

## **POSSIBLE MEASURES TO PREVENT AND ADDRESS DIVERSION<sup>1</sup>**

(Annex: post-delivery cooperation: operational steps for the introduction and implementation of post-shipment control)

*States Parties to the Arms Trade Treaty involved in the transfer of conventional arms have a legal obligation to take measures to prevent their diversion (Article 11(1)). This paper presents a non-exhaustive list of practical measures which States Parties may draw from, where relevant, useful and feasible within the available resources of each State, to prevent diversion as it may occur in their particular national context.*

*The measures have been drawn from a range of sources, including documents in the “List of possible reference documents on diversion” and input from States Parties and civil society. Some measures relate directly to specific legal obligations or guidance in the text of the Treaty. In these cases, the measures listed are to be understood only as suggested options for implementation of the relevant obligations or guidance. The measures are not intended to reinterpret, add to, or derogate from relevant obligations in any way.*

### **Transfer chain stage 1: Before the transfer/Country of origin/point of embarkation**

1. Requiring all conventional arms transfers to be subject to prior authorisation (Article 5).
2. Performing consistent and objective transfer risk assessments that take into account the risk of diversion (Articles 7(1) and 11(2)).
3. Requiring that importing States provide proper documentation (such as contracts or agreements, international import certificates, transit approvals, end-use/r certificates (EUCs), and various other assurances) to the competent authorities in exporting States, upon request (Articles 8(1) and 11(2)).
4. Not authorising the export if a significant risk of diversion is detected (Article 11(2)).
5. Including the following measures in their consistent and objective transfer risk assessments:
  - Establishing the legitimacy and credibility of all parties involved in the transfer, such as the exporter, brokers, shipping agents, freight forwarders/intermediate consignees and stated end-use/r (Article 11(2)).
  - Also examining the risks:
    - Arising from the proposed shipment arrangements.

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<sup>1</sup> Annex D to the Draft Report to the Fourth Conference of States Parties (CSP4) ([ATT/CSP4.WGETI/2018/CHAIR/355/Conf.Rep](https://www.un.org/armsregulation/ATT/CSP4/WGETI/2018/CHAIR/355/Conf.Rep)) presented by the Chair of the Working Group on Effective Treaty Implementation (WGETI).

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- Arising from the potential unreliability of controls in the importing country and the transit country (if applicable).
  - Arising from insufficient resources to allow for effective enforcement of national laws concerning the transfer of conventional arms.
  - Arising from political instability in the importing country.
  - That a conventional arms transfer would increase the risks of diversion of the existing holdings of the end-user.
- Utilising interdepartmental / inter-agency examination of the exportation requests, enabling analysis of diversion risks to be based on reliable information, from diverse sources (diplomatic, customs, intelligence unit, UN experts' reports, information exchanges between States).
  - Maintaining and/or consulting national databases identifying natural or legal persons previously sanctioned and /or involved in illicit trafficking.
6. Conducting a thorough review of the proper documentation (such as contracts or agreements, international import certificates, transit approvals, end-use/r certificates (EUCs), and various other assurances) (Articles 8(1) and 11(2)) provided by importing States, including:
- Authentication of documentation (including checks for forged or inauthentic documentation, including authentication of EUCs through diplomatic channels or the importing country's national authority by using the declared Point of Contact).
  - Verification of contents of the documentation through establishing the legitimacy and credibility of the stated end-use/r.
  - To prevent any falsification risk, importing States could institute national procedures for issuing EUCs for government and private end-users.
7. Including the following details in EUCs (Articles 8(1) and 11(2)), required for the contents of the documentation to be verified for end-use and user, as well as to inform a risk assessment:

Element	Essential	Optional
Parties involved in the transfer	<ul style="list-style-type: none"> <li>• details of the exporter and end-user, such as name, business name, address, phone, etc.</li> </ul>	<ul style="list-style-type: none"> <li>• details of the intermediate consignee and final consignee</li> </ul>
Goods to be transferred	<ul style="list-style-type: none"> <li>• description;</li> <li>• reference to contract, purchase order, invoice or order number;</li> <li>• quantity and/or value.</li> </ul>	
End use	<ul style="list-style-type: none"> <li>• indication of end-user;</li> </ul>	

	<ul style="list-style-type: none"> <li>undertaking, where appropriate, that the goods will not be used for purposes other than the declared end use and/or used for Chemical Biological Radiological and Nuclear (CBRN) etc.</li> </ul>	
Location		<ul style="list-style-type: none"> <li>certification that goods are to be installed at/used at premises of end-user;</li> <li>agreement to on-site inspections.</li> </ul>
Documentation	<ul style="list-style-type: none"> <li>signature, name, title of consignee/end-user representative;</li> <li>original or legally-certified copy.</li> </ul>	<ul style="list-style-type: none"> <li>signature and certification by government of final consignee/end-user and only by specific representatives of that government;</li> <li>unique identifier/number provided by the government authority;</li> <li>validity terms and date of issue;</li> <li>kept with conventional arms all along the transfer</li> </ul>
Re-export / diversion		<ul style="list-style-type: none"> <li>an undertaking not to re-export/transship at all, or at least not without notification or express permission from original exporting state's competent authorities</li> </ul>
Delivery verification		<ul style="list-style-type: none"> <li>provide a Delivery Verification Certificate / proof of arrival</li> </ul>

8. Encouraging all parties involved in conventional arms transfers (exporters, freight forwarders/intermediate consignees, brokers (Article 10), shipping agents, and end-users) to be registered with national authorities.

9. Applying the following measures when they are transit, trans-shipment, or importing States in an international transfer:

- Requiring prior authorisation for the transit and importation of conventional arms through and to their territory (Article 9).
- Requesting or providing documents that indicate whether the transfer has been authorised or is subject to any objection (Article 11(3)).

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10. Requiring particular conditions to be met prior to export authorisation, such as:

- Provision of information related to transport prior to the grant of the exportation authorisation: mode of transport, name of the transporter, nationality, route to be taken.
- Agreement to specific conditions on storage facilities (location, conditions, specific management measures and security).
- Verification through physical inspections of the adequacy of the recipient's storage facilities.
- Enforcement of technical conditions to secure conventional arms, such as systematic marking and implementation of systems preventing use by non-authorised persons.
- Agreement to particular disposal requirements (e.g. conditioning the sale of new small arms and light weapons on the verified destruction of old stocks).

11. Including concrete, unambiguous suspension or cancellation clauses in the wording of all conventional arms contracts other relevant documentation / inter-governmental agreements.

12. Encouraging parties involved in conventional arms transfers to introduce internal export control compliance programs to assist them in complying with national export control legislation and regulations, and increase awareness and mitigation of diversion risks.

- Internal compliance programs could include provisions for parties to conduct their own risk assessments, record-keeping on international commercial operations, and cooperation and information sharing with competent authorities (e.g. regular reporting on licences used, cooperation with compliance visits by government agencies etc.).

**Transfer chain stage 2: During the transfer / En route to the intended end-user / In transit**

1. Ensuring close cooperation and information sharing, pursuant to their national laws, where appropriate and feasible, with the governments of transit States (Article 11(3)).

2. Requiring or encouraging delivery notification by any transit countries (through delivery receipts signed by the importations customs service, delivery verification certificate, etc.) (Article 11(3)).

- Note that in the case of delivery by air, the exporter may be required to provide a 'certificate of unloading' to confirm delivery.

3. Monitoring and protecting conventional arms shipments, in cooperation with industry parties involved (e.g. freight forwarders/intermediate consignees, transporters etc) from the time the arms leave the warehouse in the exporting state until the intended end-user receives them (and verifies delivery), including through:

- Physically accompanying the shipment or remote monitoring via satellite.

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- Stringent physical security requirements (such as ensuring that arms and ammunition are transported in separate vehicles, the use of alarm systems on transport vehicles and container seals, and physical inspection during transit and at the point of delivery).
  - Scrutiny of arms shipments and documentation by customs agents in all the States involved in the transfer (exporting, transit, and importing States).

### **Transfer chain stage 3: At or after importation / Post-delivery**

1. Requiring or encouraging delivery notification by the importing State (through delivery receipts signed by the importations customs service, delivery verification certificate, etc.) (Articles 8(1) and 11(3)).
  - Note that in the case of delivery by air, the exporter may be required to provide a 'certificate of unloading' to confirm delivery.
2. For exporting States: conducting post-delivery checks in cooperation with competent authorities in the importing State to verify compliance with end-use conditions, such as the condition that no re-export can take place without prior notification to the country of origin, including through:
  - Checking end-use certificates by, for instance, checking delivery signatures against the list of authorised signatories by directly contacting such signatories using contact information provided in advance of the certificate.
  - Organising regular on-site visits to verify the ongoing use(r) of the arms.
  - Conducting physical inventories of exported conventional arms to ensure they are properly accounted (Article 12(1)).
  - Investigating suspected violations of end-use and re-transfer conditions agreed to by the end-user.
3. For importing States: registering and maintaining records of conventional arms entering their national territory, as well as the secure transfer of these to the authorised end-user (Article 12 (2)).
4. For exporting and importing States: initiating and responding in a timely manner to tracing requests, including through utilisation of existing tools such as the INTERPOL Illicit Arms Records and Tracing Management System (iARMS).

### **Transfer chain stage 4: Post-delivery storage / National stockpiles**

1. Establishing and maintaining robust stockpile management procedures for the safe storage of conventional arms and ammunition, including by:
  - Establishing and conducting inventory management and accounting procedures (including centralized record-keeping, which entails storing records of transactions made by all departments in a single, central authority).
  - Controlling access to stockpiles.

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- Applying physical security measures (such as fencing and locking systems).
  - Ensuring the security of stockpiles that are in transport.
  - Destroying all surplus arms and ammunition in accordance with international norms and standards.
  - Ensuring appropriate staff training in safe and secure stockpile management procedures.
  - Note useful guidance provided in the ISACS Module on 'Stockpile management' and the International Ammunition Technical Guidelines (IATG).

2. Ensuring adequate border controls and patrols.

#### **Other comprehensive measures applicable across the transfer chain**

1. Establishing a strong national control system for of the authorisation of international transfers of conventional arms (including transit and trans-shipment), and the enforcement of national laws and regulations (Articles 5 and 14).
2. Ensuring that when a diversion is detected, appropriate legal and administrative measures are taken to address the diversion, enabling the competent national authorities to seize the illicit conventional arms (Article 5).
3. Ensuring close cooperation and information-sharing with other States involved in the arms transfer chain, including information on: weapons transportation providers; denials of export and import licences export/import, transit/trans-shipment licence/authorisation; end-user certificates data; international trafficking routes; illicit brokers, sources of illicit supply and methods of concealment (Articles 8(1), 11(3), 11(4), 11(5), and 15(4)).
4. Sharing information with other States on measures taken that have been proven effective in addressing the diversion, including through: the ATT Secretariat; other mechanisms such as the Working Group on Effective Treaty Implementation; and databases for information exchange such as the ATT website (Article 13(2)).
5. Taking the following measures when a diversion is detected:
  - Alert potentially affected States Parties.
  - Examine diverted shipments of conventional arms.
  - Take follow-up measures through investigation and law enforcement, including the establishment of criminal offences and the capacity for sanctioning violators in relation to diversion detected during post-delivery checks or at any time during an arms transfer (Article 11(4)). It is recommended that available sanctions should be both administrative (including confiscation of conventional arms) and criminal (sufficiently high to serve as deterrents).
6. Ensuring that officers responsible for administering the national control system are trained in the detection of fraudulent behaviour across the different stages of the transfer chain.

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7. Maintaining open communication and cooperation across licensing, customs, law enforcement, intelligence and other government agencies domestically and amongst States.
  8. Providing sufficient resources to national authorities, especially customs authorities, to ensure they have effective control over conventional arms flows into and out of their territory.
  9. Pursuing cooperation through regional and sub-regional groups, such as the EU.
  10. Ensuring effective legislation for investigating and punishing theft, corruption, and other diversion-related offences.
  11. Running industry outreach programmes (such as with industry associations) to share diversion risk assessment guidance and encourage industry to play a cooperative role in risk assessment and management.
  12. Reinforcing cooperation between national authorities and the private sector (armament industry, transporters, banks, etc.) to ease the detection and the interception of the illicit flows.
  13. For both exporting and importing States: jointly developing and agreeing programmes to identify challenges identified, which may take various forms depending on the challenges identified (Article 11(2)).
    - For example, the exporting and importing States could collaborate on measures to improve the security of stockpiles and the disposal of surplus stocks, or to eradicate organised criminal activity and combat corrupt practices
  14. Ensuring transparency through communicating information on authorised or completed- legal transfers of conventional arms in annual reports (Article 13(3)).

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**POST-DELIVERY COOPERATION: OPERATIONAL STEPS FOR THE INTRODUCTION AND IMPLEMENTATION OF POST-SHIPMENT CONTROL<sup>1</sup>**  
**(ANNEX I TO POSSIBLE MEASURES TO PREVENT AND ADDRESS DIVERSION)**

## **Introduction**

The document with Possible Measures to Prevent and Address Diversion, welcomed by the Conference at CSP4, makes reference to post-delivery checks as one of the measures that exporting States can take to prevent diversion in the third stage of the transfer chain (at or after importation / post-delivery). The topic of post-delivery cooperation between exporting and importing States subsequently became the priority theme of the German CSP8 Presidency. In that context, the CSP8 President presented a working paper to the Conference which provided a comprehensive toolbox on the topic, which, inter alia, included operational steps for the introduction and implementation of post-delivery cooperation.<sup>2</sup> During the CSP9 cycle, the topic of post-delivery cooperation was considered further in the WGETI Sub-working Group on Article 11. During those discussions, some participants suggested that it would be useful to include these operational steps as an Annex in the document with Possible Measures to Prevent and Address Diversion.

As elaborated below, the operational steps concern the following aspects of the introduction and implementation of post-delivery cooperation: 1) political commitment and buy in; 2) structure, organisation and staff; 3) legal considerations; 4) communication with importing States; 5) pre-control phase – preparation of individual controls; 6) control phase – conducting controls; and 7) post-control phase.

In accordance with the main document with Possible Measures to Prevent and Address Diversion, the list presents a voluntary, non-exhaustive overview of practical steps which States Parties may draw from, where relevant, useful and feasible within the available resources of each State. They are to be understood only as suggested options for the implementation of the general obligation of States Parties to prevent diversion in Article 11 (1) of the Treaty and the specific obligation of exporting States Parties to do so by assessing the risk of diversion of exports and considering the establishment of mitigation measures. In Article 11 (2). The suggestions are not intended to reinterpret, add to, or derogate from relevant obligations in any way. In that regard, the suggestions also do not detract from the intrinsic responsibility of importing States Parties to prevent diversion. While post-delivery cooperation can be an effective method for importing States Parties to engage in joint diversion risk mitigation with exporting States,

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<sup>1</sup> Annex C of the [Working Group on Effective Treaty Implementation \(WGETI\) Chair's Draft Report to CSP9 \(ATT/CSP9.WGETI/2023/CHAIR/767/Conf.Rep\)](https://www.thearmstradetreaty.org/conference-documents-csp9), endorsed by States Parties at CSP9 as an Annex to the document with Possible Measures to Prevent and Address Diversion and as living document of a voluntary nature, to be reviewed and updated by the WGETI, as appropriate.

<sup>2</sup> The working paper is available at <https://www.thearmstradetreaty.org/conference-documents-csp8> (CSP8 President).

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importing States have a distinct responsibility under Article 11 (1) of the Treaty to take measures to prevent diversion of imported arms. Examples of such measures are included in the document with Possible Measures to Prevent and Address Diversion.

### **Political commitment and buy in**

1. Consider States that have already introduced post-delivery cooperation in order to learn from their experiences.
2. Carry out an initial pilot phase of post-delivery cooperation in order to gain first-hand experience and to test domestic decision-making and coordination structures or identify the optimal structures, then subject the results to an internal evaluation process before more formal structures are established.
3. Establish a dialogue with exporters and parliaments to explain the motivation for post-delivery cooperation as well as its limitations.
4. Develop an initial general policy paper.
5. Define the scope of controls, in geographical terms and in terms of the items subject to control. Focusing on final and complete products may be useful as it may be difficult to trace and control components or assemblies that are to be incorporated into weapons systems abroad; a risk-guided approach could focus on those items that are most likely to be diverted.

### **Structure, organisation and staff**

1. A standardised procedure is helpful to guide the inter-agency process for the checks to be performed in any given year.
2. A specialised unit could be established, for example within the licensing authority.
3. Staff should be identified in part based on the following skills that may be useful: flexibility, multilingualism, diplomatic competence, intercultural understanding, legal knowledge, technical understanding and possibly an enforcement background.
4. Special guidance documentation could be drawn up for embassy personnel.
5. Possible indicators for risk-based selection criteria could be based on the destination country, the items in question (some items are more likely to be diverted than others) or the scope of the delivery. The selection may also be guided by the time that has elapsed since the initial delivery or the number of on-site visits to a particular end-use destination in the past. Guidance can be provided by embassy personnel, intelligence or media reports or as a result of information-sharing among State Parties.
6. The visit needs to be coordinated between the exporting and the importing State beforehand.
7. The verification team should ideally be accompanied by embassy officials in the importing State.
8. Control officers could be provided with diplomatic passports. This may be more flexible than asking for formal assurances from the importing State.

### **Legal considerations**

1. National legislation could clarify that the approval of a licence (possibly for a defined range of end-use destinations) would be dependent on the submission of written assurances by the end-user that consent is given for subsequent on site-verifications.

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2. National legislative steps may also be necessary to allow the control unit to trace the transaction in question (e.g. reporting requirements for the actual export, including the submission of serial numbers to the control authority).
  3. As permanent exports are usually dependent on the presentation of an end-use certificate, end-use documents are a simple and helpful tool to obtain the necessary assurances/approval from the end-user of the items in question. The template could simply be amended. For example, the template for end-user certificates could require the end-user to sign the following assurance: “Additionally, the end-user certifies that the authorities in the exporting State have the right to verify the end-use of the above-mentioned weapon on-site upon their request at any time”.
  4. The exchange of diplomatic notes may also be a way to obtain the consent of the importing State.

### **Communication with importing States**

1. Embassies may play a crucial role in explaining the motivation for post-delivery cooperation. They could conduct more general outreach when post-delivery cooperation is initially introduced; more detailed information could be provided during preparations for an actual on-site verification. Embassy staff should be provided with guidance material.
2. It may be helpful to provide information material for the exporters that can be forwarded to their customers.
3. Conducting international outreach or participating in international outreach efforts may help to raise awareness and acceptance of post-delivery cooperation.

### **Pre-control phase – preparation of individual controls**

1. Embassies can facilitate the communication with the authorities of the importing State.
2. Clear and direct communication lines between the verification team and the local embassy are necessary in the run-up to an on-site visit.
3. The preparation of a dossier for the embassy (e.g. export licence, information about the consignee/end-user, EUC, description of the arms, serial numbers) may be useful for the initial talks with the authorities of the importing State.
4. The verification measure should be planned beforehand and a strategy should be in place, i.e. what kind of items will be subject to inspection? Under which circumstances? What sort of preparation will be necessary?
5. Typical issues to be coordinated between the verification team and the local authorities include the location and time of the verification visit. In importing States with a large territory where items may have been distributed across the country, verification officers may need to travel to different locations or the items could be gathered in a central location.
6. Officers charged with the verification visit could be trained by military staff in safety measures for handling the weapons in question; they could also be trained in identifying the items that are subject to inspection. The exporter may also be a useful source of information in the run-up to a verification visit, e.g. by providing in-depth presentations of the items in question or merely by providing photographs that may help in identifying the weapons.
7. The involvement of the importing State’s authorities should be discussed beforehand. It may be helpful to plan for extra meetings for example at the MFA, MoD or other local authorities that may wish to gain a better understanding of the motivation for the verification visit.

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8. Coordination with the importing State at an early stage may also facilitate the issuing of visas or other required travel documents.

### **Control phase – conducting controls**

1. Logistics to consider include issues such as access to the verification site, the use of translators, transport services, permission to take pictures of the arms and serial numbers.
2. It is useful to consider alternative means of verification, e.g. if items cannot be presented or have been used or destroyed. This could include the presentation of documents or pictures of arms.
3. There should be clear communication on the handling of the inspected items; arms should be safe and unloaded.
4. A visual check of all transferred arms – based on their serial number – is recommended; in the case of larger volumes of arms, a smaller sample check may also be acceptable.

### **Post-control phase**

1. A template for reporting should be in place.
2. It is also useful to consider who the addressees of the reports will be (e.g. other agencies, parliament) and how often these reports will be made (e.g. after each visit or annually?).
3. Other issues to consider include the following: Will the information be shared with international partners? What kind of feedback should be provided to the importing State?
4. Will reports also be shared with other partners? It is important to consider how the outcome of the verification visit can inform subsequent export licensing processes for the end-user in question and what to do in the case of non-compliance with the end-user's assurances. Such cases could also be presented to ATT partners.
5. Appropriate sanctions in the case of non-compliance could include the suspension of export control licensing decisions until the incidents of non-compliance have been clarified. It is recommended to first discuss the instance of non-compliance with the importing State and to identify the source of the problem encountered. It may also be helpful to offer support in helping to prevent future incidents, e.g. training or capacity-building measures in the field of export controls, safe storage, anti-bribery measures etc.

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