

Flemish foreign arms trade 2016

The interpretation of the common assessment criteria for
arms exports by the Flemish government

This summary describes the main conclusions of recent analyses by the Flemish Peace Institute of the arms export control practices of the Flemish government in 2016.

The publications (in Dutch) are available in full text on www.vlaamsvredesinstituut.eu.

1 Size and character of the Flemish foreign arms trade in 2016

In 2016, the licensed value of Flemish arms exports increased to **120.7 million euro** (figure 1). However, the size of the Flemish foreign arms trade remains limited compared to the Walloon Region and neighbouring countries such as Germany, the UK, France and the Netherlands. The Flemish defence industry mainly produces and exports **components of military goods and high-tech products**. Approximately half of arms exports in 2016 consists of components of military aircraft. Components of military ground vehicles represent another 25% of the total value. Other exported goods are electronic equipment, specialised equipment for military training or for simulating military scenarios, imaging equipment and fire guidance systems.

Besides individual licenses, global and general licenses can also be used for the intra-EU trade in military equipment. After their legal implementation in 2013, global and general licenses are increasingly used in Flanders (figure 2). In 2016, the total effective value of trade in military equipment using **global licences** grew to 8.9 million euro. **General licences** are also increasingly used to transfer military goods: in 2016 transactions worth 63.6 million euro were completed. First, the general licence for transfers to governmental bodies of EU Member States was used for a total amount of 41 million euros. Second,

Figure 1: Licensed value of exports and transfers of military equipment by individual licences, 13-2016 (in million €)

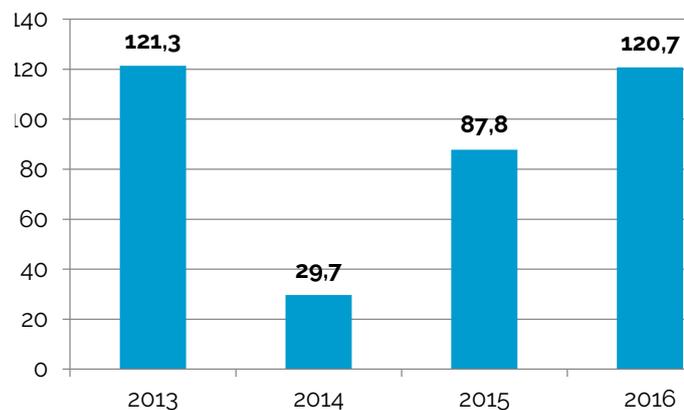
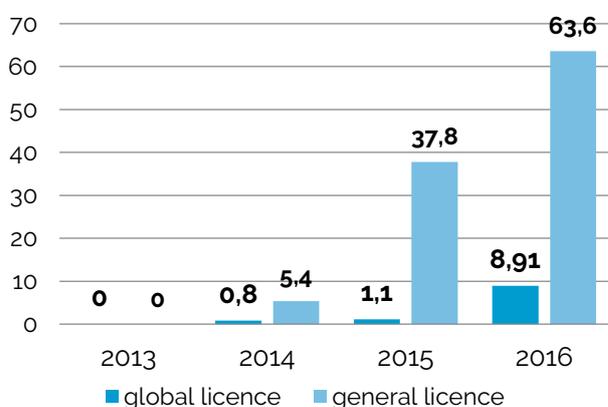


Figure 2: Actual use of global and general licenses, 2013-2016 (in million €)



transfers worth 21 million euros under general licence for intergovernmental cooperation programmes consists of transfers of components of military aircraft. These transfers probably refer to goods used in the production of the Airbus A400M transport aircraft. The Belgian government is a partner in this program and several Flemish companies are involved in the supply chain. As in previous years, the general licence for transfers to certified companies was not used by Flemish defence companies in 2016.

In 2016, the Flemish government **denied** five licenses for the export of military equipment, all of which had a country of end-use situated in the MENA-region (Middle-East and North Africa) (table 1).^a These denied licenses represent 3.6% of all individual licenses assessed by the Flemish government in 2016.

Table 1: Denied licenses for arms exports or transfers by the Flemish government in 2016

Consignee	Country of end-use	End-user	Product	Licensed value (in €)	Criteria
Saudi-Arabia	Saudi-Arabia	National Guard	Protective clothing for nuclear, biological and chemical warfare (ML7)	2.155.000	4, 6
Libya	Libya	Government of National Accord	Bullet-proof vests (ML13)	4.660.000	2, 3, 6, 7
Germany	United Arab Emirates	Armed forces	Parts and components for armoured ground vehicles and self-propelled artillery (ML6)	15.400	2, 4, 6, 7
Germany	United Arab Emirates	Armed forces		20.602	2, 4, 6, 7
Germany	United Arab Emirates	Armed forces		106.037	2, 4, 6, 7

2 The Flemish government's interpretation of the assessment criteria for arms exports

Every month the Flemish government reports on the licenses that were issued or denied. For each license, information is made available on the type of products, the type of consignee (armed forces, government, defence-industry, arms dealer, individual), country of destination, country of end-use (if different from country of destination), the type of end-user and the value of the license.

Since 2016 the Flemish government shares information on its interpretation of the assessment criteria in specific license applications when responding to written parliamentary questions. These parliamentary Q&A's **give a detailed description of the way in which the Flemish government assesses the criteria in light of the specific product, the country of end-use and the end-user**. Such information has been made available for 26 licenses, **both denied and issued licenses**. For 2016, this accounts for approximately 9% of all individual licenses.

The level of detail of information on how the criteria are interpreted in practice allows the identification of general principles of the government in its assessment of license applications. In this assessment process, the Flemish government takes into account the common criteria set out in Common Position 2008/944 of the European Council *defining common rules governing control of*

^a In 2016, the Flemish government also denied two licenses for temporary exports of fire guidance systems to Iraq and Azerbaijan. Also, a transit license was denied for the transit of pistols from Turkey to Gambia.

exports of military technology and equipment. These criteria are integrated in the Flemish Arms Trade Decree of 15 June 2012 and further elaborated with additional grounds for refusal grounds, e.g. with regard to human rights violations.^a Besides these common European criteria, the arms trade decree also lists six additional assessment criteria.^b

The information made public through the parliamentary Q&A allows us to analyse the scope of the assessment criteria (on which trade transactions the criteria are applied), the interpretation of the 'clear risk' element in the criteria by the Flemish government and the views of the Flemish government on the legitimacy of arms exports to countries involved in the conflict in Yemen. Below, we briefly discuss the main findings of our analysis of these parliamentary Q&A.

Flemish government applies assessment criteria to all arms trade transactions

The Flemish government applies the assessment criteria on all foreign trade transactions. As prescribed by Common Position 2008/944, it uses the criteria to assess licenses for **exports** of military goods to non-EU Member States. Moreover, the government chooses to apply the criteria in case of transfers to other EU Member States, and to assess the criteria in light of the last known country of end-use. If in case of an intra-EU transfer is known that the final country of end-use is non-European, the criteria will be evaluated on the situation in this latter country. **Abstraction is thus made of the preliminary intra-EU transfer of the goods**, even if the transfer concerns components for integration in another EU Member State.

The criteria are also used to assess licenses for **transit** of military goods over Flemish territory. While Common Position 2008/944 prescribes that the common criteria should equally be used to assess transit licenses, in practice two perspectives exist in Europe.^c Some European countries prioritize guaranteeing a safe and secure transport of the goods over their territory. Other governments, such as the Flemish government, see transit control as an extension of its arms export control policy. As a consequence, each license for transit of military goods is evaluated in light of the risk that the goods transited could be used for human rights violations, engagement in armed conflicts (internal or regional), etcetera.

Lastly, the Flemish government applies the assessment criteria to licenses for **temporary** transactions. Although the goods by definition return to Flanders after being used for demonstrations or repairs, the Flemish government chooses to make abstraction of the temporary character of the export.

^a See for more information: Cops, D., Duquet, N. & Gourdin, G. (2017), *Towards Europeanised arms export controls? Comparing control systems in EU Member States*. Brussels: Flemish Peace Institute, p. 127-130. This report can be downloaded at www.flemishpeaceinstitute.eu

^b More specifically, the Flemish governments needs to take the following element into account during the assessment of arms export licenses: (1) external interests of Belgium and Flanders, (2) respect for children's rights, (3), attitude towards capital punishment, (4) prevalence of gender related violence, (5) prevalence of armed violence, (6) presence of peacebuilding and reconciliation initiatives.

^c Van Heuverswyn, K. in collaboration with N. Duquet (2013), *Transit of strategic goods in Europe. A comparative analysis of policy on the transit of strategic goods in Belgium, France, Germany, the Netherlands and the United Kingdom*, Brussels: Flemish Peace Institute.

Flemish government applies a stricter interpretation of the assessment criteria of Common Position 2008/944

Our analysis of the interpretation of the assessment criteria in license applications indicates that the Flemish government applies a **stricter interpretation** of the criteria than set out in Common Position 2008/944.

First, the Flemish government opts for a **low level of risk-tolerance in case of human rights violations**. The Flemish arms trade decree contains an explicit ground for refusal in case of a clear risk that the goods might be used for grave violations of human rights. Moreover, the Flemish government in practice chooses to deny arms export licenses if the goods may be used *to facilitate human rights violations*. In the denied license for bullet-proof vests to the Libyan government of National Accord (worth 4.6 million euro) the Flemish government substantiates this denial by stating that *“a clear risk exists that the goods might facilitate grave violations of human rights or of international humanitarian law”*.^a Likewise, the Flemish government applies a precautionary approach in its interpretation of the criteria 3 (internal conflicts), 4 (regional tensions) and 7 (illegal diversion).

Second, the Flemish government **applies a broad scope in the judgment of ‘the end-user’**. This is for example the case in the denied licenses for Germany, with the armed forces of the United Arab Emirates as end-user. In assessing the risk of human rights and IHL violations, the Flemish government sees the grave violations of IHL in Yemen as a sufficient reason to assume that a clear risk exists that the goods exported to the armed forces of the countries involved in general might be used for IHL-violations. The same holds for a denied temporary export of fire guidance systems to the Iraqi Armed Forces. In this case the risk analysis was conducted on all parts of the armed forces, i.e. the army, the navy and the air force.

Thirdly, the Flemish government chooses to **fully apply the assessment criteria on exports and even on transfers of components of military products**. For example, in the case of the transfer of visualization screens to Germany for integration in armoured vehicles for the UAE armed forces, the criteria are assessed while taking into account the potential use of the armoured vehicles.

The Flemish government opts for a principled approach to arms exports

To summarize, the Flemish government chooses to apply a **principled and precautionary approach** to arms exports, by extending its assessment of the criteria beyond the direct causal link between the exported good and the risk of violation of the criteria. The Flemish government also applies this perspective to intra-EU transfers of components, and evaluates the criteria in light of the potential use of the complete weapon system in the final country of end-use. However, in **65% of intra-European licensed arms trade, the defence industry is the last known end-user** of Flemish defense related goods. In most licenses for intra-EU transfers, the final country of end-use is thus not known at the moment of evaluation of the license application by the Flemish government.

^a Bourgeois, G., antwoord op de schriftelijke vraag. 177 d.d. 9 februari 2017 door Tine Soens tot minister G. Bourgeois, *Schriftelijke vragen en antwoorden, zitting 2016-2017*, Vlaams Parlement, 3 april 2017. (Our translation.)

Flemish government's views on arms exports to the Yemen conflict

Arms transfers to countries involved in the Yemen conflict have caused worldwide controversy. Evidence of grave violations of international humanitarian law (IHL), mainly by the Saudi-led Coalition, and the major impact of the enduring conflict on Yemeni citizens (famine, outbreak of a cholera epidemic, etc.) triggered this controversy. Because of the absence of an UN or EU arms embargo, governments need to decide on the legitimacy of arms deliveries to these countries.

The Flemish government in this regard applies the following principles:

1. The Flemish government **denies all (temporary and definitive) trade in arms (and components) that could be used in the conflict**, if the end-use of these military goods is situated in one of the countries involved in the conflict. The Flemish government applies a broad perspective and

The Flemish government denies all (temporary and definitive) arms trade of goods that could potentially be used in the Yemen conflict

considers that **all transfers to armed forces in the conflict indicate a clear risk the goods might be used for human rights violations and violations of IHL**, even while most evidence of such violations were ascribed to air bombardments.^a

2. However, the Flemish government does not deny all licenses to these countries. In 2016, export licences to Saudi-Arabia, Qatar and Kuwait have been issued, **because the Flemish government assessed that the exported goods could not be used in the conflict or be illegally diverted**. The licences for Qatar and Kuwait dealt with the export of (parts of) shooting ranges for the National Guards. The license for export of (non-listed)^b optical weapon sights to Saudi-Arabia was issued because the Flemish government assessed that these weapon sights, which had a magnification of 4 times, could not withstand enduring military use. Moreover, a large amount of specialised military weapon sights is readily available in Saudi-Arabia, strongly reducing the risk of illegal diversion.^c

3. The arms trade decree stipulates the refusal of export of goods if a clear risk exists that these goods might be used in a regional armed conflict (criterion 4), but it also contains an exception clause to this ground for refusal. If the government assesses that the export responds to **legitimate security concerns** of allies and friendly countries, a license can be issued. In the context of the Yemen conflict, **the Flemish government makes clear that this exception clause does not apply to these countries**.

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^a UN Panel of Experts (2016), *Final report of the Panel of Experts on Yemen established pursuant to Security Council resolution 2140 (2014)*, Security Council, S/2016/73, http://www.un.org/ga/search/view_doc.asp?symbol=S/2016/73

^b As the magnification capacity was less than 9 and they were not especially designed for military use, these sights are not on the EU Military List. However, the Arms Trade Decree contains a catch-all clause, which allows the Flemish government to demand a license for non-listed goods, if these goods "can cause serious harm to persons or goods and that could be used as means of violence in an armed conflict".

^c Bourgeois, G., antwoord op de schriftelijke vraag nr. 22 d.d. 7 oktober 2016 door Tine Soens aan minister-president G. Bourgeois, *Schriftelijke vragen en antwoorden, zitting 2016-2017*, Vlaams Parlement, 2 december 2016, p. 2-3.