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Advice concerning the annual report of the Flemish Government to the Flemish Parliament on the implementation of the Act of 5 August 1991 regarding the import, export and transit of arms, ammunition and equipment specifically intended for military use or for law enforcement and associated technology

1 Introduction

The Flemish Act of Parliament defining the work of the Flemish Peace Institute stipulates that the latter will advise the Flemish Parliament on the annual report of the Flemish Government about licences issued and denied for arms, ammunition and equipment specifically intended for military use or for law enforcement and associated technology.¹ On 13 April 2011, the Flemish Government submitted its seventh annual report to the Flemish Parliament.²

The present advice highlights a few important elements in the Flemish Government's report. These points and the Peace Institute's advice are based on previous advice and research by the Peace Institute's Arms Trade and Production research programme, under which the Institute monitors the national, European and international legal framework for external trade in arms, as well as the facts and figures of arms production and trade in Flanders. The study report '*Flemish foreign arms trade 2010*'³, presented to the Flemish Parliament on 30 March 2011, has been a key source for the present advice. The significance of the resolution adopted by the Flemish Parliament in plenary session on 16 February 2011 regarding export control and the political unrest in several countries in the Middle East and the Maghreb should also be underlined.

With this advice, the Peace Institute seeks to evaluate the Flemish arms trade policy of the Flemish Government on the one hand and to support and enhance the parliamentary control of that policy on the other.

2 Points to note in the Flemish Government's annual report on arms trade, 2010

2.1 The share of arms exports for which the industry is the last reported user at the time of issuing the licence remains high

In 2010 the Flemish Government issued 330 licences for the export of military equipment with a combined value of EUR 320.5 million, an increase of EUR 38.5 million as compared to 2009 (+ 13.5%). The high value of licensed arms exports in 2010 should be seen in the setting of a longer-term trend: between 2005 and 2010 its value more than doubled, a sharp increase that is in line with several international developments such as growing global military expenditure and a major rise in the value of European licensed arms exports.⁴

For each export licence, the annual report of the Flemish Government records the recipient and the end user of the product. Chapter 5 of the annual report - which discusses the methodology - describes how the Flemish Government defines the recipient and the end user of the products for each individual licence. The distinction between 'recipient' and 'end user' - and analogously, between 'recipient country' and 'country of end use' - is crucial for proper control of the trade in military equipment.⁵ The recipient is the person, the company or the organisation who takes receipt of the equipment after dispatch from Flanders. The end user is the party that puts the equipment to their intended end use (e.g. deployment with the armed forces). Recipient and end user may be the same party, but this is not always the case. For instance, when defence-related products are integrated into larger weapon systems, 'the industry' is the recipient and the actual end user will then be the party who purchases and deploys the military end product. Although

larger weapon systems are usually manufactured to order - and the end user is hence a known party – the Flemish Government’s annual report does not always report the end user. An analysis of the figures from the 2010 annual report of the Flemish Government shows that the categories ‘industry’ or ‘trader’ were the last known end user for 67% of the value of the issued licences. This is in line with the last few years: between 2007 and 2009 the proportion fluctuated between 60 and 78%.⁶ This means that for the larger part of licensed Flemish arms exports, the end user is unknown and/or not named in the Flemish Government’s annual report to the Flemish Parliament. Analysis of the data in the annual report further shows that whether the ultimate end user is listed or not varies significantly with the nature of the equipment. While the end user is usually indicated for licensed exports of (parts of) military vehicles and imaging equipment, this is not the case for licensed exports of visualisation screens, military electronics, training material and aircraft components. This raises the question whether the difference arises from the nature of the products, or from different methods of operation in the sector.

With a view to an effective export control policy and high-quality parliamentary oversight, the Flemish Government needs to assemble all possible information about both the recipient and the actual end user of the exports. Complete information on both recipient and end user is a necessary precondition for a responsible and accountable policy. Although the actual end user cannot always be traced, additional efforts can be made; and the relevant companies’ duty to provide *correct and complete* information when applying for import, export or transit licences (article 9, Act of 5 August 1991) should be insisted on as a starting-point.⁷ Beyond this, constant monitoring of trends in the defence market by the Strategic Goods Monitoring Unit, and the exchange of information with domestic and foreign intelligence services and other government institutions, may help to amass information about a product’s end use.

2.2 The high value of licensed arms export to countries from the Middle East and the Maghreb

The Flemish Government’s annual report lists all the export licences issued and denied for 2010. An analysis of these licences shows that last year, 38 licences were issued for which the last known users were located in Middle East and Maghreb countries. Their combined value amounted to EUR 30.6 million, representing 9.6% of the total value of the licensed arms export from Flanders in 2010. More specifically, licences were issued for exports of military equipment to Bahrain, Egypt, Iraq, Oman, Saudi Arabia, Turkey and the United Arab Emirates, in most cases involving exports to the armed forces of these countries (with or without the industry as first recipient). At EUR 30.6 million, the value of licensed arms export to these countries in 2010 was significantly higher than in previous years.⁸ Further, the actual value of arms exports ending up in the Middle East and Maghreb is likely to be much higher, since the end user of military equipment is not always known during the licensing procedure (see 2.1). Cases are known from this specific region where Flemish products were initially dispatched to non-sensitive recipient countries, but found their way to the Middle East from there. The above-mentioned figures do not include these indirect forms of export, in which the final recipient at the time of the licence application does not correspond with the end user.

In view of the political unrest in several Middle East and Maghreb countries, the plenary session of the Flemish Parliament adopted a resolution on 16 February 2011 asking the Flemish Government to *“exercise the greatest caution and to act in accordance with current legislation when granting licences for the export, import and transit of arms, ammunition and equipment specifically intended for military use or law enforcement purposes to and from the regions”*.⁹

On 23 February 2011, the Flemish Government decided to put arms exports to ‘problem countries’ in the Middle East on hold. These instructions were further elaborated on 3 March 2011. They involve licences relating to Bahrain, Egypt, Libya, Oman and Tunisia.¹⁰ Putting licences on hold means that for the time being, no new export or transit licences will be granted for these problem countries, and the companies involved were asked to send back any current licences to the Strategic Goods Monitoring Unit. On 25 March the list of problem countries was expanded and licences for Syria and Yemen also put on hold.¹¹ However, there is no clarity as regards the criteria for putting these licences on hold, nor is it clear whether the list of problem countries has meanwhile been expanded or what criteria would be used for reviewing their status.

2.3 Transparency in the annual reports has increased considerably over the past few years, but there is still room for significant improvement

The Flemish Government’s annual report lists all the licences that were issued in 2011 for the import, export and transit of military equipment. The past few years have clearly shown a trend towards more transparency in the methodology used by the Flemish Government for its reports for the Flemish Parliament. Reporting has gradually evolved from aggregate figures per recipient/exporting country, merely broken down into the number of licences per category of recipients and a very rough classification of military equipment, into a report for *each* individual licence application. The following characteristics are currently listed: the nature of the equipment (based on the categorisation of the European list of military equipment, supplemented with a number of ‘Flemish’ categories); the value of the equipment to which the licence applies; the country of origin; the country of destination; the nature of the recipient; the nature of the end user (if known and if that party is not the recipient) and the country of the end user (if not the country of destination).¹² Besides being included in the annual report of the Government for Parliament, this information is published each month on the website of the Strategic Goods Monitoring Unit.¹³

Clearly, transparency in reporting on foreign arms trade is not an end in itself but should be a means towards, among other things, effective and accurate parliamentary control. Although enhanced transparency has greatly improved the scope for high-quality parliamentary oversight, there is still room for improvement in certain areas. For instance: the annual report of the Flemish Government does not cover all licences issued and denied for foreign trade in military equipment. Information is lacking on the renewal of previously approved applications, on temporary transactions and on all licences falling under the system of European Directive 91/477. It would also be desirable to include in the annual report, besides licence information, an overview of foreign trade in military equipment that has actually taken place on the basis of licences issued. Systematic reporting of the motives behind denial of licences is also lacking at present. More

openness in decision-making adds to improved policy accountability. It would also make policy more predictable, which in turn would offer companies greater legal security.

A liberalised licensing system for trade in defence-related equipment within the EU, laid down in Directive 2009/43/EC on intra-Community trade in military equipment, will come into force from the end of June 2012.¹⁴ Since about 50% of the licensed arms exports from Flanders are intended for EU Member States, the Directive will have far-reaching consequences for Flemish arms trade policy. After implementation of the aforementioned European Directive, companies will have the option of using generalⁱ and global licencesⁱⁱ for relevant transfers of defence-related products within the EU, in addition to the current practice of individual licences.¹⁵ To allow for effective and accurate parliamentary control, it is essential that the Flemish Government in its future annual reports should not only provide adequate information about individual licences, but also about these general and global licences.

2.4 The importance of an unambiguous interpretation of the Wassenaar Arrangement's Munitions List

In its annual report, the Flemish Government always highlights a certain theme. This year it highlights the Wassenaar Arrangement, an export control regime involving 40 participating countries, one of which is Belgium. The Technical Experts Group of the Wassenaar Arrangement monitors latest technological developments and on that basis, issues recommendations for updating the list of categories of equipment subjected to control. The countries participating in the Wassenaar Arrangement commit themselves to apply export controls to the types of equipment on the list and to inform the other members of any exports of these equipment to non-participating countries. One of the key aspects of the Wassenaar Arrangement is its annual publication of an updated version of its 'Munitions' list.

The full Munitions List is reproduced by the European Union as the "Common Military List of the European Union", and thus forms the basis of the export control system used by EU Member States. Products for which export licences are issued or denied are further classified into 22 categories in the Munitions List.ⁱⁱⁱ However, with the increasingly blurred boundaries between civil, military and security equipment, it is not always clear whether products exported from Flanders match the specifications assembled in the Munitions List. In the interests of proper

ⁱ General licences are issued for certain products. All companies located on the territory of a Member State may opt to use them; an application for a separate licence is no longer required for these products. For more information, see: Flemish Peace Institute, *The European Defence Package: Towards a liberalization and harmonization of the EU defence market*, background note, 7 April 2008.

ⁱⁱ Under a global licence, companies will be able to transfer (certain categories of) products to (certain categories of) recipients within the EU. For more information, see: Flemish Peace Institute, *The European Defence Package: Towards a liberalization and harmonization of the EU defence market*, background note, 7 April 2008.

ⁱⁱⁱ Belgian legislation on import, export and transition subjects further types of equipment to a licence obligation. In its reports to the Flemish Parliament, the Flemish Government uses four additional categories: "Rifles and ammunition not covered in ML1, 2 and 3" (ML23); "Visualisation screens (catch-all)" (ML24); "Other (catch-all)" (ML25), and "Law enforcement equipment" (ML26).

control of the trade in military equipment, it is of the highest importance that the Flemish Government should regularly screen the products of the companies involved on the basis of the specifications in the Munitions List, and should monitor the updated listings.

It is also important for the companies involved to know whether the export of their products is subject to a licensing obligation. Licensing obligations impose an administrative burden. Furthermore, clarity on their products' classification would add to legal certainty. The challenge for the Flemish Government is thus to brief the industry clearly on which products are and are not subject to a licence obligation, on the basis of regular and in-depth screening of the products involved in accordance with the Munitions List.

2.5 The number of licences issued for the transit of military equipment has steadily decreased since 1999

As a result of its central location and extensive logistical infrastructure, the Flemish Region is an important transit region for industrial products. Military equipment is also transported to global destinations via the Flemish Region. However, not all transports of military equipment are subject to licensing. Only if the transport involves transshipment or processing or any other cargo-related action does this "transit" of military equipment require licensing. Uninterrupted transit (i.e. when the equipment does not have a customs use) technically does not qualify as "transit" and does not require a licence. Furthermore, licences are not required for transit within EU Member States, or if the Grand Duchy of Luxembourg is the country of origin or destination. Transit from and to the Netherlands requires licensing only if it involves equipment that is subject to a trade embargo. In 2010, the Flemish Government issued 18 licences for transit of military equipment through Flanders, having a total value of EUR 75.8 million and relating to 16 recipient countries around the world. The majority of these licences involved military equipment for the armed forces or governments of these recipient countries; only in a few cases was the equipment in transit destined for the industry or a dealer. Not a single application for a transit licence was denied in 2010.

The number of transit licences issued in Flanders has steadily decreased since 1999 - the first year in which information about these licences was published - from 136 Dutch language transit licences in 1999, to only 18 Flemish transit licences in 2010. This was the lowest number ever issued, aside from 2007. The fact that a large number of transit licences were applied for and approved in the late 1990s demonstrates that logistical connections in Flanders are capable of being used for the transit of military equipment. It is thus noteworthy that only a limited number of transit licences were requested in recent years. To date, the Flemish Government has provided no explanation for the steady fall in numbers of transit licences in Flanders.

3 Advice

The Flemish Peace Institute wishes to emphasize five key points in relation to the Flemish Government's annual report to the Flemish Parliament on licences issued and denied for arms, ammunition and equipment specifically intended for military use or for law enforcement and associated technology, as submitted to Flemish Parliament on 13 April 2011:

- the share of arms exports for which the industry is the last reported user at the time of issuing the licence remains high;
- the value of licensed arms exports to countries from the Middle East and the Maghreb is high;
- transparency in the annual reports has increased considerably over the past few years, but there is still room for significant improvement;
- an unambiguous interpretation of the Wassenaar Arrangement's Munitions List is important;
- the number of licences issued for the transit of military equipment has systematically decreased since 1999.

With a view to these key points, the Peace Institute formulates the following advice aimed at optimising control of the Flemish arms trade and supporting and enhancing parliamentary oversight of the relevant policy.

The Flemish Peace Institute recommends the Flemish Parliament as follows:

- **to ask the Flemish Government to make an extra effort to collect all available information on the recipient and the actual end user if the two are different parties; to include this information in the assessment of licence applications, and to inform Parliament accordingly;**
- **in view of the high value of licensed arms exports to the Middle East and the Maghreb countries in 2010, and of the resolution of the Flemish Parliament of 16 February 2011, to scrupulously monitor the arms export policy of the Flemish Government vis-a-vis the Middle East;**
- **to ask the Flemish Government to maintain the present level of transparency in its annual report to the Flemish Parliament, and to enhance transparency by including detailed information about the actual foreign trade in military equipment, licence renewals, temporary transactions, and licences under the system of European Directive 91/477, as well as an explanation of licence denials;**
- **to ask the Flemish Government to carry out regular and in-depth screening of the products of the companies involved on the basis of the specifications in the Munitions List of the Wassenaar Arrangement and to clearly communicate the screening results to the companies involved;**
- **to have an investigation carried out into the systematic decrease in the number of transit licences.**

Endnotes

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- ¹ Act of 7 May 2004 on the founding of a Flemish Institute for Peace and the Prevention of Violence at the Flemish Parliament (Updated text as of 08-07-2009), article 6.
- ² Annual report of the Flemish Government to the Flemish Parliament about licences issued and denied for arms, ammunition and equipment specifically intended for military use or for law enforcement and associated technology. Period from 1 January 2010 to 31 December 2010 (Document 53A (2010-2011) – No. 1), submitted on 13 April 2011, <http://docs.vlaamsparlement.be/docs/stukken/2010-2011/g53-1.pdf>.
- ³ Duquet, N. (2011), *Flemish foreign arms trade 2010*, Brussels: Flemish Peace Institute.
- ⁴ Duquet, N. (2011), *Flemish foreign arms trade 2010*, Brussels: Flemish Peace Institute.
- ⁵ For more detailed information on the control of end use and the distinction between recipient and end user, please see also Flemish Peace Institute (2008), *End use as a factor in the Flemish licensing procedure for arms exports*, Brussels: Flemish Peace Institute.
- ⁶ Duquet, N. (2011), *Flemish foreign arms trade 2010*, Brussels: Flemish Peace Institute.
- ⁷ Act of 5 August 1991 on the import, export, and transit of and against the illegal trade in arms, ammunition and material specifically intended for military use and associated technology.
- ⁸ Duquet, N. (2011), *Flemish foreign arms trade 2010*, Brussels: Flemish Peace Institute.
- ⁹ Proposal for a resolution from Messrs Ludwig Caluwé, Johan Verstreken, Ward Kennes, Matthias Diependaele <http://docs.vlaamsparlement.be/docs/stukken/2010-2011/g967-3.pdf>.
- ¹⁰ Peeters, K., response to an actual question from B. Caron to Minister-President K. Peeters, *Handelingen plenaire vergadering, zitting 2010-11* (Proceedings of the plenary meeting, session 2010-11), Flemish Parliament, 23 March 2011.
- ¹¹ Roegiers, J., request for explanation no. 1650 submitted to Minister-President K. Peeters, Proceedings of the Committee for Foreign Policies, European Affairs and International Cooperation, session 2010-11, Flemish Parliament, 29 March 2011.
- ¹² For a more detailed review of this trend towards a more transparent reporting method, see Duquet, N. (2010), *Flemish foreign trade in arms and dual-use items 2009*, Brussels: Flemish Peace Institute (pp. 24-25).
- ¹³ <http://iv.vlaanderen.be/wapenhandel>
- ¹⁴ Directive 2009/43/EC simplifying terms and conditions of transfers of defence-related products within the Community, Official Journal of the European Union L/146/1, 10 June 2009.
- ¹⁵ For more information on the contents of the Directive please see Flemish Peace Institute (2008), *The European defence package: towards a liberalization and harmonisation of the European defence market*, Brussels: Flemish Peace Institute.

The Flemish Peace Institute was founded by Act of the Flemish Parliament to serve as an independent institute for the purpose of conducting research on peace issues. The Peace Institute engages in scientific research, documents relevant information sources, and informs and advises the Flemish Parliament and the public at large on questions of peace.

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