with the proposed Article 47c of the EPF proposal, AMs must respect the obligations of the Union and its Member States under international law, in particular IHRL and IHL.

c) Appraisal of beneficiary country's context

~~25-23.~~ When assessing the context for a planned AMs, it ~~would be~~ is important to also bear in mind:

- the beneficiary's political commitment and compliance with international standards in the proper use and management of military equipment;
- ~~the availability of comparable systems from third country suppliers or potential donors;~~
- the ability of the beneficiary to field, support, and employ the requested system in accordance with ~~their intended proper~~ end-use, ~~and in accordance with the undertakings specified on the End-User Certificate (EUC);~~
- the possibility of corruption linked to the assistance after the transfer of the equipment to the beneficiary;
- the overall EU engagement in support of the security sector in the country and the existence of national security sector improvement strategies or policies (such as, for instance, SSR process);
- ~~where required,~~ the possibility to train and accompany the beneficiary country's armed forces.

Commented [IE DNP22]: This is not a concept recognised in export control and would be damaging here. It may be more suitable in a broader situational analysis.

~~26-24.~~ It would also be important to consider the current and past behaviour of the beneficiary country with regard, but not limited, to:

- ~~— commitment to the fight against international terrorism and international organised crime;~~
- compliance with obligations under international law, including IHRL and IHL;
- ~~— taking on~~ commitments in the areas of non-proliferation, arms control and disarmament.
- commitment to the fight against international terrorism and international organised crime;

~~27-25.~~ This exercise could also draw on recent UNSC presidential statements¹⁸ and the following additional context specific elements:

- progress on the effective implementation where appropriate, by the beneficiary government, and within sustainable budgetary resources, of a National Program for Disarmament, Demobilization, Reintegration and Repatriation (PNDDRR), and in particular the socio-economic reintegration of former members of armed groups and the integration of vetted former members of armed groups into governmental forces;
- the establishment by the government of a planning document detailing the needs of the national authorities in terms of weapons and ammunition storage facilities and in terms of training and vetting of defence and security forces for the management of these weapons and ammunition and facilities, as well as working effectively towards the increase in adequate storage and management capacity and towards the effective training of defence and security forces, consistent with the final needs of the partner authorities;
- the keeping, by the government, of an arms registration and management protocol for defence and security forces, covering small arms, light weapons and ammunition, and other weapons and ammunition, delivered to the authorities;
- the establishment of a system of individual receipt of weapons and of a system for applying individual accountability measures in case of loss, theft, or diversion of weapons;
- effective engagement / work towards proficiency in arms registration and management and towards investigating when weapons were inappropriately managed, and existing related national law;
- the establishment and beginning of functioning of a national commission against illicit SALW proliferation;
- the establishment, by the government, of a protocol for the collection and destruction or transfer to the armed forces and internal security forces of surplus, unregistered or illicitly held weapons and ammunition seized by the authorities with the aim, in particular, of fighting against the illicit dissemination of weapons and ammunition, and working effectively towards implementing such a protocol.

¹⁸ UN SC/13769, 9 April 2019, statement on the conditions for reviewing the arms embargo on the Government of the CAR. (<https://undocs.org/en/S/PRST/2019/3>).

V. CONTROL AFTER DELIVERY TO THE BENEFICIARY

~~28-26.~~ Verification of end-use includes a range of possible actions aimed at avoiding diversion, ensuring proper use, reducing legacy stockpiles, as well as preserving equipment.

Commented [IE DNP23]: While important, it is unclear how this relates to verification of end use.

1) End-user certificates and commitment from the beneficiary

~~29-27.~~ Provision by the beneficiary of an EUC¹⁹ should be a precondition for the delivery. EUCs should include a non-re-export clause and could prescribe specific conditions and commitments (including, as required, use and user reserves and post-export verification procedures) as agreed with the beneficiary. EUC can be complemented with other agreements (as set out in para. 20).

Commented [IE DNP24]: Again, important to clarify whether the EUC is that normally provided by a national licencing authority, or a different type of EUC? It is further important to clarify to whom the EUC will be provided; the national licencing authority, the EEAS, or someone else?

2) Delivery verification and controls

~~30-28.~~ Delivery and transfer of ownership to the agreed end-user has to be verified and registered by the EPF. Subsequently, if so provided in the Council decision on the EPF AM, controls and physical examination could be carried out by EPF mandated actors after the delivery of the equipment.

Commented [IE DNP25]: The option for post-shipment controls should always be foreseen in any Council Decision for EPF AMs, even if they are not always exercised.

3) Non-diversion after delivery and transfer of ownership to the beneficiary

~~31-29.~~ Provisions to ensure that equipment will not be diverted should be included in Council decisions on AMs.

Commented [IE DNP26]: Considerable additional detail is required.

4) Physical security and stockpile management (PSSM)

~~32-30.~~ PSSM of SALW and ammunition is instrumental to curbing losses, diversion and illicit proliferation of weapons and ammunition. Poor stockpile security is often a prime means through which arms and ammunition are diverted to illicit markets. Thus, weapons and ammunition need to be physically protected and stored. This includes the provision of secured infrastructures (armouries in protected and secured zones), storage rules (neutralization, separated storage of arms and critical parts, isolation of ordnance from firing sets, detonators, igniters, etc.). Adequate storage and rules of conservation should be provided for in permanent bases, as well as in forward/deployed operational bases, and in field units.

~~33-31.~~ EPF AMs could should also contribute, beyond the actual provision of equipment, to reducing the possibility of diversion of SALW, and to international arms trade control. They should offer additional opportunities to provide leverage for promoting international efforts

¹⁹ COARM 172 CFSP/PESC 393, 20Jul. 2015: User's Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment. Section 1: Best practices in the area of end-user certificates

to control the illicit trade in SALW. Recommendations, guidelines and practices developed by relevant international organisations, entities or mechanisms should be taken into account.

5) Traceability

~~34-32.~~ All small arms and light weapons and ammunition should be marked according to international standards²⁰. SALW provided by the EPF should also be marked, prior to delivery, with import markings identifying the end-user. Traceability of most sensitive items²¹ must be ensured by the beneficiary country (or international or regional organisation) throughout the lifecycle of the item. This requires the use of ledger systems, and systematic recording of moves and transfers together with the identification of a responsible person at any given moment. Agreements/arrangements to be concluded with beneficiary countries should provide for an obligation to notify the country having granted the export licence and the EU/AM in the case of theft or loss of weapons and ammunition, or other sensitive-military equipment. Agreements should also include a procedure for destruction of equipment, including provision for prior information, consent and verification.

Commented [IE DNP27]: What happens once the EU and exporter is so notified? Do they inform all EU MS and how?

~~35-33.~~ Beneficiary armed forces should take the necessary measures in order to ensure secure storage, registry of armaments, recording of each arms and ammunition movement (check-out, check-in) with regular control from each hierarchical level, as well as regular inspection and inventory checks. In case of inconsistencies and losses, the competent authorities of the beneficiary State should undertake effective investigations and launch disciplinary measures and impose sanctions against persons found responsible. They should also inform the country having granted the export licence and the EU.

~~36-34.~~ The EPF should keep data records of all sensitive equipment (in particular identification numbers) that it will supply, and of the related agreements with the beneficiary.

6) Stockpile management and reduction

~~37-35.~~ In some cases, small arms and ammunition stockpiles greatly exceed, immediate and projected future needs. Surplus arms are best disposed of through destruction. Furthermore, significant stockpiles make traceability and inventories more complex and difficult to achieve. Thus, the reduction of excess inventory (including disabled equipment) through destruction could be considered in association (or as a condition) with the supply of EPF equipment.

²⁰ Markings should be easily recognisable, legible, durable and capable of being restored when fraudulently erased.

²¹ The Council may not consider all equipment provided by an EPF AM as sensitive and may be willing to focus post-delivery monitoring on the most sensitive cases. The decision on the sensitivity of an item would lie with the Council and could include, indicatively: i) armaments, ii) explosives and ammunition, iii) Command and control (radio, crypto, etc.), but also certain medical drugs, CBRN materials and personal protective equipment.

~~38-36.~~ Provision of 'New for Old' could also be considered in particular for SALW deliveries. In such cases, destruction of old equipment is a recognized best practice and should be monitored²².

7) Preservation of EPF-provided equipment

~~39-37.~~ Sustainability is an important criteria for responsible supplies of equipment. This implies that the beneficiary has a sense of ownership and commitment to value the assistance effort through *inter alia* logistics policies, allocation of necessary means (e.g. human and financial resources, budget plan, infrastructures, maintenance tools) and professional care of equipment.

8) Appropriate environment in the beneficiary country

~~40-38.~~ Such an environment should include: genuine political commitment by the beneficiary at the appropriate level and buy-in of security sector actors to improve practices; a legal framework providing a sound basis for law enforcement in case of identified deficiencies; end-user internal regulations, rules on accountability as well as a disciplinary code. This framework should be accompanied by education and training, as appropriate.

VI. EPF FOLLOW UP AND CONTROL OF DELIVERED ITEMS THROUGHOUT THE LIFE CYCLE

~~41-39.~~ Council decisions on AM should provide for follow-up and monitoring of delivered items. For its part, the EEAS²³ ~~could- will~~ keep records of all ~~sensitive-relevant~~ equipment (including identification numbers) and their use, which would be provided under the EPF.

Commented [IE DNP28]: Para 41 should include for follow-up and monitoring not just of delivered items in a stock-taking sense, but also of their use. Reporting on how equipment has been used is at least as important as physical accounting for the equipment.

VII. CONCLUSION

~~42-40.~~ It is incumbent on the Council as the decision-making body to ensure that the supply by the EU of military technology and equipment through the EPF is subject to appropriate safeguards for the proper delivery, management, maintenance, use and disposal of the items, and follow up monitoring. In accordance with the principles in Article 21(3) TEU, the consistency of such support with the broader EU approach to a given country or region needs to be ensured, notably from the perspective of efforts to strengthen the rule of law, good governance, and more accountability of their military, in the framework of the European integrated and multi-dimensional approach to prevention and stabilisation.

²² See 2018 EU SALW Strategy.

²³ This report would be prepared by the future EEAS division in charge of EPF affairs.

ANNEX I

A. Illustrative list of international instruments related to conventional arms control

Instrument	Scope	Status
Convention on Certain Conventional Weapons (Geneva Convention), 1980	Aims to regulate or prohibit the use of certain conventional weapons	Legally binding Entered into force in 1983
<u>Protocols:</u> - Protocol I - Protocol II - Protocol III - Protocol IV - Protocol V	<u>Protocols:</u> - Non-detectable fragments - Mines, booby-traps and other devices - Incendiary weapons - Blinding laser weapons - Explosive remnants of war	Legally binding: - 1980 - 1980 (amended in 1996) - 1980 - 1995 - 2003
Anti-personnel Landmine Convention (Ottawa Convention), 1997	Total ban on anti-personnel land mines	Legally binding Entered into force in 1999
Convention on Cluster Munitions (Oslo Convention), 2008	Total ban on cluster munitions	Legally binding Entered into force in 2010
Firearms Protocol	Fight against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition	Legally binding Entered into force in 2005
Arms Trade Treaty (ATT), 2013	Common rules for the regulation of trade in conventional weapons	Legally binding Entered into force in 2014

B. Illustrative list of the European acquis on the control of arms and sensitive goods transfers applicable to EPF provisions of equipment

	Instrument	Scope
Military equipment	Common Position (CFSP) 2003/468 of 23 June 2003	Common rules for the control of military equipment brokering
	Council decision (CFSP) 2008/944 of 8 December 2008	Common rules governing the control of exports of military technology and equipment

	Council decision (CFSP) 2019/1560 of 16 September 2019	amending Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment
Dual-use goods and technologies	Regulation (EC) No 428/2009 of 5 May 2009	Control regime for exports, transfers, brokering and transit of dual-use goods and technologies
Others	Regulation (EU) 2019/125 of 16 January 2019	Regulates the import and export of goods that might be used to inflict capital punishment, torture or other inhuman or degrading treatment or punishment
	Regulation (EU) No 258/2012 of the Parliament and of the Council of 14 March 2012	Regulates the transfer of firearms, parts, components and ammunition for civil use to non-European Union member states