

# *Flemish Foreign Arms Trade 2013*

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# 1 *Why controlling the arms trade is important*

Arms are no ordinary commodities. The trade in arms, weapon systems and components poses obvious security issues, which is why it is controlled. Governments try to prevent the undesirable and illegal spread of arms on the one hand, while on the other hand safeguarding trade to destinations they see as legitimate.

Control measures have been developed for a wide range of conventional arms: firearms, ammunition, rocket launchers, military vehicles, combat helicopters, fighter aircraft and submarines, etc., and the components of these products. Trade in equipment that is less “military” at first glance - including protective garments, radar and communication equipment, screens that can be used for military purposes, night vision equipment and simulation equipment - is also subject to control.<sup>1</sup> Besides the trade in military equipment, there are controls on trade in ‘dual-use’ items. i.e. goods regularly used for civil purposes but with military applications as well. The control of dual-use products lies outside the scope of the present report.<sup>1</sup>

Foreign arms trade can consist of several types of transactions: import, export, transit and brokering. The various activities in the logistical chain of the arms trade are all controlled and each control has a specific goal and method. The control of exports aims to prevent undesirable foreign supply and proliferation, reflects foreign policy positions, and is designed to safeguard the country’s own military capacity vis-à-vis (potential) enemies.<sup>2</sup> The control of arms imports is primarily designed to safeguard public security in one’s own country.<sup>3</sup> Transit control and the control of brokering are primarily second-line measures designed to make export controls effective. The transit control aims essentially to limit the risk of diversion of the goods during transport: the goods must always reach the originally indicated destination.<sup>4</sup> Controls on the activities of brokers who act as intermediaries in transactions between producers, buyers or sellers are mainly designed to prevent the smuggling of arms or the violation of arms embargoes.<sup>5</sup>

When evaluating licence applications for the import, export and transit of military equipment, the nature of the products, the recipient country, the end-user and the proposed end-use of the goods are taken into account.<sup>6</sup> During the assessment of licence applications the risks are evaluated on a case-by-case basis.

The arms trade is regulated by international agreements, which are subsequently transposed into national policy and legislation to give these control measures practical effect.<sup>7</sup> In EU Member States, international control regimes provide the framework for controlling the arms trade. The Wassenaar Arrangement is the most important of these. Decisions on specific export cases are made by the competent national or sub-national governments. Under their licensing policy, the authorities make judgements in which international security, economic interests, and ethical ambitions all play a role.

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<sup>1</sup> In this report the terms “arms”, “military equipment” or “defence products” are used interchangeably.

In Belgium – as a result of political disputes over certain sensitive export cases in the past – the authority for controlling foreign arms trade conducted by companies in Flanders, Wallonia and Brussels, respectively, became a regional competence in 2003. Control of arms imports and exports made by the Belgian armed forces and the police remains a federal competence. The Federal Public Service (FPS) for Justice, meanwhile, is responsible for the control and regulation of brokering. The actual scrutiny and physical controls are the responsibility of the Belgian Customs (FPS Finance). The intelligence services also provide information about specific problematic transactions or individuals, while the FPS for Foreign Affairs can supply country-specific information.<sup>1</sup> Coordination and collaboration across various public services and across the various levels of government are vital, and regionalization constitutes a challenge for implementing a uniform Belgian foreign policy.<sup>8</sup>

In Flanders the import, export and transit of military equipment are regulated by a licensing and control policy based on the Flemish Arms Trade Act and the associated implementing order. The Strategic Goods Control Unit (SGCU) of the Flemish Department of Foreign Affairs oversees the administrative aspects of the control policy and issues licences. During the 2009-2014 coalition period, political responsibility for this work was given to the Minister-President, who had competence for foreign arms trade controls.

This annual report analyses the Government of Flanders' policy on foreign arms trade. As part of its tasks as defined in its Founding Act, the Flemish Peace Institute "provides advice to the Flemish Parliament on the annual report of the Government of Flanders to the Flemish Parliament as prescribed in the Flemish Parliament Act of 15 June 2012 on the import, export, transit and transfer of defence-related products, other materials especially intended for military use, law enforcement material, civil small arms, components and ammunition."<sup>9</sup> To prepare this advice, the Flemish Peace Institute analyses licensing policy each year on the basis of the information published by the Government of Flanders. Every six months the Government of Flanders sends its reports about licences to the Flemish Parliament, and monthly reports are published meanwhile on the Strategic Goods Control Unit's website.<sup>10</sup> Based on the information in these government reports, the Flemish Peace Institute has developed a database with data on all Flemish licences approved and denied for the import, export and transit of military goods, as published on the website of the SGCU, since this competence was regionalized. This database, in the form of an SPSS file, enables the Flemish Peace Institute to make comparisons and to recognize and analyse developments and trends in foreign trade in military equipment. Unless expressly stated otherwise, all figures in the present report have been taken from this database.<sup>11</sup>

In June 2012 new legislation entered into force in the Flemish Region: namely, the Flemish Arms Trade Act. The licensing policy was also overhauled. This undermined the comparability of the 2013 data with those of previous years. Because of such methodological constraints it is now impossible to track trends in the arms trade accurately, especially when it comes to the transfer of military equipment to other European countries and the import of firearms. Moreover, 2013 is a transition year and the reporting system on the use of general licences (see 3.4.) is still unclear. That said, other aspects of the Flemish foreign arms trade can still be analysed.

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<sup>1</sup> For the internal trade in, possession of and use of weapons, and for sub-aspects of these issues, competence rests with the communities, regions, provinces, FPS Justice and FPS Interior.

<sup>11</sup> As the 2013 semi-annual reports and the 2013 annual report of the Government of Flanders on the arms trade were not available at the time of writing, the analyses in this report are based on the monthly reports that the SGCU publishes on its website.

As background to the analysis, in the second chapter we will discuss major international and European developments in 2013. The third chapter sets out the main points of the legal framework and the various licensing procedures applying in Flanders, followed by an explanation of the practical modalities of the government's reporting system. The analysis of imports, exports and transit in chapters four, five and six constitutes the core of this annual report and is designed to cast a critical light on licensing policy. Chapter seven outlines the challenges for parliamentary control. The eighth, concluding chapter gives a brief overview of the Flemish Peace Institute's findings on the Government of Flanders' control policy in 2013.

## 2 International context and policy developments in 2013

The regulation of the arms trade constantly changes over time. Answers are sought, on several levels, to recognized problems and new challenges. In what follows we shall first discuss the main developments in the United Nations (UN) and the European Union (EU). Then we will examine the *status quo* in terms of arms embargoes, and the role that Belgium plays in the relevant international consultative and decision-making bodies.

### 2.1 The Arms Trade Treaty

When the General Assembly of the UN in New York adopted a text for the Arms Trade Treaty (ATT), it was an important international development for the control of the arms trade. With this treaty, the states that support it are seeking to agree minimum requirements for a worldwide control policy on conventional arms transactions. Stricter controls should prevent arms deliveries from threatening international peace and security, as well as reducing the risk of violations of human rights or of international humanitarian law. On 2 April 2013 the Member States of the United Nations adopted the Arms Trade Treaty with a large majority (154 countries in favour, three against and 23 abstentions). Top arms exporting countries such as the United States, the United Kingdom, France and Germany voted in favour of the text. Some other important arms exporting countries such as Russia and China abstained during the vote, and Iran, North Korea and Syria voted against adoption of the text. As a consequence the treaty is not a universal treaty, which may potentially undermine its impact. Yet this treaty for the regulation of the arms trade may be considered historic because it is the first time that worldwide standards for controlling the conventional arms trade have been set out in very clear terms. The landmark of 50 ratifications – which are needed for the treaty to become legally binding – was reached by the end of October 2014. The Arms Trade Treaty has entered into force on 24 December 2014. Its impact on Flemish control policy will probably be rather limited, given that the terms of this policy - as laid down by the EU and implemented in Flanders - are generally more far-reaching than those of the Arms Trade Treaty.

### 2.2 European developments aimed at harmonizing the arms export policies of the Member States

European developments have an impact on the control of the foreign arms trade in Belgium. In the framework of the EU's Common Foreign and Security Policy (CFSP), agreements have been reached over the past two decades for a more uniform policy to govern Member States' arms exports. However, the control of the trade in military equipment remains a national competence. Some EU Member States attach particular importance to the principle of sovereignty in the context of security and defence policy, and aim to safeguard their national interests as far as possible. European regulatory initiatives reflect a dual concern: on the one hand, to safeguard the *status quo* of the existing international order and international security; and on the other, to avoid EU internal

market mechanisms being disrupted by divergent export control policies among different Member States.

With the instruments at its disposal, the EU has created a unique common framework of reference for its Member States when controlling the trade in firearms and military equipment with states both inside and outside the Union.<sup>11</sup> A first important initiative was the introduction of a Code of Conduct for EU arms exports, in 1998, that called for an assessment against eight criteria. In 2008 the Code of Conduct was upgraded to a Common Position, but the criteria largely remained the same.<sup>1</sup> More recently, European Union Directive 2009/43/EC, simplifying terms and conditions of transfers of defence-related products within the Community, has obliged EU Member States to adapt their export control policy.<sup>12</sup> The Member States must also take into account Council Directive 91/477/EEC on the control of the acquisition and possession of weapons – amended in 2008 by Directive 2008/51/EC in 2008 – and Regulation (EU) No 258/2012 implementing Article 10 of the UN Protocol against the illicit manufacturing of and trafficking in firearms.<sup>13</sup> This European framework shapes the control of the arms trade in Belgium, and is further reflected in recent amendments to the applicable legislation (see 3.1).

In 2013 no new regulations were developed in the European Union for the control of arms exports. Instead the emphasis was on achieving a uniform implementation of the existing tools. The evaluation made of the Council Common Position 2008/944/CFSP of 8 December 2008 (defining common rules governing control of exports of military technology and equipment), for example, has not thus far led to a revision of this document. The Council was mainly aiming to achieve a more coherent implementation of the existing Council Common Position. It intends to review the User's Guide and to improve information sharing among the Member States, but did not consider it necessary to amend the provisions and criteria of the actual Position.<sup>14</sup>

## 2.3 Arms embargoes in 2013

The UN Security Council, the Council of the European Union, the Forum for Security Co-operation of the Organization for Security and Co-operation in Europe (OSCE), or individual countries can institute arms embargoes to respond to situations of concern in specific countries. Arms embargoes are punitive measures that target certain (warring) parties – states and/or non-state actors. By this means, (part of) the international community marks its disapproval or seeks to limit the inflow of weapons in a certain conflict. The exact modalities of arms embargoes differ greatly, as well as the types of products and recipients they target. Compliance with embargoes is important for export control, but the monitoring of compliance also requires efforts in terms of transit control. In 2013 there were 14 UN arms embargoes in force as well as 21 EU arms embargoes<sup>15</sup> and one imposed by the OSCE.<sup>15</sup> International developments involving embargoes are relevant for the control policy of the various competent Belgian authorities. Belgium has committed itself to implementing all UN Security Council, Council of the European Union and OSCE embargoes. This is not just a task for the licensing authorities, as the customs and intelligence services can also play a role.

The EU can impose arms embargoes under its Common Foreign and Security Policy (CFSP). A large proportion of EU arms embargoes arise from the transposition of UN arms embargoes. For

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<sup>1</sup> The EU Common List of military equipment, to which these agreements apply, is based on the Munitions List of the Wassenaar Arrangement.

<sup>15</sup> This includes stringent binding embargoes of a legal nature as well as measures that are of a more politically binding nature.



example, in response to the escalating violence and increasing violations of human rights in the Central African Republic, the UN Security Council adopted on 5 December 2013 an arms embargo on arms deliveries to non-state actors in the country under Resolution 2127. On 23 December 2013 the EU Council adopted Council Decision 2013/798/CFSP concerning restrictive measures against the Central African Republic to implement this embargo in the European Union. The embargo prohibits the supply of “arms and related material of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned”, to non-state actors in the Central African Republic.<sup>16</sup> In recent years, however, the EU has also adopted arms embargoes of its own: for example the arms embargo against China imposed in 1989 which is still in force today, 25 years later, or the arms embargo on Belarus from 2011. Both of these embargoes were adopted in view of human rights violations.

The most recent arms embargo which the EU imposed of its own accord concerned arms deliveries to recipients in Syria. In response to the violent repression by the Syrian regime of peaceful protests, the EU announced an arms embargo on the country in May 2011 (Council Decision 2011/273/CFSP). Following the escalation of violence in Syria, however, this embargo came under severe pressure. France and the United Kingdom (UK) were in favour of arms deliveries to certain rebel groups, and in Spring 2013 this led to a loosening of the embargo. France and the UK, however, did not consider that the rules had been sufficiently eased. Given that the arms embargo and a series of other restrictive measures against the Syrian regime were scheduled to expire in June 2013 and that consensus was required to extend these measures, representatives of the French and British governments were able to exert significant pressure on the other Member States. By the end of May 2013, a compromise was reached whereby the arms embargo was largely lifted while other restrictions remained in place.<sup>17</sup>

Arms embargoes are powerful EU instruments as they are binding on all Member States. The shifts described above in the EU’s arms embargo on Syria, however, show that their foundation is relatively weak. All EU Member States must agree to proclaim, extend or amend an embargo, and if one EU Member State does not agree it can block the entire process. The resulting compromises can undermine efficient and effective collective action. A good illustration of this quandary is the European position regarding arms exports to Egypt. In August 2013 political violence strongly increased in Egypt. A hastily convened meeting of the EU Council of Foreign Ministers gave rise to a Council conclusion stating that all export licences for material that could facilitate internal repression would be suspended; new licence applications would be carefully examined in the light of Common Position 2008/944/CFSP; and security cooperation with Egypt must be reviewed. For lack of consensus it was impossible to adopt a strong, formal and detailed European arms embargo, and the decision merely contained vague principles of restraint which, moreover, were only politically binding.<sup>18</sup>

## 2.4 The representation of Belgium and Flanders on the international stage

Belgium plays an active role in the development of international export control regimes. In the negotiating bodies of the United Nations, Belgium – like other EU Member States – has always been in favour of the Arms Trade Treaty. Belgium is also a member of the relevant international control regimes for strategic goods. The Wassenaar Arrangement (WA) is the most important regime for controlling the trade in weapons and military equipment. Essentially, agreements

arrived at in the WA on which goods must be controlled are transposed into the common military lists of the European Union. The EU Member States sit at the WA negotiating table as sovereign states and take part as such in the discussions and decision-making procedures. Belgium also plays an active role in the EU's Conventional Arms Exports Working Group (COARM). During the evaluation of Common Position 2008/944/CFSP, Belgium focused on developing mechanisms for a better sharing of information on diversion (criterion 7).<sup>19</sup>

Given that the competence for export control is largely the responsibility of the Regions, and the "in foro interno, in foro externo" principle holds good in the Belgian federal state, agreements have been made between the various services involved that are enshrined in a formal cooperation agreement. A large part of these agreements relates to the exchange of information, between the competent authorities as well as with international partners. Agreements on participation in international discussion and decision-making bodies are also included, and spokespersons to represent Belgium have been designated. A spokesperson either from the Flemish or Walloon Region, or from the federal state, is identified depending on the control regime and the level of negotiation. The spokesperson always holds a consultation meeting beforehand to determine a common position, and is responsible for reporting and the circulation of relevant documents. The other entities can act as assessors.<sup>20</sup> Two consultation forums are especially important for the control of the trade of military equipment: COARM for coordination within the European Union, and the Wassenaar Arrangement group that updates the control lists for trade in military equipment.

### 3 *The regulatory framework in Flanders*

After the regionalization of competence in 2003, the various competent authorities at first went on applying the same regulatory framework for controlling the foreign arms trade: namely the Belgian Act of 5 August 1991 on the import, export and transit of, and combating illegal trafficking of arms, ammunition and equipment specifically intended for military use or law enforcement and related technology (as last amended on 26 March 2003), and the Royal Decree of 8 March 1993 regulating the import, export and transit of arms, ammunition and equipment specifically intended for military use or law enforcement and related technology. However, there were differences in the implementation of this legal framework. The exports made by companies in the Walloon and Flemish Regions and the Brussels-Capital Region, respectively, and the arms sales by the Belgian defence authorities, each involve very different types of products and specific recipient countries, and this has been reflected in their respective policies.<sup>21</sup>

The legislative provisions of 1991 ceased to satisfy the requirements of the above-mentioned European regulatory measures, and were revised in 2012 by the various competent authorities. In Flanders the Government of Flanders aimed to develop a regulatory framework to transpose international and European agreements into a (sub)national control policy, thus “developing a coherent and all-encompassing set of ground rules for an efficient control of the arms trade, taking ethical and economic parameters into account as much as possible”.<sup>22</sup> The ratification of the draft Flemish Arms Trade Act created a new and comprehensive legal framework, but at the same time its coverage was substantially reduced - trade in several types of goods formerly needing a licence is now no longer controlled. The authorities of the Brussels-Capital Region largely followed the Flemish draft proposal. The Walloon Region chose largely to adopt the existing federal legislation, but the procedures for applications were revised and procedures for transfers to other EU Member States simplified in line with Regulation 258/2012. On 14 December 2012 the existing Belgian federal act of 1991 controlling trade by the armed forces and the police was slightly amended by a Royal Decree amending the Royal Decree of 8 March regulating the import, export and transit of arms, ammunition and equipment specifically intended for military use or law enforcement and related technology. As a result of all this, the new legislative steps taken by Belgium to implement the EU’s harmonization policy gave rise to divergent legislation in the various entities of the Belgian federation.<sup>23</sup>

2013 was the first year in which the licensing policy of the Flemish Region was regulated entirely by the Flemish Arms Trade Act of 15 June 2012 on the import, export and transit of defence-related items, other equipment specifically intended for military use, law enforcement equipment, civil small arms, components and ammunition, and by the related implementing order of 2012. Since the act was enforced we have observed a clear reduction in the prior control of export transactions involving military equipment. This liberalization is the consequence of a shift in the control modalities and licences, and the phasing out of the catch-all clause (see 3.4). These aspects will also be discussed in this chapter.

## 3.1 The Flemish Arms Trade Act

The Flemish Arms Trade Act of 15 June 2012 and the related implementing order provide the legal basis for the control of the foreign arms trade in Flanders. For a better understanding, it is worth briefly discussing the scope of the legislation and explaining the difference between controls on intra-Community and on extra-Community trade.

The act holds good for the Flemish region and applies to (legal) persons wishing to import, export or carry out the transit of strategic goods to or from countries outside of the EU, or to transfer them to or from other EU Member States.<sup>i</sup> The goods to be controlled – and to which the provisions of the act apply – are subdivided into two groups: (1) defence items listed<sup>ii</sup> on the Common Military List of the European Union, supplemented with a list of law enforcement equipment, and (2) the so-called “civil small arms”.<sup>iii</sup> Further, goods not belonging to these categories may, for security reasons, need a licence on an *ad hoc* basis under a catch-all clause (see 3.4).<sup>iv</sup>

The direct cause of the adaptation of existing legislation in Flanders was the implementation of a European (de-)regulation initiative aiming to relax controls on trade in military equipment within the European customs union. The Flemish Arms Trade Act implements this European directive and therefore distinguishes between trade in military equipment with countries within the EU (known as transfer), and outside the EU (import, export and transit). Transfer is carried out under a relaxed regime with general, global or individual licences. In certain cases under this new regime, traders no longer need to apply for a license before each transaction but instead can use licences published by the authorities. Moreover, the catch-all clause cannot be invoked for transfers: the EU directives state that the security risks of intra-EU trade are not such as to justify interfering in the functioning of the internal market by imposing such an extra licensing requirement.<sup>v</sup>

This directive does not apply to trade with countries outside the EU, where the authorities must always check the appropriateness of an export prior to the transaction, and a catch-all clause can be applied to make goods subject to licensing. The Flemish authorities have simplified the administrative process for trade in military equipment with countries outside the EU by making use - besides applications for individual transactions - of combined licences whereby several recipients in one and the same country can be supplied with military equipment under a single licence application.

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<sup>i</sup> Within the European Union there is free movement of goods. When these goods cross the Union's internal borders this is no longer considered an import or export, but a transmission or 'transfer' to and from other Member States.

<sup>ii</sup> Including a subcategory of sensitive goods included in the UN Register for Conventional Arms.

<sup>iii</sup> These are firearms that are imported, exported or transferred for uses other than military or paramilitary use, except for automatic firearms and firearms with a calibre classified as military by the Permanent International Commission for Portable Firearms Testing.

<sup>iv</sup> This licensing requirement can be invoked under Article 8, header 2 of the Flemish Arms Trade Act for products which when “used alone or in combination with one another or with other goods, substances or organisms, can inflict serious harm to persons or goods and that can be used as a means of violence in an armed conflict or a similar situation of violence”. For further information on the amended policy, see 5.1. The “disappearance” of the catch-all clause: a significant proportion of arms exports no longer requires a licence.

<sup>v</sup> Consideration 14 of Directive 2009/43/EC: “This Directive should not prejudice the application of provisions necessary on grounds of public policy or public security. In the light of the nature and features of defence-related products, grounds of public policy, such as the safety of transport, the safety of storage, the risk of diversion and the prevention of crime, are of particular relevance for the purposes of this Directive.”

The Flemish Arms Trade Act also contains provisions on the suspension, revocation and limitation of licences, the exclusion of applicants and the right to appeal, as well provisions on monitoring and penalties in order to provide a suitable response to irregularities and violations. The government's control policy is not limited to issuing permits and penalties: all holders of licences must provide information to the SGCU on the use made of licences granted and on actual exports, including transactions where prior licensing is not required. The final element in a licence-based control policy is the verification of the use of these licences.

## 3.2 The licensing process

Cross-border transactions<sup>I</sup> in military equipment and technology<sup>II</sup> falling under the scope of the Flemish Arms Trade Act must be covered by a licence. However not everyone can apply for licences for foreign arms trade. Prior to applying for these licences for the import, export and transit or transfer of military equipment, or to making use of general licences, individuals must obtain an authorization or accreditation as an arms trader or have an accredited company. In the first instance the authorized or accredited importer, exporter or transit agent will check whether the goods to be transported require a licence. They may request advice on this from the competent services. Then they must verify whether the recipient of the goods is located in or outside the EU.

The new legislative framework has given rise to a diversified licensing policy. Its designers were strongly committed to reducing the administrative burden involved in trade in military equipment, both for businesses and for the licensing authorities. Besides the already existing individual licences, companies can now also make use of general licences, or apply for global, combined, or multiple licences for certain transactions. The diagram below shows the various types of licences depending on the nature of the goods and their destination.

	Intra-EU	Extra-EU
<b>Military equipment</b>	<ul style="list-style-type: none"> <li>- General licence</li> <li>- Global licence</li> <li>- Individual licence</li> </ul>	<ul style="list-style-type: none"> <li>- Individual licence</li> <li>- Combined licence</li> </ul>
<b>Civil small arms</b>	<ul style="list-style-type: none"> <li>- Individual licence</li> <li>- Multiple licence</li> <li>- Open licence</li> </ul>	<ul style="list-style-type: none"> <li>- Individual licence</li> </ul>

<sup>I</sup> Under the BLEU agreements all trade with Luxembourg is exempted from the licensing requirement. Netherlands and Luxembourg licences are recognized in Belgium because of the Benelux Customs Union and no transit licences are required in this case.

<sup>II</sup> This may also be "intangible technology". Export control covers both goods, and the technology enabling the production of the goods under control. When this information is divulged in communication by e-mail or by fax, this is called an intangible technology transfer. These "transactions" also fall under the control regime.

The Government of Flanders has published 'general licences' for certain well-defined *transfers of military equipment* to specific destinations within the EU. Exporters need not apply for licences for these transactions prior to the transfer. All the products on the Common Military List of the European Union can be transferred to EU armed forces under a general licence, for demonstrations or for repairs. The transfer of military equipment to accredited companies is also possible under a general licence, except for weapons (systems) that are listed in the UN Register of Conventional Arms such as tanks, combat aircraft or heavy artillery. Users of general licences must notify the authorities beforehand that they are using these licences, must duly register information about their activities, and must report to the authorities on their transactions after the event.

A prior licence application is required for transactions within the EU for which no general licence has been published. Users can apply for a 'global licence' for the transfer of one or more specific products to (several) EU Member States, under which transactions are covered by the licence up to a certain ceiling. An 'individual licence' can also be issued for the transfer of military equipment, authorizing a transaction up to a specific maximum value of a specific product to a specific recipient.

The *import, export and transit of military equipment to countries outside of the EU* generally requires an individual licence. A 'combined licence' may be requested for the export of a number of previously determined products to different recipients in one and the same country outside the EU.

A specific licensing system applies to *cross-border transactions in civil small arms* – i.e. firearms that are not for military or paramilitary purposes. Aside from individual licences, relaxed controls are in place for holders of a European firearms pass or for accredited arms traders, who can use 'multiple licences' for temporary transfers or exports and 'open licences' for transfers on which they inform the authorities.

Aside from the general licence, which can be freely used while respecting the conditions set out in it, all licences involve an application procedure. The individuals applying for licences must provide technical information on the goods as well as all possible information on the end-user and the end-use of the goods. They can document this with an international import certificate, a statement by the end-user, or a copy of the import licence.

The administrative aspects of the licence application are first checked, after which it is evaluated by policymakers. This political assessment balances security aspects, economic interests and ethical considerations against each other. Specific evaluation criteria are used in the process, designed to limit risks. The eight European criteria of the Common Position are used as a minimum threshold: (1) respect for international obligations and commitments; (2) respect for human rights in the country of final destination; (3) avoid provoking or prolonging armed conflicts; (4) no support for aggression by the recipient country against other countries; (5) guarantee national security and defence interests and those of friendly and allied countries; (6) evaluate the attitude of the recipient country to terrorism and non-proliferation; (7) evaluate the risk of diversion to undesirable end-use, and (8) take into account the technical and economic capacity of the recipient country and the level of their military expenditure in relation to their social expenditure. Six specific "Flemish" criteria have been added to this: (a) the external interests of the Flemish Region and Belgium; (b) the use of child soldiers in the armed forces; (c) the end-user country's attitude to capital punishment; (e) the prevalence of firearm violence; (f) the presence of gender-related violence and (g) the presence of peace building and reconciliation processes.

The applicant must justify the use made of the issued licences by providing information on subsequent transactions to the Government of Flanders, more specifically to the SGCU. Depending on the type of licence this is done annually, every six months, or after the licence has expired.

### 3.3 Control of end-use: the Achilles' heel of Flemish export control policy

The most important criterion when judging whether the export of military equipment is opportune is the proposed end-use. The inclusion of evaluation criteria in the Flemish Arms Trade Act aims to provide a framework for the political evaluation of a specific licence application for specific exports. The recipient country is important in this context, as well as the specific capacity of the recipient and the listed end-user. In Flanders the government uses the following categories of recipients and end-users in its reports to Parliament: government, armed forces, defence-related industry, industry, trader, private individual, international organization and other. The inclusion of a catch-all clause in the Flemish Arms Trade Act was inspired *inter alia* by concerns about the end-use of equipment specifically intended for military use. It was invoked for products that when “used alone or in combination with one another or with other goods, substances or organisms, can inflict serious harm to persons or goods and that can be used as a means of violence in an armed conflict or a similar situation of violence” (Art. 2. 2°). In sum: when evaluating a licence for the export of military equipment the risk must be evaluated on a case-by-case basis, and guarantees must be requested about the end-use.

The evaluation of a licence application based on the effective end-use of the exported products is, however, no easy feat in Flanders. Most Flemish companies that operate in the defence market supply components to foreign defence companies that incorporate these components into larger weapon systems. A large majority of the export licences for military equipment thus list the (defence-related) industry as a recipient and/or end-user. The indicated end-use can then be “integration” into a larger system.<sup>24</sup> The finished arms system may, however, have a different end-use in a military or security context.<sup>25</sup> Thus the control of end-use of weapon systems incorporating components made in Flanders poses specific challenges. Serial production, the long-term contracts that are typical of the defence industry, and deliveries to the international parent company sometimes complicate matters for Flemish companies when it comes to keeping an overview of the end-use of their products. On the other hand, technical specifications provide an insight into the end-use, and companies know their industry and customer portfolio well enough. As a result they commonly possess further information on the end-user and the ultimate end-use of the goods after their integration into the arms system.<sup>26</sup> If so, they must also pass on this information to the authorities.

The Government of Flanders, which regulates the transaction, has three different options. First, it can try to obtain information beforehand on ultimate end-use and include this information when evaluating of the application. This is why the Flemish Arms Trade Act stipulates that the applicant should give the government full information on the end-use and the end-user of the goods. Secondly, it can include restrictions in the licence as regards the re-export of the supplied goods. For example in Article 19, section 3 the Flemish Arms Trade Act provides the option of requesting a statement from the end-user in specific cases whereby he commits himself to “request the authorization of the Government of Flanders in case of a possible re-export”. Thirdly, it can transfer full responsibility for the export of military equipment to the competent authorities of the country

where the systems integrator is based. In this case, however, the risk remains that the objectives of Flanders' own export control policy will be undermined.

### 3.3.1 The restrictive arms export policy vis-à-vis the Israeli government: an example of thorough-going control of end-use

Arms exports to Israel are a very sensitive matter in Flanders. Since September 2006 successive governments of Flanders have imposed a *de facto* arms embargo on the country: the Flemish Government denies licence applications for the export of military materials with an end-use in Israel<sup>i</sup>. This does not mean, however, that no arms export licences for products destined for Israel have been issued in recent years. One of the most important Flemish defence-related companies has been owned by a large Israeli defence company for over ten years.<sup>27</sup> In past years the Government of Flanders has issued dozens of export licences for Flemish defence products for the Israeli defence-related industry, in order to facilitate trade relations between the Flemish subsidiary and the Israeli parent company, on condition that these products will be re-exported to an approved third country.<sup>28</sup> This arms export policy for Israel is in line with the various resolutions adopted in the Flemish parliament in recent years.<sup>29</sup>

In practice this means that this Flemish defence company must always list the ultimate end-user in its licence applications for arms exports to its parent company in Israel. Table 1 provides an overview of the arms exports for Israel that have been authorized by the Government of Flanders since 2007. These are all licences for products which in first instance are bound for the (defence-related) industry in Israel. With few exceptions, they always list an end-user in a third country: namely the armed forces, or other government agencies, of fifteen countries including the United States, Turkey, Indonesia, Croatia, Colombia and even Belgium (see table 1)<sup>ii</sup>. This practice shows that Flemish defence-related companies can often ascertain the ultimate end-user of their exported products – when this information is needed to obtain a licence.

One striking fact emerging from Table 1 is that the value of licensed arms exports to Israel in 2013 - totalling 3.7 million euro - was the highest ever since the competence for foreign arms trade was regionalized in summer 2003. This is mainly the consequence of an export licence for military cameras (ML15.b) for the Israeli defence industry. The relevant report by the Government of Flanders does not, however, list an end-user for these defence products. After checking with the SGCU, we learned that a Belgian company returned these products to the original Israeli exporter and owner of these goods after a foreign customer cancelled the order.<sup>30</sup>

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<sup>i</sup> In October 2014 the current Flemish Minister-President confirmed, in response to a parliamentary question, that the restrictive arms export policy applying to Israel has remained unchanged.

<sup>ii</sup> Besides these definitive licences, several temporary licences are also granted every year for arms exports to Israel. In 2013 there were 15 licences in all, almost always relating to fire control systems (ML5) or imaging equipment (ML15). These licences were always for exports to the Israeli defence industry, usually without listing an end-user.



*Table 1: Overview of licensed arms exports to the (defence-related) industry in Israel from the Flemish Region, September 2003-2013*

Year	Value	Products and end-user
<b>Sept-Dec 2003</b>	0	/
<b>2004</b>	0	/
<b>2005</b>	0	/
<b>2006</b>	251.237€	- Weapons sights for firearms (ML1.d) for the Croatian government - Imaging equipment (ML15.d) for the U.S. Government
<b>2007</b>	€751,499	- Canons (ML2.a) for the Belgian armed forces - Imaging equipment (ML15) for the armed forces of Canada, Croatia, Romania, Slovenia and the United States - Electronics (ML25.i) and imaging equipment (ML15.d) for the Colombian armed forces
<b>2008</b>	€1,129,078	- Weapons sights for firearms (ML1.d) for the Croatian government - Imaging equipment (ML15) for the armed forces of Greece, Portugal, Romania, Slovenia and Turkey - Ground vehicle components (ML6.a) for the Turkish armed forces - Electronics (ML25.i) and imaging equipment (ML15.d) for the Colombian armed forces
<b>2009</b>	€ 491.014	- Machine guns (ML1.a) for the Slovenian armed forces - Weapons sights (ML1.d) for the Croatian armed forces - Ground vehicle components (ML6.a) for the Slovenian armed forces - Imaging equipment (ML15) for the armed forces of Canada, FYR Macedonia, Turkey and the United States - Law enforcement equipment (ML26) without mention of the end-user
<b>2010</b>	€672,870	- Imaging equipment (ML15) for the governments of Bulgaria and Austria and the Canadian armed forces - Fire control systems (ML5.b) for the defence-related industry of the United States
<b>2011</b>	26.400€	- Fire control systems (ML5.b) for the Romanian armed forces
<b>2012</b>	€440,559	- Weapons sights (ML1.d) for the Italian armed forces - Fire control systems (ML5.b) for the Austrian armed forces and the government of the FYR of Macedonia - Imaging equipment (ML15.b) for the Argentinean armed forces
<b>2013</b>	€3,674,894	- Fire control systems (ML5.b) for the government of the FYR of Macedonia - Ground vehicle components (ML6.a) for the Indonesian armed forces - Imaging equipment (ML15.b) for which the end-user is not listed

### 3.3.2 How a high level of unknown end-use can undermine national export control policy

An export control policy focuses on international security aspects, economic interests and ethical aspirations.<sup>31</sup> The motives for control, however, mainly relate to security issues and ethical aspects: the final end-use of arms (systems) has direct security implications and an impact on people's lives. Concern about the illegitimate use of arms is manifested through the denial of export licence applications, the enforcement of embargoes, and 'on hold' measures. It is through such processes that Government of Flanders gives shape to its own policy. Refusals by the Government of Flanders to licence arms exports to certain recipient countries, recipients or end-users may be undermined by the high level of unknown end-use of the Flemish licensed arms exports. The specific profile of the Flemish defence-related industry – mainly supplying other defence companies – complicates the control of the final end-use of the goods. The level of effectively unknown end-use in past years has ranged from 60% to 78% of all licensed trade flows. Military equipment made in Flanders is, in effect, used in combat situations at the end of the logistics chain: for instance by NATO allies for operations in Afghanistan, or for attacking ground targets in Libya in 2011. In recent years, however, weapon systems containing Flemish components have also been used by the armed forces of other countries. To give a few examples, the Filipino army uses armoured vehicles with Flemish caterpillar tracks in its fight against the rebel factions in the country; the Indian army uses tanks with Flemish fire control systems for guarding the border with Pakistan; while pilots of the United Arab Emirates air force are trained for combat missions in training aircraft that incorporate Flemish screens.<sup>32</sup>

When the country of end-use is an ally, it is worth considering a lighter control. Belgium has nothing to fear, after all, from its allies - either those in the EU or those to which it is tied in the collective Atlantic alliance of NATO. On the contrary, arms deliveries to allies seem self-evident when we are developing a collective defence with them. The assumption that these allies pursue a similar foreign policy on the re-export of military equipment, however, is difficult to maintain. The US authorities' export control policy - for example - is characterized by a very far-reaching control on end-use, while the USA's policy orientation on foreign arms trade is different from that of the Government of Flanders, e.g. on Israel. Although Common Position 2008/944/CFSP was drafted with a view to harmonizing EU export control policies, there are significant divergences in the policies of the Member States which continue to be made on a sovereign national basis. The various policy steps taken by EU Member States in response to the events of the Arab Spring painfully highlighted this.<sup>33</sup> When the Government of Flanders systematically transfers the control of end-use to the governments of other countries, without including limitations in the licences, this policy practice undermines the normative framework set out in the Flemish Arms Trade Act. As a result, it is quite probable that in recent years Flemish military products ended up in countries for which Flemish licences were previously denied or to which an 'on hold' policy applies.

To counter the undermining of its arms export policy, the Government of Flanders has incorporated in the Flemish Arms Trade Act the option of imposing restrictions regarding the re-export of Flemish military products.<sup>1</sup> This same provision was applied in 2013 for arms exports to Saudi Arabia. In response to the parliamentary debate in the Flemish Parliament's Committee for

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<sup>1</sup> If the country of end-use is not an EU or NATO Member State, the end-user must make a statement committing himself to requesting the permission of the Government of Flanders in the event of re-export if the authorities believe that:

1° the end-use or end-user could give rise to concern in terms of an undesirable change of the goods' purpose or destination, or undesirable re-export;

2° the export control policy and the effectiveness of the export control system of the recipient country or the country of end-use may give rise to concern.

Foreign Policy, during which the risk of undesirable re-export was pointed out, the then competent minister announced that additional steps would be taken on arms exports to Saudi Arabia in July 2013. First, an end-user statement would be included for every export or transit to Saudi Arabia, committing the recipient and/or end-user not to re-export these goods without permission of the Government of Flanders, and stipulating that the goods could not be exported to Syria or used in the Syrian conflict. Second, further steps would be taken on the export of Flemish components for integration in larger weapon systems destined for other countries and with unknown end-use. Besides evaluating the export control policy of the initial recipient country, the government would also examine and take account of the integrator's customer portfolio. If a clear link could be established between the integrator and a Saudi end-user for a specific project, then the export would either be denied or re-export options would be restricted.<sup>34</sup> This proactive policy for limiting the risk of undesirable re-export, if effectively applied, is a step in the right direction. However, the risk of undesirable re-export is not limited solely to arms exports to Saudi Arabia.

## 3.4 The impact on the control regime of liberalization and the easing of administrative procedures

The implementation of the Flemish Arms Trade Act has had far-reaching consequences for the control of foreign arms trade in the Flemish Region. First, a significant proportion of exports that previously required a licence no longer require one (see 3.4.1). In addition, control over a sizeable part of transfers of defence products within the EU has shifted from *a priori* to *a posteriori* (see 3.4.2).

### 3.4.1 The review of the catch-all clause: a significant share of arms exports no longer require a licence

In recent years, a significant share of licensed Flemish arms exports consisted of products that were not listed in the Common Military List of the European Union. Goods whose technical properties fall just outside the definitions and technical specifications of the military list, or which have certain properties making them strategically important, can entail a security risk. Until the Flemish Arms Trade Act came into force, the Government of Flanders required a licence for the export of these “free products” based on the catch-all clause as defined in the Royal Decree of 8 March regulating the import, export and transit of arms, ammunition and equipment specifically intended for military use or law enforcement and related technology. The aim of a catch-all clause is to impose a licensing requirement for goods that are not on the military list, and which in principle are not subject to control, in order to reduce the risk of undesirable exports of these products.<sup>35</sup> The Royal Decree of 1993 stated that an export licence is required for the export of “other equipment used in support for military actions”, but the government neglected to define what the “support of military actions” actually entailed. Successive Flemish Governments have had difficulties interpreting this catch-all clause as a result. In its annual report of 2006, the Government of Flanders gave more details of the interpretation problem, explaining that the decisive factor is not the capacity or character of the recipient or the end-user, but what this individual intends to do with the products.

This implies that the assessment of an export under the catch-all clause must always be done on a case-by-case basis.<sup>36</sup>

In the past ten years, exports of certain products in the Flemish Region have been systematically controlled on the basis of the catch-all clause. More than three-quarters of the licensed catch-all exports involved visualization screens, and as a result, a separate Military List category was created for these screens in reports by the Government of Flanders. These products are manufactured by a single Flemish technology multinational: not a defence company, but a company that explicitly caters to the defence market with part of its extensive product range.<sup>I</sup> The company's defence customers include some of the largest American and European defence companies as well as smaller defence integrators. Direct deliveries to armed forces are significantly less frequent. The company's products requiring a licence in the past ten years may be sub-divided into four groups. First, the company sells screens specifically developed for military purposes to other companies. These are mainly screens capable of operating in extreme conditions, which generally meet military standards (MIL-STD), are often used for C4ISR,<sup>II</sup> and are integrated in all kinds of military vehicles, vessels and ground systems. Secondly, the company also sells avionics screens that are installed in military and civilian aircraft. Thirdly, it sells all kinds of video walls and the related control systems and software that can be used in operational, tactical and strategic military command centres. Fourthly, the company also produces and exports simulation equipment including various applications such as air traffic simulation, ship's bridge simulation and flight simulation. The company's flight simulation systems in particular are also used for military purposes.<sup>III</sup> The licensable production of this company thus covered rather a wide range of items for which the company had to seek a licence whenever it exported to defence customers (both companies and governments).<sup>37</sup>

Besides the export of visualization screens, over the last 10 years lighting systems for military airfields, electronics, projection equipment, telecommunication equipment, software, building materials, fibrous and filamentary materials, and unspecified vehicles, vessels and/or aircraft and/or their parts have all been subjected to licensing under the catch-all clause. An analysis of the end-use of catch-all exports shows that these products were used in military campaigns, e.g. in Afghanistan and Libya.<sup>38</sup> A limited number of cases, however, involved products not clearly linked to support for military operations. For example, in 2006 a transit licence was issued for prefabricated buildings and construction materials for building housing blocks and blocks of washrooms to be used by the Ministry of Defence of Sierra Leone.<sup>39</sup> This case was, however, the exception and not the rule in the Flemish application of the catch-all licensing requirement. In recent years the Flemish Region has refused only a limited number of licences for catch-all exports.<sup>IV</sup>

There was much room for interpretation in the catch-all clause of the Royal Decree of 1993, and the competent ministers complained of consequent problems. Already in 2006, the government announced that while developing its own Flemish Arms Trade Act and the related implementing

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<sup>I</sup> According to the company, its products are integrated worldwide in more than 250 defence programmes.

<sup>II</sup> This is a military term meaning "Command, Control, Communications, Computers, Intelligence, Surveillance & Reconnaissance".

<sup>III</sup> According to the company, about one third of all military pilots worldwide are trained using its products.

<sup>IV</sup> From September 2013 to May 2014, seven applications out of more than 1,200 licence applications were denied. These included the denied export of telecommunications equipment to Tanzania, visualization screens to Austria, software to China, electronics and telecommunications equipment to Israel and unspecified products to Iran.

order, it would define a number of clear criteria for implementing the catch-all clause.<sup>40</sup> The existing catch-all clause and Flemish catch-all licensing practices also came under strong criticism from the business world. Agoria, the federation that defends the interests of the technological industry, pointed out during hearings in Flemish Parliament in 2012 that the current catch-all practice created uncertainty for applicants and customers and a competitive disadvantage for Flemish companies. Agoria further considered that the catch-call clause was invoked too frequently and that it should rather be defined as an exceptional case.<sup>41</sup>

The adoption and implementation of the Flemish Arms Trade Act in 2012 brought an amendment of the catch-all clause with far-reaching consequences for export control policy in Flanders. First, in line with Directive 2009/43/EC which simplified terms and conditions for transfers of defence-related products within the Community, it is no longer possible to invoke a catch-all licensing requirement for the transfer of products within the European Union. It is however possible to invoke a catch-all clause when it is known that the end-use of specific goods lies outside the European Union. Secondly, the formulation of the catch-all clause is far more restrictive in the Flemish Arms Trade Act: a licence is only required for the export of “products, used alone or in combination with one another or with other goods, substances or organisms, that can inflict serious harm to persons or goods and that can be used as a means of violence in an armed conflict or a similar situation of violence”. In this definition the emphasis is now on the nature of the products, rather than on their end-use,<sup>42</sup> which should provide added clarity. On its website the Government of Flanders (SGCU) has published a guideline for interpreting the catch-all clause that aims to ensure its consistent and transparent application.<sup>43</sup> In the first instance, companies themselves are asked to consider whether the products for export are deemed to be of a sensitive nature. These companies may then request written confirmation of whether their products fall within the scope of the catch-all clause. In this case the products are subjected to a technical evaluation to check, based on the interpretation guideline, whether the products fulfil the legal stipulations for catch-all treatment.<sup>44</sup>

The revised formulation of the catch-all clause, and the modified policy whereby the evaluation rests first and foremost with companies themselves, have resulted in a significant liberalization of the trade in strategically sensitive goods as well as significantly reducing the opportunities for control. In April 2014, the then competent minister stated that only one transaction had been subjected to a licensing requirement based on the catch-all clause in the 18 months since the Flemish Arms Trade Act entered into force.<sup>45</sup>

### 3.4.2 The shift from prior to *a posteriori* control of transfers

Export control aims to prevent arms trade with (potential) enemies while facilitating the trade with military allies. In the European Union, Directive 2009/43/EC on transfers of defence-related products provides for the use of general licences for arms trade within the EU. With this administrative simplification, the European Commission intended to encourage intra-Community transfers of military equipment and to stimulate the development of a European defence industry. The publication of general licences by the government of a Member State gives every company in the territory of that country – or of a competent Region – the option of using the licence subject to fulfilling a number of specific conditions. For such transfers, the exporters no longer need to apply for a government licence, but instead can rely on the published general licence which legitimizes

these transactions. They must however notify the authorities that they are using this licence and subsequently report to the competent authorities about how they used it.

The Flemish Arms Trade Act provides for five different types of general licences. These were published under an implementing order. They include general licences for transfers:

- to the armed forces of other EU Member States.
- in the context of demonstrations, evaluations or exhibitions
- with a view to the maintenance or repair of the goods
- in the framework of an intergovernmental cooperation programme between EU Member States
- to accredited persons or companies.<sup>I</sup>

This signifies that the government does not check the end-use for these types of transfers beforehand. In an implementing order appended to the Flemish Arms Trade Act, the Government of Flanders states that the first four general licences relate to all the goods on the Common Military List of the European Union. For the fifth general licence (transfers to an accredited recipient) the decision was made to issue a general licence for the majority of the goods on the Common Military List. Thus companies must only apply for a licence prior to the transfer of “sensitive goods”<sup>II</sup> to accredited individuals or companies; transfers of all other products on the military list to accredited individuals or companies can be made based on the general licence.

The easing of trade in military equipment within the EU has had a significant impact on the regulatory system. While transactions under a general licence are still regulated, the control modalities have shifted from a prior control on specific deliveries to an *a posteriori* control on transfers. After completing a specific number of deliveries, a company making use of a general licence must register and must supply data on all its deliveries to the Flemish authorities,. The government no longer weighs the pros and cons of end-use for intra-Community transactions prior to the transfer; the companies themselves are now responsible for doing this. That said, the government of another EU Member State is obliged to check and evaluate any (re-)export of these goods to a country outside the EU, based on the criteria of Common Position 2008/944/CFSP.

## 3.5 The government’s reporting to the Flemish Parliament

After competence for controlling foreign arms trade was regionalized in 2003, the three Belgian regional governments and the federal government reported to their respective parliaments on their policy for controlling the foreign arms trade under the Act of 1991. The provisions in this law on reporting to parliament were inspired by the findings of a parliamentary committee of inquiry, which concluded in 1989 that the control regime was failing on several levels.<sup>46</sup> Parliamentary control was strengthened in the subsequent new legislation and regulations. Systematic oversight of arms trade policy was facilitated by making reporting mandatory on licences issued for foreign

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<sup>I</sup> An accredited individual is an individual who has received accreditation from an EU Member State stating that he is reliable, and capable *inter alia* of respecting export restrictions on the defence products he transfers from another Member State under licence.

<sup>II</sup> “Sensitive goods” are to be taken as meaning all products on the UN Register of Conventional Weapons, including the optional categories of small and light weapons.

arms trade. However, the manner in which the reporting was done guaranteed the confidential and sensitive nature of the information.

In recent years there has been a noticeable trend towards greater transparency. The Flemish Region, in particular, took the lead in this. Since 2005, the Government of Flanders has no longer reported on an aggregated level, i.e. by recipient country, but has supplied a number of specific details for every licence application.<sup>47</sup> This practice is also enshrined in large part in the Flemish Arms Trade Act. This Act of the Flemish Parliament stipulates that the Government of Flanders must submit a report every six months on the according of exemptions and on all licences issued or denied for transfers, imports, exports and transit, as well as an annual report on the implementation of the act. In addition, monthly overviews of licences are published on the website of the SGCU - something that is not required under the Flemish Arms Trade Act. The following details are provided in the reports for every exemption and every licence issued or denied, except for the general licences:<sup>I</sup>

- the nature of the goods<sup>II</sup>
- the value of the licence application or exemption<sup>III</sup>
- the recipient country
- the category of the recipient(s)
- the category of the end-user(s) (if they are known and are not the same as the recipient)
- the country of end-use (if different from the recipient country).

Regarding general licences, in its annual report to the Flemish Parliament the Government of Flanders must provide an overview for each licence of the number of individuals who have used it and of the total value in euros of the transactions carried out, broken down by the recipient Member State, the category of the recipients and the category of the defence products.<sup>48</sup> To date, no information has been made publicly available on control policy for the use of general licences.<sup>IV</sup>

The Flemish Arms Trade Act – like its predecessor, the federal legislation – takes into account the sensitive and confidential nature of information on the arms trade. A provision has been included that “everything will be done to ensure that no information shall be shared which can cause damage to the individuals involved” (Art. 50 §4).

Besides information about licences issued and denied, the annual report must also contain data on imports, exports and transit on the European and global level, an overview of international and European initiatives and embargoes, and possible amendments to regulations and procedures in the Flemish Region.

Since the Flemish Arms Trade Act came into force in October 2012, the Government of Flanders has changed its reporting format to parliament - compared with previous years - on foreign trade licence applications issued and denied. Firstly, licences for intra-Community trade (transfer to/from

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<sup>I</sup> These provisions relating to transparency in the new Flemish Arms Trade Act apply to individual licences as well as to global licences (intra-EU) and combined licences (outside the EU).

<sup>II</sup> This classification according to the nature of the goods is based on the classification of the Common Military List of the European Union, supplemented with a few Flemish categories. The most recent version of the Common Military List of the European Union is provided in Appendix 3 to this report.

<sup>III</sup> This value does not necessarily coincide with the value of the actual exports. For instance, sometimes licences are not used or not completely “used up”.

<sup>IV</sup> Since the annual report about the Flemish foreign arms trade for 2013 was not available at the time of writing, the analyses in this report are based on the published monthly reports as checked on 30 October 2014: see. <http://www.vlaanderen.be/int/verslagen>

EU Member States) and licences for extra-Community trade (imports, exports and transit from/to third countries) are discussed in two separate sections of the report. Secondly, from that point onwards, the reports also provide information on temporary licences issued and denied (e.g. those given in connection with a demonstration of defence products at an exhibition, or for repairs), and on licences granted under the Council's "firearms" directive 91/477.<sup>1</sup>

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<sup>1</sup> This licence system applies to the transfer of firearms within the EU, with the exception of automatic firearms and firearms with a calibre that has been classified as military.



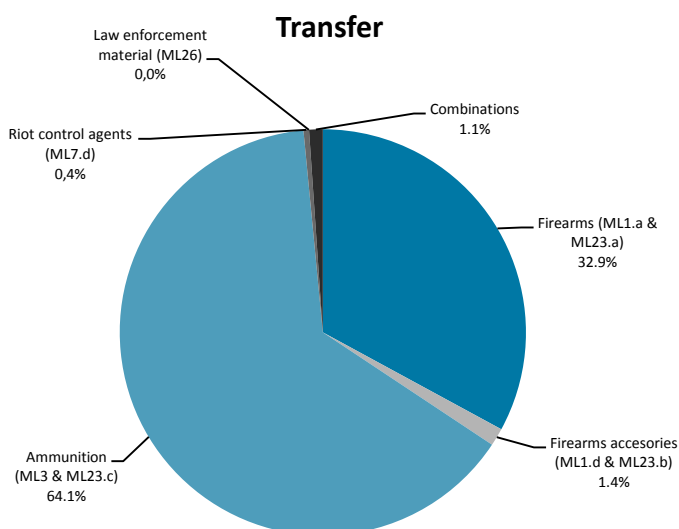
## 4 Imports and transfers to the Flemish Region

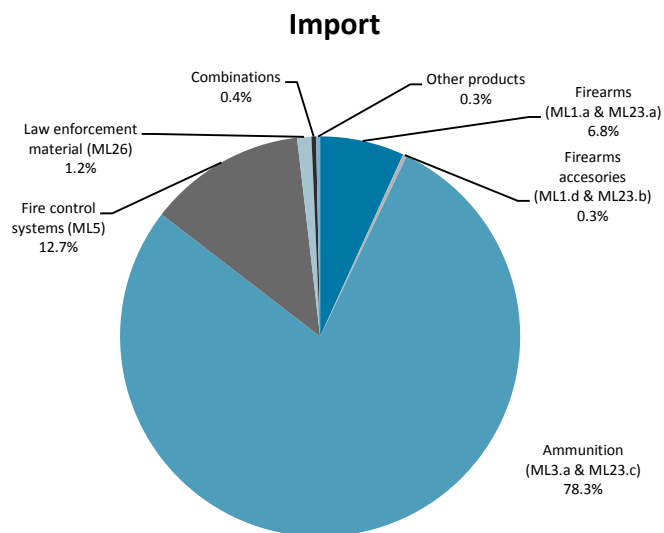
### 4.1 Licensed imports and transfers mainly consist of firearms and ammunition

In 2013 the Government of Flanders issued a total of 507 licences for the transfer or import of defence products to the Flemish Region. These included 450 licences for transfers from other EU Member States of products for a value of 19,578,853 euro, and 56 import licences for imports from countries outside the EU to the value of 4,900,431 euro. A temporary import licence was also approved for military electronics worth 10 million euro from the United States, destined for the Flemish defence-related industry. No applications were denied in 2013 for a licence to import civilian small arms or defence-related products.

Below we will examine the characteristics of licensed transfers and imports to the Flemish Region in more detail. Based on the following figures, we can deduce that in 2013 the authorities chiefly issued licences for the import and transfer of ammunitions and firearms, which is in line with the experience of previous years.<sup>49</sup> These products accounted for 97% of the licensed transfers and 85% of the licensed imports to Flanders. Aside from firearms and ammunition, the authorities in 2013 also issued licences for the import of Israeli and South African fire control systems for the Flemish defence-related industry; German and Swiss law enforcement equipment for a trader; accessories for firearms such as weapons sights for traders and the defence-related industry; and French materials for riot control for a Flemish trader who works as a government contractor.

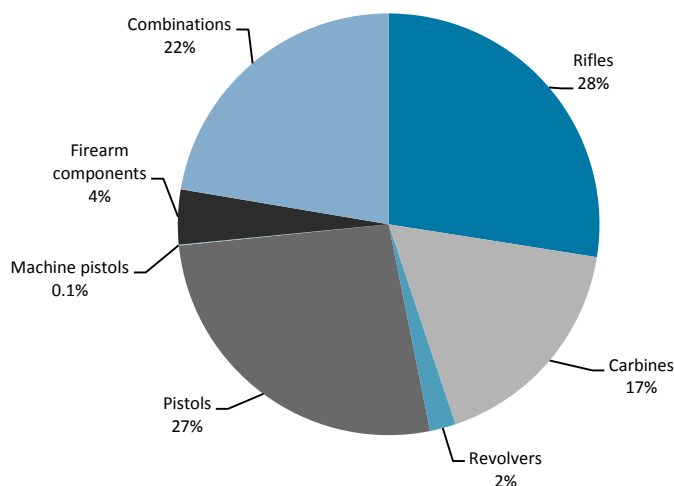
*Figure 1: Product classification of licensed imports and transfers to the Flemish Region, as a percentage of the value of licences issued, 2013*





Overall, more than 400 licences were issued for the import or transfer of firearms to the Flemish Region in 2013. The total value of the licences was 6.8 million euro. They were mainly sought by traders wishing to import relatively large quantities of firearms in the context of their professional activities, and private individuals who generally apply for licences for a rather limited number of firearms. Imports in Flanders mainly consist of rifles, pistols and carbines (see figure 2). The main countries of origin were Germany, Italy, Austria, France and Spain. The Flemish Arms Trade Act distinguishes between civil small arms and military equipment (including firearms) in terms of regulation, so that different procedures apply for foreign trade in these products. Reports by the Government of Flanders on licences issued and denied do not, however, distinguish between civil small arms and firearms for (para)military use, which are considered military equipment.

*Figure 2: Nature of the licensed imports and transfers of firearms to the Flemish Region, as a percentage of the value of licences issued, 2013*



The licensed value of ammunition transferred and imported in 2013 was 15.2 million euro. Such licences are almost always requested by traders. Private individuals who wish to purchase ammunition mainly do this in their own country. The imported ammunition mainly comes from

Germany, France, Switzerland and the United States. It is worth noting that just three licences made up a total value of 9.8 million euro.

Since 2005 Flanders has seen a strong increase in the value of licensed imports and transfers of firearms and ammunition. This is remarkable given that the arms legislation was amended in 2006 and the conditions for possessing a firearm became substantially more stringent.<sup>50</sup> At first glance, the licensed imports and transfers of firearms and ammunition totalling 22 million euro seem to have spectacularly increased compared with previous years. As things stand, however, it is impossible to make a reliable comparison between the figures for 2013 and the figures for the previous years, because under the Flemish Arms Trade Act in October 2012 the Government of Flanders also reports on licences issued under the system of the European “firearms” Directive 91/477. In contrast to temporary licences - for example - the government does not, however, place these licences in a separate section of the monthly reports.

## 4.2 The loophole in traceability of imported firearms was eliminated in 2013

The Flemish Arms Trade Act of 8 June 2006 distinguishes three categories of arms: prohibited arms<sup>i</sup>, arms that require a licence, and arms that are freely available.<sup>ii</sup> When imported, these firearms - a limited number of exceptions aside<sup>iii</sup> - always require a licence.<sup>51</sup> Owners of freely available arms, unlike those requiring a licence, are not required to register their weapons. Consequently they are no longer traceable after import. A number of firearms with “historical, folkloric and decorative” value were on the freely available list, which also included firearms manufactured before 1950 but for which ammunition could still easily be obtained. This list drew criticism because such arms pose a security risk: they allow private individuals or criminals to obtain a functional firearm without a licence and without registering these arms in the Central Weapons Register. Some types of freely available weapons thus became very interesting for certain criminals. In recent years, the police, both in Belgium and abroad, have come across this type of firearm in criminal circles. In the Netherlands someone was even killed with such a weapon.<sup>52</sup>

In the wake of the deadly shooting in Liège in December 2011, the federal government in early March 2012 decided to step up the fight against the illegal arms trade. One of the measures it took was to abolish the supplementary list of freely available historical, folkloric or decorative weapons.<sup>53</sup> The abolition of the list, which was amended under a Royal Decree, entered into force on 25 May 2013. Consequently, from that date, a licence is required to possess such a weapon.<sup>iv</sup>

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<sup>i</sup> Prohibited firearms for example include arms that were “exclusively designed for a military use”, such as automatic firearms. In principle private individuals cannot own prohibited firearms. Consequently these arms cannot be imported. The Flemish Arms Trade Act however makes an exception for accredited arms collectors and private museums.

<sup>ii</sup> All firearms that have not been explicitly classified as prohibited or freely available firearms are considered to require a licence.

<sup>iii</sup> The Flemish Arms Trade Act stipulates that the Government of Flanders can establish a list of freely available civil firearms, components and ammunitions for which no licence is required because they do not pose a direct threat to the public order or public security (Article 30, header 2). These exemptions are listed in Annex 4 of the implementing order to the Act. They include alarm pistols and firearms definitively deactivated for shooting.

<sup>iv</sup> The scope of this decision does not cover deactivated firearms, firearms that use black powder (except for modern replicas), arms used by historical and folkloric societies for processions, historical reconstructions and archery festivals, and non-firearms.

Owners of these weapons were given one year's grace to register their weapons (free of charge)<sup>1</sup>. With this decision, the federal government aimed to close the loophole in the regulations on possession of firearms. By the same token the black hole in terms of the registration and traceability of imported weapons of a historical, folkloric or decorative nature has been closed. The government is concerned, however, that many owners of such weapons have not registered their weapons. As a result, the number of illegally held firearms in Belgium has gone up sharply in one fell swoop.

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<sup>1</sup> In anticipation of the final decision by the competent authorities (governors) the owners were issued a temporary licence for possession when they registered their arms with the local police.

## 5 Exports and transfers from the Flemish Region

In 2013 the SGCU of the Government of Flanders issued 100 licences for the transfer of military equipment to other EU Member States and 52 licences for the export of military equipment to countries not belonging to the European Union.<sup>i</sup> These licences represented transactions to the value of 121.3 million euro. About two thirds of these licensed exports were bound for other EU Member States (84.9 million euro). The SGCU denied a total of five licence applications for transfers/exports. In this section we will examine the licensed and denied transfers and exports of military equipment from Flanders in more detail.

The problem of unknown end-use, the review of the catch-all clause, and the shift from prior to *post hoc* control of arms transfers within the EU (see Chapter 3) have made it difficult to draw up a comprehensive analysis with comparisons over time. The only exports about which significant conclusions can be drawn are exports to countries outside the EU. Below we will use the licensing policy from 2007-2012 as a reference-point to illustrate the share of transactions that used to be controlled, but which are now no longer controlled or only *a posteriori*. The analysis will show that the implementation of the Flemish Arms Trade Act has had a significant impact on the control system, and on reporting, for four fifths of the exports of military equipment that previously needed a licence.

### 5.1 The “disappearance” of the catch-all clause

In 2013 not a single licence was issued under the catch-all clause. This is quite remarkable as such trade flows had accounted for a significant share of the Flemish licensed arms exports over several years.<sup>54</sup> To reliably judge how far controls under the Flemish control regime have been modified by implementation of the new catch-all clause, we must break down licensed arms exports from the period before implementation of the Flemish Arms Trade Act by their destination (intra-Community transfers and exports to countries outside the EU, respectively<sup>ii</sup>), and by the nature of the goods: on the one hand goods and technology listed in the European Union Common Military List (ML1 through ML22), and on the other hand goods and technology that were licensed on the basis of the Belgian catch-all clause (ML24 and ML25).<sup>iii</sup> This break-down is shown in figure 3.

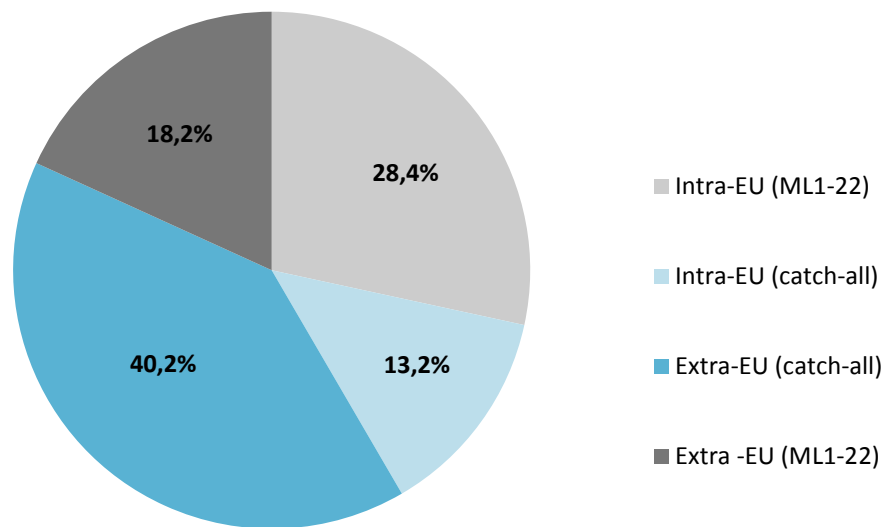
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<sup>i</sup> In 2013 the SGCU issued an additional 26 temporary licences for the transfer or export of military equipment from Flanders. Four temporary export licence applications were also denied. The scope of this report does not include an analysis of these temporary licences.

<sup>ii</sup> This division only takes into account the initial recipient country.

<sup>iii</sup> To ensure the most exact classification possible, the authors chose to include in this analysis only licences relating to goods listed in the government's reports as ML1 to ML22 (Common Military List of the European Union) and as ML24 and ML25 (catch-all). Licences relating to ML23 (additional list of firearms and ammunition) and ML26 (law enforcement equipment) were not included in this analysis. Licences covering products in several ML categories were also not included.

*Figure 3: Distribution of licensed arms exports by intra-Community and extra-Community destinations, ML 1-22 and catch-all, from 2007 to September 2012*



We can see from figure 3 that catch-all exports accounted for 53% of the licensed arms exports from Flanders in the years prior to the implementation of the new Flemish Arms Trade Act. Some 13% of all arms exports previously licensed are no longer relevant because of the provision in Directive 2009/43/EC which states that no catch-all licensing requirement may be imposed for intra-Community transfers. The new policy whereby not a single catch-all license was imposed in 2013 for exports to recipients outside the EU means that some 40% of all exports of products with a military end-use, previously requiring such a licence, have also dropped out of the picture. Some of these exports involved products previously classified in the catch-all product categories (ML24-25), but now included in the categories of the military list (ML1-22).<sup>55</sup> It is however unclear how many products this applies to and what their nature is.

In practice, the new catch-all policy is mainly likely to lead to written confirmations that goods do not require a licence.<sup>56</sup> Given that just one company carried out three quarters of all Flemish catch-all exports in the period before implementation of the new Flemish Arms Trade Act, we are forced to conclude that the almost complete disappearance of the catch-all licensing obligation primarily affects this specific Flemish company, whose exports are largely free from licensing under the new legislation.

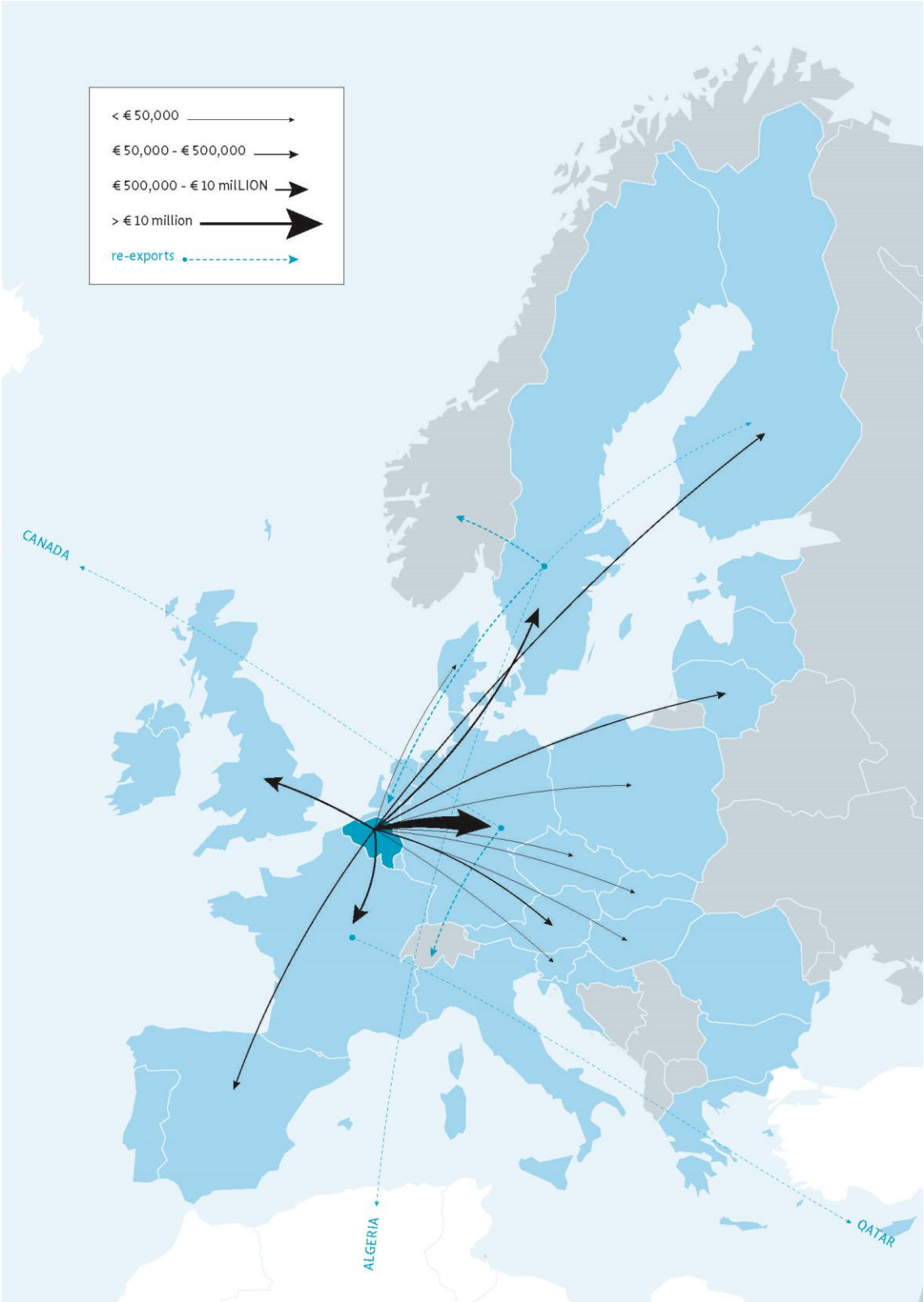
## 5.2 A limited view of intra-Community transfers in 2013

Intra-Community transfers of products listed on the Common Military List of the European Union accounted for 28% of the total value of foreign arms trade from 2007-2012. Today these transactions are largely carried out under general licences. The companies in question must, however, annually submit information on them to the competent service of the Government of Flanders. This implies not only a certain amount of delay in control by the government, but also a delay in reporting to parliament on the use of these general licences and – *a fortiori* – on the transfer of military equipment from Flanders to recipients in other EU Member States. Currently there are no data available for 2013. As a result we can only give a partial picture of intra-Community transfers.

Companies must apply for a global or individual licence prior to export for all transactions not falling under the comprehensive general licences. In 2013 a total of 100 licences were issued for the transfer of military equipment to other EU Member States. These licensed transactions had a combined value of 84.9 million euro. They mainly concerned the transfer of products such as military electronics and military training equipment to Germany (66.1 million euro). Licences were also issued for the transfer of military equipment to the United Kingdom (8.5 million euro), France (6.4 million euro) and Sweden (2.6 million euro). The monthly reports do not state whether these are individual or global licences.

A licence must be applied for prior to the transfer when the known end-use of military equipment for a recipient in the EU is outside of the EU. Licences for the transfer of defence products to another EU Member State whose country of end-use is outside of the EU rarely occur in Flanders. In 2013 only five such licences were issued for transactions to the amount of 184,000 euro, for end-use in Algeria, Canada, Norway, Qatar and Switzerland. These transactions were however considered intra-Community trade.

Map: Transfer of Flemish military equipment within the EU under individual and/or global licences in 2013

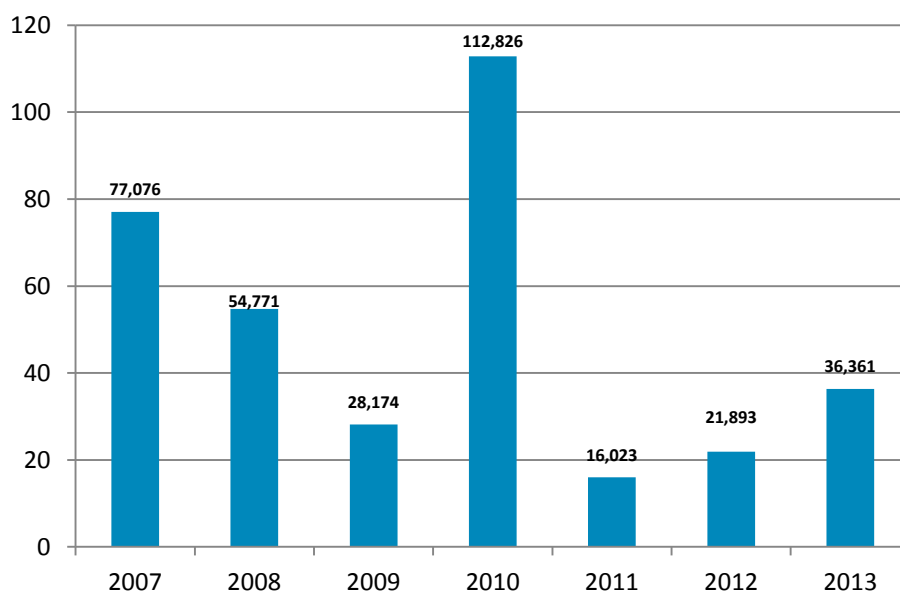




## 5.3 Exports to countries outside the EU

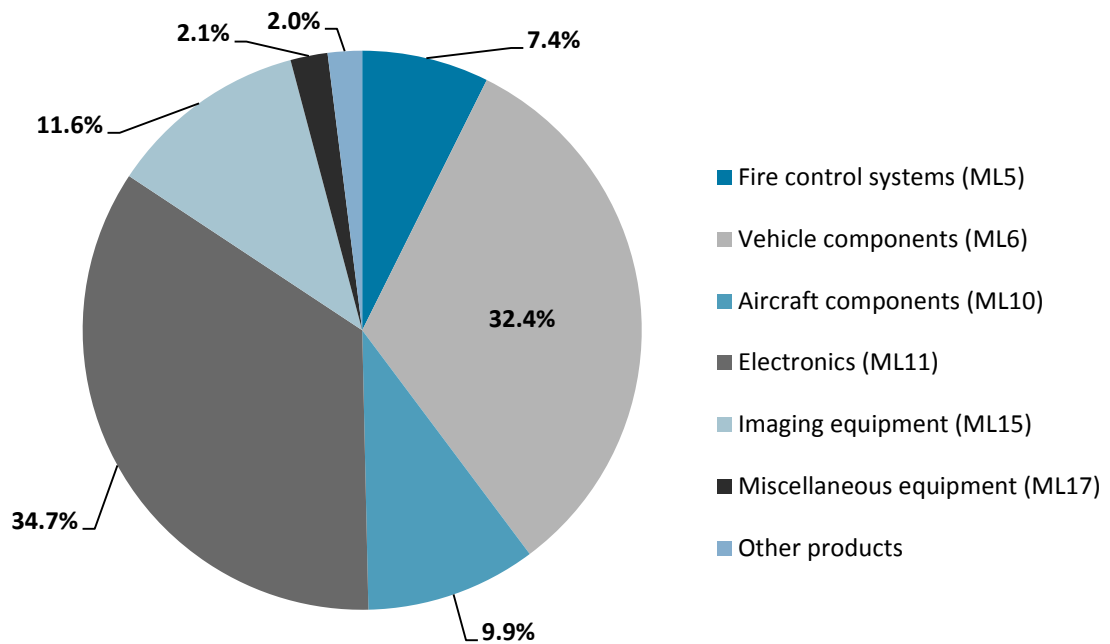
As things stand, we can only offer a reliable and detailed analysis of extra-Community exports of military equipment. From 2007 to September 2012 these exports accounted for about one fifth (18.2%) of all licensed arms exports (see figure 3). In 2013 the Government of Flanders issued 50 licences for extra-Community exports of military equipment to the value of 36.4 million euro. The monthly reports do not state whether these were individual or global licences. Figure 4 shows that the value of licensed extra-Community arms exports from the Flemish Region varies strongly from year to year.

*Figure 4: Trends in value of licensed extra-Community arms exports (ML1-23, ML26) from the Flemish Region (in million €), 2007-2013*



In 2013, exports of military equipment licensed by the Flemish Region mainly consisted of military electronics (ML11 – 12.6 million euro) and ground vehicle components (ML6 – 11.8 million euro). All exports of military electronics were destined for the defence-related industry in the United States. Exports of ground vehicle components were mainly directed to the armed forces and industry in the United States. Other recipients included the industry in Indonesia (with the armed forces as end-user), the defence-related industry in Turkey (with the armed forces as end-user) and the defence-related industry in Israel (with the Indonesian armed forces as end-user). In 2013, in addition to export licences for military electronics and ground vehicle components, licences were also issued for the extra-Community export of imaging cameras and image intensifier equipment (ML15 - 4.2 million euro), aircraft components (ML10 - 3.6 million euro) and fire control systems (ML5 - 2.6 million euro). The value of extra-Community exports of other types of military equipment was rather limited. They included, among others, i firearms and/or accessories for firearms (ML1), mobile repair units for maintaining military equipment (ML17), and military production equipment (ML18). Licences were also issued for intangible technology transfers.<sup>57</sup>

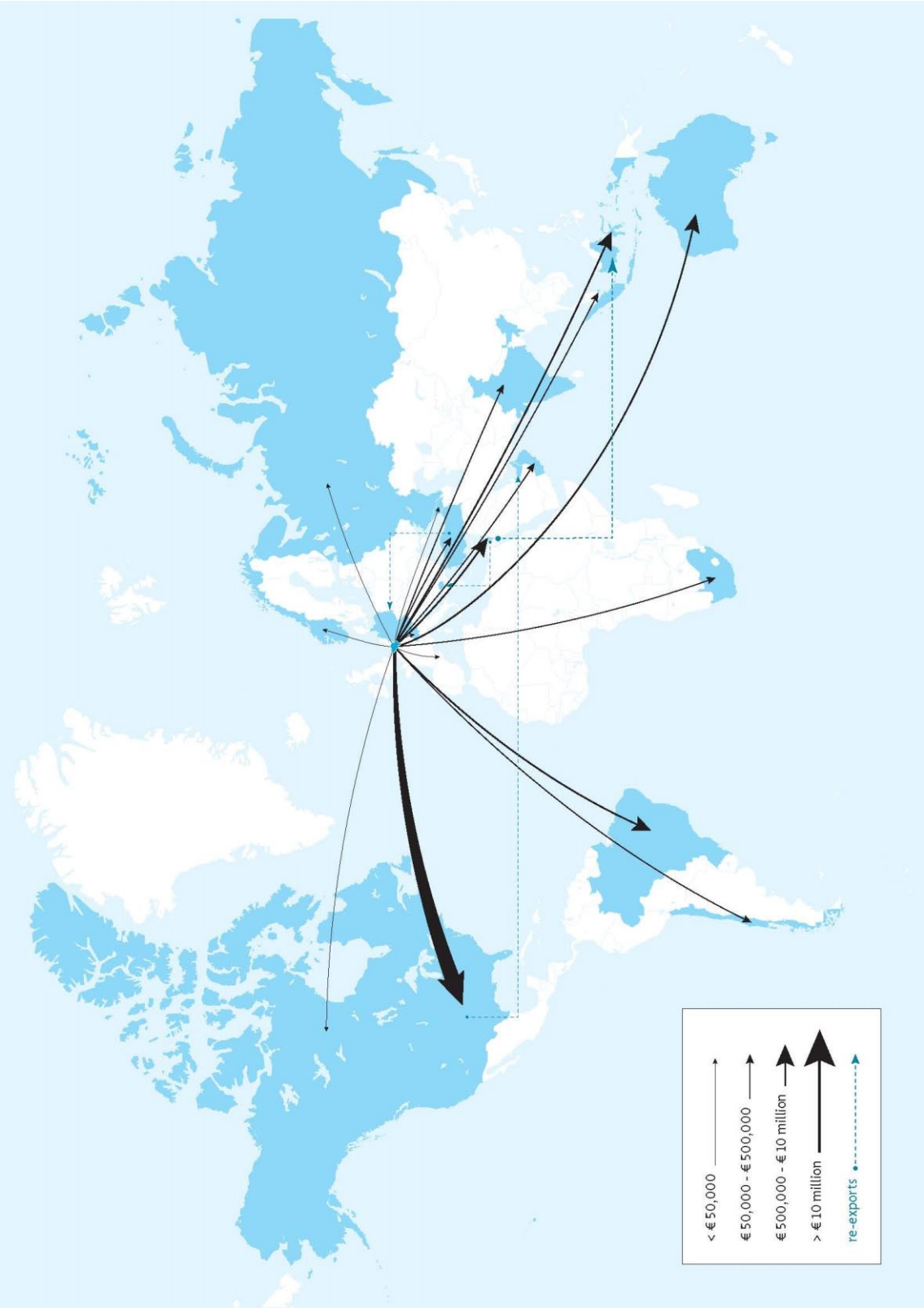
Figure 5: Nature of the licensed extra-Community arms exports (ML1-23, ML26) from the Flemish Region, as a percentage of the value of licences issued, 2013



An analysis of the recipient countries shows that three-quarters of licensed extra-Community arms exports from the Flemish Region were bound for the United States. About 10% of the extra-Community arms exports were bound for Israel and 8% for Brazil. In 2013, extra-Community exports were made to about 15 recipient countries.<sup>1</sup> In about half of the cases (54%), the ultimate end-user of the licensed extra-Community arms exports was known at the time of approving the licence.

<sup>1</sup> Besides the United States, Israel and Brazil the other recipient countries in 2013 were Andorra, Australia, Canada, Chile, Georgia, India, Indonesia, Norway, Oman, Russia, Singapore, South Africa, Switzerland and Turkey.

Map: Exports of Flemish military equipment outside the EU in 2013



## 5.4 Denied licence applications

Applications are evaluated based on administrative and political assessment criteria. In some cases this gives rise to denials based on the individual case. Since the regionalization of competence for arms export controls in 2003, a total of 36 export licences and 19 transit licences have been denied. They include denials of the export of military goods to users in China, Israel, India, Pakistan, Turkey and Venezuela among others. In 2013, five licence applications were denied for export transactions with a total value of 2.4 million euro for the following end-users: the armed forces of Algeria, Bahrain, Pakistan, Thailand and Saudi Arabia (see table 2). The SGCU's monthly reports do not state the grounds for denial.

*Table 2: Overview of denied applications for the transfer/exports of military equipment from the Flemish Region in 2013*

Products	Value	Recipient and recipient country	End-user
Metal fuels in particle form (ML8.c)	40,805	Industry - Algeria	Armed forces (Algeria)
Image intensifier equipment (ML15.c)	206,701	Defence-related industry - France	Armed forces (Bahrain)
Ground vehicle components (ML6.a)	49,303	Defence-related industry - Pakistan	Armed forces (Pakistan)
infrared imaging equipment (ML15.d)	18,936	Defence-related industry - Sweden	Armed forces (Thailand)
Military training equipment <sup>i</sup> (ML14)	2,044,805	Defence-related industry – United Kingdom	Armed forces (Saudi Arabia)

In recent years, the Government of Flanders has put the export of military equipment to certain countries “on hold” in view of the political situation there. This was also the case in 2013. In the wake of the Arab Spring in 2010-2011 and the associated unrest in various countries in Northern Africa and the Middle East, the Government of Flanders modified its arms export policy for the region. Since then an “on hold” policy has applied to all arms exports to several of these countries: thus, in addition to respecting UN and EU arms embargoes, the Government of Flanders withholds export licences for a list of recipient countries in the Arab world that are deemed problematic<sup>ii</sup>. When the SGCU receives such an application it denies it, and the affected companies have also been asked to return to the SGCU all ongoing licences for arms exports to these recipient countries.<sup>58</sup> At first, licences ceased to be issued for a rather wide range of sensitive countries. Soon, however, the “on hold” measure was limited to a handful of countries in the Arab world.<sup>59</sup> In 2013 it applied to arms exports to Bahrain, Egypt, Yemen and Syria<sup>iii</sup>. Arms exports to Saudi Arabia

<sup>i</sup> More specifically, this is specialized equipment for military training or for simulating military scenarios, simulators specially designed for training in the use of any firearm or weapon specified in ML1 or ML2, and specially designed components and accessories therefor.

<sup>ii</sup> The “on hold” rule is a dynamic quantity. When assessing potentially problematic recipient countries the SGCU uses information supplied by the regional and functional services of the federal department of Foreign Affairs and from open sources.

<sup>iii</sup> Until May 2013 an EU arms embargo applied to this country. After the embargo was lifted the Government of Flanders decided to add the country to its list of “on hold” countries.

were not put on hold, but the arms export policy for this country was amended in 2013 (see below).<sup>1</sup> It is important to stress that direct arms exports from Flanders to the countries where the “on hold” measure has applied in recent years do not happen all that often. In 2013 the then competent minister stated that since the introduction of the “on hold” measure, only a limited number of applications had been submitted for arms export licences to these countries.<sup>60</sup>

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<sup>1</sup> Following the unrest in Ukraine in February 2014 all arms exports to that country were also put on hold. At the request of the competent minister the SGCU is reviewing the current “on hold” measures.

## 6 Transit

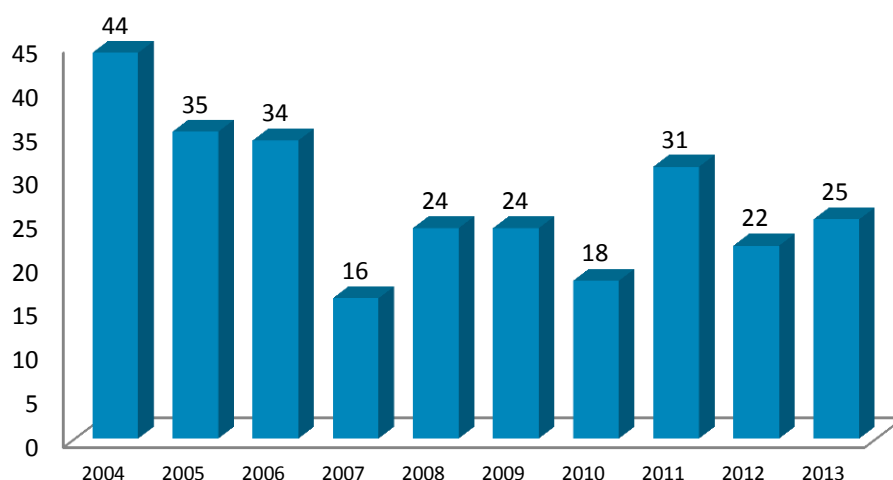
Transit is a trade transaction whereby goods enter the territory of a State in order to travel onward to other destinations outside the jurisdiction of the transit country. A distinction is made between transit without transshipment (transit) and transit with transshipment (transshipment). In Flanders and Belgium, a systematic licensing obligation currently applies only to transit with transshipment.

Most Flemish transit companies (such as shipping agents, forwarders or principals) are rather reluctant about transporting defence products because the licensing regime is complicated, requires specific competences, and thus carries a high administrative cost that might potentially undermine profit margins. Moreover, these companies are very vulnerable as the Belgian Customs hold them accountable as the first-tier supplier. They also depend on their customers to provide the right information about the goods, the recipient and the end-user of the goods in question. That said, a limited number of Flemish transit companies specifically target this market. As a result they have recently started to participate in specialized defence exhibitions as exhibitors.<sup>61</sup>

### 6.1 Analysis of transit licences

Since 2004 the annual number of transit licences has varied from 16 to 44 (see figure 6). In 2013 the Government of Flanders issued 25 licences for the transit of military equipment. These licences concerned items with a value of 45.8 million euro. They involved the transit with transshipment of military goods in Flanders from twelve countries, bound for 14 countries worldwide (see figure 11) including for example military ground vehicles and/or ground vehicle components from Israel for Kenya, Canada and the United States, explosives from Switzerland for the industry in Peru, and gun mountings for firearms from the United States for the Jordanian armed forces.

Figure 6: Trends in the number of transit licences approved by the Flemish Region<sup>1</sup>, 2004 - 2013



<sup>1</sup> Flemish figures for the period before 1999-2003 relate to applications for a federal transit licence from the Flemish Region and the Dutch-language applications from the Brussels Capital Region.

Every year the Flemish Region also denies a few applications for transit licences, and in 2013 three were denied. These included licences for the transit of (1) ammunition from Finland bound for a trader in the United Arab Emirates (50,000 euro), (2) ammunition from the Czech Republic for a trader in Cameroon (3,725 euro) and (3) aircraft components from the Czech Republic for the Angolan armed forces (84,395 euro). These denials were noteworthy because on all three occasions, the Government of Flanders denied the transit through Flanders of deliveries that had been previously approved by EU Member States.

The government also denied some transit licences in previous years. The grounds for these denials were not included in the reports of the Government of Flanders. In the past transit licences were refused both for administrative reasons (use of the wrong forms), and in light of the specific situation in the recipient country and/or the country of end-use.

Figure 7: Transit of military equipment through Flanders in 2013





## 6.2 The effectiveness of transit control policy

In the first half of the 2000s the number of transit licences in Flanders dropped spectacularly.<sup>62</sup> The causes for this are not sufficiently known. Perhaps the companies in question no longer applied for the required licences, or there was a change in the control policy that made fewer transactions visible. Recent research points to external aspects that may also explain the downward trend. The EU does not oblige its Member States to implement a uniform transit policy, and the transit policy in our neighbouring countries is apparently more flexible. Whereas the Flemish Region opted for a systematic control of the transit of all types of military equipment, regardless of the origin or destination of the products, Germany and the United Kingdom limit systematic transit controls to fewer types of goods. In the Netherlands, meanwhile, transit agents can use general transit licences to and from a number of listed friendly countries. A significant amount of bureaucracy - and possible delays - can thus be prevented by avoiding the Flemish Region for the transit of military equipment.<sup>63</sup>

Existing control options are relatively limited because only transit with transshipment is subjected to a systematic license requirement. All transit without transshipment is given the green light, even though problematic goods may end up with undesirable recipients. The systematic licensing obligation for all transit of strategic goods with transshipment generates a proportionately huge administrative burden. An efficient transit control policy would benefit from properly harmonized control measures. First, the authorities' capacity for information and risk analysis could be increased by optimizing the collaboration between customs, the SGCU, the police and the intelligence services. Secondly, a broad legal foundation would have to be created, allowing the Government of Flanders to impose a licensing obligation for all transit of military equipment (including transit without transshipment) when essential security interests are or may be compromised, or if there is a suspicion of diversion. Finally, the government could argue in favour of adapting the current customs nomenclature at the level of the World Customs Organization to facilitate an efficient and effective identification of risky goods.<sup>64</sup>

## 7 *Tightening parliamentary control*

The events of the Arab Spring and the use of European arms and military equipment (including equipment made in Flanders) for the repression of peaceful protests, or in the armed conflicts that arose from it, have demonstrated in the most painful way that arms export control demands constant vigilance. In 2013, arms export control policy often stood high on the parliamentary agenda.

The ratification and implementation of the Flemish Arms Trade Treaty in 2012 has had far-reaching consequences for the nature of arms export controls in the Flemish Region. A large share of the trade flows within the EU no longer require a licence before the transaction. The general licences are sufficient. This means that the control of a significant share of the exports is now carried out after instead of before the transaction (see 3.4). The introduction of multiple procedures depending on the types of products and the countries of origin and/or of end-use, moreover, has merely made the already very complex matter of arms export control even more complicated. It is thus very important that transparency about the policy being applied should develop along with the changes in control policy.

Close parliamentary control of government policy on foreign arms trade is aided by appropriate transparency on the policy followed. We may distinguish six dimensions when considering the transparency of government reporting on the conduct of arms export policy: availability, degree of specificity, reliability, comparability, comprehensiveness, and relevance of the released data.<sup>65</sup> While transparency on the conduct of arms export policy is not something that ever comes naturally, various initiatives have been taken over the past decade to increase it. Since the end of the 1990s an annual overview of licence applications approved and denied in the various EU Member States has been provided at the EU level. In recent years the information published in these annual reports has systematically increased, and today they offer a sound base for analysing the export policy of the various EU Member States. Since the early 1990s the federal Belgian government, among others, has submitted several annual reports to parliament as it is required to do by law. Following the regionalization of competence in 2003, the Government of Flanders became responsible for all reporting to the Flemish Parliament. Consequently it took the lead to increase transparency in Belgium (see 3.5). The practice that developed regarding Flemish arms export control policy has since been legally enshrined in the new Flemish Arms Trade Act.

A number of additional steps could, however, generate significant value for the effectiveness and efficiency of parliamentary oversight of government policy without significantly complicating the already laborious administrative licensing process. In this section we will explore a number of options for enabling more parliamentary control in the changing context of arms export controls. The emphasis is mainly on the availability of relevant information (expedited reporting for sensitive cases and standard inclusion of the motivation for denying licence applications), and the comprehensiveness and comparability of the published information (reporting on actual trade flows). First, however, we will briefly explain how parliamentary oversight over arms export control policy in Flanders is currently organized in practice.

## 7.1 Parliamentary control in practice

The arms export policy of the Government of Flanders is primarily discussed and monitored in the Committee for Foreign Policy, European Affairs and International Cooperation of the Flemish Parliament. This was also the case under the previous coalition (2009-2014).<sup>1</sup>

The Flemish Parliament exercises oversight of arms export policy in various ways. First, it questions the Government of Flanders, in the competent committee, about the licence applications issued and denied on the basis of the semi-annual report that the government is required to publish by law. Second, it submits verbal and written requests for explanations during the meetings of this committee. It is worth stressing that the topic of the Flemish Government's arms export policy is not only addressed in the Flemish Parliament's Foreign Affairs Committee. It is also included on the agenda of plenary sessions of the Flemish Parliament several times a year, mainly in the form of question on current issues. For example in 2013, five such questions were asked about the Government of Flanders' arms export control policy:

- a question on arms exports to the Arab world (March 2013)<sup>66</sup>
- a question on the increased value of licensed Flemish arms exports in 2012 (May 2013)<sup>67</sup>
- two questions on arms export policy for Syria (May 2013)<sup>68</sup>
- a question on implementation of the Flemish Arms Trade Act (June 2013)<sup>69</sup>

On rare occasions, the government's arms export control policy is also a topic for debate in committee or in plenary during discussions arising from information requests not primarily related to the arms trade: for example, debates on collaboration with the Belgian State Security,<sup>70</sup> on the crisis in Ukraine,<sup>71</sup> and on the Prince's trade missions to Saudi Arabia and Sudan.<sup>72</sup>

## 7.2 Expedited reporting on sensitive cases

The presentation of the semi-annual and annual reports of the Government of Flanders in the Foreign Affairs Committee is an important concrete opportunity for monitoring Flemish arms export control policy. The Flemish Arms Trade Act stipulates that the government should submit a report every six months to parliament on individual, general and combined licences that have been issued and denied, as well as an annual report about the use of general licences. The problem lies in the fact that the resulting discussion always concerns licences that were issued some time ago. The annual report of the Government of Flanders to the Flemish Parliament for the year 2012 was only discussed in Flemish Parliament in January 2014. Given that parliament has not discussed the report for the first six months of 2012, this means that debates on licences issued and denied relate to decisions made at least a year previously. For a large proportion of licence decisions, the time-lag even extends to around two years. We have noted a similar pattern for licence decisions made in 2013: at the time of writing this report (November 2014), the semi-annual reports of the government for 2013 were not even available yet. Here too, therefore, we can observe a certain time-lag in the supply of information. Monthly reports are published on the SGCU's website; but it is very difficult to place the information about these licences in the right context and to analyse the conduct of export policy without having the correct background information and a description of the methodology used. Moreover, these reports have also often been published with a substantial

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<sup>1</sup> During the 2004-2009 coalition period the Arms Trade Sub-Committee was added to the Committee for Economy, Employment and Social Economy to monitor the implementation of this policy.

time-lag. The most recent monthly report available on the SGCU's website at the time of writing related to licence decisions from May 2014, implying a delay of 4 to 5 months.

Making relevant information available more quickly constitutes a major challenge, but it would improve the current level of transparency as well as increasing the possibilities for proper parliamentary control. Flanders is not the only country facing this problem. In neighbouring countries, data on licences issued and denied, and parliamentary debates on these licence decisions, are also often subject to delays. Various initiatives have recently been taken in several neighbour countries to increase the transparency of communication between the government and parliament so that parliament can exercise its oversight function better. In response to the events of the Arab Spring and the finding that Dutch military equipment was used for the repression of a peaceful protest, the Dutch Government decided - at the request of the Second Chamber - to radically reduce the traditional delay in "normal reporting".<sup>73</sup> It further decided to provide "expedited reporting" to the Second Chamber on very sensitive applications for arms export licences.<sup>74</sup> We have seen a similar development in Germany. In early June 2014 the German Government decided that in the near future it would provide earlier information to parliament on sensitive arms export cases. Until recently, information on licences denied and issued was only published once a year in a government report to parliament. On the occasion of forming a new coalition government, the decision was made to report to parliament half-yearly on various licences issued and denied. The Government would henceforth also provide information to the *Bundestag* within two weeks on positive decisions made in the *Bundessicherheitsrat* (Federal Security Council), which consists of the Chancellor and federal ministers and which meets *in camera* to decide on the most sensitive arms export cases.<sup>74</sup> As in the Netherlands, it was a parliamentary debate on licensed arms exports to the Arab world that prompted the speeding-up and extension of transparency.

One way of increasing transparency in Flanders would be to provide expedited reporting to parliament on sensitive applications, in line with the German approach. For example, expedited reporting could be enabled for transactions involving "sensitive products", as described in the Flemish Arms Trade Act, for a number of specific recipient countries/countries of end-use.

## 7.3 The grounds for denials

The Government of Flanders only gives an overview of licence applications approved and denied in its semi-annual/yearly reports. The grounds for decision are not included in the report. Later, the grounds for the decision are generally discussed during a debate in the competent committee of the Flemish Parliament.

The grounds for a number of the denied licences are evident. The denial of export licences for military equipment to Bahrain in 2013 did not exactly come as a surprise given the Government of Flanders' 'on hold' policy in relation to Bahrain. The licence application related to second-hand military vehicles for logistical and transport use by the Bahraini Ministry of Defence.<sup>75</sup> Arms exports to this country had, however, already been approved during the period before the 'on hold' policy

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<sup>73</sup> On average there is a seven-month delay for the publication of any given issued arms export licence on the website of the competent government service. The Dutch Government is seeking to reduce this delay to 3-4 months and aims to ultimately publish a monthly report.

<sup>74</sup> More specifically, this applies to new applications for the exports of complete weapon systems with a value of at least 2 million euro bound for countries that do not belong either to the EU or NATO or to a set of friendly countries (Australia, Japan, New Zealand and Switzerland).

took effect. In 2005-2010 the Bahraini armed forces received deliveries of military vehicles (ML6.a) and airport lighting and fencing systems (ML25.a) to a value of 2.6 million euro.

In most cases of denied licence applications it is, however, very difficult to ascertain the underlying grounds for denial based on the information in the reports of the Government of Flanders. In May 2013 the government denied a licence for exports of pyrotechnical substances (metal fuels in particle form<sup>i</sup>) to the Algerian army. Two months earlier, however, an export licence had been approved for infrared imaging equipment for the Swiss industry with the Algerian army as end-user. Why one licence was approved while the other was denied is not exactly clear. In fact, other export licences for Algeria have been approved in the recent past<sup>ii</sup>. Also rather surprising was the denial of export licences for components for military vehicles worth almost 50,000 euro for the defence-related industry in Pakistan, with the end-user listed as the national armed forces. The last denial of an arms export licence to the Pakistani army goes back to October 2007, and since then a total of 40 export licences and 4 transit licences have been issued for products listing the Pakistani army as the end-user. These licences were mainly for components for vessels (ML9, ML25.g), catch-all airport lighting and fencing systems (ML25.a), and military training equipment (ML14) to a value of 6.5 million euro. The denials of licences for arms exports to Algeria and Pakistan were possibly motivated by the specific nature of the products for which an export licence was requested in 2013 - pyrotechnical substances and military vehicles - perhaps combined with the fact that the end-user was the armed forces of these countries. The grounds for these denials could also be the result of a changing political context or simply an administrative glitch on the part of the Flemish exporter. Based on the current reporting, however, this cannot be deduced from the reports of the Government of Flanders.<sup>iii</sup>

Decisions on licence applications and the underlying grounds for decisions constitute the backbone of an arms export control policy. The lack of detailed information on export denials in the reports of the Government of Flanders makes it hard to properly evaluate the conduct of policy based on these reports. In several neighbouring countries, such as Germany, the Netherlands and the United Kingdom, the governments do report on the grounds for denied licence applications in their official reports to parliament. For example, they refer to the (European or national) evaluation criteria that gave rise to the denial of the licence<sup>iv</sup>. In the annual report by the EU Council Working Group on Conventional Arms Exports (COARM), a list of the evaluation criteria inspiring a decision is provided for most EU Member States that denied export licences. Given that this information is also

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<sup>i</sup> These more specifically concern metal fuels in particle form whether spherical, atomised, spheroidal, flaked or ground, manufactured from material consisting of 99% or more of any of the following:

a. Metals and mixtures thereof, as follows:

1. Beryllium (CAS 7440-41-7) in particle sizes of less than 60 µm;
2. Iron powder (CAS 7439-89-6) with particle size of 3 µm or less produced by reduction of iron oxide with hydrogen;

b. Mixtures, which contain any of the following:

1. Zirconium (CAS 7440-67-7), magnesium (CAS 7439-95-4) or alloys of these in particle sizes of less than 60 µm;
2. Boron (CAS 7440-42-8) or boron carbide (CAS 12069-32-8) fuels of 85 % purity or higher and particle sizes of less than 60 µm;

<sup>ii</sup> In 2011-2012 four licences to the value of 3.5 million euro for the export of visualization screens (ML24), telecommunications equipment (ML25.c) and components for vehicles, vessels or aircraft (ML25.g), specifying the Algerian army as end-user, were granted.

<sup>iii</sup> The grounds for the denied export of infrared imaging equipment - which was ultimately to be delivered to the Thai armed forces - cannot be ascertained based on the available reports of the Flemish authorities. Licences for the export or transit of military equipment to Thailand are hardly ever issued in Flanders.

<sup>iv</sup> In the United Kingdom information on the grounds for licence denials is published every year in the government's report, but the report does not enter into details. The report only gives an overview of the criteria invoked during the past year to refuse exports; it does not make a link to actual export cases or specific recipient countries. The Dutch and German reports, however, do this.

provided for Belgium as a whole in the annual COARM reports, there is no reason why it should not be included in the reports to the Flemish Parliament.

## 7.4 Actual trade flows

Reporting on licence policy is one way of allowing parliament to monitor the government's arms trade policy. As things now stand, however, the assumption that reporting on licences paints an adequate picture of the arms trade is no longer justified. As explained above, the nature of Flemish export controls has significantly changed following implementation of the Flemish Arms Trade Act (see section 3.4). The introduction of comprehensive general licences will, in the long term, gradually shift the control over most trade flows to reporting on the use actually made of the licence, rather than the issuing of the licence. The method presently used by the government to report to parliament must be adapted to reflect this reality. It is no longer sufficient to merely report on *licensed* trade flows: reporting on actual trade flows seems more to the point.

At present, the annual report of the Government of Flanders does not list any data on actual foreign arms trade. The Walloon Region, however, has already recognised the added value of such an approach. The Walloon Government has been publishing figures about real arms exports from the Walloon Region in its annual report to parliament for almost ten years<sup>I</sup>.<sup>76</sup> The annual reports of the EU Council Working Party on Conventional Arms Exports (COARM) also contain data about actual arms exports, listing the value of actual exports of the various types of military equipment to various recipients for 19 EU Member States. The Member States provide this information to COARM, which in turn publishes it. No figures are given on actual arms exports for Belgium (as a whole).

One way of mapping actual arms exports from Flanders is to analyse the available customs data, but this approach has several major shortcomings as we will see below. The customs data used for the following analysis were supplied by the Flanders Investment & Trade Agency or FIT<sup>II</sup>, which in turn obtained them from Eurostat. These figures show that the value of actual exports of "arms and ammunition" from the Flemish Region amounted to about 24.5 million euro in 2013<sup>III</sup>. Over 80% of these registered exports were bound for Germany (10.6 million euro) and France (9.5 million euro)<sup>IV</sup>. Saudi Arabia was in third place on the list of recipient countries in 2013, with exports to the tune of 2 million euro. It is striking that in these figures, exports of "arms and ammunition" worth 1.1 million euro are listed as destined for "confidential destinations"<sup>V</sup>.<sup>77</sup>

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<sup>I</sup> In 2012 the value of actual arms exports from the Walloon Region amounted to 410.6 million euro. This was 54% of the total value of licensed arms exports in that year (756.2 million euro).

<sup>II</sup> The Flanders Investment and Trade Agency was founded to promote the international entrepreneurship of Flemish companies and to attract foreign investors. To this end, the agency gathers and analyses customs data relating to international entrepreneurship.

<sup>III</sup> This amounts to an 11% increase compared with 2012.

<sup>IV</sup> This is not exceptional: for the period from 2004 to 2013 these two recipient countries accounted for about 60% of total Flemish exports of "arms and ammunition". The three other neighbouring countries (the Netherlands, Luxembourg and the United Kingdom) also scored quite well as recipients, both in 2013 and in the period 2004-13.

<sup>V</sup> For the period 2004-13, "confidential destinations" accounted for 19.7% of overall Flemish exports of "arms and ammunition" with a value of 34.8 million euro. For comparison, during this same period "friendly countries" accounted for 46.2% of all Walloon exports of "arms and ammunition".

It is also worth noting that the FIT's figures show striking discrepancies compared with the SGCU's figures for licensed arms exports. First, the FIT's amounts are significantly lower<sup>I</sup>. Secondly they relate to very different recipient countries. These discrepancies occur because the customs data on which the FIT bases itself only relate to a limited range of arms and military equipment, and more specifically to products from chapter 93 ("arms and ammunition") in the customs nomenclature.<sup>78</sup> These are mainly firearms, cut and thrust weapons (such as swords), and so-called "heavy" weaponry (like grenade launchers)<sup>II</sup>. Compared with the Common Military List of the European Union, this represents a more limited range of military equipment, covering only ML categories 1-4. Data on actual exports of large weapon systems (such as fighter aircraft, military vessels and armoured army vehicles), or components of these weapon systems - which account for an important share of exports from the Flemish Region - are not included in these customs figures. The latter can thus only be used to a limited extent to assess actual trade flows in Flemish arms exports, as the categories of the Common Military List of the European Union do not correspond with the customs nomenclature. Originally, the statistics on effective trade flows given in reports by the Walloon Government were also based on customs data from the Belgian National Bank; but in view of these shortcomings, it was decided from 2005 onwards to prepare the reports on the basis of data that the government obtained from the companies. Of all the available data sources, business data are considered to come closest to the economic reality. An additional problem with the customs data is that it is very difficult to link these data, based on information from the various customs clearance offices, to the licences issued by the various regional licensing services in Belgium. (Companies must apply for their licence in the region where their registered office is established.)

A second, more appropriate way of mapping actual arms exports from Flanders involves processing the data that companies supply when justifying the use made of their licence to the government. The Flemish Arms Trade Act stipulates that individuals who make use of licences (including general and global licences) must report the fact to the Government of Flanders. These individuals must keep a detailed and complete overview of their transfers and exports for every licence used, and report all this to the Government of Flanders<sup>III</sup>. The Flemish Arms Trade Act also stipulates that the Government of Flanders must report to the Flemish Parliament on actual arms exports, but this reporting is limited to general licences<sup>IV</sup>.

Mapping actual Flemish exports of military equipment is useful in view of an export control policy that is radically changing. The Government of Flanders needs to control and analyse the use made of general licences and other licence types for intra-Community transfers if it wishes to trace and prevent misuse. Further, if this information is monitored the government can better assess current and future trends in the activity of the Flemish defence-related industry, and use this assessment

<sup>I</sup> The arms exports for which a (permanent or temporary) licence was obtained beforehand in 2013 amounted to 186.3 million, compared with only 24.5 million euro's worth of actual arms exports according to the FIT.

<sup>II</sup> These specifically include: 9301: Military weapons other than revolvers, pistols and cut and thrust weapons. These include artillery pieces (e.g. cannons, howitzers and mortars), missile launchers, flame-throwers and grenade launchers; 9302: Revolvers and pistols other than those intended in 9303 and 9304; 9303: Other firearms and other such appliances which rely on the explosive force of powder. E.g. hunting rifles, pistols and carbines; 9304: Other arms (e.g. rifles, carbines and pistols, operating with a spring, air or gas), other than those stipulated under item 9307; 9305: Components and accessories of the products under items 9301 through 9304; 9306: Bombs, grenades, torpedoes, mines, missiles, cartridges and other ammunition and projectiles, as well as parts thereof, including shot and cartridge wads; 9307: Swords, cutlasses, bayonets and lances and other cut and thrust weapons including parts and scabbards and sheaths therefor. Parts of these arms and the ammunition fall under category 93 of the Customs nomenclature.

<sup>III</sup> For individual, general and combined licences the recipient of the licence must return the original licence to the competent authorities and report on its use when the licence has expired (after three years).

<sup>IV</sup> The government must provide an overview of the number of individuals who have used the licence as well as the total value in euro of the conducted broken down by the recipient country, the category of the recipients and the category of the defence-related products.

to develop an efficient and effective government policy. In this case there would be little trouble about sharing data on actual arms exports in a detailed and comprehensive way with the Flemish Parliament: something that could only benefit parliamentary oversight of arms export policy. Parliamentary monitoring of actual transactions involving government-licensed exports would make assessing government policy easier.



## 8 Conclusions

2013 was the first full year in which the new Flemish legal framework for the control of foreign trade in arms and military equipment (the Flemish Arms Trade Act) was enforced. This report provides an initial analysis of the new situation. The control regime for trade in weapons and military equipment has undergone major changes: by transposing European initiatives, Flanders has achieved a far-reaching administrative simplification and liberalization of the control of foreign arms trade.

During the past ten years in Belgium, the greater part of competence for controlling the arms trade was transferred to the Regions. Up to now, this institutional change has meant a less clear connection between the control of trade in strategic goods and Belgian foreign security policy and defence. The specific profile of the defence-related industry in the different regions has led to a different – even divergent – policy in the federated entities. The transposition of European Directives aimed at harmonizing the control of trade in weapons and military equipment has led to legislative initiatives in the various competent Belgian regions. The new parliamentary acts and the amendments to federal legislation are linked to the European liberalization initiative, but the specific provisions of the various legislative texts are quite different. The competent authorities in Belgium have developed different legislative approaches for the control of foreign arms trade.

Flanders has developed a detailed Flemish Arms Trade Act to regulate foreign arms trade. The Flemish Arms Trade Act provides sufficient tools for assessing export control cases in a sound and responsible manner. The assessment criteria for proposed end-use are, for instance, adequately detailed. Practical implementation of the legislative framework depends on the implementing order drawn up and published by the Government of Flanders, and on the daily practice of the competent authorities who operate under the supervision of the competent minister. The various analyses contained in this report on the practical implementation of this legislation have produced to a number of findings and insights.

1. In 2013 the Government of Flanders issued a total of 507 licences for the transfer (intra-Community) or import (extra-Community) of defence products to the Flemish Region. This included 450 licences for transfers from other EU Member States of products to the tune of 19.6 million euro, and 56 import licences for imports from countries outside the EU to the value of 4.9 million euro. These often involved imports of transfers of firearms and ammunition. The reports of the Government of Flanders do not distinguish between civil small arms or firearms for (para)military use. In 2013 more than 400 licences for firearms were issued, with a value of 6.8 million euro. They were issued to traders who import larger quantities of firearms, as well as to private individuals. The licensed value of ammunition transferred and imported was 15.2 million euro in 2013. Such licences are almost always requested by arms dealers. Licences were also issued for the import of fire control systems, law enforcement equipment, accessories for firearms, and riot control substances for the government. Import control covers a more limited range of products than export control.

2. The scope of the Flemish Parliament Act covering transfer of goods to other EU Member States and extra-Community exports has been significantly reduced compared with the Belgian Act of 1991. About half of the export products that were previously controlled because of their military end-use now are no longer controlled and can now be freely traded. While the application of the

catch-all clause was previously considered too broad by the relevant trade organizations, it was not applied at all in 2013. The task of assessing risks from the security implications of goods not included on the EU's Common Military List has been, to a large extent, transferred to the producers of these goods, while the competent authorities mainly adopt a reactive approach. As a result, the catch-all clause is no longer used as a preventative and proactive export control instrument. The option of imposing an *ad hoc* licensing requirement still exists; but the rationale behind current policy practice is insufficiently known.

3. In 2013 a total of 100 licences were issued for the transfer of military equipment to other EU Member States. Together these licensed transactions had a shared value of 84.9 million euro. They mainly involved the transfer of products such as military electronics and military training equipment to Germany. Licences were also issued for the transfer of military equipment to the United Kingdom, France and Sweden. The published information does not clarify whether the licences issued were individual or global licences. It should be noted here that the Flemish Arms Trade Act also provides for general licences. Transfers of military equipment under a general licence to recipients in other European countries will only be checked by the government after the transaction. The responsibility for assessing whether the transfer of military equipment is appropriate mainly resides with the companies involved, who inform the government on the transactions after they are completed. Thus in addition to the reduction of control resulting from reduced scope, the nature of control has also shifted from a prior to an *a posteriori* check. As of now, we do not (yet) have information on how the general licences are used.

4. In 2013 the Government of Flanders issued 50 licences for the export of military equipment to countries outside the EU. Together they represented a value of 36.4 million euro. They mainly involved military electronic and vehicle components, as well as imaging cameras and image intensifier equipment, aircraft components, fire control systems and – to a significantly lesser extent – firearms and/or accessories for firearms, mobile repair units for maintaining military equipment, and military production equipment. These exports went largely to the foreign (defence-related) industry. Direct exports to foreign armed forces or other government services do not occur very often. In about half of the cases, the ultimate end-user of these licensed extra-Community arms exports was known when the licence was issued. When this is not the case, the authority for making decisions on the (re-)export of components integrated in weapon systems is transferred to other governments. Licences were also issued for intangible technology transfers. i.e. the control of sensitive transfers of information.

5. In 2013 five licence applications were denied for transactions to the amount of 2.4 million euro for the following end-users: the armed forces of Algeria, Bahrain, Pakistan, Thailand and Saudi Arabia. It is impossible to deduce from the data published on the website of the Government of Flanders whether, and to what extent, restrictions are being imposed on re-export to certain sensitive areas – an option expressly included in the Flemish Arms Trade Act.

6. Military goods transiting through Flemish territory are only controlled when the transit involves transshipment. In 2013, the Flemish Government issued 25 licences for transit of military equipment. These licences related to items with a value of 45.8 million euro. Three transit licences were denied: one with a recipient in the United Arab Emirates, one with a recipient in Cameroon and one with a recipient in Angola. What is striking about these denials is that in all three cases the government refused transactions that had previously been given the green light by other EU Member States. The scope for control is relatively limited, however, because only transit with transshipment is subjected to a systematic licensing requirement. An efficient transit control policy

would benefit from more thought-through control measures, with a focus on systematically collecting and sharing information.

7. Flemish policymakers have enthusiastically embraced European deregulatory initiatives for controlling trade in military equipment within the EU. The new regulatory framework has also brought changes in the control of trade with countries outside the EU, as a result of the amended catch-all control policy and the introduction of combined licences. Certain licence application procedures no longer exist, while others have resulted in a shift towards internal compliance management by companies. The government's role has changed from a decision-making body to an oversight body. The Flemish Arms Trade Act contains refined criteria for the responsible assessment of licence applications, but the assessment of specific transactions mainly applies for exports of military equipment outside the EU; for imports of firearms, law enforcement equipment and fire control systems; and for transit with transshipment. In such cases the government weighs the assessment criteria prior to the transaction. In all other cases, an assessment is no longer made; and prior ethical and security considerations drop off the radar as a result. The *a priori* assessment of arms exports on a case-by-case basis is no longer the standard, and in Flanders the trade in weapons and military equipment will now be managed rather than assessed. In future the control of a significant share of Flemish exports of military equipment will take place *a posteriori* instead of *a priori*. This means that the tasks of the administration's services will shift, but their work burden will not necessarily be lightened. More than ever, the government will need to employ people with analytical skills, as well as using high-quality and up-to-date software systems for information management. Although licensing policy for the companies in question has been eased, this does not alter the fact that a task of government control remains.

8. While parliamentary control of the foreign arms trade policy has always been a challenge, the amendments to licensing and control policy have only served to complicate matters. As things now stand there is no guarantee of the availability, comparability and comprehensiveness of published information. In the absence of information on transactions the need remains to make sure that the new export control policy still guarantees an effective control. Delays in information will however be unavoidable, and parliamentary monitoring will take place willy-nilly at a later stage.

9. The current Government of Flanders is committed to strive for a balanced and responsible assessment of ethical, economic and security factors in the trade in strategic goods. The competent minister stated in a published policy memorandum that Flanders pursues a responsible licensing policy for the trade in strategic goods, and announced that he will examine whether the Flemish Arms Trade Act needs amending. The parliamentary debate on control policy for the trade in military equipment – which now involves more than just checking the licences issued – would benefit from timely reporting on the current policy. At the time of writing (November 2014) the government had still not submitted its report to the Flemish Parliament about the control policy it practised in the first and second semester of 2013. To date there is no comprehensive report available with data on Flemish imports, exports and transit, on Flemish transfers, on exemptions granted, on European and global imports, exports and transit, on possible amendments to regulation and procedures in the Flemish Region, and on the relevant international and European initiatives and embargoes. Some extra steps could also contribute to a correct understanding of export control policy: expedited reporting for sensitive cases (relevant for the *availability* of relevant information), reporting on the use made of licences and effective trade flows (*comprehensiveness* and *comparability* of the published information), and regular inclusion of the reasons for denying licence applications (*availability/detailed nature* of the published information).

# 9 Publications of the Flemish Peace Institute on arms trade in 2013

## Reports



### ***A European Agenda for Security Technology: From Innovation Policy to Export Controls***

Author: Dr. Jocelyn Mawdsley

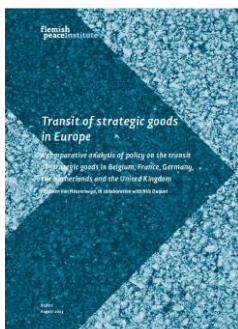
Publication: Brussels, 22 February 2013 - ISBN 9789078864561, 101 p.



### ***Flemish Foreign Arms Trade 2012***

Authors: Milou Dubois & Nils Duquet

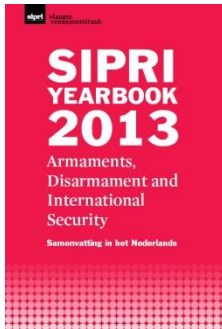
Publication: Brussels, 25 June 2013 - ISBN 9789078864608, 72 p.



### ***Transit of strategic goods in Europe***

Authors: Kathleen Van Heuverswyn, i.c.w. Nils Duquet

Publication: Brussels, 13 August 2013 - ISBN 9789078864592, 168 p.



***SIPRI Yearbook 2013 – Summary in Dutch***

Publication: Brussels, 17 September 2013

## Advisory notes

**Advice concerning the global Arms Trade Treaty**

Publication: Brussels, 11 March 2013

**Advice concerning ammunition marking**

Publication: Brussels, 13 March 2013

**Advice concerning the yearly report of the Flemish Government on the Flemish foreign arms trade 2012**

Publication: Brussels, 23 September 2013

**Advice concerning the transit of strategic goods**

Publication: Brussels, 19 November 2013

# End notes

- <sup>1</sup> For further information on Flemish export control policy for dual-use items, see Dubois, M. & Duquet, N. (2013), *Vlaamse buitenlandse handel in producten voor tweërllei gebruik 2012* (Flemish foreign trade in dual-use items), Brussels: Flemish Peace Institute, [http://www.vlaamsvredesinstituut.eu/sites/vlaamsvredesinstituut.eu/files/files/reports/jaarrapport\\_dual-use\\_2012.pdf](http://www.vlaamsvredesinstituut.eu/sites/vlaamsvredesinstituut.eu/files/files/reports/jaarrapport_dual-use_2012.pdf)
- <sup>2</sup> Evans, S.A.W. (2013) *Revising Export Control Lists*, Brussels: Flemish Peace Institute.
- <sup>3</sup> Duquet, N. & Van Alstein, M. (2012) *De registratie en traceerbaarheid van ingevoerde vuurwapens* (The registration and traceability of imported firearms), Brussels: Flemish Peace Institute.
- <sup>4</sup> For an extensive discussion of this, see Van Heuverswyn, K., with Duquet, N. (2013), *Transit of strategic goods in Europe.*, Brussels: Flemish Peace Institute, [http://www.flemishpeaceinstitute.eu/sites/vlaamsvredesinstituut.eu/files/files/reports/report\\_transit\\_of\\_strategic\\_goods\\_in\\_europe.pdf](http://www.flemishpeaceinstitute.eu/sites/vlaamsvredesinstituut.eu/files/files/reports/report_transit_of_strategic_goods_in_europe.pdf)
- <sup>5</sup> For an extensive discussion of this, see Van Heuverswyn, K. (2010), *The Belgian regime for the control of brokering in military and dual-use items*, Brussels: Flemish Peace Institute, [http://www.flemishpeaceinstitute.eu/sites/vlaamsvredesinstituut.eu/files/files/reports/vvi\\_web\\_rapport\\_tussenhandel\\_en\\_b.pdf](http://www.flemishpeaceinstitute.eu/sites/vlaamsvredesinstituut.eu/files/files/reports/vvi_web_rapport_tussenhandel_en_b.pdf)
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- <sup>7</sup> Depauw, S. & Van Heuverswyn, K. (2010), *Toetsingskader voor een Vlaams decreet inzake de buitenlandse handel in militaire goederen*. Brussels: Flemish Peace Institute, [http://www.vlaamsvredesinstituut.eu/sites/vlaamsvredesinstituut.eu/files/files/reports/achtergrondnota\\_wapenhandeldecree.pdf](http://www.vlaamsvredesinstituut.eu/sites/vlaamsvredesinstituut.eu/files/files/reports/achtergrondnota_wapenhandeldecree.pdf)
- <sup>8</sup> Baum, T., Depauw, S. & Duquet, N. (ed.) (2014), *Belgische wapenhandel: een politiek, economisch en ethisch hangijzer* (The Belgian arms trade: a political, economic and ethical issue), Leuven: Acco.
- <sup>9</sup> Article 6 of the Act of 7 May 2004 on the founding of a Flemish Institute for Peace and the Prevention of Violence at the Flemish Parliament (Text edited until 08-07-2009), Article 6.
- <sup>10</sup> These reports are published on the website of the SGCU at <http://www.vlaanderen.be/int/verslagen>
- <sup>11</sup> Bauer, S. (2010) 'Post Cold War control of conventional arms' in Tan, H.T.H (ed) *The Global Arms Trade: A Handbook*. London: Routledge.
- <sup>12</sup> For further information on these developments, see Depauw, S. (2010), *The Common Position on arms exports in the light of the emerging European defence market*, Brussels: Flemish Peace Institute, [http://www.flemishpeaceinstitute.eu/sites/vlaamsvredesinstituut.eu/files/files/reports/vvi\\_web\\_achtergrondnota\\_1jaarnacp\\_en\\_1203\\_def.pdf](http://www.flemishpeaceinstitute.eu/sites/vlaamsvredesinstituut.eu/files/files/reports/vvi_web_achtergrondnota_1jaarnacp_en_1203_def.pdf)
- <sup>13</sup> Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons, Official Journal, no. L 256 of 13 September 1991, p. 0051-0058 (amended by Directive 2008/51 of the European Parliament and of the Council of 21 May, 2008, Official Journal no. L 179 of 8 July 2008, p.5-11); Regulation (EU) No. 258/2012 of the European Parliament and the Council of 14 March 2012 for implementing Article 10 of the United Nations Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (UN Firearms Protocol), and for the establishment of export licences for firearms, their components, parts and ammunition, and measures concerning their import and transit. Official Journal no. L 94/1, 30 March 2012, p. 0001-0015.
- <sup>14</sup> [http://eeas.europa.eu/non-proliferation-and-disarmament/arms-export-control/docs/15\\_annual\\_report\\_en.pdf](http://eeas.europa.eu/non-proliferation-and-disarmament/arms-export-control/docs/15_annual_report_en.pdf)
- <sup>15</sup> Stockholm International Peace Research Institute. (2013). SIPRI yearbook 2013: armaments, disarmaments and international security. Oxford, UK: Oxford University Press.; <http://www.sipri.org/databases/embargo>
- <sup>16</sup> Council Decision 2013/798/CFSP of 23 December 2013 concerning restrictive measures against the Central African Republic, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:352:0051:0052:NL:PDF>
- <sup>17</sup> For further information, see Duquet, N. (2014), *Business as usual? Assessing the impact of the Arab Spring on European arms export control policies*, Brussels: Flemish Peace Institute, p.14-15 [http://www.flemishpeaceinstitute.eu/sites/vlaamsvredesinstituut.eu/files/report\\_business\\_as\\_usual\\_web.pdf](http://www.flemishpeaceinstitute.eu/sites/vlaamsvredesinstituut.eu/files/report_business_as_usual_web.pdf)
- <sup>18</sup> For further information, see Duquet, N. (2014), *Business as usual? Assessing the impact of the Arab Spring on European arms export control policies*, Brussels: Flemish Peace Institute, p.15. [http://www.flemishpeaceinstitute.eu/sites/vlaamsvredesinstituut.eu/files/report\\_business\\_as\\_usual\\_web.pdf](http://www.flemishpeaceinstitute.eu/sites/vlaamsvredesinstituut.eu/files/report_business_as_usual_web.pdf)
- <sup>19</sup> *Countering illicit SALW trafficking*, EU Non-Proliferation and Disarmament Conference 2013, Special session 6, 30 September 2013, <http://www.iiss.org/en/events/eu%20conference/sections/eu-conference-2013-ca57/special-sessions-3818/special-session-6-d94f>
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