

REPORT

Under the radar

Transit of military goods -
from licensing to control

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flemish
peaceinstitute

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Under the radar: Transit of military goods – from licensing to control



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List of abbreviations

ACI	Advance Cargo Information
AEO	Authorised Economic Operator
ATT	Arms Trade Treaty
BAFA	Federal Office for Economic Affairs and Export Controls, Germany (Bundesamt für Wirtschaft und Ausfuhrkontrolle)
CDIU	Central Office for Import and Export (the Netherlands)
COARM	Working Party on Conventional Arms Exports
dCSG	Strategic Goods Control Unit (Flemish Region)
DG TAXUD	Directorate-General for Taxation and Customs Union (European Commission)
DG Trade	Directorate-General for Trade (European Commission)
ECS	Export Control System
EEA	European Economic Area (EU with Iceland, Liechtenstein and Norway)
EXBS	Export Control and Related Border Security (US programme)
FPS	Federal Public Service
HS	Harmonised Commodity Description and Coding System
IAEA	International Atomic Energy Agency
ICP	internal compliance programme
ICS	Import Control System
MENA	Middle East and North Africa
NCTS	New Computerised Transit System
OPCW	Organisation for the Prohibition of Chemical Weapons
OSCE	Organization for Security and Co-operation in Europe
PCA	priority control area
POSS	Precursors, Strategic Goods and Sanctions Legislation
SALW	small arms and light weapons
STCE	Strategic Trade Control Enforcement
UAE	United Arab Emirates
UNODC	United Nations Office on Drugs and Crime
WA	Wassenaar Arrangement
WCO	World Customs Organization

Introduction

In November 2020, Operation YAKIR by the Spanish police resulted in the dismantling of a criminal organisation involved in smuggling defence equipment – including tanks – from Ukraine via various routes to countries in North Africa and the Middle East. These goods were often destined for conflict zones under arms embargoes and international sanctions. The criminal organisation used various transit locations to make it difficult to control this traffic.^a It required multidisciplinary cooperation between “experts in the economic, armament, technological, commercial and international maritime transport fields” to expose this international trafficking in military equipment.¹

In February 2019, having gathered relevant intelligence, the customs department of Singapore, a major transit port in Asia, intercepted a container ship transiting the city-state’s port. On board were 2,000 firearms and 12 million pieces of ammunition allegedly originating from the Philippines and destined for the government of Djibouti. Enquiries with this government revealed that this was not the case. Moreover, the applicant for the shipment was based in Sudan, a country under a UN arms embargo, and the goods were to be transhipped in Sudan’s port (Port Sudan), posing a high risk that they would be diverted to Sudan. As the real owner of the goods did not come forward, the goods were eventually destroyed.²

In 2018 and 2019, several transit transactions of military goods – mainly armoured vehicles – originating from Canada and destined for Saudi Arabia were conveyed via the Port of Antwerp in Belgium. Although the Canadian government had issued an export licence for these goods, the transactions would have required a transit licence for transit through Flemish territory. According to the Flemish Arms Trade Decree, transit without transshipment is subject to a licence if there is a reasonable suspicion that the goods are, or could be, intended for crimes against humanity or war crimes.³ The Flemish government has a policy of refusing arms trafficking to Saudi Arabia because of abuses in the conflict in Yemen. However, no such licence was applied for. The relevant minister indicated in the Flemish Parliament that the relevant Flemish authorities were not aware of these transactions; if they had been, a licence application would have been required and the transit licence would probably have been refused.⁴

^a In brief, “transit” is the movement of goods from one country to another through a third country. The term is defined more thoroughly in section 1.

These three cases highlight the problematic and very diverse reality of transit transactions of military goods. In the first example, the **transactions were deliberately illegal**, as both the nature of the goods and their origin and destination were hidden from the various control authorities (in many such cases, they are also hidden from the transport companies carrying them). The second example shows that it is also possible to be dealing with **apparently legal transactions** where the validity of the accompanying documents is in doubt. In such cases, a thorough inspection of these documents will make it possible to identify and stop undesirable and illegal arms transactions. The third case is an example of a situation in which arms shipments are accompanied by the **necessary export licences** and there is no doubt about their intended end use (i.e. no risk of illegal diversion), but the transaction contravenes the export control policy or international obligations of the transit country.

These cases also highlight the opportunities that transit transactions offer to monitor and, if necessary, stop illegal, suspicious or undesirable arms transfers. After all, global trade flows increasingly use transit points: *“Transit and transshipment hubs, or nodes, are an increasing feature of international supply routes and a significant proportion of international containerised trade transits or transships at some point along the supply chain.”*⁵ In fact, flows of illegal goods, or illegal arms transfers, also occur via these global, legal trade flows. At almost all of these transit hubs, the necessary administrative documents have to be presented and competent control agencies (such as customs and the police) are present. In principle, this should make it possible to identify such illegal or undesirable transactions, provided that an efficient and effective control system is in place.

The objective of this report is therefore, taking the complex reality of transit into account, **to gain an insight into the possibilities, challenges, limitations and good practices for better and more efficient controls on the transit of military equipment.**^a With this objective in mind, this report has a two-pronged approach. Firstly, it focuses on the national level. Transit controls on military goods are implemented by national governments. This research focuses on the control systems in **seven European countries: Belgium, Denmark, France, Germany, the Netherlands, Spain and the United Kingdom.** Because controls on the trade in strategic goods are not implemented by the federal government in Belgium, they are the responsibility of regional governments (there is no single Belgian control system). This report consequently includes two control systems in Belgium: those of the **Flemish Region** and the **Walloon Region**. In total, eight European transit control systems are analysed in depth. These systems were selected because they are all mature control systems that see substantial trade flows within their territory and are geographically somewhat scattered across the western side of the European continent.

^a As this statement indicates, this study focuses on control of the transit of military goods. So-called dual-use goods are not covered. The regulatory framework for transit controls on these goods is organised differently. However, where relevant, existing practices concerning transit controls on dual-use goods can be taken into account in the identification of good practices for transit controls on military goods.

This report uses the concept of the “control system” as an umbrella term encompassing (1) the legal framework laid down in regulations; (2) policy, which reflects political choices; and (3) administrative practice, or the way in which policy is implemented. In terms of the actors involved, this means that the report considers not only licensing authorities and procedures but also the roles and responsibility of other government (i.e. customs, police and intelligence services) and private actors in the transport and logistics sector, and the cooperation of those actors with the licensing authorities.

Secondly, this report focuses on the **international dimension of control of the transit of military goods**. Besides focusing on national systems and potential good practices at that level, the report looks at opportunities and challenges for international cooperation and information exchange. While transit controls are developed, implemented and enforced at the national level,⁶ the international nature of transit, by definition, means that various international actors are involved. Consequently, they all have a potential role to play in the control process, including the provision of relevant information. Again, this international analysis focuses specifically on the identification of relevant and good practices and possible initiatives for the optimisation of the control system that monitors the transit of military equipment.

The combination of national and international dimensions facilitates the identification of good practices and recommendations. These concern both the national organisation of controls on the transit of military goods and potential cooperation within international institutions and regimes to improve such controls.

This study was conducted at the request of the Foreign Policy, European Affairs, International Cooperation and Tourism committee of the Flemish Parliament. In December 2020, this committee commissioned the Flemish Peace Institute to conduct research into the possibilities and challenges associated with control of the transit of military goods.

Research methods

In order to respond to the above-mentioned topics, this study used a combination of research methods:^a

1. A **literature and policy document analysis** of studies focusing on transit control issues concerning the international trade in strategic goods and of various documents published by national governments, international control regimes and international organisations. Different types of documents were used in the comparative national analysis: policy and background documents; parliamentary questions and answers; administrative guidelines; outreach documents; scientific and other literature; reports

^a Throughout the report, where quotes are included, the translations (where applicable) are original to this report.

on licensed and denied transit transactions; company, federation and government websites; and publicly accessible databases.

2. A **legal analysis** of regulations in the selected control systems. To this end, primary legislation, preparatory documents, explanatory notes and administrative guidelines were consulted (where available). Public data on the nature and volume of licensed transits in these control systems was also analysed.
3. **Interviews with various stakeholders.** The first aim of these interviews was to generate a better understanding of the organisations, policies and practice of transit controls in the selected systems. Another objective was to identify potential good practices and challenges within these control systems. A combination of methods was used to conduct these interviews, with the choice of methods depending on the profile of the target group:
 - All **government agencies primarily responsible** for the assessment of transit licences were contacted. Interviews were conducted with the services of the Flemish Region (Strategic Goods Control Unit), the Walloon Region (Arms Licensing Directorate), the Netherlands (Central Import and Export Office and the security policy department of the Ministry of Foreign Affairs) and Germany (Federal Office for Economic Affairs and Export Control and the War Weapons division of the Federal Ministry for Economic Affairs and Climate Action). Because of the prevailing Covid-19 measures, these interviews took place online. The various subdivisions of the relevant government department in Denmark, in particular the Danish police, stated that they could not participate due to a lack of capacity. Despite multiple attempts to contact them, no response was received from the British, French or Spanish competent authorities.
 - Twenty-eight **other public services** in the control systems – such as customs; police; intelligence services; ministries of justice, the interior, or foreign or economic affairs; and a civil aviation authority – were contacted by telephone or email with specific questions. Only four of these services were willing or able to participate in an interview.
 - **International experts and actors involved in international trade** were interviewed. These were all people who could provide useful insights into the possibilities for and limitations of international cooperation and information exchange:
 - Representatives of **transport companies** and **umbrella organisations** from the maritime and air transport sectors. In total, six interviews were held with representatives from two international transport companies and two international umbrella organisations. In Belgium, interviews were also held with umbrella organisations of Belgian shipowners, shipping agents, and freight forwarders and customs agents (three interviews).

- Representatives of the **European Commission**: the dual-use^a export control team within Directorate-General (DG) Trade (two respondents) and representatives of the customs transit unit (one respondent), the customs legislation unit (two respondents), and the risk-management and security unit (two respondents) within DG TAXUD (Taxation and Customs Union).
- A representative of the European Council’s **Working Party on Conventional Arms Exports (COARM)**, which sits within the European External Action Service.
- **International organisations** active in the control of the trade in strategic goods: the World Customs Organization (WCO) (two interviews with the programme manager of the WCO’s Strategic Trade Control Enforcement programme),^b a representative of the Global Firearms Programme of the United Nations Office on Drugs and Crime (UNODC), and a representative of the Container Control Programme (jointly run by the UNODC and the WCO).
- A representative of the **European Firearms Experts** network.
- Experts from **other research institutes** (the Small Arms Survey and the Stockholm International Peace Research Institute) and a **peace organisation** (Vredesactie).
- Experts in the control of the international trade in **hazardous goods**: a representative of the HAZMAT department within the Belgian Federal Public Service (FPS) Mobility and Transport, a representative of the Harbour Master’s Office of the Port of Antwerp, and the hazardous goods coordinator of the Belgian Civil Aviation Authority, within FPS Mobility and Transport.

Targeting efficient, effective and transparent controls on the transit of military goods

This research aims to identify initiatives and practices that will optimise control of the transit of military goods, which means that it is important to be clear from the outset about the normative assumptions that inspire the overall analysis. To be able to describe existing practices as “good”, it is necessary to employ an evaluative and interpretative process. This report uses three principles, or criteria, as part of an assessment framework: efficiency, effectiveness and transparency. In other words, this report considers optimum transit controls to be more efficient, effective and transparent. More specifically:

^a Dual-use items are goods, software and technology that can be used for both civilian and military applications. The European Union controls the export, transit and brokering of dual-use items, as well as activities relating to the provision of technical assistance with their use, with the aim of contributing to international peace and security and preventing the proliferation of weapons of mass destruction. These controls take into account the commitments made in the relevant multilateral export control regimes, such as the Wassenaar Arrangement, the Australia Group, the Nuclear Suppliers Group and the Missile Technology Control Regime.

^b The observations and comments of the WCO employee are based on his professional experience in the field of transit and export controls and do not represent official WCO policy regarding transit controls and relevant customs procedures.

1 Efficiency refers to the transit control process from multiple perspectives:

- **efficiency from society's perspective:** a balance between controlling suspicious transit and not unduly burdening legal transit (international security versus national, economic interests);
- **efficiency from the competent authority's perspective:** a balance between controlling the substantial number of transit transactions and the time investment required by the available staff, and seamless cooperation with other authorities for information and enforcement purposes (administrative efficiency);
- **efficiency from the transit actors' point of view:** a proportionate administrative burden, a customer-friendly authorisation process, accessibility and availability of information, and deadlines that take into account economic realities.

2 Effectiveness refers to the result of the control policy as a function of the stated policy objective. Within the context of this research, more effective control is taken to mean better identification of licensed, suspect and illegal transits of military goods. This improved control will then contribute to the security of the transport chain, the prevention of undesirable weapon diversions and compliance with international obligations. The assessment of effectiveness covers the following aspects:

- the level of **identification and detection** of suspect transits or transits subject to licensing;
- the level of **monitoring and compliance** with the licensing conditions of transits subject to licensing;
- the level of **enforcement** of licensing conditions and the degree to which **sanctions** are imposed in the event of violations;
- the level of **alignment** between control systems and the characteristics of the goods being transited.

3 Transparency refers to the possibility for external parties to gain insight into the internal processes of an organisation or government. On the one hand, such transparency is an important aspect of successful parliamentary oversight of control policies implemented by governments. On the other hand, transparency matters as it provides insight into the prevailing legal obligations and common procedures, enabling monitoring of compliance with those legal obligations and procedures. This criterion consequently focuses on the following aspects:

- the nature and extent of **publicly available and easily accessible information** concerning the prevailing legal framework and procedures;
- the nature and extent of **public reporting** concerning licences for the transit of military goods that have been issued and denied.

Structure of the report

Section 1 outlines the phenomenon of transit and explains why this type of transaction is controlled. It further focuses on the international framework and national governments' commitments and obligations regarding control of the transit of military goods. Finally, this section describes the reality of transit as a component of international trade and details which actors – both private and public – play a part in it.

Section 2 analyses how the Flemish Region, the Walloon Region, Denmark, France, Germany, the Netherlands, Spain and the United Kingdom organise control of the transit of military goods. It looks at the applicable legal frameworks, policies, practices and procedures. The aim of this analysis is not only to describe and compare these systems but also to identify relevant and good practices in terms of vision (political choices) and operational control of the transit of military goods.

Section 3 elaborates on the possibilities for and limitations of international cooperation and information exchange between the actors involved in (control of) the transit of military goods. The international nature of transit, where the relevant actors (the exporter, the transporter, and the consignee or importer) are by definition spread across several countries, means that cooperation between international actors is essential. A **whole-system** approach relies on successful and efficient cooperation and information exchange between the various actors involved, at both the national level and the international level. This analysis highlights potential relevant and good practices that could contribute to the optimisation of national transit control systems. At the same time, these insights and conclusions provide impetus and suggestions for actions to be taken at the international level.

Based on the insights from the previous sections, **section 4** presents the general conclusions of this report. It also puts forward potential avenues and interesting practices for the optimisation of control practices pertaining to the transit of military goods.

1



Controlling the transit of military goods

The term “transit” refers to the transportation of goods from a country of origin to a country of destination through the territory of a third country, during which the goods remain on board the transport facility (boat, plane, train or lorry) or are unloaded from one means of transport and reloaded onto the same or another means of transport (e.g. from a ship to a train).⁷ Such unloading and reloading is called “transshipment”, which is formally defined as the transfer of consignments from the “importing means of transport to the exporting means of transport within the area of one Customs office which is the office of both importation and exportation”.⁸

Transit of goods can, therefore, take place with or without transshipment. This distinction is commonly upheld in the use of the terms “transit” (without transshipment) and “transshipment” (with transshipment). Thus, in the present context, transit occurs when a consignment passes through a customs territory without being unloaded from the means of transport.⁹

Transit is a common and complex phenomenon in the international trade chain. Developments with respect to the volume, complexity and speed – more and more, ever faster, and greater numbers of actors and countries involved – of international trade make it difficult to properly map the transit phenomenon, let alone to control the transit of certain types of goods without unduly affecting legitimate trade flows. For a long time, controlling the transit of military equipment was not a priority for national governments. Traditionally, the focus of existing control systems has been on the export of such goods, on controlling the country’s own arms producers and on preventing their goods from being exported to undesirable destinations.¹⁰ At the same time, there has been a focus on controlling the import of goods, which is particularly significant from a tax point of view. The transit of military goods has traditionally not been relevant to exporting governments because it is a transaction outside their jurisdiction. The same is true for the countries through which the goods are transited as there are no tax obligations attached to this process.

International awareness of the importance of successfully controlling the transit of military equipment has only gradually increased in recent years. It is not enough to merely control imports and exports if all sorts of things can go wrong in the international trade flow between departure and arrival. A chain approach to controlling the trade in these goods is consequently necessary, which inevitably means that straightforward transport of military goods must also be monitored. Various international multilateral regimes and treaties relating to the control of the international arms trade have, therefore, gradually raised awareness of the transit phenomenon.

This section starts by outlining the reality of international trade, the location of transit in these international trade flows and the variety of actors involved (section 1.1). To this end, this report focuses on both private actors and the various government agencies involved in (the control of) the international transport of goods in general and military goods in particular. Section 1.2 then discusses the relevant international provisions and obligations regarding the control of conventional arms transit.

1.1 Transit in the international transport chain

Transit is a normal fact of international trade. A substantial proportion of international (container) trade will pass through the territory of a state at least once (with or without transshipment) during transport from a producer to an end user.¹¹ Container transport in particular is largely handled via fixed routes, with rigid arrival and departure times in seaports around the world. Today's transport chains have become extremely complex. A single transaction can easily involve several partners and jurisdictions.¹²

Because transit transactions have little or no fiscal interest and pose few security-related risks to the state through which the goods travel, they are traditionally less subject to formal controls and administrative obligations compared to import and export transactions. Moreover, national governments, especially in countries that serve as transit regions, may be reluctant to impose more extensive controls on transit because they do not want to slow down legitimate trade flows.¹³ Disruption in international trade flows is a competitive disadvantage and may encourage shipping and other haulage companies to divert their trade flows. Diplomatic considerations may also come into play. After all, the implementation of transit controls involves assessing the export policy of the country of origin. The economic pressure to limit unnecessary administrative burdens on legitimate trade highlights the need to find a workable balance.

The international supply chain involves various actors, who each have a responsibility to ensure that a transaction complies with a wide range of legal requirements, including those relating to export control and the management of the international trade in strategic goods.¹⁴ These actors generally fall into two groups: the private transport and logistics sector, which is responsible for the effective transport of the goods, and the public sector, which supervises international flows of goods and is responsible for enforcing relevant legal obligations. The discussion below is limited to actors involved in control of the trade in military goods.

1.1.1 The transport and logistics sector: a complex interplay of tasks

Whereas the manufacturers/exporters and users/importers of military goods often have a direct connection with and relevant expertise concerning the military nature of the goods in question, this often applies to a lesser extent to the actors responsible for the actual transport of the goods. **International transports of military goods are to a large extent handled by those responsible for the organisation of international trade in general.** Actors who act as transit agents and are consequently responsible for the effective transport of military goods are not arms traders or manufacturers. The profile of the “transit actor” covers a wide range of transport, forwarding and customs agency professionals who manage transport and/or administrative requirements:¹⁵

- The **carrier** or transport company is responsible for the actual transport of the goods from the sender to the destination. Such actors are usually responsible for the port-to-port transport of goods. The carrier’s profile depends on the type of transport (water, air, rail or road). Some are specialised in one mode of transport while some combine several types of transport (so-called multimodal transport operators). Transport via international waters represents the largest share of international transport. Approximately 80% of the total trade volume and 70% of the total value of international trade are transported by sea and handled through seaports all over the world.¹⁶ In addition, a substantial proportion of international transport takes place by air. Although air transport only encompasses about 1% of the volume of international trade, it represents about 30–35% of the global value of international trade.¹⁷ Moreover, (often public) postal and express delivery companies are increasingly active in the transport and logistics sector to complement private operators.
- **Freight forwarders** are responsible for organising the transport and are in charge of the transport and customs documentation. Freight forwarders are considered the architects of international trade: they map out transport routes; arrange transport space with carriers; manage the necessary documentation, security aspects and contacts with customs authorities; and monitor the transport. Forwarding agents are transport mediators that act as organisers in the process of shipment and transport of goods on behalf of the exporter or the importer. In fact, a freight forwarder acts as an intermediary between a carrier and a shipper or consignor (the party that gives the order to transport a cargo).
- A **customs broker** is the person who handles customs formalities in their own name or in the name, or on behalf, of a client. Customs brokers handle the administrative process of customs declarations in those countries where a customs declaration is mandatory and assume liability and payment obligations vis-à-vis the customs authorities. In many cases, the customs broker takes on this task on behalf of a foreign client (such as a freight forwarder or exporter).
- **Shipping agents** are the representatives of international shipping companies in local ports, where they handle the necessary customs formalities. They may do this solely as port agents, where they are only responsible for practical arrangements concerning the ships, or they may also be responsible for commercial transactions, in

which case they try to sell space on board the ships. It is mainly large shipping companies that have agencies in the various ports, often under their own name.¹⁸

The “transport and logistics sector” is consequently particularly heterogeneous.¹⁹ It includes companies that specialise in one type of transport, in forwarding or in customs formalities; companies that combine transport, forwarding and customs formalities (just for themselves or for others); and companies that specialise in certain types of goods. There are economic operators that specialise in one aspect – such as transport, customs formalities or mediation – but in practice many companies combine several activities. Sometimes they work directly on behalf of a client and sometimes they work as a subcontractor for another intermediary (with any number of combinations in between). The ever-increasing complexity of international trade means that the number of intermediaries involved in the trade chain is continuing to grow. As a result, “the client is not always the producer themselves, but can also be another forwarder and therefore often another logistics player.”²⁰

For a long time the different professions and functions were clearly distinguishable, but in recent years the transport and logistics sector has been moving towards increasing interdependence and overlap between the various functions. For example, there are forwarders that operate container ships, while some container shipping companies own forwarding companies. The transport and logistics sector is a sector on the move. Some companies specialise while others combine several profiles (e.g. they operate as carriers, customs agents and forwarders). This means that it is easier for some organisations to comply with formalities because they have greater in-house expertise. Moreover, there is a degree of consolidation in the international transport world. Services are concentrated among a few large shipping companies: 20 companies are currently responsible for approximately 90% of all global container transport.²¹ Prominent players include AP Moller–Maersk, COSCO (China Ocean Shipping Company), Evergreen Marine Corporation, Hapag-Lloyd and MSC (Mediterranean Shipping Company). These developments are driven by constant pressure to achieve faster delivery times and lower distribution costs.²²

The combination of various trends – the growing complexity and interconnectedness of international trade, increasing pressure to reduce delivery times, and expanding awareness concerning security – poses significant challenges to the transport industry’s ability to continue to meet all of its legal requirements.²³ Being compliant is not a straightforward matter for transporters either:

- Transport companies are not the producers, developers or distributors of the goods they transport. Therefore, they often do not have the necessary technical expertise to assess the characteristics of products.
- Transport companies have to rely on information provided by the carrier of the exporting company or the producer of the goods.
- Correct estimation and assessment of the freight and corresponding requirements depend upon the information that is available about the goods, the actual shipper or consignor, and the destination.
- International transport companies transport huge amounts of goods.

- Transport companies have to deal with many different regulations and regulatory bodies. Exposure to “compliance risk” is consequently high and continues to grow with the increasing volume and complexity of international trade.²⁴
- Transport companies rarely act as exporters or importers and often do not have legal ownership of the goods.

Furthermore, governments are placing more and more responsibility on companies and other logistics actors. For example, legal obligations are increasing in many areas, an active reporting duty for potential suspects is being introduced, and companies are being actively encouraged to implement internal management and compliance systems.²⁵

1.1.2 Public services involved in transit controls (of military goods)

Several public sector actors are involved in transit controls. Where control of the transit of military goods is involved, it generally tends to involve the same agencies that control the import and export of military goods. In practice, however, the competence or involvement of these services is often more limited in the case of transit than in the cases of import and export.

Licensing authorities have the power to impose a licensing requirement for specific transactions involving certain goods; this means that, in principle, such goods cannot be cleared by customs without an export, import or transit licence being issued by the agency concerned. If an individual case involves the transit of military goods, the relevant agency will be the government department that controls the international trade in these goods, often on the basis of relevant national regulations.

Customs agencies are responsible for the actual control and monitoring of goods entering a given territory. Traditionally, there has been less interest on the part of customs in monitoring or controlling transit, precisely because these transactions are exempt from fiscal obligations (such as import duties). The information that transporters have to provide to customs authorities in the case of transit is much more limited than for exports and imports. Only for specific transactions, such as customs transit (see the box below) and customs warehousing,^a is a formal declaration to the local customs office necessary. In practice, these are cases where goods are actually handled within the territory – for example, transferred to another means of transport or temporary storage in a warehouse. Where goods remain on board a vessel, aircraft or other means of transport during their movement across the territory and are not transshipped, no customs action is required. This implies that, in principle, the customs authorities have no physical access or control over the goods.

^a Under the customs warehousing procedure, non-Union goods can be stored in an approved area under the supervision of the customs authorities or in another location. Import duties, VAT and other charges are due only upon removal of the goods from the customs warehouse if they are destined for the EU market. These charges are not payable where the goods are destined for a market outside the customs territory of the European Union.

Within the European Union Customs Union, transit is referred to as “customs transit” in customs regulations. According to the legislation, transit is a customs procedure for goods that move through the EU customs territory outside the usual fiscal and/or commercial policy measures.²⁶ There are three main scenarios:

- 1) Non-Union goods enter the EU from a third country and are transhipped to an EU member state, where they are released for free circulation (and acquire the status of Union goods).
- 2) Union goods are exported from an EU member state and transit through the territory of other member states (as Union goods) before leaving the European Union (and acquire the status of non-Union goods when they cross an external border). In such cases, they are subject to the transit procedure when they are exported to European Free Trade Association countries. In other cases, they are covered by the export procedure.
- 3) Non-Union goods are transited from one third country to another third country via the European Union. The status of these goods does not change and they remain non-Union goods.

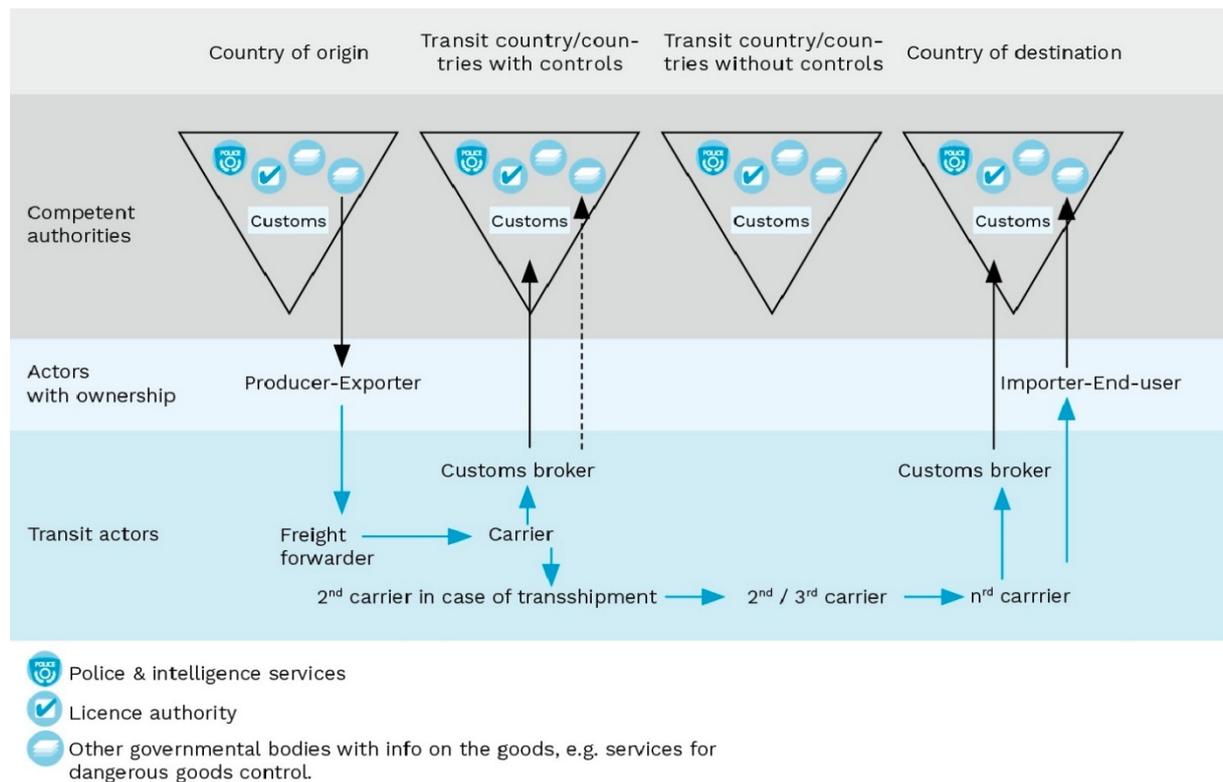
When goods enter the European Union without a customs destination in the EU, an **Entry Summary Declaration** needs to be lodged, in practice usually by the carrier or its representative in the port concerned (i.e. the shipping agent). This declaration needs to list all goods on board of the ship or airplane that enter the EU and that will not be brought into free circulation in the EU common market. So it does not matter whether the goods are unloaded or in which port the goods are to be unloaded. Importantly however, the information on the goods that needs to be included in this declaration, remains limited to a short description of the goods. In other words, for goods that are being transited or transhipped via the EU, current customs declaration does not oblige the specific HS commodity code to be reported, as would be the case in import or export declarations.

Police, security and intelligence services play a part in detecting suspicious trade flows and transactions, and in identifying and prosecuting the actors in question. Where a transaction involves trade in strategic goods, this relates to the detection and identification of illicit flows of goods that could be used in programmes to develop weapons of mass destruction or for the illegal proliferation of conventional arms in certain countries or regions. The activities of the above-mentioned services are not connected with the control of legal trade.

Figure 1 describes the international transport chain for military goods. Although this figure simplifies things in certain respects – the reality usually involves several transit countries and a larger number of transport and logistics actors – it describes the actors involved in the transport of these goods, from the producer in the exporting country to the recipient or end user in the importing country. The figure also shows the control services that

(potentially) play a role in the control of the international trade in military goods in the various countries.

Figure 1: The international transport chain for military goods: actors involved in the transport and logistics sector and relevant government departments in export, import and transit countries



Transit of military goods: additional actors involved compared to the export of such goods

Transit transactions involve economic actors additional to those that play a role in exports. Where exports are concerned, the **producer** plays a key role and is in contact with the licensing authority to obtain the necessary licences for the export of military goods. **Transport and logistics actors** have a key role in the effective transport of these goods. They are economic actors who are responsible for the organisation of international trade, the effective (inter)national transport of goods, or the fulfilment of the necessary customs obligations during the transport of the goods through the relevant countries en route to their destination. These actors differ fundamentally from the actual producer or actual (end) user of the goods, who often have clear insight into the characteristics and use of the goods.

As regards the national authorities involved in controlling international trade flows, and transit in particular, licensing authorities and customs agencies are involved, albeit in a different role and level of involvement compared to in the case of export controls. The transport and logistics actors responsible for the transport – and therefore transit – of goods only come into contact with customs agencies (not licensing authorities) and are responsible for completing the necessary customs formalities. In other words, while an exporter of conventional arms will almost always be in contact with the licensing authority to obtain an export licence and with customs agencies for clearance of the goods, a transport or logistics actor will almost never be in contact with these licensing authorities. Moreover, customs authorities only receive limited substantive information about the goods that are transiting as the goods do not need to be cleared through customs.²⁷

1.2 Greater international focus on controlling the transit of military goods

Despite the speed of international trade flows, the commercial pressure for speed and efficiency, and the relatively limited relevance of transit transactions to customs authorities, controls on transactions of this nature are useful and necessary. Transit controls enable governments to monitor, control, authorise or refuse the transit of arms through their territory, or even to seize such weapons. Precisely because international trade flows, including those involving illegal products, almost always take place via legal routes, certain administrative obligations have to be fulfilled in most cases. In principle, these controls at such transit hubs provide an opportunity to identify illegal transactions.

Transit controls on conventional arms can be implemented for various reasons. An initial important incentive to control transit transactions starts from the perspective of international security. The main risk with transit is diversion from the approved export destination, whether or not this is in combination with common crimes such as forgery, bribery of officials, or circumvention of physical border and other controls.²⁸ Transit

controls reinforce a government's oversight of arms at times when they are vulnerable to being diverted to undesirable end users or illegal arms markets. This makes transit controls essential in terms of securing the global supply chain.

Transit controls may also be necessary to comply with international obligations such as UN or EU embargoes or to defend "vital security interests".²⁹ An international shipment of military goods departing from a particular country may well be perfectly legal upon departure, but the transit country's international obligations may make such a transaction illegal. This may be the case as a result of a European arms embargo, a national arms embargo or obligations under the UN Arms Trade Treaty (ATT), which not all countries are participating in as yet. A particular transit may, therefore, be illegal from the point of view of the transit country but perfectly legal and documented from the point of view of the exporting country.³⁰

The focus on transit and transit controls has gradually increased, in particular since the turn of the century, within various international export control regimes and treaties. The following sub-sections successively deal with the focus on transit and the resulting commitments for member states and parties of the UN Arms Trade Treaty and UN Firearms Protocol, the Wassenaar Arrangement, the Organization for Security and Co-operation in Europe (OSCE) and the European Union.

1.2.1 The United Nations: the Arms Trade Treaty and the Firearms Protocol

The ATT, which took effect in 2014, for the first time created an internationally legally binding framework for the regulation of the international trade in conventional arms.^a Importantly, in addition to procedures and assessment criteria for the export and import of these goods, the procedures and obligations in this treaty cover transit (with and without transshipment). Article 9 states that: "Each State Party shall take appropriate measures to regulate, *where necessary and feasible*, the *transit or transshipment* under its jurisdiction of conventional arms covered under Article 2 (1) through its territory in accordance with relevant international law."³¹

Specifically, Article 9 of the ATT introduced a control requirement for the transit of finished conventional weapons systems: military combat aircraft, attack helicopters, armoured combat vehicles, warships, large-calibre artillery systems, battle tanks, small arms and light weapons (SALW), and missile launchers and missiles. Ammunition and components of these weapon systems are not covered by this transit control obligation.

Moreover, the treaty encourages information exchange and cooperation between the treaty parties to improve the implementation of its provisions: "Importing, transit, transshipment and exporting States Parties shall cooperate and exchange information, pursuant

^a In March 2021, 111 countries were treaty parties to the UN Arms Trade Treaty. These countries are consequently bound to implement an export, import and transit control system and to comply with obligations concerning reporting, cooperation and the exchange of information.

to their national laws, where appropriate and feasible, in order to mitigate the risk of diversion of the transfer of conventional arms covered under Article 2 (1).”³² In practical terms, the treaty compels the exporting government to provide the necessary relevant information to an importing government or nation through which the goods are transited, when such information is requested: “Each exporting State Party shall make available appropriate information about the authorization in question, upon request, to the importing State Party and to the transit or trans-shipment States Parties, subject to its national laws, practices or policies.”³³

Despite there being an article specifically on transit in the treaty text, the ATT further remains vague as to what the control obligation should look like and does not provide guidance on the substantive assessment of transit, except for a reference to relevant international regulations. Clarification of what is understood to constitute the “appropriate documentation” (i.e. documentation that should be submitted to the competent authority in the transit state(s)) is also lacking. However, at the fifth conference of the parties to the ATT, in 2019, a “transit” sub-working group was established within the working group on effective implementation of this conference. This sub-working group is tasked with examining how Article 9 of the ATT can be implemented by the state parties.³⁴

In addition to the general framework for the control of trade in military goods, a more specific agreement with relevant obligations regarding transit controls on firearms is in force within the United Nations. The 2001 Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, Supplementing the United Nations Convention against Transnational Organised Crime (the UN Firearms Protocol) obliges parties to the protocol, among other things, “to establish or maintain an effective system of export and import licensing or authorization, *as well as of measures on international transit*, for the transfer of firearms, their parts and components and ammunition”.³⁵ The key objective of the Firearms Protocol is to prevent the products in question from being diverted along the route from the manufacturer to the ultimate end user.

Until the ATT took effect, this protocol was the only legally binding international framework for controlling the international trade in arms, albeit only for firearms and ammunition. Furthermore, the protocol is based on the principle that before a state grants an export licence, the transit countries must give their written consent, demonstrating that they have no objection to the transit of the goods through their territory.³⁶ The export licence must also list all the countries through which the transit will take place. The protocol thus incorporates important obligations regarding timely information exchange between exporting and transit countries.

1.2.2 The Wassenaar Arrangement

The Wassenaar Arrangement (WA) was established in 1996 with the aim of strengthening controls on the proliferation of goods and technologies that can be used to develop conventional arms and weapons of mass destruction. To this end, the participating states to this control regime develop and implement lists of goods that they will subject to export controls. Next to these control lists (which include both conventional military goods and dual-use goods), the WA develops best practices and guidelines that participating states may use in the implementation of national control systems and practices. Currently, 42 states participate in this control regime, including most NATO member states, most countries of the former Eastern Bloc, and countries such as Australia, India, Mexico, New Zealand, the Republic of Korea and South Africa.

The WA first published a good-practice document on transit controls in 2015.³⁷ This two-page document stresses the importance of effective transit controls in preventing illegal diversion of military (and dual-use) items to undesirable end users. It contains seven recommendations, which together suggest a need for the following elements:

- a transparent legal framework that provides for the possibility of controlling transit;
- the provision of an authorisation requirement and a “catch-all” control option, which would install a legal basis for governments to place the transit of unlisted items under control via an ad hoc licence requirement for that particular transaction when there is reason to believe that such items could be intended for a undesirable or illegal end use or end user;³⁸
- the implementation of a risk-management system that uses information provided by the transport and logistics sector prior to the arrival of the goods;
- targeted outreach to all stakeholders – exporters and transit actors – to make them aware of existing legal obligations;
- training of customs staff to help them detect suspicious transactions.

The document also incorporates an appeal to share information on transit control policies and practices with the other WA countries.

These important best practices summarise how to effectively control the transit of strategic goods – a national control system as well as international information sharing and cooperation – but at the same time remain relatively non-committal and general. The document does not offer concrete recommendations on how to implement these best practices at the national level.

1.2.3 The Organization for Security and Co-operation in Europe

The OSCE has adopted several resolutions and developed manuals concerning the control of the international trade in military equipment in recent years, albeit with a strong focus on SALW.³⁹ In these publications and resolutions, the participating states specifically stress the importance of transit controls on international trade in SALW because of the risk of unwanted diversion. However, one significant limitation relates to the fact that it is left to each OSCE member state to decide whether or not to establish national procedures to control the transit of SALW through its territory.

If a participating state has established a transit procedure, the exporter or exporting country must ensure that the necessary approval has been granted. Participating states are encouraged to use a minimum common information standard for documents requesting transit transactions and to develop recommendations in this area based on best practices in other member states.⁴⁰ The OSCE is also formulating several recommendations for the organisation of transit controls on (albeit a subset of) military goods. Exporting countries and companies must first check whether the necessary approvals are available from the countries through which the goods will transit (and potentially be transshipped). Other key principles offered are exchange of information and standardisation of the necessary formalities and documents.

At the same time, the provisions and recommendations relating to transit controls appear to be much less elaborate and binding than the provisions relating to the control of exports and imports of SALW. It remains unclear, therefore, whether these recommendations are effectively implemented in practice.

1.2.4 The European Union

The fact that transit has only relatively recently become a focus in the context of controlling the international arms trade is well illustrated at the EU level. Indeed, the 1998 EU Code of Conduct on Arms Exports did not contain any reference to transit.⁴¹ It was not until the European Council's Common Position 2008/944 (in 2008) that specific reference was made to transit applications with and without transshipment of military goods also being part of the scope of the common position.⁴² Transit transactions of military goods destined for a non-EU member state should, therefore, in principle be assessed in the same way as export transactions.⁴³ In other words, member states are obliged to test transit licences against the eight common criteria in the common position for the assessment of licence applications.⁴⁴ However, they remain free to decide how to integrate these provisions into their control practices. Moreover, there is still a lack of practical initiatives to develop and harmonise this area.

Furthermore, European legislation – through Directive 2009/43, concerning the simplification of the terms and conditions for intra-European trade in defence-related products – has had an impact on the scope of control of the transit of defence-related goods.⁴⁵ This directive specifically states that the transit of defence-related goods through member states, originating from one member state and destined for another member state,

cannot be subject to authorisation, except where it is necessary for the application of provisions required on the grounds of public security or public policy, such as for the safety of transport.⁴⁶ Transit where both the country of origin and the country of destination are EU member states is, therefore, in principle not subject to authorisation. One of the objectives of the directive was to get EU member states to waive the transit licence requirement for military goods for transactions for which another member state had issued an export licence. However, this met with resistance from member states, as a result of which many of them still impose such controls.

The European Union also pays specific attention to the trade in civilian firearms. Regulation 258/2012 (on the control of extra-EU trade in civilian firearms) was introduced in 2012 to implement the obligations established by the UN Firearms Protocol at European level.^a With regard to transit, this regulation stipulates that an export licence must indicate, where appropriate, the third countries of transit.⁴⁷ The competent authorities must verify that the third countries of transit have given notice in writing, at the latest prior to shipment, that they do not object to the transit. An exemption applies for sea transit and airport transit, and for temporary export for verifiable lawful purposes such as hunting, research and repair.⁴⁸ Only transit involving transshipment is, therefore, subject to this obligation. The exporter must submit the necessary documents proving that there are no objections to the transit to the competent authority in the country from which the export is to take place.⁴⁹

Based on an analysis of the implementation of this regulation in EU member states, the European Commission published a report in 2018 addressed to the European Parliament and the Council.⁵⁰ The report made recommendations regarding steps to improve the security of export, import and transit measures for firearms as well as their components, essential accessories and ammunition.⁵¹ These recommendations stress the importance of transparency and reporting on licences issued and licences denied: collecting such data is necessary to monitor the implementation of the legislative framework and to identify security risks. The European Commission also emphasises the need for increased information sharing. Firstly, there is a need for more information exchange between export control authorities on licence refusals via the COARM online information system.^b This currently appears to be suboptimal because not all competent authorities have access to the database. Approximately half of all competent authorities consequently indicated that they had on occasion issued licences for transactions that had previously been denied by another member state.⁵² Additionally, the European Commission is of the opinion that more cooperation is needed between the customs agencies in member states concerning trade flows of firearms via the Customs Risk Management Framework in order to prevent illegal trafficking.⁵³

^a The regulation specifically defines transit as "the operation of transport of goods leaving the customs territory of the Union and passing through the territory of one or more third countries with final destination in another third country" (Article 2, 12). Transit through other EU member states prior to extra-EU export does not fall within the scope of this regulation.

^b The COARM online information system is a system developed by the European Union to facilitate the exchange of information on denied arms export licences between national export control authorities.

Limitations of the international framework controlling the transit of military goods

Traditionally, the focus in terms of control of the international arms trade has been on export transactions (and to a lesser extent imports). Only in recent years has the focus shifted to the phenomenon of transit, because of the growing recognition of the importance of controlling the entire trade flow to prevent military goods being diverted to undesirable end users. The recent establishment in 2019 of a sub-working group on transit within the framework of the conference of states parties of the UN Arms Trade Treaty illustrates this growing awareness.

However, this international framework contains few specific, practical provisions and guidelines on how such controls should be organised on the national level. As a consequence, there is no uniform supra-national framework. Therefore, in practice, the (limited) international provisions are interpreted by states parties and implemented at the national level. Table 1 provides an overview of both the opportunities and the limitations and drawbacks of the international control regimes under discussion in terms of the control of the transit of military goods.

Table 1: Overview of both the opportunities and the drawbacks and limitations of the relevant international control systems

	Opportunities.	Drawbacks and limitations
UN Arms Trade Treaty	<ul style="list-style-type: none"> - Transit controls are mandatory for treaty parties⁵⁴ - Exchange of information between treaty parties and annual reporting are mandatory 	<ul style="list-style-type: none"> - More limited goods list for transit controls (only finished military systems) - Only 110 states parties to the treaty⁵⁵
UN Firearms Protocol	<ul style="list-style-type: none"> - Transit controls are mandatory - Authorisation from transit countries is mandatory for firearms exports 	<ul style="list-style-type: none"> - Only applicable to the transit of firearms and ammunition - Only 120 states parties to the protocol⁵⁶
Wassenaar Arrangement	<ul style="list-style-type: none"> - Emphasis on the importance of transit controls - List of good practices 	<ul style="list-style-type: none"> - Emphasis on the importance of transit controls - List of good practices
OSCE	<ul style="list-style-type: none"> - Emphasis on the importance of transit controls - List of good practices 	<ul style="list-style-type: none"> - Mere political commitments, not legally binding - Member states are free to decide whether and how to implement the recommendations
EU Common Position 2008/944	<ul style="list-style-type: none"> - Applicable to the transit of military goods - Common list of controlled military goods - Binding criteria for the assessment of transfers, including transit - Information exchange system between EU member states pertaining to refused licences - Mandatory annual reporting 	<ul style="list-style-type: none"> - EU member states are free to determine the national implementation and interpretation of assessment criteria - Not legally enforceable at EU level

Further controls and monitoring of the transit of strategic goods pose various practical challenges and require coordination and cooperation between different actors, both nationally and between countries.⁵⁷ Section 2 of this report analyses the regulatory frameworks and practices associated with transit controls at the national level, while section 3 discusses the possibilities and limitations regarding coordination and cooperation between the various actors in the different countries.

2



Transit controls in eight European systems

This section aims to provide an in-depth understanding of how various governments actually control the transit of military goods via their territory. Such a national analysis will help to identify both challenges and good practices in the organisation of transit controls on military goods.

For practical reasons, the comparison is limited to six current EU member states and one former EU member state. This selection takes into account both geographical distribution and the relevance of transit to each of these European countries. Not all countries are confronted to the same extent with the phenomenon of transit through their own territory. This is why, initially, four neighbouring countries were selected that are responsible for a substantial proportion of all transit shipments through Europe: **Belgium, France, Germany and the Netherlands**. Because responsibility for the control of the international trade in strategic goods was transferred from the federal government to the regional authorities in 2003, there is no longer a single Belgian control system but rather three separate control systems. For this study, the two most important systems were selected to be included in the analysis: the **Flemish Region** and the **Walloon Region**.

In addition to these five, two other EU member states are included in the analysis to achieve a broader geographical distribution. The case of **Denmark** provides insight into the northern routes, and **Spain** provides an overview of the southern routes. The last country to be selected ceased to be an EU member state in 2020, but the **United Kingdom** remains relevant because of its recent exit from the European Union Customs Union and internal market. Not only has this introduced new customs obligations for the United Kingdom and the European Union but it may also have implications for the level playing field between the United Kingdom and the EU member states.

An effective and efficient export control system should at least incorporate the following elements to be effective: an unequivocal legal basis; transparent coordination and cooperation mechanisms between different services; monitoring, enforcement and prosecution services; and the capacity to undertake outreach activities focused on private actors to inform them of their legal obligations.⁵⁸ This comparative analysis therefore explores the various steps that are an inherent part of this kind of comprehensive control system: the identification of military goods in transit requiring licensing, the licensing process itself, and its monitoring and enforcement.

This section starts with an outline of the volume and characteristics of general cargo transport via airports and sea ports in the selected countries and regions. The transport of military goods obviously constitutes only a small part of these goods flows, but this analysis gives an initial insight into the overall size of the trade flows in the selected systems. The next section (2.2) provides an in-depth comparative analysis of the control systems of the eight countries and regions, looking at the legal frameworks (2.2.1 and 2.2.2); the material (2.2.3), territorial (2.2.4) and personal (2.2.5) scopes of the controls; prohibited, exempted and licensed transit (2.2.6); the assessment methods used in the issuing of licences (2.2.7); the various actors involved in the procedure (2.2.8); the organisation of monitoring and enforcement (2.2.9); and the degree of transparency and public reporting on licensed and denied transit transactions of military goods (2.2.10). Section 2.3 analyses the (developments in the) nature and extent of the transit of military goods in the various control systems. For each control system, this section focuses on the number of licences issued and denied for the transit of military equipment and on the countries of origin and destination of these transit transactions in the various control systems. Finally, section 2.4 offers some conclusions on this section.

2.1 Transit and transport of goods in the various countries

Europe is an important transit area with seaports and airports that rank among the world's best in terms of the volume of goods handled. The countries and regions that are the subject of this study are all major transit areas.

Tables 2 and 3 show the quantities of goods handled in 2019 by the maritime ports and airports of the selected systems.^a As mentioned in the previous section, the vast majority of international trade takes place by sea. Measured by the volume of goods, air transport represents only a fraction of global trade. With more than 600 million tonnes of goods transhipped annually, the Netherlands is the most important maritime transit area in Europe. Spain and the United Kingdom follow with annual cargo transshipments of approximately 500 million tonnes each. The Flemish Region, France and Germany each have approximately 300 million tonnes of goods handled and transported through their respective seaports each year. Denmark manages about 100 million tonnes annually. The Walloon Region is not included in this analysis because it does not have a seaport in its territory. These seven European countries accounted for 63% of the total cargo turnover in maritime ports within the European Union in 2019.⁵⁹

In terms of air transport, Germany is the absolute front runner with more than 4.5 million tonnes of goods handled annually in its airports. The United Kingdom, France, the Netherlands and the two Belgian regions also handle considerable amounts of air transport.

^a The data is from 2019 due to the major impact of the Covid-19 pandemic on the volume of trade flows. The latest figures would not be representative of the actual volume of trade flows.

Compared to the other systems, Danish airports cover only a limited share of international cargo transport by air.

Table 2: Total volume of goods transshipped via maritime ports in 2019, in thousands of tonnes⁶⁰

Control system	Total volume of transshipped goods (thousands of tonnes)
Flemish Region	277.783
Walloon Region	0 (no maritime ports)
Denmark	93.727
France	302.288
Germany	294.533
The Netherlands	607.527
Spain	496.912
United Kingdom	486.094

Table 3: Total cargo and mail transport via airports in 2019, in tonnes⁶¹

Control system	Total volume of cargo and mail transport (tonnes)
Flemish Region	588.510
Walloon Region	808.872
Denmark	244.997
France	2.377.384
Germany	4.684.553
The Netherlands	1.703.556
Spain	815.612
United Kingdom	2.650.232

2.1.1 Main seaports and airports in the various countries

Some ports and airports sit high in the European and global rankings in terms of cargo turnover and transport of goods. Rotterdam (in the Netherlands) is the largest European maritime port and is in the top ten largest ports worldwide.⁶² The Dutch port of Amsterdam is in the European top ten, with around 110 million tonnes of goods transshipped annually. This makes the Netherlands the most important country in the European Union for the transport and transit of goods.

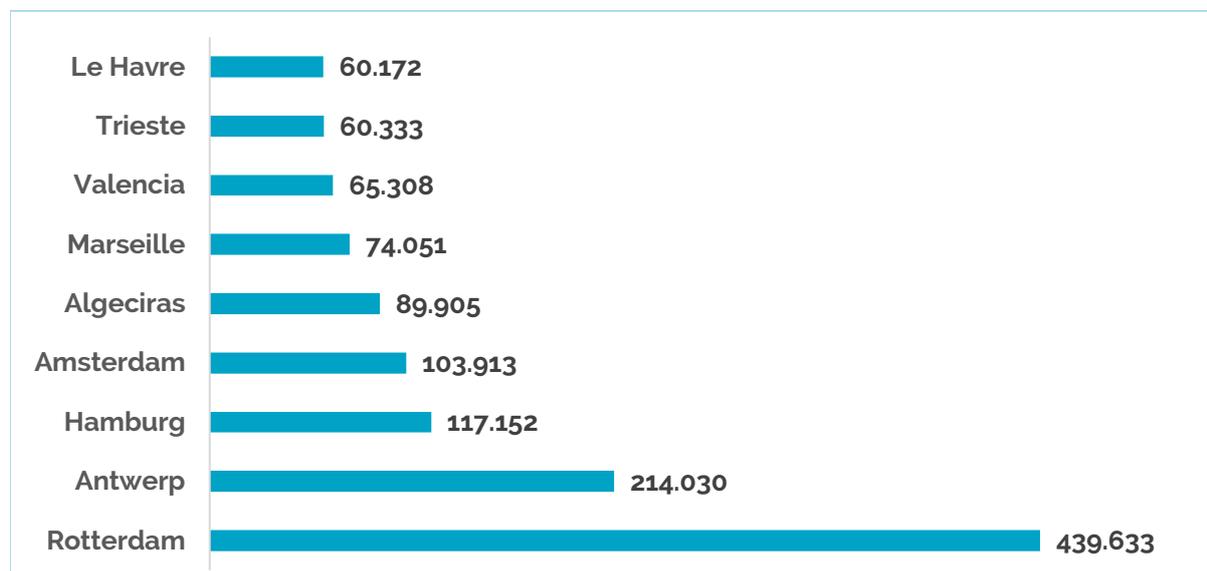
Antwerp, in the Flemish Region, is the second largest seaport in Europe and number 14 worldwide.⁶³ Since 2000, maritime traffic via the Flemish seaports has been growing almost continuously: from 194 million tonnes in 2000 to 318 million tonnes in 2019. At the same time, the share of the Flemish seaports in the Le Havre–Hamburg range^a gradually increased from 23.7% in 2000 to 26.1% in 2018.⁶⁴ Recent initiatives and plans aim to consolidate this position in the ranking. They include the North Sea Port merger project (initiated in 2018),⁶⁵ the merger of the ports of Antwerp and Zeebrugge (which together generate a turnover of 278 million tonnes of goods) into Port Antwerp Bruges, plans for a new lock in Terneuzen to act as a gateway to the Port of Ghent (which will allow ships of up to 120,000 tonnes to sail up the Ghent–Terneuzen canal), and the Oosterweel works in Antwerp.⁶⁶ These initiatives illustrate the Flemish government’s intensive policy efforts to further expand the port capacity of the Flemish Region.⁶⁶

The data in Figure 2 also indicate that, in certain countries, cargo handling is widely distributed across different ports. This is certainly the case for maritime transport: although the United Kingdom, for example, handles almost 500 million tonnes of goods annually via its seaports, no British seaport is ranked in the top ten European ports. Similar situations also apply to some extent for France and Spain. Although there are two French (Le Havre and Marseille) and two Spanish (Algeciras and Valencia) ports in the top ten, each pair of ports together represents less than half of the total cargo traffic in the country concerned. It is therefore clear that, in addition to their large seaports, France and Spain have many other smaller ports where goods are transshipped.

Danish seaports, especially when compared to the largest European seaports, only account for a limited amount of cargo handling in absolute terms. The largest Danish seaports in terms of tonnage are Aarhus (8.6 million per year), Frederica (6.9 million) and Copenhagen (6.7 million).⁶⁷ Compared to the main seaports in the European Union, the Danish ports’ volume of transhipped goods is consequently rather limited.

^a The Le Havre–Hamburg range includes all ports between Hamburg (Germany) and Le Havre (France), consisting of various smaller and larger ports that are all geographically very close to each other and are strongly integrated.

Figure 2: Top ten most important European seaports by total volume of goods handled in 2019, in thousands of tonnes⁶⁸

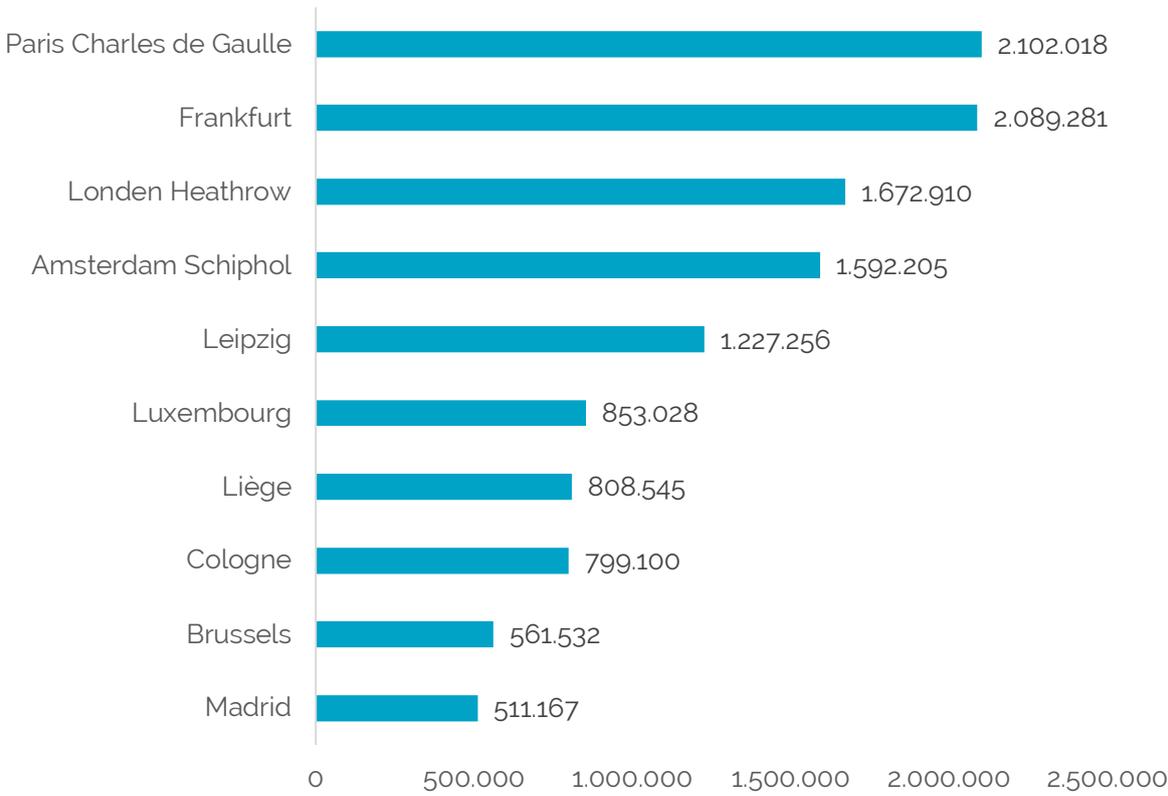


The air transit hubs in the selected control systems are not only big players at the national or European level but also on the global scale.⁶⁹ The largest cargo airport in Europe is Charles de Gaulle in Paris. In 2019, 2.1 million tonnes of goods and mail were handled through this airport, which places it 11th in the global ranking.⁷⁰ One of Charles de Gaulle's strengths is an extensive air transport network with three major hubs (for Air France, FedEx and La Poste).⁷¹

Some of the most widely used airports for cargo transport are located in Germany. Frankfurt, Leipzig and Cologne are all among the top ten largest cargo airports in Europe (Figure 3). In 2019, 2.1 million tonnes of cargo were transacted through Frankfurt's airport, putting it in 13th place worldwide.⁷² Frankfurt is home to international freight traffic and also express and courier services, with branches of global logistics companies such as DHL, FedEx and TNT.⁷³ Other important transit locations are Cologne and especially Leipzig, which is Germany's second largest airport for cargo after Frankfurt, with an annual cargo traffic of 1.2 million tonnes. This is mainly explained by the fact that Leipzig's airport is one of DHL's four global hubs. The presence of express and courier companies also largely explains the high volume of goods handled at London Heathrow airport. Courier companies such as DHL and UPS are key partners of these airports.⁷⁴

In Belgium, both regions have major airports for international cargo transport. The most important transit location in the Walloon Region is Liège Airport. This airport handled just over 800,000 tonnes of freight in 2019. Liège Airport's leading position is the result of a specific policy choice in 1996 to initiate a "full cargo" policy, with a focus on aircraft that only carry cargo.⁷⁵ The Flemish airports are also key players in European cargo transport. In 2019, Zaventem airport handled just over 550,000 tonnes of goods, which places it in the top ten European airports in terms of freight transport.⁷⁶

Figure 3: Top ten leading European airports by tonnes of cargo and mail loaded and unloaded in 2019 (source: Eurostat⁷⁷)



Conclusions on the size and outlook of transit in Europe

The selected control systems are all heavily involved in transit operations and they all have large and important transport hubs. Millions of tonnes of cargo are transported and transited through airports and seaports in the countries concerned. Maritime transport has by far the largest share. The tonnages of goods are much lower for air transport. Both types of transport have gained in importance in recent years, reflecting the general growth in international trade flows.

For economic reasons, governments make great effort to attract private actors and encourage them to settle in their territory, and these efforts often go hand in hand with substantial public investments in infrastructure. The economic appeal and added value of seaports and airports (e.g. in terms of employment) are immense. Most countries and regions have consequently developed specific policies to increase the appeal of their own airports and seaports and to channel as many trade flows as possible through national ports.

2.2 Legal frameworks and administrative practices in relation to transit controls: a comparative analysis

This section provides an in-depth comparative analysis of how different governments organise the control of the transit of military goods. The analysis compares the control systems based on the ten areas outlined in the introduction to section 2. As described in the introduction, this report not only refers to the legislative frameworks but also includes policy documents, administrative guidelines and additional administrative practices in the analysis where relevant.

2.2.1 Legal bases for control of the transit of military goods

The starting point for the analysis of the eight control systems should be the legal frameworks governing the control of the transit of military goods. A dedicated legal framework is a prerequisite for the control of transit transactions and for any interceptions of suspect or illegal transactions of military goods in a country's territory. In the absence of incontrovertible legal provisions regarding either licensing or the allocation of powers to relevant authorities, the transit of military goods cannot be controlled.⁷⁸ Table 4 lists the main legal sources of any relevant soft laws^a and other relevant legislation with a broader purpose and scope, such as customs legislation, codices and economic legislation.

Table 4: Legislation applicable to import, export and transit of military goods

System	Regulations.	Recent updates to the legislation
Flemish Region	- Arms Trade Decree, 2012 ⁷⁹ - Decision of the Flemish government to implement the Arms Trade Decree, 2012 ⁸⁰	2017 ⁸¹
Walloon Region	- Law of 5 August 1991 ⁸² - Royal decree of 8 March 1993 ⁸³ - Decree of 21 June 2012 ⁸⁴ <i>Other:</i> Customs legislation ⁸⁵	None
Denmark	- Weapons and Explosives Act of 2012 ⁸⁶ - Weapons and Explosives Act of 2016 ⁸⁷ <i>Soft law:</i> Policy letter "Description of the framework for arms exports and dual-use items" ⁸⁸	None
France	- Decree 2011-1467 dated 9 November 2011 ⁸⁹ - Decision dated 27 June 2012, attached lists of goods ⁹⁰ <i>Other:</i> Codex Defence ⁹¹	2015

^a "Soft law" in this context refers to documents that are not legally binding but are necessary complements to "hard law" (the binding and punishable legal framework).

Germany	<ul style="list-style-type: none"> - Weapons of War Act, 1961⁹² - Foreign Trade Act, 1961⁹³ - Foreign Trade Decree, 1961⁹⁴ <p><i>Soft law:</i> Policy document – “Political Principles on Export Controls for Weapons of War and Other Military Equipment”⁹⁵</p>	None
The Netherlands	<ul style="list-style-type: none"> - Strategic Goods Decision, 2008⁹⁶ - Strategic Goods Implementation Regulations 2012⁹⁷ - General transit licences NL007,⁹⁸ NL008,⁹⁹ NL009¹⁰⁰ <p><i>Soft law:</i> <i>Strategic Goods Manual</i>¹⁰¹</p> <p><i>Other:</i> General Customs Law,¹⁰² Economic Offences Act¹⁰³</p>	2016 and 2019
Spain	<ul style="list-style-type: none"> - Law 53/2007 of 28 December 2007¹⁰⁴ - Royal Decree 679/2014¹⁰⁵ <p><i>Soft law:</i> Guide for the operator¹⁰⁶</p> <p><i>Other:</i> Customs legislation¹⁰⁷</p>	None
United Kingdom	<ul style="list-style-type: none"> - Export Control Act dated 24 July 2002¹⁰⁸ - Export Control Decree dated 15 December 2008¹⁰⁹ <p><i>Soft law:</i> Consolidated EU and National Arms Export Licensing Criteria¹¹⁰</p>	None

1 Each of the selected countries and regions has specific **legal provisions** to control the transit of military goods. However, none of the systems has a legal framework that specifically targets transit of military goods. The legal principles governing transit in these control systems are thus integrated into the general export control legislation.

2 The overview in Table 4 shows a **diverse mix of specific legislation, other legislation and soft law**. Controls of the transit of military goods appear comparatively non-legalistic: in most systems the transit of military goods is to a large extent controlled through administrative practices. The Flemish legislation is the most legalistic, as it contains the most detailed legal framework for transit controls on military goods.

3 In all of the systems, **customs regulations** are important because the enforcement of compliance with export legislation is under the authority of the customs agencies. The overview in Table 4 only includes details of customs legislation in two scenarios. The first is where systems rely on customs legislation to legally define the concept of transit (the Walloon Region and Spain). The other is where there is legally mandated cooperation between export control and customs agencies and the authority to issue licences is delegated to customs (France and the Netherlands).

4 The **legal framework** regarding transit in the examined systems has seen few major changes over the past ten years. The Flemish Region is an exception with the amendments made to the transit control system in the Flemish Arms Trade Decree in 2017. Via these amendments, the Flemish government first exempted the transit or transshipment of military goods destined for EU member states from a transit licence requirement. Next, a licence requirement for transit (without transshipment) was implemented for certain circumstances (see section 2.2.6). In France, the regulations were partly updated in 2015

and recognition under the Authorised Economic Operator (AEO) system^a was imposed as a condition upon applicants for a transit licence.¹¹¹ In the Netherlands, a reporting requirement was added to the NL008 general transit licence in 2016 to allow for better retrospective monitoring. Additionally, in 2016 and 2019, destination countries for which a licence cannot be used were specified in the NL007 general transit licence. The United Kingdom has been working on an update to its export control regulations since 2019, mainly to compensate for the removal of EU regulations.

Conclusion: transit controls as an appendix to export control regulations and practices

In all the systems, transit transactions are part of the broader control system that governs the international trade in military goods. The differences between the controls systems in this analysis stem from the historical developments that have affected them. In most cases, **transit is not directly included or mentioned in the prevailing legal framework** or is simply mentioned without further detailed provisions.

A legal framework does not provide a complete picture of the control policy and measures adopted, as in most systems additional administrative practices apply. This will become clear over the following sub-sections, which compare the systems' approaches to other aspects of transit control. The Flemish control system is an exception as it has incorporated all relevant aspects into the legal framework. It is the most legalistic system covered by this analysis.

2.2.2 Definitions of the concept of transit

Definitions are important in outlining the scope of a control system. After all, the chosen definition helps to determine which transactions are (or can be) controlled or are subject to licensing.

^a According to the European Commission, "The AEO concept is based on the Customs-to-Business partnership introduced by the World Customs Organisation (WCO). Traders who voluntarily meet a range of criteria work in close cooperation with customs authorities to assure the common objective of supply chain security (and) are entitled to enjoy benefits throughout the EU" (European Commission, What is AEO? (n.d.), https://ec.europa.eu/taxation_customs/customs-4/customs-security/aeo-authorized-economic-operator/what-aeo_en).

Table 5: Definitions of transit

System	Definition or description
Flemish Region	The transportation of goods that are solely introduced into Belgian territory to be transported via that territory to another country. ¹¹²
Walloon Region	"Operations that are considered as such for the application of customs legislation". ¹¹³
Denmark	Transport between countries other than Denmark. ¹¹⁴
Germany	No specific definition for the transit of weapons of war. For other military equipment: "The transport of goods coming from abroad, through German territory, without them being released into free circulation in Germany in accordance with customs legislation, and goods in free circulation which are transported through German territory from one EU member state to another." ¹¹⁵
France	Direct border-to-border transport between two countries where at least one is not an EU member state. ¹¹⁶
The Netherlands	The transportation of military goods that are solely introduced into Dutch territory for transport via that territory to a destination outside Dutch territory. ¹¹⁷
Spain	No definition. The customs legislation refers to the related concepts of export to "free zones and warehouses" and the "customs warehouse" procedure, which correspond to "goods in transit" ¹¹⁸ and are referred to as "exempted zones". ¹¹⁹
United Kingdom	"'In transit' means imported into the United Kingdom for transit or transshipment; 'transit or transshipment' ... means transit through the United Kingdom or transshipment with a view to re-exportation of the goods or transshipment of the goods for use as stores." ¹²⁰

1 Most of the control systems – the Flemish Region, Denmark, France, Germany and the Netherlands – use a **broad definition of transit**, linking it to the “transport of goods”. Whether or not the goods are transshipped within the territory is, therefore, not a relevant criterion. Only the United Kingdom defines both forms of transit (transit and transshipment); the distinction is not acknowledged in the other systems.

2 The Walloon Region and Spain have a different basic approach from the other systems: they only control customs transit and customs warehousing, and they have no legal basis to make any other types of transit subject to licensing. **The Walloon Region and Spain consequently do not have a legal basis to control direct transit.**

3 Some of the systems refer explicitly (Denmark, France, Germany, the Netherlands and the United Kingdom) or implicitly (France) to their own **national territory** as a transit area. The Flemish Region is an exception as it refers to Belgian and not Flemish territory. This is a consequence of the regionalisation of the authority for strategic goods export controls in Belgium, in which the (location-based) competence for control of the international trade in strategic goods has been assigned to the regional governments. In

practical terms, this means that the Flemish Region is legally responsible for the territory of the Flemish Region but it grants transit licences for the entirety of Belgian territory. This is also true for the Walloon Region, even without explicit reference to the fact. In practice, a logistics actor with its registered office in the Walloon Region (or the Brussels-Capital Region) can apply to the Walloon government for a transit licence for military goods that are shipped via the Port of Antwerp or Brussels Airport, both situated in the Flemish Region.

Conclusion: the definition of transit determines the options in terms of control

It is important to define the concept of transit in order to provide a broad or narrow legal basis that enables the implementation of the chosen policy and, as a demarcation, to distinguish transit as a commercial transaction from import and export. However, the definition must be interpreted in conjunction with an understanding of the types of transit that are in practice being controlled and the extent to which a legal basis exists to allow for *ad hoc* controls of transit transactions normally exempted from a licence requirement. All of these aspects reflect a country or region's policy choices concerning which transactions to control.

The meaning and impact of a general or specific definition or a reference to customs legislation lies in the choice of a broad or narrow legal basis that underpins transit controls. The Flemish Region's policies illustrate this best, as from 2012 to 2017 the definition of transit excluded the control of transit without transshipment. In the Arms Trade Decree of 2012, transit was defined as "the transport of goods that are exclusively introduced into Belgian territory in order to be transported via this territory to another country, with the exception of transfers between two EU member states, and where the goods are transported in one of the following ways: a) they are transshipped from one means of transport to another; b) they are unloaded from one means of transport and then reloaded onto the same means of transport".¹²¹ Transit was, therefore, legally limited to transit with transshipment. The disadvantage was that direct transit could not be controlled in any situation due to the lack of a legal basis, which is why the definition was amended in 2017.¹²²

Accordingly, **the systems that use a general definition in principle retain a broad legal basis.** As regards control measures, it will become clear that the definition alone is not sufficient to determine the effective scope. After all, the different control systems provide for different exemptions from the licensing requirement (whether or not this is linked to the possibility to control transit on an *ad hoc* basis) and for different types of licensing.

2.2.3 Material scope: which goods are subject to control?

The material scope defines the goods to which the control system applies. EU Common Position 2008/944 stipulates that EU member states must implement export controls for all items on the EU Common Military List.¹²³ The EU Common Military List in reality is identical to the Munitions List of the Wassenaar Arrangement (WA).¹²⁴ Importantly, this obligation also applies to transit transactions. The Common Military List additionally constitutes the material scope of Directive 2009/43, which covers intra-EU transfers of defence-related products.¹²⁵ EU member states must, therefore, ensure that their national legislation enables them to control transfers and exports of goods and technology contained in the Common Military List. However, this list is not a substitute for member states' own national legislation, which may provide for a wider scope of application.

The overview in Table 6 shows whether each system uses the Common Military List as a basis, and in particular whether the list is legally binding. Furthermore, the table shows whether the legislation refers to the Common Military List or includes it as an annex, whether there is a national list with its own categories, and whether there is a catch-all provision allowing non-listed goods to be placed under control in certain circumstances.

Table 6: Material scope of transit controls for military goods

System	EU Common Military List?	Reference or annex?	National categories?	Catch-all provision?
Flemish Region	<i>De lege</i> ^a	Direct reference ¹²⁶	Law enforcement equipment ¹²⁷	"Other material for military use" ¹²⁸
Walloon Region	<i>De facto</i>	Administrative practice	No	Legally possible; not used in practice
Denmark	<i>De facto</i>	<i>De facto</i>	No	No
Germany	Own list equal to the EU list	Incorporated in legislation	National Ausfuhrliste (Export List) with specific subcategory ("weapons of war")	May impose trade restrictions or obligations on other categories of goods for reasons of fundamental importance to society ¹²⁹
France	Own list partly equal to the EU list ¹³⁰	Incorporated in legislation (annexes)	Own category ("other equipment used") ¹³¹	No
The Netherlands	<i>De lege</i>	Direct reference ¹³²	No	No

^a *De lege* means that the EU Common Military List is written into the national law. *De facto* means that the EU list is used as a reference.

Spain	<i>De lege</i>	Direct reference ¹³³	No	No
United Kingdom	EU list until 2019, thereafter Wassenaar list	Part of own list	National UK Military List: the Wassenaar list and own categories are designated as PL ¹³⁴	No legal provision; <i>de facto</i> possible based on end use

1 Each system has aligned its material scope with that of the **EU Common Military List**. This means that all of the transit control systems use a material scope that, in principle, is identical to the one they use for export controls. However, a closer look reveals three key areas of difference between the systems: the way the EU Common Military List is incorporated into national legislation, national extensions of the EU list through the addition of national categories of controlled goods, and the use of a catch-all provision.

2 Some countries include the EU list in their own legislation, while others merely refer to it. The Flemish Region and the Netherlands make direct reference to the EU list, which means that the most recent version is always applicable (*de lege*). The Walloon Region uses a definition of “defence-related goods” that refers to a list to be drawn up by the Walloon government.¹³⁵ Pending such an implementing decree, the 2003 federal legislation remains in force, although in practice the EU list is used as a reference (*de facto*). The other systems, which have to some extent incorporated the EU list into their own legislation, must adapt their legislation when the EU list is updated. In Denmark, §6 and Annexes 4 and 5 of the Arms and Explosives Act are interpreted to mean all products included in the EU list. France,¹³⁶ Germany¹³⁷ and Spain¹³⁸ each have their own national list, often annexed to the relevant legislation, but in reality the lists are similar to the EU list. Specific to Germany is the dual legislative framework, which has different approaches depending on the goods involved. It has a specific system for weapons of war and legislation on foreign trade, which covers other military goods. This division stems from the German Constitution of 1949. Article 26 of this constitution stipulates that weapons of war can only be produced, transported and traded with the approval of the German government.¹³⁹ The Weapons of War Control Act of 1961 is essentially the executive law of this constitutional provision.¹⁴⁰ The United Kingdom also has its own list of military goods. Until 2019 the UK Military List referred to the EU Common Military List, but since Brexit this reference has disappeared.¹⁴¹ The UK list is based on the WA’s Munitions List. As this list is in reality identical to the EU Common Military List, the impact of Brexit on the material scope of the regulations has been minimal.

3 Some control systems have **national categories of goods under control**. Both the Flemish Region and the United Kingdom use “law enforcement equipment” – goods specifically designed or adapted for the purposes of law enforcement or riot control – as an additional category.¹⁴² For both countries, this category includes products controlled under EU Regulation 1236/2005, pertaining to trade in torture equipment^a and various types of

^a This regulation prohibits the import and export of goods destined solely for capital punishment, torture or other cruel, inhuman or degrading treatment. It also subjects listed goods (e.g. electric-shock batons) to a licensing requirement. This regulation does not cover trade in these goods within the European Union.

law enforcement equipment (such as water cannons, fingerprinting equipment and truncheons).¹⁴³ France includes the following categories as “other materials used” in the control list: detection, intelligence, telecommunications and observation satellites; missiles and launchers with military ballistic capability; specific technologies; and operational training.¹⁴⁴ The United Kingdom has its own categories, such as “components that are both specially designed to provide ballistic protection and specially designed or modified for ‘vehicles’ specified in ML6.b.”; “equipment and test models other than those specified in ML11, ML12.b., ML17.n. or L19.e. specially designed or modified for the ‘development’ or ‘use’ of military ‘goods’ specified in this Part of this Schedule” and “explosive-related ‘goods’ and ‘technology’”. A specific UK category, added in 2019 due to the risk of uncontrolled exports to Russia, is “Submersible Vessels and related goods, software and technology”.¹⁴⁵

4 Some of the control systems also apply a **catch-all provision**. Five of the control systems have a legal basis for this kind of provision: the Flemish Region, the Walloon Region and Denmark explicitly, on the basis of the characteristics of the goods, and Germany and the United Kingdom indirectly, on the basis of the interests that could be jeopardised or the potential end use. The Flemish Region is the only system to have a fully fledged catch-all provision, under the description “other material for military use”: “goods that individually or in combination with each other or other goods, substances or organisms are capable of inflicting serious harm upon persons or property and which could be used as a means of violence in an armed conflict or similar situation of violence”.¹⁴⁶ The Walloon Region can still invoke a catch-all provision in federal legislation, but in reality it does not make use of it.¹⁴⁷ In Denmark, the Weapons Act stipulates that a product that is not on the EU list can still be placed under control measures on the basis of its “nature and construction, and destination for military use”.¹⁴⁸ German legislation provides the option to impose trade restrictions or obligations upon other categories of goods if there is a real and sufficiently severe threat that might harm a fundamental interest of society.¹⁴⁹

Conclusion: substantial convergence in the material scope of controlled transit

Similar to the definition of transit, the classification of military goods is important but insufficient to delineate the types of goods that are subject to controls. It is the combination of the description of the goods, the applicable list of goods, and the delineation of the types of goods subject to systematic or *ad hoc* controls (i.e. licensing requirements; see below) that determines the material scope of application *in practical terms*.

The EU Common Military List can be used as a foundation, with national categories and a catch-all provision added to make other goods subject to controls even if they are not included in the EU list. Since Brexit, the reference to the EU list in the British system has been replaced by a reference to the WA list. However, as the two lists are identical in practice, this has had no direct impact on the goods that are in principle subject to controls.

Several of the systems provide a catch-all clause to make non-listed goods subject to *ad hoc* controls. The Flemish Region employs the only system that provides for a formal catch-all provision (via a specific legal category titled "other material for military use"). Between 2004 and 2011, using the then applicable catch-all clause, 11 transit transactions of goods not requiring a licence nevertheless became subject to licensing on an *ad hoc* basis. Since 2012, the catch-all clause has not been used to make transit subject to licensing.

2.2.4 Territorial scope: which areas are covered?

The territorial scope primarily defines the territory or locations where the competent authority has jurisdiction. The overview in Table 7 indicates whether extraterritorial authority is included, what the definition of the applicable territory is and whether any exclusions apply.

Table 7: Territorial scope of transit controls for military goods

System	Extraterritorial authority?	Territory	Exclusions
Flemish Region	No	Jurisdiction over the territory of the Flemish Region for transit through Belgian territory ¹⁵⁰	Territorial waters uncertain ¹⁵¹
Walloon Region	No	Jurisdiction over the territory of the Walloon Region for transit through Belgian territory ¹⁵²	

Denmark	No	Danish territory ¹⁵³	Faroe Islands
France	No	French territory ¹⁵⁴	
Germany	Yes	German territory; ¹⁵⁵ plus extraterritorial authority for (1) German companies abroad ¹⁵⁶ and (2) ships flying the German flag and airlines registered in Germany ¹⁵⁷	
The Netherlands	No	Dutch territory in Europe ¹⁵⁸	
Spain	No	Spanish territory ¹⁵⁹	
United Kingdom	Possible	British territory including Northern Ireland; ¹⁶⁰ extension to overseas territories is possible by executive order	Isle of Man

1 In most of the systems, the territory of the country or region coincides with its area of jurisdiction. Two control systems, Denmark and the United Kingdom, exclude certain islands from the transit control system (i.e. the Faroe Islands and the Isle of Man). The Netherlands, using the definition “territory of the Kingdom of the Netherlands in Europe”, excludes the overseas territories over which it has jurisdiction (i.e. the Caribbean islands of Bonaire, Saba and St Eustatius).

2 Both the **Flemish Region** and the **Walloon Region** are subject to a number of specific rules as a result of the division of Belgium into three regions, each with its own competences. The regions operate on an equal footing and each has the authority to control the international trade in military goods assigned to it. Their authority in terms of transit controls is limited to their respective territories, because control of the import, export and transit of military goods is a regional, location-specific competence. However, the transit licences that each region issues are valid throughout the entire Belgian territory. A second consequence of the regionalisation of the competence concerning export controls relates to the territorial waters along the coastline of the Flemish Region. In principle, territorial waters have remained the competence of the federal government; however, the question remains as to whether the Flemish Region has an implicit competence for transit controls in its territorial waters.

3 Only **Germany** has extraterritorial authority regarding control of the transport of weapons of war. Both sea-going vessels under the German flag and airlines registered in Germany that transport weapons of war abroad require a licence.¹⁶¹ Licences for these types of transaction are, however, handled by the Federal Ministry for Digital and Transport rather than the Federal Ministry for Economic Affairs and Climate Action.¹⁶² A similar requirement could be established for other military equipment on the basis of the Foreign Trade Act. The owner, supplier, carrier or shipping company may be required to provide information on the cargo (nature and volume), the voyage and intended route, the estimated travel time and the port of destination.¹⁶³ These provisions apply to ships flying

the German flag (registered in Germany) for transport “outside German territorial waters” and to airlines registered in Germany. The motivation given for this extraterritorial authority relates to considerations of public safety and essential interests.¹⁶⁴

Conclusion: considerable overlap between territorial scope and national territory

In most countries, the territorial scope aligns with the territorial jurisdiction. Germany is the only country with extraterritorial authority over its own nationals beyond its own borders.

The Belgian systems have a degree of extraterritorial impact beyond their own regional borders, limited to Belgian national territory. In other words, transit licences issued by a regional authority are valid throughout Belgian territory. The licensing authorities of the Brussels-Capital Region and the Walloon Region can therefore in theory issue transit licences for transactions that take place via Flemish airports and seaports, and vice versa. This option is a consequence of the choice, following the transfer of competences in 2003, to take into account the location of the licence applicant rather than the physical location of the goods when determining the competent authority.

2.2.5 Personal scope: how are the actors who are eligible to obtain – or responsible for obtaining – transit licences defined and included?

With regard to the issue of which actors are eligible and/or responsible to obtain a transit licence for the transport of military goods – the personal scope – this subsection discusses two aspects. Firstly, this sub-section analyses and compares the legal definition of the transit actor and the administratively approved profiles that could apply for a transit licence. This analysis gives an insight into which actors are, and can be held, responsible for the application of a licence for the transit of military goods. Secondly, this sub-section looks at the imposed requirements regarding registered office or domicile of the licence applicant. The sub-section ends with some reflections on the liability challenges for actors involved in transit transactions of military goods.

Table 8: Personal scope: profile of a “transporter”

System	Legal definition	Administratively approved profiles
Flemish Region	Transit actor: “If different from the exporter and carrier, the natural or legal person, whether or not represented by a third party, who acts as a customs agent, shipping agent, forwarder or forwarding agent in the transit operation.” ¹⁶⁵ Carrier: “If different from the exporter or importer, any natural or legal person, whether or not represented by a third party, handling the transport of the import, export, transit or transshipment.” ¹⁶⁶	Carriers and logistics service providers: customs agents, shipping agents, freight forwarders and transport commissioners
Walloon Region	No definition or description of “le transitaire” (the forwarder) in the legislation.	Carriers, customs agents and freight forwarders
Denmark	No definition in the legislation.	No clarification in policy documents
Germany	No definition in the relevant legislation.	Indirect: the owner, the supplier, the carrier and the shipping company can all be targeted to fulfil the relevant obligations ¹⁶⁷
France	The phrase “the entity applying for a licence” refers to the person acting as a customs agent and recognised as an Authorised Economic Operator on the basis of EU customs regulations. ¹⁶⁸	None
The Netherlands	The “authorised representative” is “a natural or legal person who is entitled to deal with military goods or the person who handles the customs formalities on their behalf or, in the absence of such formalities, by the person who transports the goods”, ¹⁶⁹	In principle, the entire logistics chain
Spain	Physical or legal persons normally or occasionally exercising activities on Spanish territory related to materials, goods and technologies that are subject to controls. ¹⁷⁰	None
United Kingdom	The person who can obtain a licence is the person in whose name the application is made because they are the owner of the goods or hold similar rights. They must be established within the United Kingdom’s customs territory.	None

1 Most of the control systems do not define the concept of a transit actor. The Flemish Region has been a significant exception in this respect since the adjustments to the Arms Trade Decree in 2017. In practice, all of the control systems target the same profiles when controlling the transit of military goods – namely, those actors in the transport and logistics chain that arrange the physical transport, manage the logistics or arrange relevant customs formalities. The most common profiles are the carrier or forwarding agent, the shipping agent, the shipping company or shipowner, the forwarder and the customs agent. All of the systems focus on these individuals and organisations because it is assumed that

they have sufficient information about the cargo or shipment to judge whether or not it is subject to licensing. If not, they are the ones who can obtain this information. France is an exception as it specifically limits transit actors to one specific profile, the AEO-recognised customs agent.

Table 9: Overview of requirements and conditions of licensing for actors involved in the transit of military goods

System	Requirement for domicile or establishment	Condition of licensing, recognition or certification
Flemish Region	Must be domiciled in the Flemish Region, be established in the Flemish Region or have a representative in Belgium. ¹⁷¹	Prior licensing ¹⁷²
Walloon Region	Must be domiciled or have a registered office in the Walloon Region, except in cases of transit previously licensed as export from other Belgian regions or EU member states. ¹⁷³	Prior licensing
Denmark	Not specified in the legislation.	Not specified in the legislation
Germany	For war weapons, German nationality, German domicile or a German registered office is required in principle, ¹⁷⁴ but in practice this is not a necessary condition. ¹⁷⁵ For other military equipment, must have a legal connection with Germany (shipping company or airline registered in Germany, or ship flying the German flag). ¹⁷⁶	None
France	May be established indirectly, as the transit actor must be a customs agent recognised by the Authorised Economic Operator (AEO) concept.	AEO recognition
The Netherlands	No legal requirement for establishment in the Netherlands; establishment in the European Union is sufficient. ¹⁷⁷	None
Spain	The activity is the starting point, not a requirement relating to establishment or domicile.	None
United Kingdom	There is an exception to the "United Kingdom persons" principle for transit. ¹⁷⁸	None

2 In terms of the additional obligations and modalities applicable to transit actors, an initial observation is that **most of the control systems do not require a territorial link between the transit actor and the applicant for the transit licence** (Table 9).

3 In Germany, the Netherlands, Spain and the United Kingdom, a licence applicant does not have to have a formal domicile in their territory. The fact that there is no formal requirement for a transit licence applicant to have a domicile in the control system itself is often a direct result of the realities associated with transit. For example, in the United Kingdom, an application for a licence must in principle be made by a "United Kingdom person" – that is, an individual with British citizenship, a British subject or a British

protected person.¹⁷⁹ The Export Control Order allows an exception for transit and transit with transshipment.¹⁸⁰ In Germany, the Weapons of War Control Act stipulates that a licence applicant must be established in Germany, although this obligation is not absolute for transit transactions. Due to the international reality of transit, foreign actors can also apply for a transit licence in Germany.¹⁸¹

4 Only the **Flemish Region** and the **Walloon Region** impose official territorial requirements, and a licence applicant must have a formal base in Belgium. In both systems, this obligation is linked to the formal requirement to have prior authorisation to be recognised as a transit actor. A separate so-called prior authorisation, which includes a morality check, is used for this purpose. This means that actors involved in a transaction can be checked in advance. The competent service in the Flemish Region, the Strategic Goods Control Unit (dCSG), conducts this kind of investigation independently, whereas in the Walloon Region the assessment is done by the federal Ministry of Justice. In the Flemish Region, according to the dCSG, about ten actors operating in the transport and logistics sector require such a prior authorisation to apply for a transit licence.¹⁸² They include forwarders, customs and shipping agents, and air cargo transporters (for both military equipment and dual-use goods). Some organisations refer to a specialist entity with prior authorisation for the transit of military material.^a It should be noted that the Walloon Region allows an exception to the formal obligation to have a base in the region for a transit transaction if a licence has already been issued by the Brussels-Capital Region or Flemish Region, or by another EU member state. In the Flemish Region, the appointment of a representative in Belgium is not required when “the applicant is a licensed person; is a member of the EU, NATO, UN, IAEA or any other intergovernmental organisation of which the Flemish Region or Belgium is a member; is a government body or part of the armed forces of another EU member state or NATO”.¹⁸³

5 A final aspect concerning the responsibility of the actors involved is that in the Flemish Region, individual liability for transit applies to the exporter, or transport and logistics actors,¹⁸⁴ which means that each of them can be held responsible for violations of this legislation. **The Flemish control system is the only one to have incorporated individual liability into the relevant legislation.** The provision was added to the Arms Trade Decree in 2017. This does not mean, however, that there is no liability in the other systems. Common law, general criminal liability, and individual liability for non-compliance with customs regulations (based on the relevant customs legislation) still apply. Legislation continues to evolve and expand, which means that transit actors continue to increase their specialist knowledge to keep the required proficiency and liability risks manageable. Various respondents from the Flemish transport and logistics sector also indicated that, precisely because of this ever-increasing liability, they are decreasingly inclined to accept transactions involving military goods.

^a One respondent from the transport and logistics sector pointed to another reason for greater specialisation in the trade of military goods, namely the economic risk (apart from customs and licensing requirements). Because of the commercial value of large military equipment, there are major logistical challenges and risks (e.g. risk of damage, necessitating expensive insurance) associated with transport, transshipment and potential temporary storage. Therefore, this area requires specific knowledge and expertise.

Liability challenges

The question of who in the chain of actors involved in transit is liable in the event of regulatory violations appears to be a major challenge in the various control systems. After all, it remains unclear to some extent who is effectively responsible, especially when several actors are involved in moving the same cargo: an exporter, a freight forwarder, an airline, a shipping company, a courier service, a customs agent and potentially other actors.¹⁸⁵ For actors in the logistics chain, it is often not clear who can, may or must apply for a transit licence. Some transit actors (shipping agents, freight forwarders and customs agents) do this on behalf of their clients, while others consider it the client-exporter's responsibility rather than their own.

Despite the integration into the Flemish control system of an explicit list of relevant transport and logistics actors who could be responsible for applying for a transit licence, it still remains somewhat unclear who exactly is legally responsible for applying for a licence. Although the adjustments are a substantial step forward compared to how things stood before, the complex reality of international trade flows makes it very difficult to incorporate this responsibility into a legal framework. In essence, the Flemish Arms Trade Decree identifies a group of actors who could potentially be responsible, rather than specifically designating a certain actor.¹⁸⁶

This discussion is currently also on the agenda in the Netherlands, in particular concerning the extent of the obligation of a Dutch transit actor to request information from the client as opposed to the obligation of the client-exporter to proactively provide detailed information about the goods and their destination. In the Netherlands, KLM (a transport company) was fined through case law concerning a transit of military equipment without a licence (the so-called Cheetah shipment; see the box below). The judgement explicitly stated that KLM had not been fined because it had not applied for a licence but because it had transported goods that were subject to a licence without complying with the licence requirement.¹⁸⁷ At a later stage, however, this judgement, which imposed a far-reaching obligation on the transit actor, was overturned by the Dutch Court of Cassation. A new judgement by the Court of Appeal will therefore be needed for more certainty on the matter.

The Cheetah shipment: an illustration of the liability challenge facing actors in the logistics industry

In April 2016, the cargo customs department at Amsterdam Airport intercepted a shipment of aircraft parts destined for the Cheetah military jet fighter, the South African version of the Dassault Mirage III military jet fighter, specifically a shipment containing two digital air data computers, two starting relay boxes, one transformer receiver unit, three protective end cap connectors and one oxygen pressure-reducing valve. The sender was Denel SOC Ltd, a division of Denel Aviation in South Africa, and the receiver was the Ministry of National Defence in Ecuador. The shipping agent was Bidvest Panalpina Logistics, South Africa; the consignee was Panalpina Quito Ecuador; and the agent was M/S Bidvest Panalpina Logistics Isando. The goods had departed from Johannesburg Airport with the destination of Mariscal Sucre International Airport, Quito. It was the mention of "Cheetah" that alerted customs to the possibility of a link with fighter planes, which are within EU Common Military List category ML10a (manned aircraft, lighter-than-air vehicles and specially designed components relating to them).¹⁸⁸

Because no transit licence had been applied for in respect of these goods, KLM was summoned to appear in court by the Dutch Public Prosecution Service. It was significant for the legal qualification of "intent" that KLM is a professional carrier and so should have known that the legislation on strategic goods applied. The fact that KLM relied on Panalpina was not relevant in determining whether there had been intent. KLM was sentenced to a fine of €40,000. A higher appeal (2018) also ruled that KLM could not rely on international conventions regulating liability between carrier and sender to shift its own responsibility based on Dutch legislation pertaining to strategic goods. The Amsterdam Court of Appeal went one step further by stating that "the prohibition regarding the transit of strategic goods without a licence implies an obligation on the carrier to ascertain the nature of the goods on the basis of the transport documents". On appeal, the fine was increased to €60,000. With this ruling, the appeal court put the onus on carriers to identify transit movements that require a licence.¹⁸⁹

However, the judgement in cassation was later overturned by the Court of Cassation and referred back to the Amsterdam Court of Appeal for a new appeal. According to the Court of Cassation, the mere fact that the suspect "should have assumed that the goods were of a military nature" was not sufficient proof of intent. Even if the suspect had assumed on the basis of the limited information available that the goods were military in nature, this would not mean that they had the intention to export these goods without a licence.¹⁹⁰

2.2.6 Prohibited, exempted, and licensed transit and practice

Section 2.2.1 showed that almost all control systems provide a broad legal basis for controlling the transit of military goods through their territory. Except for the Walloon Region and Spain, the various control systems considered here use such wide-ranging definitions of transit that, in principle, this allows them to control any transport of military goods through their territory. The control systems have developed tiered systems with prohibited, licensed and exempted transits of military goods. To illustrate the actual handling and control of the transit of military goods, it is necessary to look at which transit transactions are actually controlled in the various control systems. This analysis will help to create a realistic picture of how the different control systems manage the control of the transit of military goods.

This section consequently covers (1) which transit transactions are prohibited in the various control systems, (2) which transit transactions are systematically subject to licensing (and which types of licence are used for this purpose) and (3) which transit transactions are exempted from controls and thus from licensing. This third part also identifies the legal bases in the various control systems with respect to their implementation of *ad hoc* controls on exempted transit transactions.

Prohibited transit of military goods

All of the control systems considered in this report incorporate categories of prohibited transit, but their definitions vary. All of the systems, without distinction, cover prohibited goods and prohibited transit to countries subject to embargoes. Goods declared illegal through other international commitments – such as cluster munitions and anti-personnel mines – are also in principle considered to be goods whose transit is prohibited. Some of the countries employ a specific list of prohibited goods to outlawed destinations (Germany for weapons of war; the United Kingdom for anti-personnel mines and certain security and paramilitary police equipment). These unequivocal prohibitions provide the legal framework to make such transactions illegal and, when they do occur, to stop them and impose legal sanctions upon the perpetrators.

Prohibited transit may, in specific circumstances, be allowed for certain destinations or end users subject to a licence (Flemish Region). Some systems state that transit is prohibited as a general rule unless authorisation is granted via a licence (Denmark, France and the Netherlands for all transit transactions; Germany only the subcategory of weapons of war).

Transit of military goods subject to systematic licensing

A second important question is which transit transactions are effectively subjected to a systematic licensing requirement. Some transit operations are considered by the relevant authorities to have priority and to be the most sensitive – and consequently most in need of being controlled. The question of which licences can be used is equally important in

assessing the organisation of transit controls, as different types of licences entail different requirements and possibilities for control by national authorities.

Table 10: Licensing requirements for the transit of military goods

	Type of transit	Type of goods	Origin and destination
Flemish Region	Transit	Prohibited goods	All
	Transshipment	All	All
The Netherlands	Transit	All	Non-allied country of origin and destination
	Transshipment	All	All
Wallon Region	The relevant legal concepts in the customs regulations: "customs transit" and "customs warehousing"	All	All
Spain	The relevant legal concepts in the customs regulations: "customs transit" and "customs warehousing"	All	All
Denmark	Transport through Denmark	All	All
Germany	Transport through German territory	Weapons of war	All
France	Direct transit by road	All	EU third country, or between third countries
	Transshipment in ports and airports	All	From or to third countries
United Kingdom	Not relevant	Anti-personnel mines and accessories	All
		Category A goods and accessories (see box below)	All
		Certain goods	To destinations under embargo
		Category B goods (see box below)	To a list of destinations

The overview of systematic licensing requirements in Table 10 clearly highlights national differences.

1 Transit with transshipment is systematically subject to licensing in almost all of the control systems. This is certainly the case in Spain and in the Walloon Region, which can only control transit shipments if they are transhipped within their territory. **Transit without transshipment**, on the other hand, follows different principles and is systematically controlled depending on the type of goods (e.g. in the Flemish Region and Germany), their link with the countries of origin and destination (in the Netherlands), or the transport mode (in France).

2 The United Kingdom employs different basic principles. Whereas other control systems use exemptions as exceptions to the rule (to a greater or lesser extent), the United Kingdom starts from the principle that any transit of military goods is exempt from licensing, except for those transactions that are specifically subject to licensing. The three-tier system that applies to goods in transit in the United Kingdom is the same as the system used for other trade controls. The three-tier approach consists of a division of goods into three categories (A, B and C) that determine the licensing requirement, in combination with certain destinations (see the box below). The United Kingdom's exemptions are so extensive that in practice most transit shipments are exempt from a formal licensing requirement.

The British three-tier system

In the British system, control is determined on the basis of a combination of the goods' sensitivity and country of destination. Every transit transaction of Category A goods needs a transit licence.¹⁹¹ anti-personnel mines and their components, and certain security and paramilitary police equipment. This category includes goods that are prohibited in principle and are only licensed under strict controls. These goods have an extraterritorial impact because the licensing requirement applies to both activities within the United Kingdom and "United Kingdom persons".¹⁹² Equipment, software and technology related to category A goods are also subject to this requirement.

Category B goods can be traded legitimately but are nevertheless associated with a higher degree of sensitivity. The list mainly includes small arms, light weapons and so-called MANPADS (man-portable air-defence systems). The licensing requirement applies when these goods are destined for countries mentioned on a list with some 40 destinations.¹⁹³ This licensing requirement also applies to all UK nationals, wherever they are in the world.¹⁹⁴

Category C goods are all other goods included in the control list of the UK Export Control Order. These goods are only subject to licensing if a certain part of the transaction takes place in the UK. The transit of these goods is controlled but for an even more restricted list of destination countries.¹⁹⁵

3 Most control systems grant individual licences for a defined quantity of specified military items, in one or more consignments, to a single consignee. The **validity period** varies: six months (France), one year (for non-EU and non-NATO countries in Denmark and for sensitive transits in the Netherlands), 18 months (Walloon Region), two years (for EU and NATO countries in Denmark and for United Kingdom), three years (for the Flemish Region and for non-sensitive transits in the Netherlands). In the Flemish Region, the period of validity is limited to the duration of the import licence of the country of destination.

4 Four control systems employ **license types** that allow greater flexibility for the transit actor, whereby each actual transaction is not assessed in advance by the licensing authorities:

- **France** has global licences for the transit of military goods. These licences are valid without any restrictions on the volume or value of the transit and are valid from and to specified consignees and forwarders. The licence is valid for one year from the date of issue.
- **Germany, the Netherlands and the United Kingdom** issue general transit licences. A general licence is a licence issued by the government and it allows actors who fulfil the criteria described in the licence to transit the goods specified in it without prior approval.

The Netherlands has three general transit licences. General transit licence NL007 (2012) is for the transit of certain goods – mainly military system components – originating from allies, except when the goods are destined for Ukraine, Turkey (since 2016), Saudi Arabia, Qatar, Yemen or the United Arab Emirates (UAE). NL008 (2012) applies to transits destined for allies (except Turkey). NL009 (2013) applies to exports, transits and transfers under the international cooperation programme for the development of the F-35 fighter jet. Importantly, these general licences can only be used for the transit of components of military systems. Transit of complete military systems, small arms, and light weapons and ammunition still requires an individual transit licence.¹⁹⁶ Germany has a general transit licence for intra-EU transit of war weapons and a general transit licence for the transit of war weapons (i.e. without transshipment).¹⁹⁷ The United Kingdom issues several “open general transshipment licences”.¹⁹⁸ These last two countries have no reporting or registration requirements for the use of these licences. This means that in reality the relevant governments have little or no control over transactions that take place subject to these general licences.

Transit exempted from a license requirement

Although at first glance there are certain similarities between the control systems in terms of transactions that require licensing, each system has a specific set of transit transactions that are exempted from licensing. Although in a formal sense these transactions are often covered by the definition of “transit” relating to military goods, they do not require a licence if an exemption applies. The overview of specific exemptions applied by the systems (Table 11) shows that there are significant differences between these exemptions, with all that implies in terms of effective transit controls in these systems.

1 Most of the systems allow **exemptions for transactions with allies**, but not necessarily in the same way: there are exemptions *between* countries and exemptions for transit shipments *from and/or to* friendly countries. Some systems work only with exemptions (such as the Flemish Region) whereas some work with a combination of exemptions and a more lenient approach to friendly countries (such as the Walloon Region). Exemptions and a more flexible approach can still coincide with certain conditions, such as the submission of an export or transfer licence.^a

2 An important finding is that there are **some types of transit that are exempt from control in (almost) all control systems**:

- The transit of military goods **within the European Union** is exempt from licensing in all of the control systems examined here. This exemption stems from the transposition of Directive 2009/43, on intra-European trade in defence-related goods, which stipulates that “no further authorisation shall be required for passage through member states or for entry into the territory of the member state where the recipient is established, of

^a In addition, there are statutory exemptions and *de facto* exceptions to the exemptions, such as the *de facto* exemptions for Turkey (the Walloon Region and the Netherlands) and Cyprus (the Netherlands) from the rule that NATO and EU member states are exempt.

defence-related products, without prejudice to the application of provisions necessary on grounds of public security or public order such as, amongst others, transport safety”.¹⁹⁹ The exception to this is the transit of war weapons through Germany, although the German government has published a general licence that allows this type of transit without prior notification and approval.

- There is an exemption for the transit of **NATO material by the armed forces** under the provisions of the North Atlantic Treaty and further regulated via the EU Customs Code.²⁰⁰
- Within the **Benelux Union**, there is free movement of strategic goods and mutual recognition of each other’s export and transit licences. In other words, once a permit has been granted at one of the external borders, it is respected by the other countries.

Table 11: Exemptions provided for the transit of military goods

	Type of transit	Type of goods	Origin and destination	<i>Ad hoc</i> controls possible
Flemish Region	Direct transit	All except prohibited goods	All	Yes
	Transit with transshipment	All	Within the Benelux Union; third country to EEA, NATO and Wassenaar countries ^a	Yes
The Netherlands	Direct transit	All	Where the origin or destination is an ally (<i>de facto</i> not for Cyprus or Turkey)	Yes
	Transit in territorial waters or airspace (overflight)	All	All	Not specified in the legislation
Walloon Region	Direct transit	All	All	No
Spain	Direct transit	All	All	Not specified in the legislation
Denmark	Transit in territorial waters or airspace (overflight)	All	All	No
Germany	Transit with and without transshipment	Military equipment other than weapons of war	All except for certain destinations	Yes

^a NATO and Argentina, Australia, Japan, Montenegro, New Zealand, South Korea and Switzerland.

France	Transit by rail			
	Direct transit in seaports and airports	All	All	Yes
United Kingdom	All transits that are not subject to control	All goods that are not subject to control	All destinations that are not subject to control	Yes

3 Transit without transshipment is (in certain circumstances) exempted from systematic licensing in several of the control systems. In Spain and the Walloon Region, it follows from the legal definition of transit that transit without unloading and reloading is exempt from a licensing requirement. The direct link with relevant legal procedures in the customs regulations in these systems' respective national legal frameworks to define the concept of transit implies that only transit with transshipment is covered: if goods are not unloaded from a transport mode, no administrative action is required from a customs perspective and these goods are consequently not subject to any customs procedure. In France, the Flemish Region and the Netherlands, transit without transshipment is also in principle not subject to licensing, although in the Netherlands this only applies if the country of origin or destination is an EU, NATO or friendly country. In the United Kingdom, transit without transshipment is also exempted from any licence requirement, providing the transaction meets all three conditions: (1) the goods remain on board a vessel, aircraft or vehicle during the period they are in the United Kingdom and in any event are re-exported within 30 days of import; (2) the destination of the goods following export from the United Kingdom was established in the country from which they were originally exported and there has been no change before the export (transit) from the United Kingdom, or the goods are transported back to that country; and (3) the goods were exported from that country in accordance with the export laws and regulations in force at the time of export.²⁰¹

4 France has numerous exemptions based on the mode of transport and is the only system that differentiates according to the transport mode. Whereas road transit without transshipment is always subject to licensing, rail transit without transshipment is exempted from this licensing requirement.²⁰²

5 Germany takes a different approach and differentiates on the basis of the type of goods. Military goods that are not included in the German national list of weapons of war – so-called other military equipment – are in principle not controlled when they are transiting through German territory.²⁰³

6 Denmark²⁰⁴ and the Netherlands²⁰⁵ formally exclude transit in their territorial waters and airspace from transit controls. In the Flemish Region it is unclear whether the Flemish government is authorised to carry out transit controls in its territorial waters, as this is a federal competence area.²⁰⁶

Legal basis for *ad hoc* control of exempted transit

Importantly, most of the control systems provide the option to control transit transactions of military goods that are exempt from a licensing requirement under certain circumstances. This possibility arises from the broad legal definitions of transit in most of the control systems. Exceptions to this are the Walloon Region and Spain. As a result of their choice to legally define transit only in terms of the relevant legal procedures in the customs regulations (i.e. customs transit and customs warehousing), neither system has a legal basis for *ad hoc* controls on exempted transit.

In the Flemish Region, prior to the amendments to the Flemish Arms Trade Decree in 2017, there was no legal basis for controlling transit without transshipment either. This is because the definition of transit applicable at the time was specifically limited to transactions involving transshipment (whether or not onto the same means of transport).²⁰⁷ The amendment to the Flemish Arms Trade Decree, which subsequently made it possible to control transit without transshipment in an *ad hoc* manner and under certain circumstances, is similar to the options provided by most of the other control systems examined.

Table 12: Overview of the legal bases for *ad hoc* control

Goods (possibly) intended for	Flemish Region	Denmark	France	Germany	The Netherlands	United Kingdom
UN, EU and OSCE embargo countries	X	X		X	X	
National embargo	X			X		
Genocide	X					
Crimes against humanity	X					
War crimes	X					
Safety risks						
Risk to public order, security or essential national security interests (of EU, NATO and allied countries)	X		X	X	X	
In the interest of the international legal order					X	
International commitments/relationships						

European or international agreements/commitments or non-proliferation treaties	X	X	X	X
Preventing disruption of external relationships			X	
Other considerations or wording				
Proportionality test: weighing security interests against economic interests			X	
Type of goods or destination or both if they present a "sufficient degree" of risk				X
Goods are destined for re-export outside the European Union, the EEA or NATO countries		X		
Transport safety			X	

The overview in Table 12 indicates that the reasons for placing transit transactions under *ad hoc* control vary from country to country and there is consequently either a limited or a wide-ranging possibility to control free or exempted transit. Except for Denmark and the United Kingdom, the systems allow *ad hoc* control for reasons of public order or security, which provides extensive options in terms of control. The overview shows that the Flemish Region has the most extensive list of legal grounds. Like the Flemish Region, Germany has a broad legal basis, which is mainly relevant to weapons other than weapons of war.

Only a few control systems attach a further condition to exemptions from licensing obligations (Table 13). These are generally conditions that must demonstrate the legality of the transaction or that create the possibility of placing certain transactions under licence on an *ad hoc* basis.

Table 13: Overview of conditions attached to transit exemptions for military goods

	Submission of export licence	Submission of transit licence	Approval of country of origin and destination	Other
Flemish Region	The Benelux Union	Transit between EEA member states	Transit to EEA, NATO and Wassenaar countries ^a	
The Netherlands				Notification mandatory for transit not requiring licensing
United Kingdom	Approval of exporting country			Goods remain on board and can stay for a maximum 30 days in the United Kingdom, without change of destination

1 In two systems – the **Flemish Region** and the **United Kingdom** – the exemption is conditional upon presentation of approval from the country of origin in the form of an export licence.

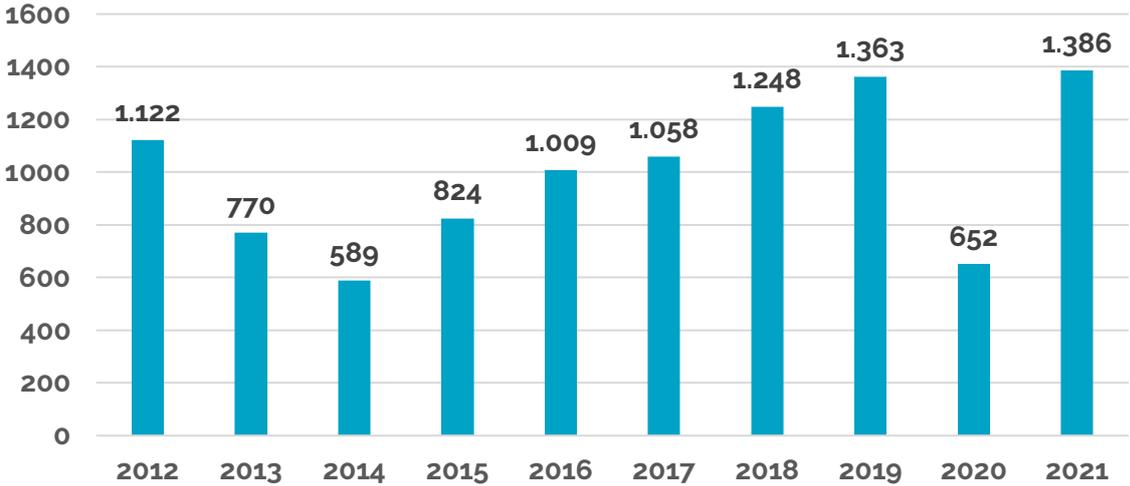
2 Only one control system imposes a notification requirement for all transit transactions of military goods that are not subject to licensing. More specifically, in the **Netherlands**, any transit shipments without transshipment originating from or destined for other EU member states and a limited list of other allies (NATO, Australia, Japan, New Zealand and Switzerland) have a notification requirement.²⁰⁸ However, these notifications are not assessed substantively: “Transit without transshipment originating from allies is merely notified and, if appropriate, examined as to whether the transport route corresponds to the destination licensed by the export control authorities of the relevant ally. The Netherlands does not carry out its own checks on such consignments.”²⁰⁹ This notification must be made to the Central Import and Export Office (CDIU) of the Dutch customs authorities.

This notification obligation serves two purposes: to identify the nature and extent of the transit, and to provide a basis for the legal catch-all provision to make a shipment subject to licensing on an *ad hoc* basis. The circumstances in which this can be done are listed in Table 12.²¹⁰ The advantage of a notification obligation is that the competent authority gains an insight into all transit operations, which means that no one formulates their own interpretation in advance as to whether the transaction is or is not subject to control. Annually, between 589 and 1,386 transit transactions not subject to mandatory licensing are reported in this way (Figure 4). In 2019, 73% of these reported transits went through Schiphol and 27% through the port of Rotterdam. The CDIU attributes the halving of the number of notifications in 2020 to the global Covid-19 crisis.²¹¹ The 1,386 transactions in

^a NATO and Argentina, Australia, Canada, Japan, Montenegro, New Zealand, South Korea, Switzerland, the United Kingdom and the United States.

2021 seem to confirm this. The information from the notifications has only been used in a few cases to apply an *ad hoc* licensing requirement on a shipment to a destination under embargo or in violation of international obligations.

Figure 4: Notifications of exempted transit in the Netherlands, 2012–2021²¹²



Conclusion: effectively controlled transit – similar at first sight, yet fundamental differences in practice

Although at first sight the different systems appear to control the transit of military goods in similar ways, their control practices are fundamentally different. Their definitions of transit are very similar, but what is actually controlled differs substantially. It would not be feasible to provide a comprehensive schematic overview of all licensed, exempted and free transit because there are too many differences between the control systems: there are different types of systematically licensed transit *and* different types of exempted transit according to the type of transit, the mode of transport, the type of goods, and their origin and/or destination.

The analysis of which transit transactions are prohibited, exempted and subject to licensing shows that there is no uniform basic approach. To get an overall picture, it is therefore easier to group the systems together:

- Systems that make the transit of military goods with transshipment systematically subject to licensing: the Flemish Region and the Netherlands.
- Systems that focus on the relevant legal procedures in the customs regulations (i.e. customs transit and customs warehousing): the Walloon Region and Spain.
- Systems that control transport: Denmark, France (road transport only) and Germany (all transport).
- The United Kingdom, where neither the mode of transport nor the type of transit is relevant. This control system starts from the principle that the highest risk, and therefore the motivation to control, lies in certain combinations of goods and destinations. Only those scenarios are subject to systematic control, with some exemptions. All other transit is free.

Having a legal framework to implement control on an *ad hoc* basis is most relevant to those systems that deal with a lot of free transit, because they systematically licence only certain transactions in a very targeted way. This applies to the Flemish Region, the Walloon Region, the Netherlands and Spain for direct transit; Germany for all transit of other military equipment; the United Kingdom for most goods to most destinations; and all systems for all exempted transit. However, not all systems have a broad legal basis and legal grounds for *ad hoc* controls, as is the case for the two countries that start on the basis of relevant legal procedures in the customs regulations, namely the Walloon Region and Spain.

2.2.7 Assessment criteria in the issuing of transit licences

The type of transaction controlled does not reveal how it is assessed in terms of content. Export controls traditionally take into account national security, international security, human rights considerations, international humanitarian law and conflict prevention efforts, as well as economic considerations relating to the country's defence industry. Transit controls broadly take into account the same considerations. However, in the case of the economy, it is not the economic interests of industry (the defence industry in particular) but those of trade, ports, airports, logistics providers and the transport sector that matter. Furthermore, diplomatic interests come into play in the assessment of goods that have already been allowed to leave another country, either with or without a licence.

After all, transit control can be seen as a form of interference in the policy of the exporting country.

Transit countries benefit from transit controls, because these ensure that they are not abused as transit countries. A transit country may choose to control only the initial export conditions, but it can also opt for a policy that requires transit to meet the same conditions as its own exports. Additionally, because the goods are present in the country's own territory, public and physical security considerations are more important for transit than for export. Table 14 outlines the eight control systems' assessment criteria.

Table 14: Overview of transit assessment criteria

	Criteria per EU Common Position 2008/944 ^a	Additional national criteria: specific considerations and frameworks
Flemish Region	<i>De lege</i> ²¹³	<i>De lege</i> – factors taken into account: <ul style="list-style-type: none"> - considerations relating to external interests and international objectives - rights of children in the end-use country - position of the end-use country with respect to the death penalty - high death rate as a result of firearms violence in the end-use country - concerns regarding gender-based violence, rape or sexual violence in the end-use country - existence of peace-building and reconciliation initiatives relating to the end-use country²¹⁴
The Netherlands	<i>De facto</i>	None
Walloon Region	<i>De lege</i> ²¹⁵	None
Spain	<i>De lege</i> ²¹⁶	<i>De lege</i> – factors taken into account: <ul style="list-style-type: none"> - international security - international obligations - concerns that the end use would be contrary to the inherent dignity of a human being - concerns that the end use would support internal repression or violation of human rights
Denmark	<i>De facto</i>	Danish obligations within the context of international cooperation ²¹⁷
Germany	Policy document	Policy document outlining political principles on the export of war weapons and other military equipment ²¹⁸ and requiring stricter assessment of human rights violations as a reason to deny a licence
France	<i>De facto</i>	None
United Kingdom	Policy document	Policy document outlining consolidated criteria on arms export licensing, including: ²¹⁹ <ul style="list-style-type: none"> - concerns about gender-based violence or serious violence against women or children - economic and national interests

1 The assessment criteria of Common Position 2008/944 have been incorporated into formal legislation in three of the control systems: the Flemish Region, the Walloon Region

^a *De lege* means that the assessment criteria set out in the EU Common Position are included in the relevant national legal framework; *de facto* means that national governments have not included these criteria in their national legislation but in practice take them into account in the assessment of export and transit licence applications.

and Spain. In practice, all of the governments apply the eight common criteria in the common position.²²⁰ However, the control systems differ in the extent to which they provide for additional national criteria.

Several of the control systems consider the **control of transit to be an extension of export control policy**. The Netherlands applies an exception for transit without transshipment destined for or coming from European member states or allies. Similarly, the German government indicated in 2014 that the country’s political principles on the export of war weapons and other military equipment are applied in full when applications for transit of sensitive goods are assessed. This means that the principle of approval applies to transit destined for EU and NATO-equivalent (Australia, Japan, New Zealand and Switzerland) countries through German territory, but for transit to other so-called third countries a stricter policy is applied, in which case the German interpretation of the eight common assessment criteria is then used to assess the transit transaction.²²¹ The Flemish and Walloon Regions have each adopted similar approaches.²²²

2 There are also several control systems that apply a **more flexible assessment system** for specific origin or destination countries of transit (Table 15). Whereas in certain control systems – the Flemish Region and the Netherlands – transit destined for other NATO or EU member states is exempt from licensing (see Table 11), other control systems – the Walloon Region, Denmark, France and Germany – *de facto* apply more lenient assessment practices to such transactions. In Germany, this stems from the distinction in political principles between EU, NATO and NATO-equivalent countries and third countries. For EU destination countries, licensing is the rule and refusals are the exception: for the transit of goods subject to licensing to one of these countries, an export licence from friendly countries is usually sufficient and the licence is granted without delay.²²³ France, too, is said to apply a similar distinction, whereby “pays alliés” (allied countries) are assessed with more flexibility. This concerns EU member states, NATO member states and countries participating in the overall spectrum of non-proliferation regimes.²²⁴ In principle, licences for these countries are always approved without any problem.

Table 15: Overview of control systems with a flexible approach

	Type of transit	Type of goods	Origin and/or destination
Walloon Region	Transit	All	To NATO and friendly countries, except Turkey
Denmark	Transit/transport	All	To or from Scandinavian countries and NATO countries
Germany	Transit/transport	Weapons of war	To EU, NATO and NATO-equivalent countries (Australia, Japan, New Zealand and Switzerland)
France	Transit	All	To or from three categories of friendly countries

3 **Brexit** has had a limited impact on the way transit control is organised. For all of the countries considered, the United Kingdom is now subject to the exemption for NATO countries or the more lenient assessment of friendly countries. The Flemish Region is the only system that has legally formalised the more favourable treatment of the United Kingdom via a ministerial executive decree.²²⁵

2.2.8 Actors involved in control of the transit of military goods

The nature of the departments involved in the evaluation of licence applications for the transit of military goods inevitably has an impact on various aspects of the control process. Arms export controls do not take place in an institutional vacuum. Within each system, such matters (and the government agencies directly involved) are incorporated within a well-defined policy domain. The policy domain within which arms export control is organised in practice can be an indication of how control of the international arms trade is perceived in the country in question.²²⁶

Table 16 shows the competent services for transit control and the departments they are allied to in each of the eight control systems. More than half of the systems examined have a shared or delegated authority for the licensing process (delegated authority is indicated by a blue arrow). The other departments (i.e. those responsible for or involved in the assessment of licensing applications) are indicated separately as “department concerned”.

Table 16: Competent authorities for transit control

System	Competent service	Competent department	Service concerned, shared authority or delegation	Department concerned
Flemish Region	Strategic Goods Control Department	Foreign Affairs		
Walloon Region	Arms Licensing Directorate	Economic Affairs	Licensing, Foreign Policy Analysis and Human Rights Control service	Foreign Affairs
Denmark	Security Service II	Justice	Police forces	
Germany	Federal Ministry for Economic Affairs and Climate Action	Economic Affairs		
	Federal Office for Economic Affairs and Export Controls	Economic Affairs		
France	International Development Directorate	Defence	Directorate-General of Customs and Indirect Taxes	Finance
The Netherlands	Security Policy Directorate	Foreign Trade and Development Cooperation	Central Import and Export Office	Finance
Spain	International Trade	State Secretariat for Trade	Competence delegated to the Ministry of Foreign Affairs	
United Kingdom	Export Control Joint Unit	International Trade	Several departments represented in the Export Control Joint Unit	

1 The only **common feature** is that in each country there is an existing or specially founded department with the specific task of granting licences. Of the eight control systems, two belong to ministries of economic affairs (the Walloon Region, Germany), three to a foreign trade department (the Netherlands, Spain and the United Kingdom), one to foreign affairs (the Flemish Region), one to justice (Denmark) and one to defence (France). It is striking that in two systems – France and the Netherlands – assessment of the transit of military goods is delegated to customs, except for the political assessment of sensitive dossiers.

2 Depending on the complexity of the application dossier, most of the systems use a **tiered assessment system** for licensing requests: administrative handling for non-sensitive applications (mostly transactions between or to allies and friendly countries) and a political consultation structure for more sensitive dossiers. There are no other individual or specific committees or procedures for transit. The difference between export and transit is that transit is less frequently considered to be sensitive, which means that it does not feature very often on the agenda of political consultations. Only in the Flemish Region does the competent authority manage the entire licensing process and there is no formal external consultation body. However, external expertise can be sought on an *ad hoc* and informal basis within other relevant government departments.²²⁷

3 The **administrative processing** of dossiers is usually handled by the competent department (the Strategic Goods Control Department in the Flemish Region, the Arms Licensing Directorate in the Walloon Region, the Federal Office for Economic Affairs and Export Controls in Germany, and the Export Control Joint Unit in the United Kingdom) or by a department appointed by delegation (the police force in Denmark, the customs authorities in France, and the Central Import and Export Office in the Netherlands). **Political evaluations** are carried out by the competent service (in the Flemish Region, Germany and the United Kingdom), the competent department (the War Weapons division of the Federal Ministry for Economic Affairs and Climate Action in Germany, the Ministry of the Armed Forces in France, and the Ministry of Foreign Trade and Development Cooperation in the Netherlands), or an external service (in the Walloon Region, the Licensing, Foreign Policy Analysis and Human Rights Control service). Some countries work with an interministerial committee for political consultation concerning the most sensitive dossiers: an advisory committee in the Walloon Region, the Federal Security Council in Germany, the Interministerial Commission for the Study of War Materials Exports in France and the Interministerial Council for Foreign Trade in Defence and Dual-Use Goods in Spain. Certain departments are structural parts of this process, while others can be consulted for advice.

4 The **United Kingdom** has opted for a different approach: to combine expertise from different government areas into a joint service, which includes representatives from interested departments who work together as a service. Because of their connection with their “home department”, the representatives also continue to have access to information and contacts in the wider network of those departments. This means that the United Kingdom is the only one of the systems examined that has ensured the involvement of all stakeholders, both on a day-to-day basis and in the event of an emergency in individual cases. The joint nature of the Export Control Joint Unit points to the bringing together of

operational and policy expertise from various departments: the Department for International Trade; the Foreign, Commonwealth and Development Office; and the Ministry of Defence.

2.2.9 Monitoring and enforcement

Enforcement and monitoring of transit transactions and of the legal obligations concerning such transactions are crucial in a control system to prevent, identify and, if required, sanction infringements of the applicable legislative framework.

Prevention via outreach and by raising awareness among transit actors

A first crucial step in terms of monitoring and enforcement is to prevent violations of the applicable legislation. Conducting outreach to relevant logistics actors to make them more aware of the provisions that apply is an important activity in this respect.

1 The various control systems appear to have developed diverse and wide-ranging approaches in this area. Germany,²²⁸ the Netherlands²²⁹ and Spain²³⁰ each publish a comprehensive manual to provide the transport and logistics sector with more detailed information. Most of the systems also provide clarification of the legal framework and application procedure on a dedicated website. The information available on these websites varies considerably. The websites of the competent authorities in the Flemish Region,²³¹ Germany,²³² the Netherlands²³³ and the United Kingdom²³⁴ provide extensive information in a well-organised format. The Danish²³⁵ and French²³⁶ websites publish concise information, while during the course of this study the Spanish website was often not available (error messages for security reasons).²³⁷

2 Some systems, such as Germany and the Netherlands, have outreach programmes, which are mainly targeted at industry and relate to export policy but can also address transit.²³⁸ The Flemish Region has recently initiated specific outreach activities for the transit sector. At the end of 2019, the relevant minister indicated that the country was “going to increase awareness about the control mechanism in order to perhaps be a bit more proactive”.²³⁹ For example, the dCSG is setting up a checklist to help transit actors to recognise transit that is subject to an *ad hoc* licensing requirement. This checklist is meant to be “a guideline to enable relevant actors to verify information on the destination and addressee and to carry out initial checks when defence-related products are likely to be present”.²⁴⁰ In the process of drawing up this checklist, consultations are being held with relevant representatives of the transit sector to ensure that it is a feasible option. The Antwerp Shipping Federation, FORWARD Belgium (the professional association for customs agents and forwarders in Belgium) and other organisations are involved in this process.

Monitoring trade flows: cooperation with other relevant government departments

Table 17: Overview of monitoring and enforcement policies concerning transit

System	<i>Ex ante</i> physical and document supervision	Authority to identify infringements	Sanctions	Numbers of charges, prosecutions and convictions
Flemish Region	Customs, dCSG	Customs, dCSG, police	Fines, imprisonment, administrative fines	Not known
Walloon Region	Customs	Customs	Fines, imprisonment	Not known
Denmark	Not known	Not known	Fines, imprisonment	Not known
France	Customs	Customs	Fines, imprisonment, administrative fines	Not known
Germany	Customs, BAFA	Customs, BAFA	Fines, imprisonment	Not known
The Netherlands	Customs, Team POSS	Customs, Fiscal Intelligence and Investigation Service, police	Fines, imprisonment, economic infringements	Not known
Spain	Customs	Customs	Fines, imprisonment	Not known
United Kingdom	Customs, Export Control Joint Unit	Customs	Fines, imprisonment	Not known

1 In all of the systems, the competent agency is a licensing service responsible for the processing of transit licence applications. In several control systems (the Flemish Region, Germany and the United Kingdom), these licensing agencies have specific powers to proactively check compliance with legal provisions concerning the transit of military goods with the companies involved. These powers tend to be focused on the actors rather than the transactions and are consequently partly linked to the preventive, awareness-raising responsibilities of the licensing agencies. The German system, overseen by the Federal Office for Economic Affairs and Export Controls (BAFA), has supervisory powers for all military goods and can carry out audits and inspections of the companies involved. The dCSG can also carry out investigations – for example, gain access to certain locations, request documentation and information, gather intelligence, question people, stop means of transport to examine the cargo, and inspect (or arrange inspections of) warehouses. To this end, the dCSG can request assistance from the police and impose precautionary measures, and it can also itself acquire the status of a judicial police officer.²⁴¹ The British Export Control Joint Unit is authorised to carry out compliance checks and site visits.²⁴²

2 At the same time, however, the capacity of these services to perform supervisory and enforcement tasks is limited, which is why they all rely on the services whose core function it is to control all transactions entering and leaving the territory: the customs agencies. Indeed, each competent service relies on cooperation with customs agencies to identify suspicious transit movements and to monitor and enforce compliance with licensing conditions. Despite the limited availability of information concerning transit transactions and the speed at which transactions occur, the challenge is to provide effective and efficient procedures that facilitate the identification of transit movements that seem suspicious or that require a licence. Successful cooperation between licensing and customs authorities is, therefore, a necessity.

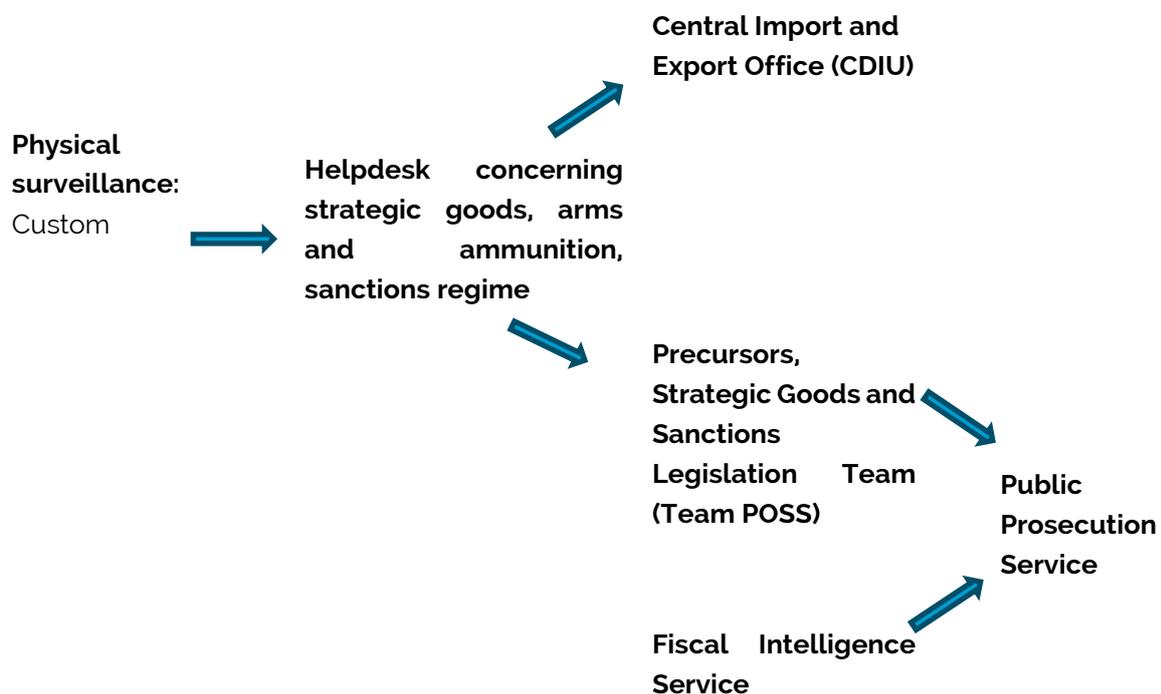
3 All of the transport and logistics actors interviewed were in favour of better communication and collaboration with customs agencies, and preferably also better mutual cooperation between the public services concerned and customs. Belgian customs also confirmed the importance of successful information sharing with other government services, among other things as an input for risk analyses. At the moment, this cooperation is often still informal, pending a “single window” system to link relevant information from different areas of competence.²⁴³ Many of the authorities in the eight countries considered here impose numerous obligations on the same transaction or cargo without mutual consultation or coordination. Digital counters linking all of this information could contribute to more effective, user-friendly and swift handling of dossiers, and to differentiation in the handling of dossiers depending upon their sensitivity. This would also reduce the time required to process dossiers. Because clients shop around – initiating several applications and then opting for the first or the most flexible one to agree – control services are burdened unnecessarily.²⁴⁴

In **the Netherlands**, control of transit transactions by customs authorities happens in close cooperation with the Ministry of Foreign Affairs, which is responsible for controlling the trade in strategic goods: “The Customs department supervises the (EU) cross-border movement of goods and enforces the laws and regulations that apply to these movements. The Customs department manages the supervision and rule enforcement concerning the import, export and transit of strategic goods on behalf of the Ministry of Foreign Affairs. Agreements regarding this supervisory and enforcement task are set up annually between Customs and the Ministry.”²⁴⁵ Specifically, a formal covenant or framework agreement is drawn up annually between the Ministry of Foreign Affairs and the Ministry of Finance regarding control of the trade in strategic goods. This document contains both general objectives and practical arrangements along with specific task arrangements and objective output commitments with respect to the number of controls to be carried out by the customs department. The document also stipulates the fee that will be paid by the Ministry of Foreign Affairs for this task.²⁴⁶

Dutch customs has also developed a **transversal structure** to monitor and enforce flows of trade in military goods (Figure 5). During inspection visits or when verifying documents, front-line customs officers may identify a cargo or shipment that might be subject to licensing. Because they do not have specialist knowledge, they can request support from a helpdesk. Helpdesk staff often have a background in defence or police work, which means that they have specialist knowledge about military goods. If the goods are subject to

licensing, the case is passed on to the CDIU, which will initiate a procedure. It is up to the CDIU to decide whether to stop the goods and up to Team POSS (Precursors, Strategic Goods and Sanctions Legislation) whether to impound them if necessary and pass the case on to the Public Prosecution Service. Team POSS is a national team with some 45 employees in five locations. It also carries out periodic audits of companies trading in strategic goods, as well as customs agents and carriers.²⁴⁷

Figure 5: Internal cooperation routes between various Dutch customs agencies



4 Some of the other control systems, such as those in **Denmark** and **Germany**, also rely on close cooperation between the licensing authority and the competent customs agencies. In Denmark, there is formal cooperation between the two agencies.²⁴⁸ In Germany, the licensing authority and customs administration have worked out “standard operating procedures” pertaining to the control of the trade in military goods.²⁴⁹ BAFA and the Federal Ministry for Economic Affairs and Climate Action also provide substantive input with regard to risk analysis and interpretation of assessment criteria: “Customs need to know what our policy is because we work end-user oriented.”²⁵⁰ Especially when it comes to the control of non-lethal weapons, which in principle qualify for free transit, BAFA has to rely entirely on a successful risk analysis and identification of sensitive transit based on *pre-arrival* information provided by the relevant customs agency. BAFA can also direct customs to stop goods on the basis of the information to which it has access.²⁵¹

5 A consequence of the division of competences in the **Belgian** state structure – export controls by the regions, customs formalities by the federal government – is that formal

cooperation is not standard. The regional authorities do not have the legal authority to impose any obligations on the federal customs service, although in practice there is a degree of cooperation and information sharing.²⁵² Formal cooperation is only possible subject to the conclusion of an inter-federal cooperation agreement between the competent authorities, which can then become law following approval in the respective parliaments. To date, no such cooperation agreement exists.

6 Bearing in mind the underlying intention of opposing the illegal arms trade, cooperation between the competent licensing authorities, police and intelligence services might also be expected. What is noticeable, however, is that very few of the control systems examined here incorporate cooperation with and **involvement of the police forces**. If there are contacts, they are informal and therefore neither systematic nor structural. The Danish control system, which has delegated part of the competence of justice to the police force, could be an interesting example of how to achieve a more efficient control process. Unfortunately, the Danish competent authority indicated that it was not available to provide clarification on how the Danish transit control system and inter-agency cooperation work in practice (due to recent restructuring and a lack of capacity).

Sanctions foreseen for violations of transit control regulations

1 All countries impose sanctions, fines and/or imprisonment for breaches of export control regulations (Table 17). Only in the Netherlands are violations considered, prosecuted and fined as economic offences, based on the Economic Offences Act. In most countries, infringements are customs offences and can be reported by the competent department and by customs agencies. In some countries, general criminal law can also be invoked.

2 **Most of the control systems do not provide publicly available information with statistics concerning identified infringements** – that is, they do not provide information about infringements leading to an official report, about how many official reports are dismissed by the public prosecutor's office or result in prosecution, or about the conviction rate.

3 The exception to this is the **United Kingdom** (and to some extent Germany), where the UK annual reports clarify the prosecution policy of the customs agencies, border guards and public prosecutor's office.²⁵³ In 2019 the figures were as follows: 194 seizures of strategic goods and 66 "end-use cases", where goods were prevented from leaving the United Kingdom due to the risk of unauthorised end use. Ultimately, 12 fines were imposed (a total of £408,000) for goods intended to be exported without a licence. Also in 2019, 199 dossiers were closed when the exporter voluntarily complied, 89 warning letters were sent and 60 dossiers were no longer followed up. Of the 199 "voluntary disclosures", five were fined, to the tune of £228,500. It should be noted, however, that these figures are not directly relevant to this study because they concern exports. No published data is available specifically relating to transit.²⁵⁴

4 A parliamentary question in 2014 revealed that nine transit transactions of war weapons that did not have a transit licence were identified in **Germany** between 2010 and

July 2014. Four of these transactions originated from another European country (Czech Republic, France, Hungary and Romania).²⁵⁵ Germany also publishes statistics concerning criminal enforcement. These state how many violations of the War Weapons Control Act and the Foreign Trade Act were prosecuted and punished. In 2019, 86 persons were prosecuted, 76 of whom were convicted based on an infringement of the War Weapons Control Act. Moreover, 21 persons were prosecuted (and six effectively convicted) for violations of the Foreign Trade Act.²⁵⁶ However, this data does not distinguish on the basis of which section of either legislation these persons were prosecuted and convicted. Because these prosecutions occur at the level of the German *Länder* (states of Germany), there is no overall picture of which specific infringements are subject to prosecution. Representatives of the competent licensing authority indicate, however, that infringements are almost never the result of deliberate attempts to divert goods to other destinations or large-scale arms smuggling but rather of unintentional transit for which a licence is required, the activities of arms collectors or small-scale illegal arms trading.²⁵⁷

5 Annual reports from **Belgian customs** show that every year, numerous physical controls are carried out on transit transactions and that a large number of offences are identified (Table 18). It is striking, however, that the number of physical checks and the number of offences detected in 2018 were substantially lower than in previous years; it is not clear exactly why this was the case. The Belgian customs agencies also regularly identify breaches of customs legislation with respect to trade in strategic goods (no information is available on the actual numbers and types of infringements).²⁵⁸ Although there are no specific figures on the number of infringements relating to the transit of strategic goods and many infringements are the result of absent-mindedness rather than a deliberate attempt to circumvent trade legislation,²⁵⁹ the statistics suggest that infringements do occur.

Table 18: Transit controls by Belgian customs front-line services, 2014–2018²⁶⁰

	2014	2015	2016	2017	2018
Number of transit declarations	2,414,889	Unknown	2,183,685	3,138,797	2,243,257
Physical controls of transit transactions	34,067	38,722	26,637	9,888	3,401
Number of offences	3,360	3,084	2,967	1,325	55

6 Generally speaking, there appears to be a **lack of information sharing and feedback** in the various control systems concerning action taken in response to identified infringements. The licensing authorities themselves only have limited insight into any action taken by the public prosecution service in response to the official reports they submit. However, the Netherlands is an exception here. When a dossier reaches the Dutch Public Prosecution Service, it is accompanied by a so-called follow-up report. This requests the Public Prosecution Service to report back on the outcome of an investigation to Team

POSS, the customs service responsible for investigation and prosecution. In addition, consultations are held with the Public Prosecution Service at least once a month. Such an exchange of information could be useful within the other control systems. For example, since 2017, the Flemish dCSG has had legal authority to impose administrative fines if, two months after an official report has been drawn up, no criminal proceedings have been initiated by the public prosecutor.²⁶¹ However, this procedure is currently not yet operational. It would be conditional upon a clear framework of agreements between the customs authorities and the public prosecution service.

7 In the **Netherlands** a website (rechtspraak.nl) has been available for some time where court decisions (by courts, courts of appeal and special courts) are accessible.²⁶² Judicial decisions are published online as related documents of legislation.²⁶³ The Flemish government has also recently been working on a database to centralise all judgements and decisions relating to infringements of Flemish regulations.²⁶⁴ After all, the publication of judgements can have a preventive effect by alerting the sector to its obligations. However, the current design of this online database does not (yet) include an area for foreign policy and control of strategic goods.

Conclusion: sanctions for infringements – a necessary element of a comprehensive control system

In most control systems only **a limited amount of systematic data is available on the number of infringements, prosecutions and penalties** for violations of the transit control system in force. Only the UK government systematically reports on the number of offences and prosecutions associated with the export control system, and it does not provide a further breakdown by type of transaction. In some of the other systems, only sporadic or anecdotal data is available. It is also noticeable that successful and systematic information exchanges between licensing agencies and investigation and prosecution services (the public prosecutor and the courts) is often lacking.

However, **such information is crucial** for several reasons. Firstly, the data gives an important indication of the extent to which the control system is effective in detecting and prosecuting suspicious and illegal transactions. Furthermore, information obtained from the identification of illicit transactions can be crucial in gaining better insight and further optimising the risk analyses used by customs administrations to identify future suspect transactions. Finally, unequivocal communications concerning identified infringements and prosecutions can act as deterrents or have an awareness-raising effect among the parties involved in transit transactions.

In summary, effective prosecution and sanctioning are necessary final elements in a comprehensive control system. In general, the limited data available in some control systems already indicates that **illegal transactions and violations of the export or transit control system are actually occurring and being identified**. Greater focus on and transparency with respect to detection and prosecution policies are, therefore, essential.

2.2.10 Transparency and public reporting

Publicly accessible information about the foreign trade – imports, exports and transit – in military equipment is a key prerequisite for parliamentary (and social) control over arms export policy. Transparency concerning export policies on military equipment has long been almost non-existent and in most countries information about relevant exports was not made available to parliament until around the turn of the century. Because of commercial confidentiality, national security, the security interests of recipient countries and disquiet about the potential negative impact on bilateral relationships, governments were not inclined to make information publicly available.²⁶⁵ Only since the late 1990s have governments gradually started to make data on the arms trade publicly available. Moreover, individual EU member states have only been obliged to publish an annual report “on their exports of military technology and equipment” since the introduction of the relevant EU Common Position in 2008.²⁶⁶ Strictly speaking, this reporting obligation does not apply to the transit of military goods, nor does it contain information on which aspects should be reported. Member states are consequently free to determine how often (but at least annually) and in what format they report on exports of military equipment.

It is also relevant to examine whether there are any obligations at the national level to report publicly to parliament on the transit of military goods. Important topics include whether there is a legal obligation to report on transit, the frequency of reporting on transit and which data relating to transit is made publicly available. Table 19 provides an overview of these dimensions for each of the selected control systems.



Table 19: Public reporting on the transit of military goods

	Flemish Region	Walloon Region	Denmark	Germany	France	The Netherlands	Spain	United Kingdom
Legally required	Yes ²⁶⁷	Yes ²⁶⁸	No	No	Yes	No	For export; transit not specified ²⁶⁹	For export; not for transit ²⁷⁰
Frequency	Monthly, half-yearly, annually	Annually	Annually	Annually	Annually	Monthly, annually	Annually	Quarterly, annually
Reported data on transit								
Numbers (categories reported on)	Licensed, denied, exemption, extension	Licensed, denied	No	No	Licensed, denied	Licensed, denied	Licensed, denied	Licensed, denied, withdrawn, revoked, interrupted
Goods	Type	No	No	No	Type (%) and description	Type	No	Type
Destination (information reported)	Country	Continent	No	No	Continent	Country	No	Country
End user	Category	/	No	No	Category	/	No	/
Value	Individual shipments in euros	Overall in euros	No	No	No	Overall in euros	No	Individual shipments in pounds sterling
Reason for denial	Criteria for refusal	No	No	No	No	Criteria for refusal	No	No

1 Official government reports on arms export policy focus almost exclusively on figures on licensed, denied and effective exports of military equipment. **Transit receives far less attention.** While a previous analysis of public reporting on arms exports in various European control systems showed that the nature and frequency of public reporting on arms exports has gradually increased over the years,²⁷¹ this is much less true when it comes to reporting on the licensed transit of military goods.

2 **Denmark and Germany do not publish data** on issued or denied transit licences. Only limited data in an answer to parliamentary questions is available for Germany – for example, in a response dated 2014 with figures on the licensed transit of weapons of war.²⁷² Moreover, these figures do not cover intra-EU transit or transit with goods onboard ships or on an aircraft; for these types of transit, the German government has published a general licence for which there is no reporting requirement. As a result, no overview is available of transactions via these licences.²⁷³ No new data has been made public since 2014.

3 The extent to which there is a **legal basis for reporting** on the control of foreign trade in military goods differs between the control systems. In some systems it is a legal obligation, while others report *de facto*. In the Flemish and Walloon Regions and in France, this is done on the basis of a provision in the specific legislation. In other systems, such as the United Kingdom, the legal obligation only applies to exports. In reality, UK annual reports on transit do state the numbers of licences granted, denied, withdrawn and revoked, as well as discontinued applications.

4 In terms of **frequency**, three control systems – the Walloon Region, France and Spain – provide annual reports only. The three other control systems that systematically publish information on transit have higher publication frequencies: the United Kingdom publishes a quarterly report, while the Flemish Region and the Netherlands report data monthly on the websites of their respective competent authorities.

5 In terms of **disaggregation** – the level of detail in reporting – again the Flemish Region, the Netherlands and the United Kingdom go the furthest: they are the only control systems that report at the licence level.²⁷⁴ Each of these control systems publishes information on the type of goods (the EU Common Military List category) and the value of each licence. The Flemish Region and the Netherlands also report on the type of end user and the Netherlands provides a description of the goods concerned. Remarkably, the United Kingdom also reports data on the processing times of licence applications. When it comes to transit transactions, it appears that in the second quarter of 2020, 63% of all licences were processed within 20 working days; the average processing time was 19 working days.²⁷⁵ In the three control systems that publish data on transit only in their annual reports – the Walloon Region, France and Spain – this reporting is often limited to a short paragraph mentioning the number of licences issued and denied for the transit of military equipment. The Walloon Region's reports provide an overview of the number of licences per destination country with the value of all licences, but they do not include an overview of the types of goods, countries of origin or end users, although they do indicate the types of goods for which transit was refused and the destination countries for those goods. Other data is lacking, though.

6 A final aspect of transparency is the **extent of reporting**. A first observation is that the control systems differ greatly in terms of the transactions that are subject to licensing (and therefore potentially reported on). All of the control systems with systematic reporting provide details of the number of individual transit licences issued and denied. None of the control systems that apply general licences to the transit of military equipment report on their actual use. The United Kingdom only reports on the number of operators that have registered to use a general transit licence. Companies are not required to provide feedback on the effective use of these licences and the UK government does not have insight into the number of transactions that occur using these general licences. In the Netherlands, the effective use of general transit licences has to be reported to the CDIU, but this data is not published. Since there is no systematic reporting on transit in Germany, the German government does not report on the actual use of general licences either.

Conclusion: public reporting on transit – less extensive and less systematic than it could be

Public reporting on the transit of military goods in the systems studied appears to be very limited. Some governments do not report on authorised and denied transit, while others only report on the number of transit licences issued (and refused). Even in the systems that provide more information, such as the Flemish Region, the Netherlands and the United Kingdom, this is partly due to the high level of transparency concerning exports of military equipment. The trend towards greater transparency about arms exports in various EU member states has consequently not necessarily coincided with greater openness about transit. All of this highlights the limited social and political focus on the issue of transit within arms export policy.

There are also wide variations in the kind of information available about the transit of military goods. While some countries do not publish any data at all, others report on a very frequent (monthly to quarterly) basis on licences issued and denied, with information on the countries of origin or destination of the transaction, the types of product and the end users.

At the same time, the previously described differences in the types of transit that are subject to licensing (see section 2.2.3) and the types of licence that can be used for this purpose also affect the comprehensiveness and comparability of the data. These differences result in transactions being subject to licensing in one system and not in another and being reported accordingly. This lack of published information means that **there is very limited comparable data available to chart European trends with respect to the transit of military equipment**

2.3 Developments in the transit of military equipment in the selected systems

The above analysis regarding the degree of transparency shows that reliably identifying developments in the transit of military goods presents quite a challenge. The limited extent of the published data, the substantial differences in which transactions require licences, and the use of global and general licences (which are not reported on) make it difficult to conduct a meaningful analysis of developments in the licensed transit of military equipment.

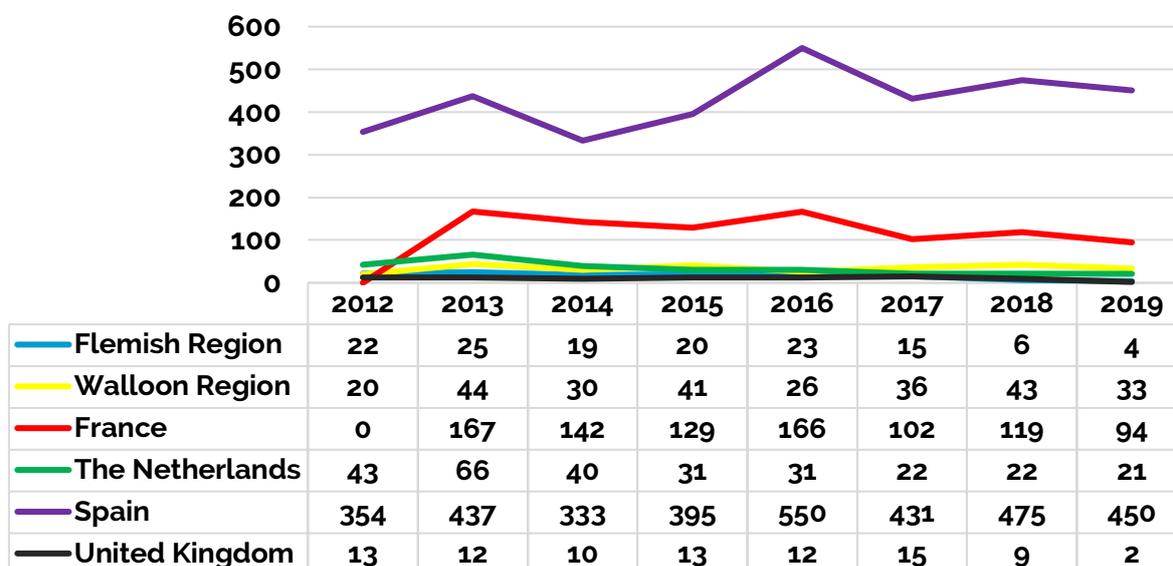
As discussed earlier (see section 2.2.10), there is a lack of comparable statistical material. Two of the eight systems investigated, Denmark and Germany, do not publish information on transit. The other systems show substantial differences in the frequency, level of detail and comprehensiveness of their information. This section therefore primarily discusses the data available in each of those other systems – the Flemish Region, the Walloon Region, France, the Netherlands, Spain and the United Kingdom – covering the period from 2012 to 2019. The available information covers authorised transit, denied transit, and destinations and origins of both licensed and denied transit in the Flemish Region. The data discussed below are all derived from the official reports published by the respective governments.

2.3.1 Authorised transit of military equipment

1 A first observation is that **the number of transit licences issued are significantly higher in two systems** – France and Spain – than in the other control systems (Figure 6). In France, the number of annual licences issued amounts to between 94 and 167 and in Spain the number is even higher (between 333 and 550). Germany only provides data for the period 2009–2013: 1,195 transit licences were issued for the transit of weapons of war during this period. However, a breakdown per year is not available, so it is not possible to determine whether there are any particular trends. These figures do demonstrate that a substantial number of licences were issued for transit through German territory, especially since they only concern a subset of goods from the EU Common Military List.^a The competent German licensing authority also indicated that 200–300 transit licences are still issued annually and that there have been few noticeable developments. In the other four systems included in Figure 6 – the Flemish Region, the Walloon Region, the Netherlands and the United Kingdom – the numbers of transit licences are much lower: nearly always fewer than 50 licences annually.²⁷⁶ As mentioned, no figures are available for Denmark.

^a In 2017, in response to a parliamentary question, the German government revealed how often the transport of non-war weapons was subject to licensing in 2015 and 2016. In each case, five transactions were made subject to a licence on an *ad hoc* basis. The destination countries were Iraq, Lebanon and Russia (Response of the federal government to a minor interpellation by Jan van Aken, Christine Buchholz, Annette Groth, other members of parliament and the parliamentary group Die Linke, Drucksache, 18/13278, 8 August 2017, <https://dserver.bundestag.de/btd/18/132/1813278.pdf>). Accordingly, although the transit of other military goods can also be effectively controlled, this happens relatively rarely.

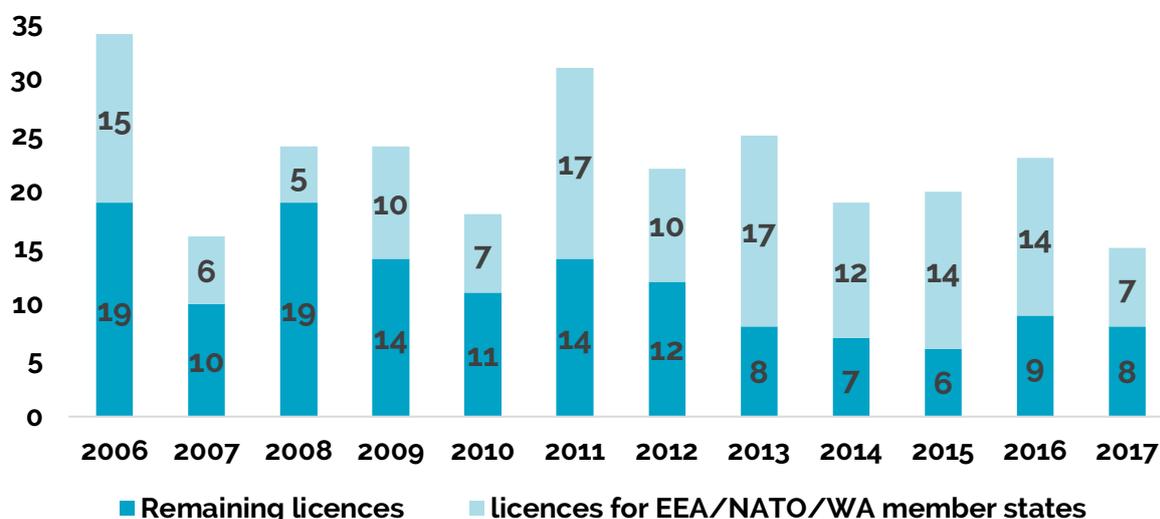
Figure 6: Number of transit licences issued in the Flemish Region, the Walloon Region, France, the Netherlands, Spain and the United Kingdom, 2012–2019



2 A second observation is that **in several of the control systems there has been a decrease in the number of transit licences**. This decrease has been particularly pronounced in the Flemish Region (also in the United Kingdom in 2019) but is also noticeable in France and the Netherlands. The decrease in the number of transit licences issued in the Flemish Region after 2017 was partly due to changes in the legal framework, particularly with regard to transactions requiring a licence: since 2017, transit with transshipment destined for a European Economic Area (EEA), NATO or WA member state no longer requires a licence. Since 2006, a substantial number of transit licences have had EEA, NATO or WA member states as destination countries, but such transactions are not subject to licensing under the current legal framework (Figure 7).^a

^a In the period 2005–2011, 11 transit licences were issued on the basis of the catch-all clause in the then applicable federal legislation of 2003. In the Flemish Arms Trade Decree of 2012, the scope of the catch-all clause was changed and narrowed down, and the focus is no longer on the end user but on the end use and potential associated damage. Since 2012, this clause has not been used to make transit transactions subject to a licence. On average, fewer than two licences per year have fallen into this category, so the overall effect remains limited.

Figure 7: Numbers of Flemish transit licences destined for shipments to EEA, NATO and WA member states and numbers of remaining transit licences, 2006–2017



The new transit system in the Flemish Region could, therefore, be a significant explanation for the decrease in the number of transit licences; however, since this trend was already emerging prior to 2017 it is not the only explanation. The data in Figure 7 imply, however, that the changes made to the legal framework did have an effect on the number of transactions requiring a licence.

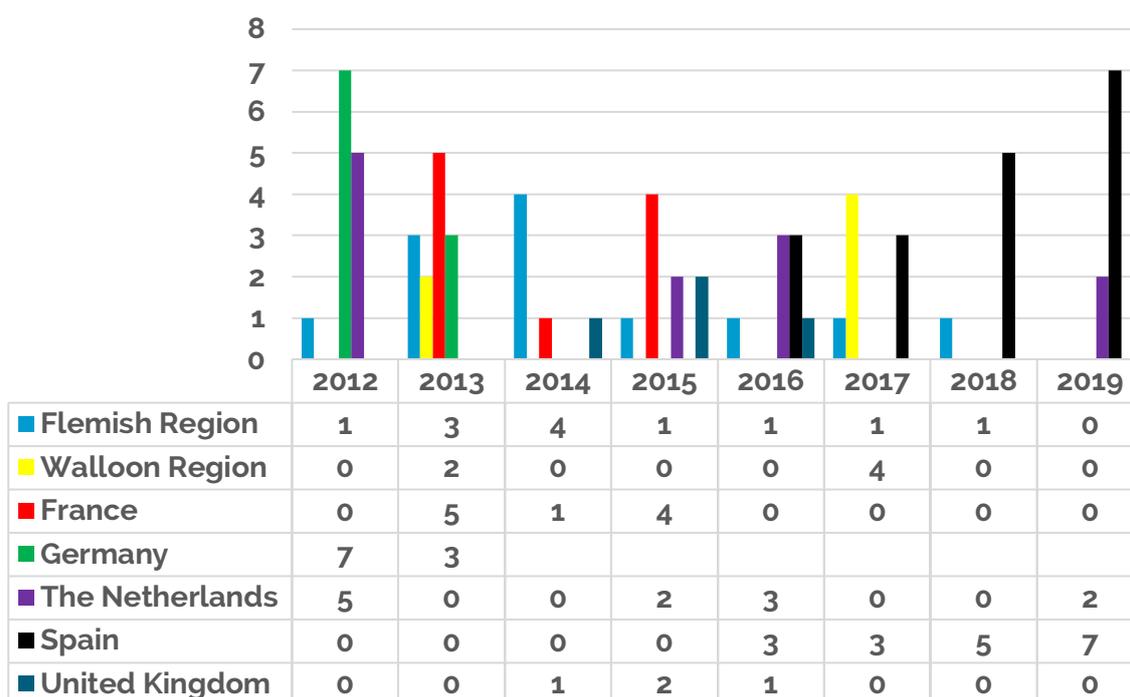
France, the Netherlands, and the United Kingdom have also seen decreases in the numbers of individual transit licences issued in recent years. In the Netherlands and the United Kingdom, this could be related to the additional implementation of general transit licences during this period. The United Kingdom also has very limited licensing requirements for the transit of military goods in general.

The number of transit transactions made through these general licences is not included in the figures, as the countries concerned do not report on that level of detail. Although in the Netherlands data on the number of times a general authorisation has been used is not readily available, information is available on the values for which these general authorisations were used. For example, via the three available general transit licences, in 2020 military goods worth almost €370 million were transited via Dutch territory.²⁷⁷ In the Netherlands, transit actors can opt to use a general licence or apply for an individual licence. For that reason, individual transit licences are sometimes issued for transactions that could officially take place subject to a general licence. This option may be used by occasional transit actors that do not wish to complete all the formalities associated with a general licence and so apply for an individual licence.²⁷⁸ Figure 7 does, however, suggest that many transit transactions in the Netherlands are carried out subject to these general licences.

2.3.2 Denied transit of military equipment

Figure 8 provides an overview of denied transit applications in the period 2012–2019, revealing rather low figures in all of the included countries. France did not issue refusals for four years in a row. Spain saw a peak in 2018 and 2019, with five and seven refusals respectively. However, these numbers are still very low relative to the total number of transit licences, which was well above 400 between 2017 and 2019.

Figure 8: Numbers of denied transit licences, 2012–2019



2.3.3 Destinations and origins of licensed and denied transits

Examining the origin and destination countries of licensed and denied transit may reveal explanations for the significant drop in the number of transit licences seen in that control system. Furthermore, this analysis may show whether certain trade flows have shifted between control systems in recent years.

An important limitation on such an analysis is the fact that only the Flemish Region, the Netherlands and the United Kingdom report on the origin or destination countries of issued and denied transit licences, with the Flemish Region being the only one that consistently reports on both origin and destination. The Netherlands primarily reports on licensed transit; only the destination is known for denied transit. The United Kingdom reports exclusively on destination countries. For Germany, data concerning the origins and destinations of denied transit licences is available only for the period 2009–2014. As a consequence, the following sub-section makes use of the available data from these control systems alone in order to analyse the licensed and denied transit of military goods in depth.

1 In terms of value, the licensed transit in the control systems mainly concerns the transit of military equipment to countries in the **Middle East and North Africa (MENA)**. However, transit via the Flemish Region to countries in the MENA region has significantly decreased over the past few years. In this case the impact of the Arab Spring and the armed conflict in Yemen on Flemish export control policies may be an explanatory factor. Since 2012, and especially since 2015, the Flemish authorities have applied a strict policy whereby export and transit licences for countries actively involved in the conflict in Yemen have been systematically denied. Any licences that were issued were mostly destined for international organisations. In 2013 (ammunition destined for the UAE) and 2014 (armoured vehicles for Saudi Arabia), in total two licences were refused for transit to this region.

It is remarkable that a similar development can be observed in **the Netherlands**. In the period 2012–2014, the MENA region was the main destination region for licensed transit of military equipment through the Netherlands. During these three years, respectively 19 out of 43, 36 out of 66, and 18 out of 40 of the licences issued were destined for that region. These were mainly transits destined for the UAE, but also for countries such as Algeria, Israel, Kuwait, Oman, Qatar, Saudi Arabia and Turkey. In 2013 and 2014, the UAE was not only the most important country of destination in terms of the number of licences but also in terms of the value of licensed transit: €18.5 million out of a total of €50.3 million in 2013, and €70.8 million out of a total of €93.2 million in 2014. In each case these transactions involved ammunition for the UAE armed forces originating from Switzerland. From 2015 onwards these transits gradually decreased, and they have almost completely ceased since 2017. Between 2017 and 2019, 12 transit licences (six of which were destined for Algeria) out of a total of 65 licences were still active. Particularly noteworthy is the apparent drop in transit to the UAE – from 34 licences between 2012 and 2014 to only one licence between 2017 and 2019. Similar to the Flemish Region, the Netherlands has been applying an strict policy with respect to the export and transit of military equipment to the UAE and Saudi Arabia since 2016. In total, three transit licences to the UAE were denied (respectively in 2015, 2016 and 2019) because of the risk of human rights violations and breaches of international humanitarian law.^a

Transit originating from **Israel** via the Flemish Region and the Netherlands also seems to have decreased considerably since around 2009. In the period 2004–2009, a few transit transactions from Israel via the Flemish Region still took place, but several transit transactions were refused. The decrease since 2009 may be the result of the tightening of Belgian policy on arms deliveries to Israel since that year. A similar development has occurred in the Netherlands: between 2006 and 2007, 142 arms shipments to Israel passed through the Netherlands; however, by the end of 2008, part of the military transit to Israel was said to have been moved to Liège Airport, officially because of an increase in landing fees at Schiphol.²⁷⁹ This has since led to a decrease in the reported instances of transit of

^a In 2016, the Dutch government removed the UAE (and some other countries in the same region) from the list of countries for which a general transit licence can be used (e.g. when the goods originate from an EU member state or another friendly country). This decrease in the number of Dutch transit licences to the MENA region cannot, therefore, be attributed to the impact of switching these transactions to general licences.

military goods to Israel via the Netherlands. However, the Walloon government only controls transit transactions with transshipment, which means that transactions where the plane only makes an intermediate stop, landing on Walloon territory, do not fall within the scope of the Walloon transit control system and are consequently not reported. The extent to which these transactions actually take place via Liège Airport is, therefore, not entirely clear.

2 Interestingly, most of the **countries of origin for both licensed and denied transit** via the Flemish Region are in the European Union. The Czech Republic and France, in particular, regularly come to the surface in this analysis, which is quite remarkable, as these transit transactions often concern goods for which the country in question has, in principle, issued an export licence. As for the countries of origin of licensed transit via the Flemish Region, what stands out is that France and Switzerland have not featured as significant transit countries since 2017. Between 2012 and 2016, for instance, 15 transit licences were issued by the Flemish government for military goods exported from Switzerland, but none have been issued since 2017.

The **Dutch** annual report does not provide insight into the countries of origin of denied transit transactions.²⁸⁰ However, it appears that for most transit licences issued in the Netherlands, the country of origin is another European member state. The data on denied transit in **Germany** for the period 2009–2013 shows that concerning the 17 denied war weapons transit licences, in ten cases the country of origin was an EU member state (Austria, Belgium, Bulgaria and the Czech Republic) or a NATO ally (such as Norway or the United States). In addition, there were other European countries of origin (Bosnia-Herzegovina, Serbia and Switzerland) besides Israel. Four licences for transit of firearms and ammunition destined for Oman were denied in the period 2009–2013. What stands out is that in 2012, Germany denied a licence for the transit of firearms and ammunition from Belgium to Oman, whereas the Netherlands approved the transit of pistols and accompanying 9 mm magazines from Belgium to Oman in December 2012 and March 2013. Transits of firearms and ammunition to South American countries – Colombia (two instances), Ecuador (two) and Paraguay (one) – were also denied. Three transit licences were denied for ammunition and propellants destined for Thailand.

3 A major constraint is that the control systems other than the Flemish Region, the Netherlands and the UK provide little or no information concerning the origin or destination countries of controlled transit transactions. The **Walloon Region** reports only the destination countries of denied transit transactions. In 2017, transits destined for Israel (two instances), Brazil (one) and France (one) were refused. Each time this concerned the transit of firearms and, in the case of Israel, also ammunition for firearms. Transit transactions refused in 2013 were destined for Bosnia-Herzegovina and Macedonia, in each case for firearms. The **French** annual report for 2015 only states that “in most cases these licences were granted for transit operations to or from an EU member state or a Western European state”.²⁸¹ The Walloon reports show that the vast majority of the transit licences issued have a European country as the destination. In this case, Europe is understood to be more than just the European Union and includes all of the countries on the European continent. In 2019, 31 of the 33 licences related to a destination country in Europe (11 different countries).²⁸² In the previous years, the numbers of licences issued with a

European destination amounted to 38 out of 43 (2018),²⁸³ 30 out of 36 (2017),²⁸⁴ 34 out of 41 (2015),²⁸⁵ 36 out of 44 (2013),²⁸⁶ and 11 out of 20 (2012).²⁸⁷ The Walloon Region does not report on the countries of origin of licensed and denied transit. According to the Walloon competent service, there are, roughly speaking, three military equipment transit flows through Walloon territory: advanced weapons; transit from Israel via Liège Airport; and transit from the United States, notably due to the European distribution centre of the American manufacturer Smith & Wesson, which is located in the Walloon Region.²⁸⁸ However, the lack of more detailed data makes it virtually impossible to identify any “shopping” effects (where transport and logistics actors choose the path of least resistance for each specific transaction) on the basis of the available data.

Conclusion: developments in licensed and denied transit – striking differences that are difficult to explain

Because the French and Spanish competent services (both customs agencies) were reluctant to cooperate, it was not possible to find an explanation for the remarkably high numbers of transit authorisations in both countries (in comparison with the other control systems).

In those cases where the origin or destination country of denied transit is known, European countries nevertheless relatively frequently act as the country of origin of the goods. This finding suggests that European member states differ in their assessments of the international trade in military goods. After all, in such cases an export licence was previously issued by another EU member state after compliance with the assessment criteria had been established. Refusal of the transit of similar goods by another member state, on the basis of the same assessment criteria, illustrates the existing differences in the interpretations of these criteria.

2.4 Eight control systems for the transit of military goods: some conclusions

The analysis and comparison of the eight selected control systems for the transit of military goods lead to several notable conclusions.

Firstly, it appears that **although the systems have several similar aspects, they differ substantially in their practical implementation of control.** The definitions used of “transit”, the concrete control lists and the applied assessment criteria appear to be very similar in most of the systems. Nevertheless, in practice there are significant differences in terms of the goods that are controlled, the transactions that are controlled, the types of licence that can be used for this purpose, and the transactions that are exempted from licensing requirements (whether or not in combination with a legal basis for *ad hoc* controls). The same transit transaction of military goods might, therefore, be completely

exempted from the licensing requirements in one system, routinely need an individual licence in a second system and occur via a general licence in a third system (and thus with much fewer controls and administrative practices compared to an individual licence), with different exceptions in each case depending on the type of goods and the countries of origin and destination.

The underlying principles of the control systems also sometimes differ significantly at a more fundamental level. In practice, most of the systems tend to focus on controlling transactions when there is a concrete opportunity to do so (i.e. in the event of transshipment in seaports and airports), precisely because checking direct transit is so burdensome from an economic point of view that it is preferable to check only if there is a suspicion of dubious transit. Germany and Denmark, on the other hand, do not in essence have a specific transit control system. Denmark approaches transit as a combination of import and export, and a transit licence is consequently a combined import–export licence. In Germany, control of the transit of war weapons derives from the constitutional provision that all actions involving weapons of war are prohibited in Germany except when they are specifically authorised by the German government. For this category of transaction, transport rather than transit licences are granted, which reflects the control system's ultimate goal: to control what happens on German territory (including in the realm of transport). In principle, the transport of other military goods is free. The United Kingdom, for its part, reverses the guiding principle in comparison with the other systems. The basic principle is that the transit of military goods is free (except for certain types of goods), whether or not a specific transaction is linked to certain end-use countries. It is irrelevant whether there is transshipment of goods. As sensitivity concerning both aspects – the type of goods and the country of end use – increases, a more far-reaching licensing requirement is imposed. In reality, this means that in the United Kingdom most transit transactions are not subject to licensing.

All this means that **control of the transit of military goods is a highly complex issue** within the eight systems studied. What is noticeable is that the level of attention paid to, or awareness about, this topic within the systems themselves is minimal. The focus is mainly on the internal (national) organisation of such controls. Each system strives for administrative efficiency, avoiding unnecessary administrative burdens not only on the sector in question but also on the licensing authorities themselves. An additional consequence of this national focus is that most systems and licensing agencies tend to concentrate particularly on specific actors within the transport chain (i.e. those located in their own territory). In reality, this is often the carrier, which is actually in possession of the goods.

A second observation is that **control of the transit of military goods is mainly approached as a licensing system** and much less as a comprehensive and integrated control system. Competent services operate on the basis of the premise that they provide a framework for legal trade and are neither authorised nor organised to detect illegal trade in military goods. In the absence of cooperation with police and intelligence services – and due to a lack of insight into transit not subject to licensing, on the one hand, and illegal transit, on the other – it is impossible to assess the effectiveness of a control system, which should be more than just a licensing system for legal trade. **It is consequently also virtually impossible to assess**

the effectiveness of these control systems, mainly due to the lack of data that would allow this effectiveness to be assessed against the objective of combating illegal arms trafficking. The fact that a competent service evaluates all the applications it receives (proactively from transit actors or reactively following referral by customs) gives no indication as to whether all transit movements subject to licensing are being controlled, or that the illegal trade in military goods is being inhibited.

The dominance of licensing in these systems' approach to transit control is illustrated by the fact that integration and formal cooperation with other relevant government agencies, such as customs and the police, do not always operate smoothly. In several systems, such as those in Germany and the Netherlands, there is more extensive cooperation between licensing and customs authorities. France has allocated licensing powers for transit to the customs authorities; however, as it was not possible to gain access to the people involved, this report can offer no insight into France's control practices. Dutch practice shows that the integration of licensing authorities into the customs service and expanded structures to control the trade in military goods throughout the customs service can contribute to a more accurate picture of the transit of military goods, and to enhanced expertise among the services responsible for the effective control of international trade flows. However, formal links with police and investigative or judicial services appear to be rather limited in the various control systems.

A third general conclusion relates to the **lack of transparency in most of the control systems**. Only a few of these systems have a comprehensive and accessible regulatory framework for control of the transit of military goods. In most of the systems, the limited legal principles are supplemented or developed within the administrative practices of the relevant administrative services. The same applies to public reporting on licensed and denied transits of military goods. While reporting on *exports* of such goods has gradually increased in most European countries in recent years, reporting on transit has not followed this trend. Whereas some systems, such as Denmark and Germany, do not report on transit at all, others disclose only aggregate data, such as the number of licences granted for transit and, in some cases, limited information on the destination countries of such transit. **This lack of transparency illustrates the limited interest in and attention paid to controlling the transit of military goods among the systems covered by this report.**

3



International information exchange and cooperation

The previous section demonstrated that the efficiency and effectiveness of control of the transit of military goods can be increased to some extent at the national level. However, the international nature of the transit phenomenon also necessitates more intense international cooperation and information exchange. All actors in the international production and trade chain have a responsibility to ensure that a transaction meets the multitude of legal obligations that can be encapsulated in the generic term “export control”.²⁸⁹ It is necessary for there to be cooperation and information exchange between all these different services and actors in order to organise control of the transit of military goods efficiently, effectively and transparently.

Figure 1 provided a visual overview of the actors and services involved in (control of) the transit of military goods in the various involved jurisdictions (i.e. where the goods depart, pass through and arrive). Various opportunities for international cooperation and information exchange can be identified based on this figure. This section consecutively describes the factors involved in information sharing and exchange between the actors involved in the logistics chain, between themselves and with relevant control authorities (section 3.1); the opportunities and challenges for information processing and sharing within and between customs agencies in different countries (section 3.2); cooperation between customs agencies and export control services (section 3.3); and the opportunities and challenges for information sharing between national export control services (section 3.4). Each of these sections contains an analysis of existing challenges and constraints as well as details of actual initiatives and opportunities to improve cooperation and information sharing between the various actors.

3.1 Information sharing and exchange by actors in the international logistics chain

The various actors involved in the international logistics chain can play important roles in identifying illicit trafficking because they are closest to the information needed to make transit subject to control.²⁹⁰ Due to the nature of its activities, the transport and logistics sector is an important and obvious partner in terms of control of the international trade in strategic goods.²⁹¹

Defence represents a significant market for the international transport and logistics sector. Each year, the international trade in military goods accounts for a turnover of €5 billion in logistics expenditure. International transport companies cannot, therefore, simply stop trading these goods.²⁹² In relation to the potential for them to take on a certain role or responsibility in controlling the international trade in strategic goods in general, and the transit of these goods more specifically, there are several challenges for the international transport and logistics sector.²⁹³

A first challenge arises from the fact that the transport of military goods often occurs via standard shipping mechanisms – usually fixed liner routes. However, companies in the international transport and logistics sector **do not always seem to be aware of the latest compliance standards** governing the trade in strategic goods in general and military goods in particular. As companies expand their services, they often fail to integrate the necessary analyses and compliance measures associated with these types of goods.²⁹⁴ Additionally, effective enforcement of transit controls requires transport companies to be aware of the risks of diversion of military goods and any associated sanctions.²⁹⁵ This limited focus among transport companies on obligations linked to the international arms trade is related to the fact that legal compliance concerning export controls is mainly focused on the producer of the goods. In practice, however, once the goods have physically left the producer, it is the forwarder who is responsible (often virtually) for managing the goods and transporting them to the end user.²⁹⁶

A second challenge relates to the **identification of the goods**. Container transport has increased considerably in recent years: international trade increasingly involves the use of containers.²⁹⁷ Cargo is rarely effectively opened or physically examined, which means that the transport and logistics sector often has no idea what exactly is being transported. This leaves room for exporters and freight forwarders to keep carriers in the dark about the specific nature of the products being transported: for example, “*Customers tend to cheat us or look for a freight forwarder that looks away. They use a general description that does not refer to the military character of the goods*”.²⁹⁸ Carriers therefore often employ phrases such as “said to contain”, in which the client assumes responsibility for any declarations relating to the cargo. However, such phrases do not provide conclusive indemnity for the carrier.²⁹⁹ This state of affairs also illustrates that the transport and logistics sector consists of multiple profiles, each with its own function (see section 1.1.1). The freight forwarder, which is the actual organiser of the transport, has the most direct contact with the producer of the goods and should, in most cases, have the best insight into the sender, the nature of the products, and the client (or recipient) abroad. Other actors are often engaged by the freight forwarder, either to manage the effective transport of the goods or to fulfil the

necessary customs formalities in local ports abroad, where the goods are in transit or imported. The opportunities and challenges for information gathering and sharing consequently depend to some extent on the specific role of the stakeholders involved in the international transport chain.

A third challenge, and one that is a major consideration for logistics actors (especially those that act as carriers or handle the necessary formalities in transit countries), is the **complexity and lack of clarity** about the applicable legal obligations concerning the transit of military goods. Compliance with legal requirements is especially challenging due to sweeping national differences. The rules, exemptions and requirements differ, and interpretations and applications may also vary. Moreover, the reality of today's trade flows is such that routes are not always fixed (long) in advance and can change for time and cost-saving reasons. Particularly with so-called express carriers, which are committed to getting goods to their destination in a very short period of time, the flight route is not known in advance and is not communicated to the exporters. In fact, the route is automatically determined by software, can change according to circumstances and is considered a trade secret, given the importance of speed as a competitive advantage.³⁰⁰ As a representative of a global courier company suggested, "This is highly advantageous from a time and cost perspective, but a nightmare in terms of compliance with national export control obligations."³⁰¹ These growing risks have, for example, led a major international transport company to refuse to handle any transactions of military goods for an indefinite period beginning in 2020.³⁰² As another control officer explained, "Carriers refusing to accept military items is a recent trend."³⁰³ Flemish respondents from the transport and logistics sector also pointed to this increasing complexity as a reason why they were not always keen to transport military equipment. More transparency and consistent application of uniform rules would make it easier for all parties to comply with and monitor the rules.

Three aspects could make an important contribution to increased awareness and better information exchange among and between logistics actors: (1) further development of internal compliance programmes (ICPs) that reflect the realities of transit; (2) structural communication on the export control modalities for goods; and (3) integration of export control modalities into international security standards for the transport and logistics sector. The following three sub-sections explore these possibilities.

3.1.1 Ongoing development of internal compliance programmes

Compliance by the transport and logistics sector (in the widest sense) with national regulations controlling the trade in strategic goods is crucial in facilitating legitimate trade and allowing customs to focus on detecting possible illicit trade flows.³⁰⁴ More effective compliance by the transport and logistics sector could ensure that military goods comply with relevant legal export control requirements in transit countries.

An initial step towards increasing awareness of export control obligations among logistics actors would be those actors' own implementation of relevant procedures and protocols in their ICPs. The transport and logistics sector in general – and, given their central position

in the transport chain, forwarders as well – could integrate various elements into their internal processes:³⁰⁵

- There could be prior data collection by the transport or logistics actor from the exporter on the nature of the goods (and their possible licensing status) and their destination, end use and end user.
- Preliminary screening by the transport or logistics actor of the exporter and importer, the client, and the various carriers could be used to organise the transport.
- Forwarders should be able to connect prohibited or restricted goods to specific destinations. To this end, forwarders should, as a matter of routine, collect information together with their clients about the control status of the goods and the extent to which the necessary licences have been obtained.
- The various actors involved in the transport and logistics sector could seek compliance throughout the supply chain by using, where possible, foreign partners that have also installed ICPs. For example, the American Bureau of Industry and Security advises US logistics actors – forwarders, exporters and customs agents – “to utilize only those trade facilitators and freight forwarders that administer sound export control management and compliance programs that include transshipment trade best practices”.³⁰⁶
- There could be a greater focus among transport and logistics actors on the dynamics of suspicious transactions and how certain aspects could point to illegal activities (e.g. changing transport routes during transport). Actors should report changes to the recipient or destination to the competent authorities, in both the exporting and the transit country (with transshipment), as these changes can render a legal shipment and its corresponding export licence illegal. As this is one of the methods used by illegal traffickers, this information can help to identify illegal actors and networks.³⁰⁷

When companies implement ICPs that include aspects related to the trade in strategic goods, they gain an important advantage. Specifically, this strengthens their reputation as a reliable partner for foreign clients who are looking for a party in the countries of transit to fulfil the necessary administrative formalities.

3.1.2 The necessity of qualitative information and information sharing between logistics actors and with relevant government agencies

A second vital step is that the information gained through the above-described extension of ICPs should be routinely shared with the various other actors involved in the transport of the goods (at home and abroad). Alternatively, procedures and systems should be made available to enable such information sharing.

In particular, carriers and customs agents in receiving ports depend upon information that is generally not requested by customs as standard; instead, it must be proactively shared by

the client in the exporting country. These actors often depend on the goodwill of the other parties at the start of the transport chain for the quality and relevance of this information. For example, one of the interviewees from the transport and logistics sector referred to a case where their transport company received “neutral” information about the goods to be transported whereas in practice the shipment contained tank repair parts.³⁰⁸

It is therefore necessary for logistics partners to systematically exchange information on the strategic nature of goods in order to strengthen compliance with export control obligations. It is crucial that this information is collected from the beginning of the transport chain and made available to the various actors within it. According to a respondent: “It is important that the responsibility should lie as close to the port of loading as possible, and that any obligations in the countries of transit or import are enquired about as early as possible in the transport chain. It is not feasible that a licence would only be applied for once a ship is actually in port, or about to enter the port.”³⁰⁹

First and foremost, responsibility in this respect lies with the exporters or producers of the goods. They are often very much aware to what extent goods are classified as military and are in close contact with the licensing authorities in their own country, especially with a view to obtaining an export licence. However, they commonly pay less attention to the obligations concerning the transport of their goods. While shippers and consignors tend to shift the risks to the transport and logistics sector, they typically have little awareness of the obligations regarding the transit of military goods. Even large defence companies appear to have limited awareness of the need to have transit licences.³¹⁰

Transport organisers also have a significant role to play. Freight forwarders are often positioned at the beginning of the commercial chain and are in principle in direct or closest contact with the producer of the goods. They consequently bear a lot of responsibility when it comes to collecting sufficient information about the goods in question and, where relevant, about whether or not these goods need to be licensed. Freight forwarders should, therefore, routinely ask their clients whether the goods to be transported fall or may fall within the scope of export control legislation and whether the necessary licences are in place.³¹¹ They should then share such information with the other logistics actors involved in the transport. The American Bureau of Industry and Security also advises forwarders that it is good practice “to communicate export control classification and destination information to end users and consignees on government and commercial export documentation”.³¹² Exporters should share such information with freight forwarders; it can be included in bills of lading, air waybills, buyer–seller contracts and other relevant commercial documentation.³¹³ This information sharing by freight forwarders allows other logistics actors to assess within their respective contexts whether a transit licence might be required.

The various logistics actors involved in the transport of military goods should, therefore, be given timely access to relevant documents such as copies of export, import and transit licences; copies of end-user certificates; and information on the planned route and on arrival and departure times. Some carriers take this approach and request as much documentation as possible from their clients. However, not all clients are keen on sharing commercial information (such as invoices, which contain comprehensive and sensitive information) with carriers.³¹⁴ An important and necessary step would be to make it

mandatory for clients or shippers to communicate information about the strategic nature of goods to other logistics actors (the forwarder and shipping company).³¹⁵ As long as this is not legally required, competitive and commercial confidentiality considerations will prevent this kind of information exchange.

Another possibility is to introduce procedures whereby the information held by logistics actors is made readily available to the relevant government authorities. The information provided by carriers to customs authorities for the transit of goods is often submitted via a cargo manifest. This document combines information concerning all transported goods, but often with less substantial and detailed information than in the case of an import or export declaration.³¹⁶ The internal information systems of both maritime and air transport companies often contain more detailed information about the cargo “that is not required or included in pre-arrival declarations or cargo manifests”.³¹⁷ One option would be to allow competent authorities access to transport companies’ internal systems containing cargo information with read-only rights for all shipments in transit (with or without transshipment). This internal information is often much more comprehensive than what is requested in standard declarations. In this way, when authorities received an initial positive risk assessment based on cargo manifest information, they would be in a better position to assess the risks without unnecessarily burdening the carrier and legitimate trade.³¹⁸

A final recommendation relates to initiatives that would ensure that other actors in the transport chain (carriers, customs agents, and ship owners or shippers) in the exporting country were prepared in advance to provide additional information about the goods. This could be achieved by setting up agreements, protocols and systems that would make the information available at short notice.³¹⁹ If a logistics actor in a transit country needed additional information, it could be made available quickly in this way.

Global trade in “dangerous goods”: example of information flow between logistics actors (and relevant government departments)

An important but specific type of goods for which extensive information exchange obligations are in place at an international level is so-called dangerous goods. This term covers a wide range of goods; however, in the context of this report, only a limited number of products are relevant, such as explosive materials and ammunition for firearms and other (heavier) military artillery. The transport of goods of this nature is subject to the regulations of various international treaties, depending on the mode of transport: the Regulation concerning the International Carriage of Dangerous Goods by Rail (RID), the Agreement concerning the International Carriage of Dangerous Goods by Road (ADR), the Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways (ADN), the International Maritime Dangerous Goods (IMDG) code and the International Civil Aviation Organization (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air. Most of these treaties are several decades old and have resulted in well-integrated reporting and monitoring practices.

Shipping companies are required by the IMDG code to share information about goods listed in the dangerous goods code in advance with the harbour master’s office of the ports through which the dangerous goods are to be transported,³²⁰ regardless of whether the goods are loaded, transhipped, or merely in transit and remain on board the ship. The shipping agent or forwarder must report this information to the office at least 24 hours in advance. The initial notification is submitted via an electronic dangerous goods notification message, which contains any information concerning the dangerous goods to be delivered at the terminal.³²¹

In civil aviation, annex 18 of the Chicago Convention regulates the “safe transport of dangerous goods by air”.³²² The provisions of this convention apply to all types of civil aviation operations (i.e. international flights, domestic flights and flights over national territory).³²³ For transport by air, information concerning the transport of dangerous goods must be submitted to the competent authority at least five working days prior to the planned operation and at least ten days in advance in the case of exemptions or approvals. The applicant, in this case the air carrier, must (1) indicate whether weapons or “ordinary” dangerous goods are involved; (2) specify whether an export, import or transit licence is available; and (3) provide detailed information about the flight routes.

Although this international regulatory framework is not completely watertight and several incidents have occurred involving undeclared dangerous goods on board,³²⁴ the above does illustrate that, overall, **well-developed practices and procedures exist whereby information is shared between actors in the logistics chain and between these actors and the relevant government departments.**

3.1.3 Whole-supply-chain security and safety

The regulatory framework that covers the import, export and transit control of military goods is related to another regulatory framework that affects goods flows, namely customs legislation. Indeed, the roles, responsibilities and expectations of the transport and logistics sector are incorporated into customs legislation rather than export control legislation.

Many programmes and protocols have been developed in recent years aimed at securing supply chains and subjecting them to certain standards. Within the European Union, this is embodied in the Authorised Economic Operator (AEO) system, which aims to increase security in the international trade chain and simplify legitimate trade flows. The AEO system involves a partnership between customs and business. The core agreement is that businesses that comply with a set of criteria that aim to secure the international trade chain enjoy certain benefits across the European Union, including faster customs clearance.³²⁵

Further recognition and expansion of AEO systems in other parts of the world and favoured cooperation with AEO partners are key instruments that can be used to strengthen the security of the entire trade chain. However, several interviewees from the transport and logistics sector pointed out that such recognitions are a double-edged sword. They are necessary or mandatory and economically relevant because of the “fast lanes” customs reserve for AEOs. Via these lanes, eligible goods being imported or exported by approved companies and transported by approved carriers are cleared through customs controls with greater speed and certainty, which reduces the costs for all actors involved. However, the downside is that customs authorities are less tolerant of errors and are more likely to consider AEO-approved organisations as acting in bad faith if an error is identified, making AEO-approved organisations the most vulnerable parties in the transport chain in terms of liability. Moreover, this certification is a lengthy, intensive and costly process. Finally, some actors from the transport and logistics sector indicated that they avoided risky activities so as not to jeopardise their certification.

Furthermore, international supply chain compliance programmes and standards exist in many transport and logistics sectors, including the Secure Freight programme of the International Air Transport Association and the Minimum Standards of the International Federation of Freight Forwarders Associations.³²⁶ A major limitation, however, is that most of these “safety and security” programmes have a limited focus on the obligations arising from legal provisions governing control of the trade in strategic goods. Moreover, these systems are often voluntary and rather dependent upon client demands. There is, therefore, still considerable scope for improvement “on integrating export control compliance-related measures into the safety-focused standards that have been developed”.³²⁷

3.2 Customs practices and opportunities for information gathering

Customs authorities have a unique authority in monitoring and controlling international trade flows. Through risk analyses, inspections and audits, customs departments play an important role in ensuring that international trade is conducted in accordance with national regulations.³²⁸ The growth in trade volumes and the dominance of container transport mean that random physical customs checks have become less meaningful in identifying illegal shipments. Worldwide, around 500 million containers are shipped annually, 2% of which are subject to physical inspections.³²⁹ Customs authorities are increasingly relying on risk analysis systems to identify suspicious and high-risk shipments and to guide physical inspections at a practical level.³³⁰ “The risk analysis system is the first tool for national customs authorities to find a balance between facilitating the legitimate trade and controlling certain transactions from a customs perspective.”³³¹ The Wassenaar Arrangement (WA) points to the importance of a well-founded pre-arrival screening system to identify transits of military goods: it advocates the use of “an intelligence-led, risk-based approach to identifying cargoes and known end users of concern, including through the use of internationally endorsed requirements for manifest collections in advance of the arrival of all controlled goods”.³³²

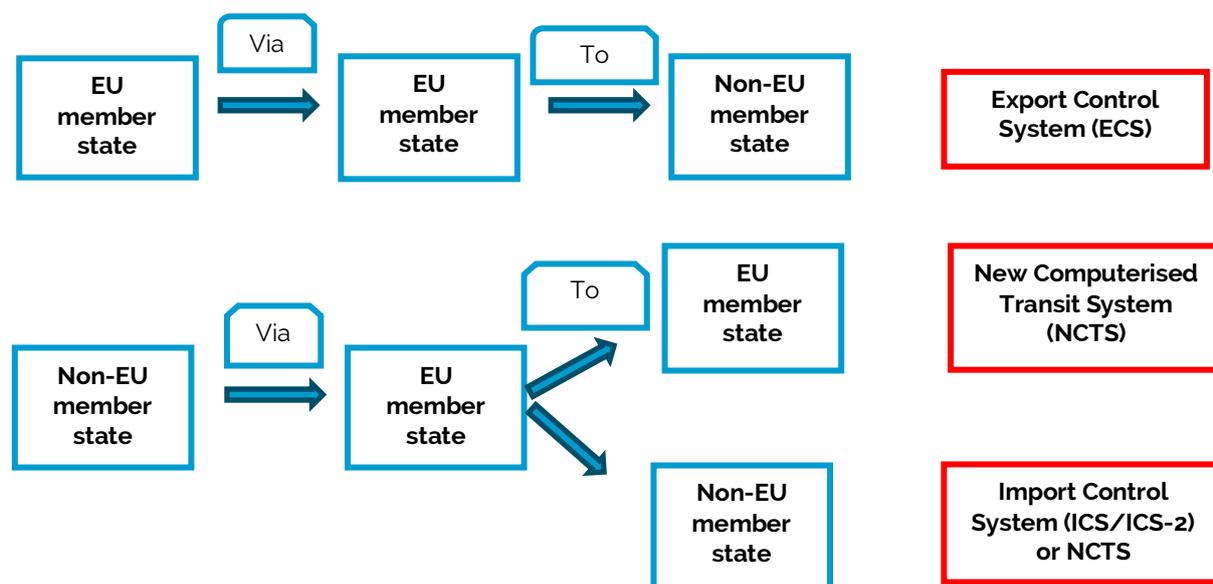
Preliminary information about cargo, along with efficient and effective risk analyses using this information, can help to identify risks early on and enable customs to undertake more targeted interventions within the international trade chain. Through these risk-management systems, customs agencies deal with a broad spectrum of possible security risks: illicit drugs, cigarette smuggling, counterfeit medicines, dangerous toys and electronics, contaminated food, precursors for drugs and chemical weapons, arms, and all other forms of organised smuggling.³³³ Various risk-management systems exist within the European Union, with their use depending on the type of transaction (Figure 9). These systems apply to all transactions involving goods that are exported from, imported into or transported via EU territory:

- When military goods originating from an EU member state are shipped via another EU member state to a non-EU member state, the transaction is controlled by the **Export Control System (ECS)**, which operates on the basis of “exit summary declarations”. These declarations must be submitted to the customs office dealing with exports (in the country of origin of the EU goods). This office, which is responsible for the risk analysis, then sends a message to the customs office managing the exit of the goods (in the country where the goods actually leave the European Union) as soon as the declaration has actually been submitted in the country of export. In principle, the office managing the exit of the goods then sends a message back to the export office to indicate that the goods have been cleared and have effectively left. This “exit confirmation” is then delivered by the export customs office to the sender of the goods. This system could potentially be used to identify transactions of military goods departing from an EU member state to a third country.
- When it comes to the transit of goods originating from outside the European Union, the main question is whether the goods are transferred to another means of transport on EU

territory. If the goods are actually disembarked and loaded onto another means of transport for ongoing transport across EU territory, a declaration must be made in the **New Computerised Transit System (NCTS)**. This system applies to all non-Union goods transported under customs supervision across EU territory. It aims to ensure that (potential) import duties and taxes only need to be paid in the country of customs clearance and not in the country where the goods are imported.^a

- If non-EU goods remain on board a means of transport during transit through the EU (transit without transshipment), in principle no customs action is required. However, in the current **Import Control System (ICS)**, information about any goods on board a transport mode travelling through the European Union must be reported. Goods that are not disembarked also have to be reported. A significant limitation of the current ICS (see below for a discussion of its successor, the ICS-2) is that the information only has to be submitted to the first EU customs office where the means of transport will arrive. These national customs agencies will then conduct a risk analysis, and they are the only ones to have access to the complete bill of lading; customs agencies in the other EU member states through which the means of transport continues to transit have no insight into the goods that remain on board.

Figure 9: Relevant EU risk-management systems for the identification of transits of military goods



^a Goods may become subject to a special customs warehousing procedure if they are stored for a certain period of time. If they are subsequently re-exported to a non-EU member state, this must be done via the "re-export" procedure. This requires a declaration in the ECS. It is also possible that goods will be directly transhipped (e.g. from an incoming ocean vessel to an outgoing ocean vessel). In such cases a so-called transshipment notification can be used to notify customs of specific information about the cargo. This avoids the need for a declaration in the NCTS. The shipping company or shipping agent sends data concerning the transshipment cargo to the customs authorities via a CUSCAR (Customs Cargo) transshipment message, which is used to exchange information concerning the cargo on board a seagoing ship arriving at a port.

Control of the trade in strategic goods, and particularly of transit transactions, generally receives little attention from customs.³³⁴ This is reflected by, among other things, the existence of relatively limited expertise and capacity. As one interviewee suggested, “In many customs services we see that there are only very small units of experienced people on this topic, and there is no transversal culture in place.”³³⁵ **Different priorities and limited resources** (financial and personnel) mean that choices have to be made as to which aspects should receive the most attention.³³⁶

The main challenge for customs when it comes to controlling transit transactions is the **limited information base** for this type of transaction. Due to the traditionally restricted relevance of transit operations for customs, a summary declaration (often based on the bill of lading) is sufficient to declare transit transactions. These declarations only need to contain a description of the goods.³³⁷ The main reason is that this data is entered by the shipping or transport company, and these actors often have only limited knowledge of the goods that are on board the ship or aircraft. After all, they are dependent on the shipper or receiver for the information they receive about the goods.³³⁸ Both the quality and the timing of the available information on transactions are crucial: “A first important challenge is to get the relevant **information on time**. Correct information is the basis for the risk analysis and assessment that customs do. A second challenge is the **quality of the data**.”³³⁹

In order to identify transit transactions involving military goods, several initiatives could be undertaken: (1) improving the quality of information; (2) improving risk indicators based on a better understanding of (illicit) trade flows in military goods; and (3) improving communication between customs authorities in countries of export, transit and import. The following three sub-sections explore these potential initiatives.

3.2.1 Improving the quality of available data

Transit declaration forms do not provide sufficient information to establish for certain whether military goods are prohibited or subject to licensing because of their destination, end use or end user. If the actor responsible for submitting the necessary administrative documents does not spontaneously provide additional information, these documents do not provide enough data for the risk analyses that customs agencies use to carry out targeted checks. In this respect, it could be beneficial to attach the export licence linked to the goods to the transport documents. The manager of the Strategic Trade Control Enforcement (STCE) programme, within the World Customs Organization (WCO), indicates that “it would be technically feasible to accompany the goods with the licence. It happens only very rarely, probably for different reasons: laziness, commercial sensitivity and a lack of willingness among countries to share such information systematically. It would make things much easier for the customs authorities using the risk analysis systems if they knew an export licence had been given for the goods, indicating that it really involved strategic goods.”³⁴⁰

In this area, carriers have an important responsibility to request more relevant information about goods from their clients and not to simply accept the data provided. However, recent developments in the nature of the transport industry have put carriers under increasing

pressure: “The speed and complexity of international trade has increased even more. We see, for example, that carriers are more and more confronted with so-called consolidated cargo in containers, which makes it almost impossible for them to really know what the cargo consists of.”³⁴¹

Moreover, the nomenclature currently used by customs is too general and not sufficiently aligned with the control lists for military goods, such as the Wassenaar Munitions List or the EU Common Military List. Even when the appropriate code in the Harmonised Commodity Description and Coding System (known as the HS) is stated in the declaration, it is not always sufficient to easily identify military goods, particularly when components of military goods are involved.³⁴² Consequently, the identification of goods is typically not straightforward, due to a lack of awareness and technical expertise regarding the strategic nature of certain goods. Further coordination with the relevant international export control regimes with a view to fine-tuning the nomenclature used by customs is therefore necessary: “At the technical level there are several relevant actors, such as the OPCW [Organisation for the Prohibition of Chemical Weapons], the IAEA [International Atomic Energy Agency], the Australia Group, the Wassenaar Arrangement and so on, that we need to cooperate with to better understand what the goods are.”³⁴³



Import Control System 2 (ICS-2): new options for more extensive, better and faster information access

A significant technological development at the European level is the implementation of a new risk-management system. Import Control System 2 (ICS-2) is a comprehensive information system that aims to support various processes, such as submission of "entry summary declarations" to customs authorities, security and risk analyses by customs agencies, presentation of goods to customs authorities, and, where necessary, control of goods by customs agencies.³⁴⁴ Several innovations in this system have the potential to meet the above-mentioned challenges concerning the timing and quality of information available to carry out risk analyses. The system is gradually being implemented across the European Union.³⁴⁵

The advantage of the ICS-2 system is that it is built around a common repository in which **all information** is combined **and directly accessible to all customs administrations involved**. Whereas in the existing entry summary declarations only the first port of entry is given access to the full bill of lading and only positive risk assessments are shared with the relevant customs offices in the various EU member states, all EU customs offices now have access to the complete entry summary declaration.

A second advantage of this new system is that the **information base has been extended**. The current ICS only contains the bill of lading, which is submitted by the carrier and contains only limited information. In ICS-2, buyers and sellers – regardless of whether they are based in the European Union – will also have to add relevant information.³⁴⁶ In terms of **timing**, the information from shipping companies must be entered at least 24 hours before loading on board ship at the port of departure. However, information that needs to be entered by other parties has no specific deadline attached to it, which poses a challenge regarding the timely and effective risk assessment and identification of potentially sensitive transactions.³⁴⁷ Nevertheless, this system offers many **opportunities** – both via the more extensive information base and in terms of the timing of when the information has to be shared with customs – **to identify transit transactions of military goods** before these goods actually pass through EU member states.

In essence, all goods passing through the European Union – irrespective of whether they are transshipped within the Union or not, and regardless of their destination (intra-EU or extra-EU) – will be declared in this new system. What is crucial is that the shared European risk indicators should be sufficiently developed and adapted to identify these transactions, as discussed in the next sub-section.

3.2.2 Better understanding of the dynamics of the international (illegal) arms trade

Better and faster access to relevant information about transactions (as outlined above) is a first step in identifying military goods. An important second step is ensuring the existence of an adequate set of risk indicators to identify suspicious transactions. These indicators not only should be able to identify military goods that are legally traded and potentially require a transit licence but also should enable tracing of illegal transactions – where traders deliberately try to conceal the nature or destination of the goods.

In this respect, it remains crucial to facilitate **clear insight** into how (illegal) arms flows proceed, which in short comes down to the following: “knowing what to look for (i.e. consignor), where (i.e. courier company) and when (i.e. at arrival, during customs clearance, etc.) based on emerging new trends”.³⁴⁸ Within customs, various initiatives could be taken to further fine-tune risk indicators in order to identify this kind of traffic in good time.

One tool used by EU customs agencies relates to so-called priority control areas (PCAs). One interviewee explained as follows: “PCAs are specific areas that customs offices across all EU member states focus on for specific goods for a specific period. The information collected via such controls has various advantages: it allows identification of illegal transactions and it allows gathering of information on these specific trade flows, dodgy companies involved, characteristics of illegal trade flows, etc. This information may then be used to develop new risk indicators and to improve the common risk criteria.”³⁴⁹ European member states tend to suggest possible themes for the PCAs; the most frequently mentioned themes are then discussed in relevant working groups within the European Union, where the final list of themes is determined. These kinds of thematic monitoring initiatives have the advantage that all EU customs authorities participate. As a result, such initiatives can contribute to a more detailed picture of the trade flows in military goods through European member states and of the *modi operandi* of illicit dealers in military goods. Information of this kind could therefore be useful when fine-tuning the various risk-management systems operated by national and EU customs agencies.

Another option is to use information from other sources to fine-tune risk indicators. This could include information from official reports (e.g. from the United Nations) concerning actors involved in violations of arms embargoes or findings from police investigations into illicit arms trafficking. Such findings could be particularly relevant to the further improvement of risk-management systems.³⁵⁰

World Customs Organization: partner in international cooperation around the trade in strategic goods

The World Customs Organization (WCO) is a key actor involved in strengthening the efficiency and effectiveness of customs administrations. Established in 1952 as an intergovernmental organisation, the WCO currently has 183 member states. In recent years, at the request of its member states, the WCO has established a specific department dedicated to enhancing its knowledge, expertise and capacity around controls on the international trade in strategic goods. It has introduced several initiatives in this respect.

The WCO has developed several **tools** that member states can use to create an **efficient and effective risk-management system**. They include the Advance Cargo Information (ACI) system, which uses data to identify high-risk cargoes before they are loaded or before they arrive at WCO member states. The WCO's SAFE Framework of Standards to Secure and Facilitate Global Trade harmonises the ACI information requirements for import, export and transit shipments.³⁵¹ When combined with a sound risk-management system, the ACI can contribute to better security for transport chains by effectively screening transactions before they enter national territories. The WCO Cargo Targeting System can be used by national customs authorities to conduct risk analyses and to handle import, export and transit cargo with due awareness of a range of customs-related risks. Information held by the system originates from transport companies' advance cargo manifests. The system offers both ocean container and air cargo management capabilities, and it incorporates up-to-date international standards and best practices.³⁵²

The WCO also organises international **investigations** aimed at identifying suspicious and illegal transactions involving strategic goods. For example, in 2014 and 2018, the WCO ran operations Cosmo and Cosmo 2, which were focused on the detection of strategic goods. A total of 114 countries and international organisations participated in the latter investigation, which resulted in the identification of several suspicious transactions.³⁵³

Moreover, the WCO has developed several activities and tools to **enhance expertise among national customs authorities** concerning the trade in strategic goods:

- The **Strategic Trade Control Enforcement** programme helps to implement knowledge about the control of strategic goods within national customs authorities. To this end, the WCO has developed a comprehensive curriculum to train several individuals, who are then expected to instruct other groups of customs staff on how to control the trade in strategic goods (the "train the trainer" principle).
- The **Strategic Trade Atlas** provides a country-by-country overview of the main imports, exports and trading partners for goods classified in accordance with the codes in the harmonised customs nomenclature (known as the HS; see section 3.2.1) associated with strategic goods.

3.2.3 Communication and information exchange between customs authorities

A final aspect that could contribute to speeding up the transmission of more accurate information on strategic goods is communication between customs authorities in different countries. Strategic goods have to be declared to national customs agencies and cleared for export. Customs documents relating to exports require more extensive information than those for transit. Customs agencies in exporting countries could pass on information about the actual departure of military goods to customs agencies in countries of transit and import. In this way, the transit and import countries would have access to relevant information about the transaction (and the possible need for a licence) early on, which would provide an additional guarantee to exporting countries about the security of the international transport chain.

The STCE programme manager of the WCO recognises that communications of this nature could help authorities to monitor the international trade in military goods more efficiently and effectively. Technological developments have now made it possible to share relevant information, seamlessly and securely, with other customs authorities. The programme manager of the STCE programme commented as follows:

“We have developed a tool to share encrypted information between countries. Here also, new technologies, such as using blockchain technology for information exchange, could be a very interesting practice in the near future. These techniques allow information to be secure and only available to authorised services to share and consult. It could, for example, be interesting and maybe more feasible to start with implementing these technologies in the context of sanctioned regimes. It is not feasible to redesign everything right away, so this could be a possible first step, also to get government agencies getting acquainted to it.”³⁵⁴

In practice, however, the necessary political will is still lacking:

“The technical side of the story is not the main problem, but what is needed is more openness among countries and governments.”³⁵⁵

3.3 Cooperation and information exchange between customs and export control

Customs agencies play a crucial role in the control of the international trade in strategic goods, especially as they are able to monitor, identify and, where necessary, intercept flows of goods that are subject to obligations under the direct authority of administrations not situated at the border. This is specifically the case for strategic goods, the international trade of which is or may be subject to authorisation by a licensing authority. Customs agencies rely heavily on licensing authorities to effectively assess whether there has been an infringement of the applicable export control regulations. It is therefore necessary for

there to be a constructive relationship between customs and export control authorities in order to maintain an efficient and effective control system for the trade in strategic goods.³⁵⁶

This cooperation can take various forms. Regular consultations and reciprocal visits can promote a better understanding of everyone's tasks, and this also applies to standardised procedures for information exchange. To raise awareness of the legal obligations associated with the trade in strategic goods among logistics actors, it would be useful for licensing authorities and customs agencies to practise joint outreach. This kind of outreach demonstrates that there is a high level of coordination and consistency, and it encourages cooperation.³⁵⁷ Joint company audits by export control and customs agencies can also help to increase future compliance, verify previous levels of compliance and trace potential infringements. The representative of Team POSS in the Netherlands pointed out that both aspects are necessary: "You can achieve more with reliable information and cooperation with the transport sector than with strict enforcement – although the latter may sometimes be necessary, particularly in the event of repeat offences."³⁵⁸

Having specialist departments for the control of strategic goods within customs agencies also offers a number of benefits. Such departments can not only systematically incorporate the necessary expertise and experience but also act as a fixed point of contact for other services, particularly export control services. They help to build better and more stable personal relationships that can enhance trust, both nationally and internationally.³⁵⁹

New EU Dual-Use Regulation: inspiration for greater cooperation and coordination

The **new EU Dual-Use Regulation**, which came into force in September 2021, represents a significant step towards promoting further cooperation between export control and customs authorities.³⁶⁰ Also relevant in connection with this report are several initiatives to promote better coordination and information exchange between export control and customs authorities, at both the national level and the European level. The European Commission wants to introduce more effective control measures for the transit of dual-use goods and identify more transit transactions, albeit without substantially slowing down legitimate trade.³⁶¹ Existing differences between the handling of dual-use goods and the handling of military goods do not alter the fact that such initiatives are relevant to the control of the transit of military goods, as long as the overarching objectives are the same.

An initial step is a **new definition of transit** in the Dual-Use Regulation that specifically aligns with the relevant concepts in the Union Customs Code. The new regulation defines transit as follows:

A transport of non-Union dual-use items entering and passing through the customs territory of the Union with a destination outside the Union, including items:

- which are placed under the external transit procedure and only pass through the customs territory of the Union;
- which are transshipped within, or directly re-exported from, a free zone;
- which are in temporary storage and are directly re-exported from a temporary storage facility;
- which were brought into the customs territory of the Union on the same vessel or aircraft that will take them out of that territory without unloading.³⁶²

Striving for maximum alignment between the transit control system and customs regulations proved to be a necessity for the former to be more effective. As one respondent explained:

"There was a felt need to develop a harmonised approach. We agreed that an explicit link between customs legislation and export control legislation at EU level would definitely offer added value, because the actual enforcement will need to be done by customs. When definitions and the identification of relevant operations and entities fit well for the different actors involved in the process, it is clear this has important advantages. Creating links between the different legislative frameworks is also one of the reasons behind this very explicit referral to concepts and definitions from the Union Customs Code in the recast of the Dual-Use Regulation."³⁶³

In other words, a stronger link between the central concepts in export control and customs legislation can contribute to better cooperation between the services in question.

Another instrument at EU level aimed at better enforcement and monitoring of international trade flows in dual-use goods, including transit, is the **Enforcement Coordination Mechanism**.³⁶⁴ This newly created European structure "will cover all agencies involved in the enforcement of the Dual-Use Regulation. This would include licensing authorities, customs authorities, police services, intelligence services, specific prosecutors' offices, etc."³⁶⁵ The central objectives of this mechanism are to strengthen the exchange of information between member states and the European Commission and to bring together the various public services involved. By exchanging good practices; strengthening communication between licensing agencies, customs authorities and security services; encouraging information sharing between security and intelligence services; and disseminating information concerning identified infringements, the European Union wants to strengthen the overall control system and cooperation between the administrations concerned – within and between member states.³⁶⁶

3.4 Information exchange between national export control authorities

A final aspect whereby international information exchange and cooperation could improve the efficiency and effectiveness of international transit controls on military goods is exchange and cooperation between the export control authorities of the relevant countries. **Effective information sharing between export control authorities** could give competent authorities in transit countries an insight into arms transfers approved by other countries.

Licensing authorities in the country of export have early access to specific information on exports of goods that are clearly military items subject to control. The cumulative number of states that are members of relevant international export control systems – the WA, the UN Arms Trade Treaty (ATT) or the UN Firearms Protocol – implies that almost all arms-exporting countries are bound to implement an arms export control system. Moreover, the goods subject to control are largely similar across these international systems. The EU and WA control lists are identical, and the ATT contains an extensive list of goods that must be controlled.

In principle, sharing of information between export control authorities always concerns transactions that have already been approved by another country (an EU member state or a third country) via an export licence. However, this information sharing can be relevant for several reasons. First and foremost, it can **secure the international transport chain** and prevent goods from being diverted during transport. Once they have left the territory of the exporting country, the authorities in the country of origin have very few or no options to properly monitor the transport. **Differences in arms export policies** also remain relevant: exports approved by one country may contravene the reasoning or international commitments applicable in another country. For example, EU member states are bound by European arms embargoes, whereas other countries obviously are not. Information sharing

can also help to allow **sufficient time** to process a transit licence. Licensing agencies in exporting countries become aware early on of an intended export. Communicating the route to be followed to the intended transit countries gives the authorities in those transit countries sufficient time to assess the licence application. This avoids goods being unnecessarily stopped and delayed during transit.

The various international control regimes and treaties also emphasise the importance of successful cooperation and information sharing between the member states concerned. The ATT imposes specific obligations and commitments upon treaty parties to cooperate and exchange information, including within the context of the transit of controlled military goods. Similarly, the WA points out that coordination with, and communication between, exporting and importing countries may be needed to ensure that goods in transit are effectively accompanied by an export and/or import licence.³⁶⁷

When an export licence is requested, information on the route to be followed may, in certain cases, have to be communicated to the licensing authority. This kind of obligation is found in the UN Firearms Protocol and is also incorporated within EU Regulation 258/2012, which imposes the obligation on exporters to obtain consent from the transit and importing countries when applying for an export licence.³⁶⁸ The framework of the Organization for Security and Co-operation in Europe also highlights the importance of information sharing between export control authorities, including those in transit countries: “If the State of transit requires a shipment of small arms and associated technology to be authorized, the exporter, or the authorities of the exporting State, should ensure that the appropriate authorization has been issued. If not, the transit State should still be informed.”³⁶⁹

Although information on the intended route is not always known when applying for an export licence, the OSCE states that “a participating State may issue such an export licence subject to the condition that this information shall be provided to government authorities before the goods are actually exported; it will then be clear for enforcement officers controlling the actual export that such a licence is not valid without evidence that the requested additional information has been provided.”³⁷⁰ Authorities could request additional information on the planned transport from the exporter, who must submit it to the competent authorities before the export is actually completed. For example, the following information could be requested:

- the transport company and shipping company involved in the transport;
- information on the registration number and the nationality of the means of transport;
- the flight path and planned stops during transport;
- information on previous similar flights;
- evidence of compliance with existing national legislation and with international systems governing the transport of weapons by air.³⁷¹

The implementation of such initiatives would provide the national export control authority with relevant information on the route and countries through which the military goods will be transported, once exported from the country of origin. Table 20 provides an overview of

the agreements and commitments concerning information exchange between national control authorities in the various international export control regimes.

Table 20: Commitments and practical options for information exchange in the relevant international export control regimes

Control regime	Legal obligations concerning the exchange of information
UN Arms Trade Treaty	<ul style="list-style-type: none"> - Treaty parties are held to commitments concerning international cooperation and exchange of information between importing, transit and exporting countries aimed at preventing diversion³⁷² - Treaty parties are obliged to submit an initial report on the applicable national legal framework³⁷³ - Treaty parties are encouraged to keep records of licensed transits³⁷⁴
UN Firearms Protocol	<ul style="list-style-type: none"> - Exporting countries must obtain consent from transit countries for exports of small arms and light weapons³⁷⁵ - Exporting countries must retain data concerning transit countries³⁷⁶ - Treaty parties are obliged to share information contained in the import licence with transit countries in advance³⁷⁷
Wassenaar Arrangement	<ul style="list-style-type: none"> - Signatories to the Wassenaar Arrangement are obliged to exchange information every six months on transfers to non-participating states³⁷⁸
European Union	<ul style="list-style-type: none"> - The Working Party on Conventional Arms Exports (COARM) discusses national policy options for further EU convergence³⁷⁹ - The "denial notification" system between EU member states reports on denied licences³⁸⁰ - There is annual reporting at both national and EU level³⁸¹

In practice, however, the **effective implementation** of the provisions in Table 20 appears to be linked to several problems. Firstly, it is not easy to identify the authorities responsible for issuing transit licences in the countries concerned. Although the WA, for example, points out the importance of a **transparent legal framework**, this does not always appear to be present in practice.³⁸² Not only is it not easy for other authorities and international logistics actors to get an insight into the prevailing framework for transit controls on military goods in the different countries, but also finding contact details for the licensing authorities responsible for the transit of military goods can be problematic.³⁸³

The question as to whether the obligations of the Firearms Protocol and Regulation 258/2012 are being complied with remains unanswered. The added value of supra-national obligations is relatively limited because there remains a lot of scope for national differences. At the international level, there is also a **large implementation gap** with regard to these obligations.³⁸⁴

A similar observation applies at the EU level. **Common Position 2008/944** makes information sharing concerning export licence denials obligatory between the competent authorities of EU member states: “Before a member state grants a licence which has been denied by another member state or states for an essentially identical transaction within the past three years, it shall first consult the member state or states concerned.”³⁸⁵ Using this provision, the European Union aims to avoid member states undermining each other’s arms export policies and to prevent licence applicants looking for the “path of least resistance” within the EU (the “no undercut” principle^a). As such, the EU countries systematically exchange information on denied export licences. Moreover, the online platform used for this purpose, which is managed by the Working Party on Conventional Arms Exports (COARM), which sits within the European External Action Service, has been developed in more detail and fine-tuned in recent years.

It is not clear, however, to what extent the above procedure actually happens with denied **transit** licences. During an interview, the COARM representative indicated that they did not know whether the EU member states systematically share data on denied transit licences: “I have no guarantee that denied licences are also entered into the COARM online system and are consequently systematically included in the consultation procedure.” The COARM representative also stressed the importance and relevance of such information: “It would be beneficial if member states would specifically record differences in interpretation of the common position – for example, when a transit licence is denied even though an export licence was issued by another member state – in COARM. COARM is intended precisely to discuss such differences in interpretation, so it can be beneficial sometimes if opposing views are highlighted.”³⁸⁶

A key explanation for the confusion concerning transit practices and poor communication between export control authorities is a **lack of awareness and interest** in the need to share such information. This is largely due to the traditional focus on controlling the export of military goods within export control authorities. Moreover, in some cases where a different department is involved than that for export control, transit control authorities do not have access to the COARM information exchange channels.³⁸⁷

A more fundamental reason as to why communication and information sharing between export control authorities is difficult is the reluctance among national authorities to systematically share such information. This **lack of political will and inclination** was recently illustrated by the rejection of a proposal by the United Nations Office on Drugs and Crime (UNODC) to establish a global verification system for the trade in firearms. Had the proposal been accepted, any relevant export, import and transit documentation would have been combined and made electronically accessible to competent export control authorities. Concerns about the centralisation of details of military transfers and national security risks were the main reasons why several national governments were reluctant to accept the proposal.³⁸⁸

^a This principle aims to ensure that member states avoid undermining each other’s export control policies as a result of being less strict in applying the criteria when assessing almost identical applications for the export of military goods. To this end, the “denial notification” system was introduced. This obliges EU member states to enter into bilateral consultations if they are presented with an essentially identical licence application that was previously denied by another member state. If, following consultation, a country decides to issue a licence after all, it must provide the other country with a detailed explanation.

In other words, systematic information sharing between national export control authorities delivers many benefits when it comes to improving the effectiveness and efficiency of the control of the transit of military goods. Furthermore, within various international frameworks, many governments have committed to establishing an export control system, checking exports of military goods included in an internationally shared list, and exchanging information with other export control authorities.

However, despite international regulatory initiatives and technical possibilities, this information sharing is almost non-existent. Lack of clarity about national control systems and agencies, little awareness of and interest in transit issues, and a lack of political will to share such information are some of the reasons for the implementation gap.

4

Guiding principles and recommendation for better transit controls on military goods

Efficient and effective controls on the transit of military goods are essential in identifying and intercepting illicit trade flows, preventing arms from reaching undesirable locations where they might prolong or aggravate internal or regional conflicts, and pre-empting violations of international and EU arms embargoes. The case studies in the introduction to this report illustrate the significance of these issues quite clearly. Despite all the challenges involved in controlling them, **transit transactions often prove to be the right time and place to uncover illegal and undesirable transactions involving military goods.**

Nevertheless, a focus on, interest in and awareness of controls concerning the international trade in strategic goods – and more specifically the transit of such goods – is lacking. One interviewee described this situation as follows: “*Prioritisation is a big issue and [the level of priority given to transit] is often rather low. It only becomes a priority when a scandal breaks out.*”³⁸⁹ The final section of this report first focuses on several elements that could promote more efficient, effective and transparent controls on the transit of military goods (section 4.1) before considering how transit could be given higher priority (section 4.2).

4.1 More efficient, effective and transparent controls on the transit of military goods

One objective of this research was to identify opportunities, challenges and good practices for better and more efficient controls on the transit of military goods. The introduction put forward criteria such as “effectiveness”, “efficiency” and “transparency” that were used on the one hand to analyse the current situation and to identify potential ideas and relevant initiatives that could improve existing transit control practices, on the other hand.

From a national perspective, the **efficiency** of the controls examined in this report seems mostly reasonable and proportionate. However, the fact that national systems are internally coherent and licence applications are processed efficiently is of little relevance to the global level of efficiency of control on the transit of military goods. Indeed, the efficiency of a national control system is of limited relevance if there is no efficiency or proportionality along the entire transit route, which might pass through several countries

and falls under the authority of several national customs agencies and licensing authorities. The lack of integration, identified in this report, between the operations of the competent authorities means that, in reality, most of the burden with regard to the identification of military goods and the legal obligations related to the transport of such goods, falls on the shoulders of those actors physically closest to the goods, i.e. Customs and transport companies. The former because only they are theoretically capable of identifying such transfers, the latter because they are effectively possessing the goods when they are controlled during a transit. Significant differences in national transit control systems and the limited cooperation and information exchange between relevant actors consequently inhibit the overall efficiency of the control of military goods in transit.

The current **effectiveness** of transit controls – to what extent control systems succeed in achieving their stated objectives – is very difficult to assess. In the general discourse, controlling the transit of military goods serves several important objectives: securing international trade, preventing the diversion of military goods, tackling illicit trafficking, and preventing gross violations of human rights and international humanitarian law. In practice, however, the objectives of the licensing agencies featured in this report are less ambitious and they judge the success of their work mainly in terms of processing submitted licence applications. Licensing agencies often lack the authority and capacity to proactively trace suspicious transfers of military goods. A significant reason why the level of effectiveness is difficult to assess, however, is the authorities' lack of insight into the nature and extent of (illegal) arms transfers through their own territory. Some respondents from the international transport and logistics sector suggested that many transit transactions of military goods probably take place without transit licences. The lack of information and limited expertise of the relevant control agencies, limited awareness among transport and logistics actors and the speed of today's international trade flows further suggest that many or most of these transactions are not identified.³⁹⁰

Finally, **transparency** is vital for several reasons. First of all, proper public reporting is necessary to ensure adequate political and social control over the policies pursued, but also to gain reliable insights into the phenomenon (in this case, transit). Moreover, transparency regarding the applicable control system and practices helps to ensure that all actors involved can act in accordance with the relevant obligations. At this point in time, there appears to be very limited transparency in most of the examined control systems in terms of the applicable legal frameworks, existing control practices, and issued and denied transit licences. The reporting requirements of the relevant international export control regimes and treaties also currently pay little or no attention to the transit of military goods.

The question is, therefore, how to increase the efficiency, effectiveness and transparency of the control of the transit of military goods. Based on the research reported in the previous sections, the following sections identify **six intersecting conclusions** that could contribute to making control of the transit of military goods more efficient, effective and transparent, at both the national level and the international level.

4.1.1 Less complex controls

A first noteworthy conclusion of this study is that control of the transit of military goods is currently organised in a highly complex manner. The investigated control systems differ widely in their general approaches, scopes and practices. The current controls on military goods in the European Union are characterised by a wide variety of transactions that are subject to licensing, different understandings of exempted transit, varying types of licences, and wide-ranging possibilities for controlling certain transactions on an *ad hoc* basis. How national systems score in terms of efficiency, effectiveness and transparency is of limited relevance when the coherence of the measures throughout the entire transit process (which is by definition cross-border) is not taken into account.

Obviously, this level of complexity reduces the efficiency and effectiveness of controls. The multiplicity and diversity of rules and exceptions inhibit seamless cooperation between agencies in different countries. Moreover, this complexity threatens to increase the risk of “shopping around”, where transport and logistics actors choose the path of least resistance for each specific transaction. Furthermore, the lack of common standards makes national governments reluctant to implement strict controls themselves, out of concern that they will have too great a negative impact on legitimate trade flows.

The **transport and logistics sector** in particular struggles with this complexity. Even for those with the necessary expertise, the transport of military goods remains complicated: the same transaction may be subject to licensing in one country but not in another, and interpretations of the rules vary from country to country and from customs post to customs post. This entails various risks. It can lead to common or criminal law prosecutions and fines for (unintentional) breaches of export control laws, to compensation for clients for whom the transport is carried out if goods are intercepted by control authorities, and to additional internal costs (e.g. for the temporary storage of goods and for personnel).

Unequivocal agreements and procedures would be beneficial in moving towards a more level playing field between potential transit countries and achieving more effective controls on certain goods flows.³⁹¹ Greater convergence, at least at the level of the European Union, is therefore important in making controls on the transit of military goods more efficient and effective. Each actor involved in (the control of) international trade has something to gain from better and less ambiguous organisation of the control of the transit of military goods. As a first step, more transparent communication of the prevailing transit control systems in the framework of the relevant international export control regimes could be useful to identify potential opportunities for simplification and convergence in national transit control systems. **As the in-depth comparison of national transit control policies and practices is crucial to identify differences between them, international action is a necessary to reduce the current complexity in transit control systems.**

At the level of the **UN Arms Trade Treaty (ATT)**, various concrete steps could be taken to identify the complexity of national transit control systems and practices and to develop measures to reduce such complexity. For example, in their initial reports within the ATT, states parties to the treaty are asked to tick “yes” or “no” to indicate whether they have transit controls in place. However, this mere “yes-no” response risks creating an artificial sense of harmonisation and of adherence to the ATT’s obligations and goals. The results of

this study indicate that behind such a simple answer may lie a highly diverse reality of varying practices and procedures. This diversity substantially limits the efficiency and effectiveness of national and international controls. At the level of the ATT, therefore, two concrete steps could be taken to decrease complexity:

- The reporting practices in the initial reports state parties submit to the ATT within the first year after entry into force of the ATT for that party, on the scope and organisation of transit controls could be elaborated. More specifically, additional information on the scope of the controls and the definitions used in the national legislative and policy framework would be relevant to be included in the reporting templates
- The analytical capacity of the ATT secretariat could be strengthened with a view to enabling it to describe and analyse current practices in more depth and identify possible ways to reduce complexity. Such analyses will prove to be crucial in order to have more substantive debates in the Conference of State Parties' working groups on which actions state parties could take to accommodate the current complexity in transit controls of military goods.

Similar recommendations are also valid at **the EU level**:

- The introduction of a shared definition of transit, with a clear link to relevant customs legislation, would reduce the complexity and ambiguity in transit controls among EU member states. Especially given the existence of the Customs Union and the pivotal role Customs play in identifying international transports of military goods, close alignment between customs legislation and export control legislation seems indispensable. Here, inspiration could be drawn from the changes made to definition of 'transit' in the EU Dual-Use Regulation.³⁹²
- Clearer communication on prevailing transit control systems within the framework of the **Working Party on Conventional Arms Exports (COARM)** would help to identify potential areas for simplification and convergence of national transit control systems across the European Union.

The latter recommendation also applies to the **Wassenaar Arrangement (WA)**. Its participating countries have already implemented advanced export control systems, but it is important to also clarify how transit controls are organised at this level. Such discussions among the participating states could eventually result in extending the current document on best practices for transit and transshipment with specific guidelines to reduce the complexity in current national transit control systems.³⁹³

4.1.2 Greater transparency

An additional problem, besides the complexity of transit controls, is the lack of transparency about how these controls are implemented in practice. Not only is public

reporting on the transit of military goods very limited but also the information available on prevailing control practices often proves to be highly fragmented.

Only a few of the examined systems provide for a comprehensive and coherent legal framework of transit controls on military goods. The fact that it proved impossible to identify and contact the competent authorities in several of the control systems illustrates this lack of clarity. Greater transparency from regulatory authorities with respect to the rules applicable to the control of the transit of military goods is, therefore, essential. Ambiguous rules result in legal uncertainty for legitimate commercial trade and the actors involved. Lack of clarity also increases the number of unintentional breaches of the existing rules and procedures and reduces the scope for consistent application of the legal framework.³⁹⁴ Greater transparency can also help to reduce the existing level of complexity. After all, not only is the multiplicity of approaches inherently problematic but also the lack of clarity about which rules apply in practice compromises the efficiency and effectiveness of controls.

Next to the limited information available on national transit control policies and practices, public reporting on licensed and denied transit also is quite limited. With the notable exceptions of the Flemish Region and the Netherlands, national reporting on transit of military goods remains limited or even non-existent. Better and more comprehensive public reporting on licensed and denied transit of conventional weapons is necessary to achieve better insight into the reality of the transit of military goods.

Steps could therefore be undertaken at the various policy levels to promote more systematic and better reporting on the existing transit control practices. In the first instance, this could be achieved within the framework of the current **ATT** reporting templates:

- It would be possible to introduce an unequivocal and easily accessible inventory of the contact details of all competent control agencies (import, export and transit) of the various states parties. It is not always clear to either exporters or national authorities which agencies in transit and import states to contact in order to apply for the necessary licences or to gather necessary information.³⁹⁵
- Details of transit licences that were issued and denied could be included in the national reports that the states parties must submit annually. At a minimum, information on the type of goods involved and on the countries of origin and destination should be included.

At **COARM** level, too, more attention should be paid to systematic reporting of denied transit transactions, to ensure that the basic principles of EU Common Position 2008/944 are not compromised. As mentioned in the previous sub-section, the volatile nature of transit operations means that there is a real risk of transport and logistics actors “shopping around” (i.e. displacing trade flows to countries with the most lenient controls), which is exactly what the common position aims to prevent.

More concretely, **COARM** could take steps to increase EU member states’ reporting practices on transit licences. As the common position also applies to the transit of military

goods, the reporting obligations included in it should also be valid for transit licences issued and denied by member states. Greater national transparency on licensed and denied transit transactions, in particular about the categories of goods involved and the countries of destination and origin, is crucial in order to identify and eventually discourage “shopping” effects. The Flemish and Dutch systems can serve as examples of good practice in this respect, as their reporting practices allow the identification of arms flows and give insights into the extent to which such “shopping” occurs.

Next to a general increase of reporting practices on transit licences, systematic information sharing between EU member states could also be a useful basis for discussions within COARM on the interpretation of the common position, particularly in cases involving transit originating from another EU member state:

- There could be mandatory sharing of information concerning denied transit licences via the “**denial notification**” system, which allows exchanges of information between competent authorities in EU member states. The “no undercut” principle (see section 3.4), which is central to the European Union’s approach to arms exports, should also be applied to transit.
- There should be guarantees that all authorities responsible for the control of the transit of military goods, which in some systems differ from the authorities in charge of export controls, have effective **access to COARM information exchange procedures**.
- **Information on denied transit licences** should be used to facilitate discussions on the interpretation of common criteria. Denials of transit licences are often useful starting points for clarifying diverging views on the interpretation of common criteria.

4.1.3 Improved communication and information exchange

One of the main challenges associated with the control of the transit of military goods is the limited information base regarding the exact nature of any given shipment of goods and their destination. Today, trade flows move extremely quickly and are largely handled online by both the transport and logistics actors and the controlling customs agencies. The quality of the information provided has a strong impact on the performance of both the existing customs systems and the internal compliance systems of the logistics actors in the international trade chain. Vague and limited information about goods and transactions consequently makes it difficult to implement efficient and effective controls.

Such specific information about the exact nature of goods (e.g. the consignor and the end user) is nevertheless available, not only in the transport chain but also from various control agencies in the exporting country. **Reliable information sharing as early as possible in the chain should, therefore, be the starting point.** It is in the interests of all parties in the transport chain to share detailed information on the nature of goods and their licensing requirements in advance. Such sharing of information is also crucial in attempts to identify

deliberately illegal transit, where the parties involved intentionally try to conceal the nature of the cargo and/or the actual country of end use. Even in case of deliberate illegal trade flows, legitimate transport and logistics actors are often (unwittingly) involved. Moreover, as such transfers use legal trade routes, administrative (customs) obligations apply to these transactions too. More and better information sharing would increase the chance of such illegal transfers being identified during transit.

New legal obligations could be useful in this regard: actors at the beginning of the transport chain (exporters/producers and freight forwarders) could be required to share relevant information with the other logistics actors responsible for international transport. They could also be required to complete customs formalities in the countries of transit (and import).

New technological developments in risk analysis, such as the European Import Control System 2 (ICS-2) (see section 3.1), will partly accommodate the need for more information. Not only the carriers but also the other actors in the transport chain will have to provide additional information about the transaction. This will increase the likelihood that customs authorities will be able to identify transactions that require a licence and/or are suspicious. Since this may mean that more transactions are intercepted by customs and temporarily or permanently seized, it will be in the interests of the exporting company and the exporting country to share as much information as possible in advance in order to prevent this.

Export control agencies in the country of export can also play an important part. These agencies, which will be aware of the strategic nature of a shipment of goods, could request information on the intended transport routes and share this data with control agencies in the transit and importing countries. Such information may not be available when the application is assessed but will be known to the transport companies and the exporter (in most cases) at the time the transaction actually takes place. Proactively sharing information about a transaction with transit countries can make transit controls more efficient and effective. This aspect is provided for in various international control regimes, but it does not appear to be easy to implement. The relevant procedures in the UN Firearms Protocol, for example, are rarely observed in practice.³⁹⁶

The following recommendations may help to improve information sharing between relevant actors:

- A **legal obligation** should be imposed upon actors in the transport and logistics chain to share information on the licensing requirements for goods with other actors in the transport and logistics sector. Such an obligation should be implemented at the highest possible policy level in order to be effective.
- Effective procedures should be developed for information sharing on the licensing requirements of transported goods between export control authorities. Procedures with respect to the international trade in firearms incorporated in the UN Firearms Protocol and EU Regulation 258/2012 could provide input in this respect.³⁹⁷ At the same time, the urgent need for the effective implementation of these principles should be emphasised in relevant international forums and organisations, such as the UN Office on Drugs and Crime (UNODC) and the World Customs Organization (WCO),

which should be supported in their efforts to develop secure information exchange channels.

- Within the framework of the **ATT**, international actors (such as the WCO) and international umbrella organisations from the transport and logistics sector should be involved in the working group on transit. Furthermore, within the ATT, it should be investigated how information about international arms transfers can be exchanged between the licensing authorities in the exporting states and their counterparts in the countries of transit.
- It should be considered how **existing and new European risk-management systems**, in particular ICS-2, can provide opportunities to identify licensed and suspect transactions involving military goods. Furthermore, it should be established how this information can be communicated efficiently and effectively to the relevant export control agencies.

4.1.4 Raised awareness among private actors

Companies involved in the manufacture of military goods are usually aware of the licensing requirements associated with these goods and the fact that certain transactions require an export licence. **Logistics actors, on the other hand, are often unaware of the obligations concerning control of the trade in strategic goods.** They also typically have limited awareness of indicators that could point to suspicious transactions, such as unexpected changes in route or destination.

There is a need for control agencies to develop a systematic and appropriately designed outreach programme to address the various actors in the international trade chain along with informative guidelines for the sectors concerned. This awareness-raising initiative should consider the diversity of profiles in the international trade chain. It would also be relevant to increase awareness among exporters of their obligations regarding the international trade in strategic goods. The internal compliance programmes (ICPs) of private actors could be used as a basis for the development of such tools, with the ICPs being supplemented and adapted at both national and international levels to ensure proper control of the trade in strategic goods. Internationally, this could be done via and together with the relevant international umbrella organisations and institutions; this would help to draw more attention, within existing security standards, to obligations pertaining to export controls on strategic goods. Moreover, to optimise the content of the ICPs, it would be necessary to proactively communicate with private actors concerning the policies implemented by the various licensing agencies. The mere existence of a legal reporting obligation for logistics actors, without guidelines on how the legal framework should be interpreted, does not appear to be sufficient. Licensing agencies themselves should clarify which transactions they want to monitor.

In addition to this preventive outreach, **permanent monitoring** of the transport and logistics sector is needed. Systematic monitoring and control of logistics actors, in a spirit of cooperation, would contribute to lasting awareness and successful interactions between

control agencies and those actors. Developing such constructive relationships would therefore benefit all parties concerned.³⁹⁸

At the same time, there remains a need for adequate enforcement and, where necessary, penalties. Both the identification of violations and sanctioning thereof could have a preventive and awareness-raising impact, providing there were sufficient transparency about the sanctions. In the Netherlands, for example, awareness of obligations concerning strategic goods increased in the transport and logistics sector following several court rulings that resulted in significant fines, according to a representative of the relevant customs agency.³⁹⁹

In order to improve awareness in this area, competent authorities could undertake the following steps:

- They could undertake a more systematic approach to developing and implementing **structural outreach programmes focused on the transport and logistics sector**. Importantly, these initiatives should consider the various profiles within the transport and logistics sector. Specific attention to the issue of transit control among exporters of military goods is also needed to ensure that exporters are made more aware of the need to share detailed information about goods with the logistics actors who will be responsible for the goods' transport.
- In partnership with the transport and logistics sector and relevant umbrella organisations or lobbyists, the authorities could examine how private actors' existing **ICPs** could be adapted to ensure that they focus more on export control obligations and are better able to identify suspicious transactions.
- **Proactive monitoring** of the activities of logistics actors would help to ascertain to what extent they comply with legal obligations concerning the control of the international trade in military goods (and more generally strategic goods).
- At the **international level**, within relevant control regimes (such as the ATT and the WA), more could be done to cooperate with the international umbrella organisations of the transport and logistics sector and with other relevant international regimes and institutions dealing with international transport security.

4.1.5 Increased expertise and knowledge

For the economic actors involved in transit transactions – often transport and logistics actors – to be able to comply and for government agencies to be able to identify transactions involving military goods, all actors involved in the process need to have specific knowledge and expertise. This applies to transport and logistics actors (in itself a highly diverse category of profiles) and to customs agencies, each of which play a key part in the identification of transactions involving military goods that may need to be licensed or could be suspect. However, few actors and agencies have the specialist knowledge that is required to ensure that the process of identifying and controlling the transit of military goods runs seamlessly.

Customs agencies require greater knowledge and expertise in order to make customs controls, both physical and via risk-management systems, more efficient and effective. The low priority attached by most customs agencies to controlling the transit of military goods and the lack of consistency between customs nomenclature and military checklists to a large extent explain the current lack of knowledge. Better and faster identification of military goods not only contributes to more effective identification of transactions that are suspect or subject to licensing but also reduces the risk of false positives, where transactions are intercepted that ultimately turn out not to be suspect or subject to licensing.

It appears to be at least as important that this knowledge and expertise is gained in a structured and collaborative way, with clear contact points. For example, the Netherlands has worked collaboratively to develop a structure within customs to make expertise sustainable and easily accessible. This approach requires consultation and formal agreements between licensing and customs authorities through formal partnerships.

In addition to fostering better technical knowledge of the nature of the goods themselves, it appears to be necessary to enable **better understanding** of the nature, extent and characteristics of the **international trade in military goods**. After all, this kind of information is indispensable in enabling all actors involved to identify any transactions that appear suspicious or require licensing. Indeed, the risk indicators employed by both logistics actors and customs agencies for identification purposes depend upon such knowledge. The Netherlands is one of the few countries examined in this study with wide-ranging insight into the trade flows in military goods across its territory. The country's systematic reporting obligation for transits of military goods not requiring licensing helps to build up a comprehensive picture of all military transit through the Netherlands and enables *ad hoc* controls to be implemented in practice.

Similarly, the need for a better overview implies that more attention should be paid to the active detection of illegal transactions to gain insight into the dynamics of the illegal international trade in military goods. Such information is also crucial in fine-tuning and improving existing risk-management systems.

In order to **enhance technical expertise**, there is a need to:

- increase the collaborative and structural expertise concerning strategic goods among national customs agencies in areas ranging from physical surveillance in all relevant airports and seaports to adequate risk management, auditing and enforcement;
- provide training on strategic goods to front-line customs officers.

In order to achieve **better overall insight**:

- at the EU level, promote the implementation of a so-called priority control area^a for military goods by customs authorities in all EU member states;

^a These are priority areas on which all customs authorities within the European Union focus their control activities for a given period. These areas are defined at the EU level, having been proposed by member states, and are mandatory for all customs agencies. Such an initiative could contribute to a better perception of the trade flows in military goods and the *modi operandi* of illegal arms traders. See also section 3.2.2.

- encourage structured coordination between customs and export control agencies to examine how existing customs declaration systems could be used to identify transports of military goods that may be subject to licensing;
- at the international level, enhance the coordination between the existing customs nomenclature and the checklists of the various international export control systems, such as the WA;
- commit to improved cooperation with law enforcement and prosecution services.

4.1.6 From licensing system to control system

Controlling the international trade in strategic goods in general, and the transit of military goods more specifically, involves more than a mere licensing system. Efficient and effective controls need a **comprehensive system approach** with structural and systematic agreements and cooperation between all agencies and stakeholders. **The efficiency and effectiveness of such a control system is only as strong as the weakest link.** Each service has its own responsibility and role, but sound agreements and cooperation are needed to achieve an effective, comprehensive system. Such agreements should cover all aspects of control: enhancement of expertise and perception, outreach, information exchange, company audits, identification of relevant transactions, and physical controls up to and including enforcement and sanctioning.

At the national level, the transit control system would benefit from more extensive coordination between export control and customs agencies, in terms of both policy and operations. When it comes to control of the trade in strategic goods, the two are interdependent: export control agencies determine the policy and which transactions are actually controlled, while customs agencies play a crucial role in the identification and physical control of these transactions. Unequivocal and formal partnerships could contribute to better controls. The same applies to links with police forces. Detecting illegal activities, in this case illegal trade in military goods, is a key task for police forces. Although police forces are often indirectly or informally involved by customs or export control agencies, in most cases they are not a structural link in the control process.

International partnerships can deliver further benefits. The focus on national controls means that, in practice, targeting mostly focuses on those actors who actually have access to the goods when they are on national territory, and these are often the carriers. The actors who are *de facto* responsible, either because they are not aware of the licensing requirement or because they deliberately want to keep the transaction hidden from control agencies, often remain out of range. In other words, cooperation and information sharing between control agencies in exporting, transit and importing countries offer a number of advantages. Cooperation and information sharing can ensure that goods arrive safely at their final destination and are not diverted to another, undesirable destination during transport. Coordination between customs agencies, between customs agencies and export control agencies, and between export control agencies in the countries of export, transit and import can improve control of the trade in military goods.

4.2 Transit controls on military goods: moving towards the priority lane

Efficient and effective controls on transit transactions can play a vital role in compliance with international obligations, in preventing the diversion of arms to undesirable destinations and in detection of illegal arms trafficking. In contrast, poorly managed transit transactions can weaken the security of international trade flows and create opportunities for undesirable diversion and proliferation of strategic goods.⁴⁰⁰ This report has identified several guidelines and concrete initiatives that could contribute to more efficient, effective and transparent control of the transit of military goods.

Control of the transit of military goods is generally approached as an “appendix” to export control policies. National governments tend to focus primarily on the export of military goods when implementing their export control policies. This reality has a certain logic attached to it. A government can exercise export controls autonomously and collaborate directly with companies and institutions in its own territory that are often well aware of the military nature of the goods they manufacture. Transit control is more complex: a different category of actors is involved – those that make up the international transport and logistics sector – and these actors have less insight into the nature of the goods. Indeed, transit is by definition an international phenomenon and is characterised by greater interdependence between public authorities and private operators, both national and international. Moreover, governments are reluctant to intervene in international trade flows out of concern for their own competitive position: “In European countries we can see that the guiding mantra is ‘how to make trade as swift as possible’. The key element [in improving control of transit] will be to build in controls [that take account of the fact that] this is the guiding principle.”⁴⁰¹

This report has identified several possibilities and initiatives to improve the (inter)national control of the transit of military goods. New technologies and software now make it possible to efficiently monitor goods flows and to share relevant information in advance between logistics actors and with and between government agencies in the countries in question. It is crucial for governments to be willing to share information and be open about the military nature of certain goods flows with other governments. **Greater political will appears essential** to implement these technical possibilities in practice and achieve more efficient, effective and transparent transit controls.

At various levels (European and international), governments have committed to controlling transit operations and to cooperating and exchanging information. An emerging tentative focus on the transit issue, illustrated by the establishment of a transit sub-working group within the framework of the ATT, could represent an opportunity for certain member states to raise awareness of this topic in a more prominent and structured manner. This report might motivate these member states and provide them with the tools to further optimise transit controls.

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- ³⁹⁹ Interview with a representative of Team POSS, 23 April 2021.
- ⁴⁰⁰ Orzel et al., *Export control compliance*, p. 3.
- ⁴⁰¹ Interview with the Strategic Trade Control Enforcement programme manager, World Customs Organization, 20 April 2021.

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