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# **Bulgaria's arms transfer control system at EU accession: an analysis**

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Saferworld is an independent non-governmental organisation that works to prevent armed violence and create safer communities in which people can lead peaceful and rewarding lives.

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## Acronyms

ADGT	arms and dual-use goods and technologies
AR	Arsenal
BGN	Bulgarian Leva
BICIS	Bulgaria's Integrated Customs Information System
BSEC	Black Sea Economic Co-operation Organisation
CEI	Central European Initiative
COARM	European Council Working Group on Conventional Arms
COMTRADE	UN Commodity Trade Statistics Database
COREU	Correspondance Européenne
DUGT	dual-use goods and technologies
EC	European Commission
EU	European Union
EUC	End-User Certificate
EUR	Euros
EXBS	export control and border security
GGE	Group of Governmental Experts
LPO	Licensed Production Overseas
MFA	Ministry for Foreign Affairs
ML	Military List
MOD	Ministry of Defence
MOEE	Ministry of Economy and Energy
MOF	Ministry of Finance
MOI	Ministry of Interior
MOTT	Ministry of Transport and Telecommunications
MP	Member of Parliament
NATO	North Atlantic Treaty Organisation
NFP	National Focal Point
NGO	non-governmental organisation
NISAT	Norwegian Initiative on Small Arms Transfers
NITI	Science, Research, and Technology Engineering
OSCE	Organisation for Security and Co-operation in Europe
SALW	small arms and light weapons
SECI	Southeast European Co-operative Initiative
UK	United Kingdom
UN	United Nations
UNDDA	United National Department of Disarmament Affairs
UNITA	<i>União Nacional para a Independência Total de Angola</i> (National Union for the Total Independence of Angola)
UNPoA	United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects
UNROCA	United Nations Register of Conventional Arms
UNSC	UN Security Council
US	United States
VMZ	Vazov Engineering Works
WA	Wassenaar Arrangement
WMD	weapons of mass destruction

## Executive summary

Bulgaria's arms transfer control system has been developing dynamically over the past decade in light of Bulgaria's accession to the North Atlantic Treaty Organisation (NATO) in 2004 and to the European Union (EU) in 2007. Since April 2005, when Bulgaria signed its EU Accession Treaty, Bulgarian officials, along with EU officials and Member States, have been working towards bringing Bulgaria's legislation into compliance with EU standards for the export of arms and dual-use goods and technologies (ADGT). In November 2005, the text of the EU Code of Conduct on Arms Exports (EU Code) was included as an annex in national export control legislation.<sup>1</sup> In February 2007 the Bulgarian National Assembly passed a new *Law on Export Control of Arms and Dual-Use Goods and Technologies* (Law on Export Control)<sup>2</sup> which further aligns Bulgaria's national transfer control policy with EU standards and practice.

Despite the encouraging legislative changes and an export control processing system which appears structurally sound, questions remain over how Bulgaria's foreign policy obligations are interpreted, in particular obligations arising under the EU Code. It appears that not all ministries and agencies involved in the licensing process take into account considerations such as the impact of a particular transfer on human rights, conflict and development, relying solely on a list of proscribed destinations for guidance. Given the unequal power relationships between government departments, the move to a qualified majority decision-making process (replacing the previous consensus-based system) and ongoing commercial links between some ministries and the defence industry, this approach raises serious concerns about Bulgaria's commitment to international best practice.

Progress towards the implementation of international best practice in the field of transfer controls, and adherence to the EU Code in particular, need to be demonstrably reflected in licensing decisions. This can only occur when a high level of transparency in the national control system has become entrenched over a number of years. Ultimately, this involves the regular and timely publication of comprehensive reports detailing transfers licensed, fulfilled and denied. Bulgaria has only recently published its first annual report on transfer licensing decisions. It remains to be seen whether Bulgaria will be able to produce comprehensive regular reports in a timely manner, as past commitments to do so have not been realised.

In the last ten years Bulgaria has come a long way. From international condemnation for its involvement in supplying arms to conflict zones and human rights abusers, to an accepted and valued partner in NATO and the EU, the rapid pace of legislative change should not be underestimated. However, this progress has been primarily the result of external pressure from the US, NATO and the EU, rather than domestic pressure from government, parliamentarians and civil society. The export control culture in Bulgaria remains one of secrecy, close state-industry relationships and the promotion of narrow national interests over international obligations. As a new EU member it is incumbent on the Bulgarian government to respect its regional and international obligations with regards to ADGT transfers. Parliament and civil society must now demand genuine independent scrutiny and oversight as a cornerstone of democratic accountability.

These goals should not be mutually exclusive. Bulgaria can and should play a progressive and provocative role as a new Member State of the EU, challenging other Member States to live up to, explain and implement the standards they have set for ADGT transfers. Bulgaria should also use its EU status to encourage and facilitate the improvement of transfer control systems in the European neighbourhood.

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<sup>1</sup> Decree No 91/2001 the list of states and organisations towards which the Republic of Bulgaria applies embargoes or restrictions for sale or delivery of arms and related equipment was amended in November 2005 to incorporate the EU Code.

<sup>2</sup> State Gazette 11/2007.

## Principal recommendations To the Government of Bulgaria

- ❑ Continue to improve policy and practice on licensing ADGT transfers, using accession to the EU as a spur to bring the Bulgarian transfer control system into complete compliance with EU obligations and norms as a minimum, and wherever possible up to the standards of EU and/or international best practice;
- ❑ The Bulgarian regulatory framework should be reviewed to ensure that:
  - The *Law on Export Control of Arms and Dual Use Goods and Technologies*, is amended to include:
    - enumeration of the EU Code criteria and an obligation for all government agencies involved in transfer licence decisions to consider licence applications against them in a consensus-based process;
    - extraterritorial coverage of ADGT brokers so that a Bulgarian citizen resident or acting outside Bulgarian territory would still need to register and apply for a licence if brokering controlled goods;
    - the full range of brokering activities, including the financing, insurance, transportation, facilitation or expedition of transfers;
    - controls on licensed production agreements, placing clear and binding contractual obligations on production ceilings and permitted export markets. Production or export over and above terms specified in the original licensed production agreement should require an additional licence;
    - severely punitive penalties to discourage breaches of Bulgaria's national transfer control system; and
    - the explicit power to revoke licences for ADGT transfers (including spare parts and servicing) if conditions in the country of end use change or the end user is in breach of the conditions of the original licence.
- ❑ In addition to the above, the Government of Bulgaria should look to:
  - Institutionalise understanding of the EU Code by developing a comprehensive training programme on transfer controls for officials from all relevant branches of government, including licensing and enforcement ministries, as well as staff in Bulgarian missions abroad. This training programme must address *inter alia* the licence assessment process, with particular and in-depth reference to the EU Code criteria;
  - Separate ownership of defence and dual-use goods manufacturers and traders from those ministries and/or individuals who regulate the licensing regime. It is essential for any transparent and accountable exporting regime to have in place separate checks and balances over commercial and public interest, including a system of declaration of interest and refusal; and
  - Step up industry outreach in 2007 to ensure that industry is kept informed of any regulatory changes to the control system following EU accession.
- ❑ Bulgaria should undertake the following commitments to significantly improve transparency and oversight:
  - Publish timely and comprehensive national reports on transfers of ADGT in line with their commitments under the Law on Export Controls;
  - Work with Parliament to develop a procedure for parliamentary scrutiny, drawing on best practice from EU member states; and
  - Support the development of independent civil society oversight of the national control system and encourage parliament to consult regularly with civil society on policy and practice in this area.

## **To the international community**

- ❑ Countries with developed transfer control regimes and, in particular, with relatively sophisticated procedures for parliamentary oversight should:
  - Encourage information exchange between Bulgarian parliamentarians and their counterparts from other states who have experience in this area; and
  - Provide support to Bulgarian civil society so as to build indigenous capacity to analyse and monitor Bulgaria's policy and practice in this area.
- ❑ The EU in particular should:
  - Assist the Bulgarian authorities to prioritise improvements to its licensing system to ensure that Bulgaria is capable of implementing its EU commitments and bringing its transfer control system up to EU best practice. On the basis of these agreed priorities, provide appropriate financial and technical assistance; and
  - In conjunction with Bulgaria, undertake a comprehensive risk analysis of likely ADGT trafficking following Bulgaria's accession to the EU. On the basis of this analysis develop a comprehensive anti-trafficking programme and provide appropriate financial and technical assistance.

# 1. Introduction

Bulgaria's arms transfer control system has been developing dynamically over the past decade in light of Bulgaria's accession to the North Atlantic Treaty Organisation (NATO) in 2004 and to the European Union (EU) in 2007. Past allegations of unregulated arms deliveries to embargoed destinations have gradually subsided and Bulgaria has taken steps to align its conventional weapons and dual-use export control systems with EU standards. Nevertheless, the previous lack of public transparency and the entrenched and narrow approach to export licence decision-making in some ministries, particularly in relation to Bulgaria's foreign policy obligations, raise serious concerns about Bulgaria's commitment to international best practice.

Since April 2005, when Bulgaria signed its EU Accession Treaty, Bulgarian officials, along with EU officials and Member States, have been working towards bringing Bulgaria's legislation into compliance with EU standards for the export of arms and dual-use goods and technologies (ADGT). In June 2005, Bulgaria joined the EU as an 'active observer', which granted Bulgaria access to the Corespondance Européenne (COREU) denial notification database and a seat in the Working Party on Conventional Arms Exports (COARM). In November 2005, the text of the EU Code of Conduct on Arms Exports (EU Code) was included as an annex in national export control legislation.<sup>3</sup> A peer review by the European Commission in 2005 evaluated the current legislation from both policy and practice perspectives and suggested changes to bring Bulgaria's transfer controls in line with EU standards. In February 2007 the Bulgarian National Assembly passed a new Law on Export Control of Arms and Dual-Use Goods and Technologies (Law on Export Control)<sup>4</sup> which takes into account some of these recommendations.

Despite the encouraging legislative changes and an export control processing system which appears structurally sound, questions remain over how Bulgaria's foreign policy obligations are interpreted, in particular obligations arising under the EU Code. This concern is augmented by provisions in the new Law on Export Controls to change the consensus-based approach to case-by-case licensing, where all the ministries involved effectively hold a veto over the granting of licences, to a system of qualified majority. The risk is that the Ministry of Foreign Affairs, which appears to have sole responsibility for assessing export applications against Bulgaria's foreign policy obligations, including those arising under the EU Code, will lose the power to block exports of concern on human rights, humanitarian or sustainable development grounds if the other ministries do not share the same concerns. This is of particular concern for exports to destinations which do not appear on Bulgaria's list of proscribed destinations but which nevertheless may give cause for concern under one or more EU Code criteria.

The UN Register on Conventional Arms and the Norwegian Initiative on Small Arms Transfers (NISAT) database illustrate some areas of concern. In 2005, Bulgaria reported the export of 120 battle tanks, 10 armoured combat vehicles and 20 large-calibre artillery systems to Eritrea.<sup>5</sup> These exports have serious implications under the EU Code, in particular Criterion 4 with respect to the preservation of regional peace and Criterion 8 with respect to sustainable development.

In the same year, UN Comtrade data shows that Colombia, Indonesia and Pakistan all imported small arms and light weapons (SALW) from Bulgaria.<sup>6</sup> In 2004, Bulgaria's report to the UN Register included exports of large-calibre artillery systems to Georgia, Israel, and Eritrea, and training combat aircraft to Ethiopia.<sup>7</sup> In the same year India reportedly purchased

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<sup>3</sup> Decree No 91/2001 the list of states and organisations towards which the Republic of Bulgaria applies embargoes or restrictions for sale or delivery of arms and related equipment was amended in November 2005 to incorporate the EU Code.

<sup>4</sup> State Gazette 11/2007.

<sup>5</sup> UN Register of Conventional Weapons, reporting year 2005, <[http://disarmament.un.org/UN\\_REGISTER.nsf](http://disarmament.un.org/UN_REGISTER.nsf)>

<sup>6</sup> NISAT Database. Imports to Colombia, Indonesia and Pakistan from Bulgaria in 2005, <[http://balder.prio.no:8080/PublicResults\\_SQL.aspx?C1=355&C2=2&p=Exports&Dep1=0&Dep2=False&r=True&W=100&dtl=3&Y=2005&d=99&t=3&dls=True&csv=False&EY=2005&scp=3](http://balder.prio.no:8080/PublicResults_SQL.aspx?C1=355&C2=2&p=Exports&Dep1=0&Dep2=False&r=True&W=100&dtl=3&Y=2005&d=99&t=3&dls=True&csv=False&EY=2005&scp=3)>

<sup>7</sup> UN Register of Conventional Weapons, reporting year 2004, <[http://disarmament.un.org/UN\\_REGISTER.nsf](http://disarmament.un.org/UN_REGISTER.nsf)>

64,000 AK-47s from Bulgaria.<sup>8</sup> While these states may not be currently under UN or EU embargo, they are without doubt sensitive destinations to which EU Member States have denied export licences to export ADGT, including SALW, military vehicles and combat aircraft. Such exports do not appear to be consistent with Bulgaria's obligations under the EU Code.

Progress towards the implementation of international best standards in the field of transfer controls, and adherence to the EU Code in particular, need to be demonstrably reflected in licensing decisions. This can only occur when a high level of transparency in the national control system has become entrenched over a number of years. Ultimately, this involves the regular and timely publication of comprehensive reports detailing transfers licensed, fulfilled and denied. Bulgaria has only recently published its first annual report on transfer licensing decisions. It remains to be seen whether Bulgaria will be able to produce comprehensive regular reports in a timely manner, as past commitments to do so have not been realised.

There is also a need for both parliament and civil society to have the capacity and the opportunity to provide genuine independent scrutiny and oversight of the national control system and individual licensing decisions. Unfortunately, mechanisms to ensure parliamentary oversight in this area are currently negligible, while capacity among civil society to provide independent scrutiny is limited. As a result of the absence of independent domestic scrutiny and oversight, past progress in improving transfer control policy and practice has primarily been the result of external pressure from the EU, the North Atlantic Treaty Organisation (NATO) and the United States (US). However, in order for good practice to be sustainable, domestic pressure must be increased through the development of effective parliamentary and civil society scrutiny.

Concerns linger over the relationship between government and some defence manufacturers and how this may affect the export licensing process. Previously wholly state-owned, the slow pace of privatisation of the defence industry during the transition period and the continuing existence of state-owned defence manufacturers and traders creates a potential conflict of interest for those ministries simultaneously engaged in export control and weapons production and export. A transparent and accountable transfer control regime must apply separate checks and balances over commercial and public interests. This should include the declaration of interests and refusal of officials who face a conflict of interest due to commercial or other interests with regards to ADGT transfers, and the separation of ownership of ADGT manufacturing or trading companies with those responsible for their regulation.

In 2005, at least four export licence applications for Bulgaria were denied by EU Member States.<sup>9</sup> In all cases the risk of diversion or re-export under undesirable conditions was cited as the reason for the licence denials. In addition, in 2005, EU Member States initiated seven separate consultations<sup>10</sup> concerning exports to Bulgaria, putting it sixth out of 47 countries that were subject to a consultation for that year.<sup>11</sup> This number of denials and consultations is high for a state which has supposedly taken steps to harmonise its export control system with EU policy and practice and was preparing to become a full EU Member State.

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<sup>8</sup> *New Delhi Mid-Day*, 22 July 2004, 'Ministry gets AK-47s without tenders'; *The Hindu*, 6 April 2004, 'Centre denies irregularities in AK-47 deal'; NISAT Database 'Imports to India from Bulgaria 2004', <[http://balder.prio.no:8080/PublicResults\\_SQL.aspx?C1=355&C2=-2&p=Exports&Dep1=0&Dep2=False&r=True&W=100&dtl=3&Y=2004&d=99&t=3&dls=True&csv=False&EY=2004&scp=3](http://balder.prio.no:8080/PublicResults_SQL.aspx?C1=355&C2=-2&p=Exports&Dep1=0&Dep2=False&r=True&W=100&dtl=3&Y=2004&d=99&t=3&dls=True&csv=False&EY=2004&scp=3)>

<sup>9</sup> *Ibid*, Table A.

<sup>10</sup> When Member States are considering granting an export licence which has previously been denied by another Member State, a consultation can be initiated between those states to establish whether it is an 'essentially identical transaction'.

<sup>11</sup> 'Eighth Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports', *Official Journal of the European Union*, C250 16 October. 2006, Table B.II. Countries on which Member States consulted more times than Bulgaria in 2005 were: Colombia, India, Indonesia, Pakistan and the Russian Federation. The only other EU candidate country on which Member States consulted in 2005 was Croatia (two consultations). Croatia and Turkey each had one licence refused.

## 2. International commitments and adherence

As set out in Table 1 below, Bulgaria has signed up to a number of conventional arms transfer and arms control regimes. Bulgaria aligned itself to the EU statement on transfer controls at the UN Programme of Action (UNPoA) Preparatory Committee in January 2006 and again at the UN PoA Review Conference in June/July 2006, although it did not make a national statement in support of reaching agreement on global transfer controls at either conference. More positively however, Bulgaria co-sponsored Resolution A/C.1/61/L.55 on an international Arms Trade Treaty at the UN General Assembly First Committee in October 2006.<sup>12</sup>

**Table 1. Bulgaria's commitments to arms transfer or SALW Control agreements<sup>13</sup>**

COMMITMENT	RATIFICATION / ALIGNMENT / ACCESSION DATES
Wassenaar Arrangement	July 1996
EU Code of Conduct on Arms Exports	August 1998
EU Joint Action on Small Arms and Light Weapons	December 1998
OSCE Document on Small Arms and Light Weapons	November 2000
Regional Implementation Plan on Combating the Proliferations of Small Arms and Light Weapons (SALW)	November 2001
UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects	July 2001
Protocol against the Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organised Crime	February 2002
UN Firearms Protocol	December 2002
OSCE Document on Stockpiles of Conventional Ammunition	December 2003
OSCE Decision on MANPADS	May 2004
OSCE Decision on End-User Certificates	November 2004
OSCE Principles on the Control of Brokering in Small Arms and Light Weapons	December 2004
EU Common Position on Brokering	January 2006

## 3. Legislation and regulation

Bulgaria's transfer control regime is in the process of being brought into line with current EU standards and practices. At present, Bulgaria has two main laws that control conventional arms exports. The 2007 Law on Export Control provides the legal foundation of Bulgaria's arms transfer control system.<sup>14</sup> A second law, the 1998 *Law on the Control of Explosive Substances, Firearms and Ammunition* (1998 Firearms and Explosives Law, last amended in May 2006) – covers weapons production, acquisition, possession, use and domestic trade.<sup>15</sup> Both laws have accompanying regulations governing their implementation. Other relevant laws include the

<sup>12</sup> Full text available at <<http://daccessdds.un.org/doc/UNDOC/GEN/N06/499/77/PDF/N0649977.pdf?OpenElement> >

<sup>13</sup> Bulgaria is also state party to the *Biological Weapons Convention*, the *Chemical Weapons Convention* and the *Nuclear Non-proliferation Treaty*

<sup>14</sup> Law on Export Control of Arms and Dual-Use Goods and Technologies. State Gazette 11/2007

<sup>15</sup> 1998 *Law on the Control of Explosive Substances, Firearms and Ammunition* available at <[http://www.mvr.bg/NR/rdonlyres/054D77D0-D898-459D-B5D4-71A4741B82A7/0/03\\_Law\\_Control\\_Explosives\\_EN.pdf](http://www.mvr.bg/NR/rdonlyres/054D77D0-D898-459D-B5D4-71A4741B82A7/0/03_Law_Control_Explosives_EN.pdf)>

Penal Code and a number of government decrees regulating the enforcement and administration of various aspects of arms transfer control. In addition, each government agency involved in arms transfer control has its own internal regulations and standards.

In November 2005, the text of the EU Code was included as an annex in national export control legislation. The new article stated that the controlling bodies "should ensure the implementation of the obligations that derive from the EU Code of Conduct on Arms Exports, in accordance with Annex 2". Annex 2, also part of the amendment, is a full translation of the EU Code.<sup>16</sup>

As noted above, recent legislative developments concerning arms transfer controls are related to Bulgaria's EU membership in 2007 and are designed to align Bulgarian controls with EU standards. For example, the 1998 *Law on the Control of Explosive Substances, Firearms and Ammunition* was amended in May 2006 to introduce a European passport for the carrying of arms, and to require Ministry of Interior permission for the transportation of arms and explosives within the EU.<sup>17</sup>

The following table outlines the main relevant primary legislation, as well as selected secondary legislation in this field.

**Table 2. Bulgaria's Domestic Legislation Framework on Arms Controls**

Date in Force Last Amended	Legal Reference	Title
February 2007	SG 11/2007	Law on Export Control of Arms and Dual-Use Goods and Technologies
December 2002 November 2005	SG 115/2002 SG 96/2005	Regulation on Implementation of the Law on Control of the Foreign Trade in Arms and Dual-Use Goods and Technologies. <sup>18</sup>
11 November 1998 9 May 2006	SG133/1998 SG 38/2006	Law on the Control of Explosive Substances, Firearms and Ammunition
3 September 1998 22 August 2006	SG 78/1999 SG 68/2006	Regulation on Implementation of the Law on the Control of Explosive Substances, Firearms and Ammunition
25 April 2003 08 August 2003	SG 39/2003 SG 70/2003	Decree no 51/15.04.2003 of the Director of the Customs Agency at the Ministry of Finance (on customs offices where ADGT could be processed).
24 February 2004 10 October 2006	SG 15/2004 SG 82/2006	Law on Private Security Companies
21 March 2006	SG 31/2006	Regulation 59 Adopting the List of Arms and Dual Use Goods and Technologies
30 April 2002 10 October 2006	SG 45/2002 SG 82/2006	Law on Protection of Classified Information
13 April 2001 14 November 2006	SG 34/2001 SG 92/2006	List of countries and organisations towards which the Republic of Bulgaria applies prohibitions or restrictions on the sale and supply of arms and related equipment in accordance with UN Security Council resolutions and decisions of the EU and the OSCE

In a further move towards EU alignment, the 1995 *Law on Control of Foreign Trade Activity in Arms and Dual-Use Goods and Technologies* was substituted with the new Law on Export Control which was adopted in January 2007, and came into force on 2 February 2007.<sup>19</sup>

<sup>16</sup> Decree 244 of the Council of Ministers (adopted in State Gazette 94/2005), amended Decree № 91 (*List of countries and organisations towards which the Republic of Bulgaria applies prohibitions or restrictions on the sale and supply of arms and related equipment in accordance with UN Security Council resolutions and decisions of the EU and the OSCE*), which was adopted SG 34/2001.

<sup>17</sup> *Ibid*, 38/2006

<sup>18</sup> This is due to be replaced by a Regulation on Implementation of the Law on Export Control – Additional Provisions of the Law on Export Control, Article 13

<sup>19</sup> State Gazette 11/2007

Developed through an inter-departmental working group consisting of experts from the Ministry of Economy and Energy (MOEE), the Ministry of Foreign Affairs (MFA), the Ministry of Defence (MOD), the Ministry of Interior (MOI) and Customs and Excise, the new Law on Export Control harmonises Bulgaria's export controls with EU standards, including Regulation 1334 on Dual-Use Goods and the EU Common Position on Brokering. The inter-departmental working group consulted key stakeholders including the Bulgarian defence industry and took into account the recommendations of the 2005 EC peer review, submitting the articles dealing with dual-use goods and technologies to EC experts to check their compliance with Regulation 1334.<sup>20</sup>

Now that the Law on Export Control is in place, government officials envisage that an amendment will be passed in early 2007 to implement the European Council Regulation No 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment<sup>21</sup> so that it will become directly applicable in Bulgarian law. The proposed amendment will establish penalties and specify which national authority will have the competency over its enforcement. This is likely to be the same authorities that currently deal with dual-use goods within the MOEE.<sup>22</sup>

## 4. Production

During the communist period the Bulgarian military-industrial complex focused on manufacture for export. Supplying arms to countries from the Warsaw Pact, the Middle East, North Africa and India among others, Bulgaria benefited from a privileged position under communism which belied the problems defence manufacturers would face in the transition period to democracy and a market economy. The lack of a consistent defence industry policy for long-term development led to a confusion of roles and conflicts of interest between state and private enterprise, inefficient and short-term reforms in the defence-industrial sector and no clear strategy to guide the restructuring of the national defence industry.<sup>23</sup> At the same time, Bulgaria lost many of its traditional export markets as demand for modern hi-tech armaments increased, stricter transfer control measures (such as UN arms embargoes) imposed limits on some countries to which Bulgaria had previously exported, clients developed their own production capabilities and demand for NATO standard weapons overtook that for older Soviet-era weaponry.<sup>24</sup>

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<sup>20</sup> Saferworld interview with Ms Ivelina Bahchevanova, Head of Internationally Controlled Trade and Security Directorate, and Mr Christo Atanasov, Head of Department, Export Control of Dual-Use Goods, MOEE. 1 December 2006

<sup>21</sup> Official Journal of the European Union Council Regulation (EC) No 1236/2005 of 27 June 2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment 30 July 2005  
<[http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l\\_200/l\\_20020050730en00010019.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l_200/l_20020050730en00010019.pdf)>

<sup>22</sup> *Op cit*, interview: Ms Ivelina Bahchevanova and Mr Christo Atanasov

<sup>23</sup> Saferworld interview with Mr Dimitar Dimitrov, Associate Professor, University of National and World Economy, Sofia. 30 November 2006

<sup>24</sup> *Weapons under scrutiny: implementing arms export controls and combating small arms proliferation in Bulgaria*, Saferworld, April 2004

- ❑ Over the past 10 years, most defence companies have been privatised although some remain state-owned. The MOEE has full ownership of the defence production companies VMZ<sup>25</sup> Sopot and NITI<sup>26</sup>. It also owns two of the country's arms trading companies, Kintex and Teraton, and holds a 35.8 percent stake in Arsenal.<sup>27</sup> The full privatisation of all five companies has been delayed for over two years for various reasons. The Privatisation Agency has stated that this is a priority for 2007, although similar statements have been made in the past to no effect.<sup>28</sup>
- ❑ Bulgaria's defence industry consists of around 25 companies that produce, service and assemble arms and components for weapon systems; 126 registered trading and brokerage companies involved in the export and re-export of arms; and 41 involved in the export of dual-use goods and technologies<sup>29</sup>. In revenue terms, the most significant part is SALW production. On average, over 80% of defence products are exported. In 2005 Bulgaria exported around EUR120 million worth of military equipment and imported around EUR90 million. The main export destinations remain countries in Africa and Asia, although Bulgaria also maintains US and EU markets.<sup>30</sup>
- ❑ A significant part of Bulgaria's arms trade is carried out by the state-owned trading company Kintex which specialises in import, export, engineering, technical assistance and technology transfer in a range of arms and other military and security equipment. In 2004 it won a contract to supply the Indian government with 64,000 AK-47 assault rifles, a deal worth approximately EUR8 million. The company is reportedly targeting sales of EUR40 million in both 2007 and 2008 on the back of new markets and an expanded product range. The company exports mainly to India and Algeria but clients also include Bangladesh, Yemen, Angola, Libya and Jordan.<sup>31</sup>
- ❑ The largest producers are Arsenal, Arcus, and VMZ. Other significant arms producers include Dunarit, EMCO, NITI, Miltech and its subsidiary Electron Progress, the state-owned TEREM Companies and Norwood.
- ❑ Arcus is the most financially stable SALW producer in the country. Its product range has doubled to around 60 items, about half of which are SALW-related. They include anti-aircraft ammunition, semi-automatic weapons, grenade launchers and mortars. According to industry sources in 2005 the company's revenues were around EUR28-32million.<sup>32</sup> Arcus has reportedly signed an agreement for a three-year project to upgrade and expand Vietnamese artillery shell production beginning in 2007.<sup>33</sup>

Arsenal, whose 2004 revenues reached EUR36 million<sup>34</sup>, is the other large SALW producer. Employing over 6200 people and exporting more than 80% of its production, Arsenal is the only Bulgarian producer of Kalashnikov-type assault rifles, under its own brand 'Arsenal' (AR) (5.45, 5.56, 7.62 mm) alongside a range of SALW and ammunition, pyrotechnics and machine tools. Arsenal also transfers machine tools, and provides technical assistance and

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<sup>25</sup> VMZ stands for Vazov Engineering Works

<sup>26</sup> NITI stands for Science, Research, and Technology Engineering

<sup>27</sup> See <<http://www.priv.government.bg>>

<sup>28</sup> For example, in 2002, it was reported in *Who is Trading with Arms in Bulgaria*, 24 Chasa, 4 December 2002, that the privatisation of Kintex and Teraton had stalled for over a year, but plans remain for the two companies to be sold. Four years on and the MOEE still owns both companies.

<sup>29</sup> Official data, as of 21 March 2006, provided by the Interministerial Council on the Issues of Military Industrial Complex and Mobilisation Preparedness of the Country to the Center for the Study of Democracy.

<sup>30</sup> Press conference of Ms Ivelina Bahchevanova, Head of Internationally Controlled Trade and Security Directorate at the Ministry of Economy and Energy, as cited in *Dnevnik Daily, Licensed Brokers will Trade in Arms*, 14 September 2006,

<sup>31</sup> See *News Bulgarian Arms Trader Kintex Eyes \$50 million Sales in 2007, 2008* 09 November 2006

<sup>32</sup> Arcus Company, see website <<http://www.arcus-bg.com>>

<sup>33</sup> *Dnevnik Daily, Bulgaria Cos to take part in Vietnamese Arms Production Upgrade Project*, 27 November 2006

<sup>34</sup> Republic of Bulgaria, Privatization Agency, <<http://www.priv.government.bg/apnew/Root/index.php?magic=0.11.3516.5314>>

know-how to set up and develop production facilities abroad for weapons including anti-aircraft systems, grenade launchers, assault rifles and ammunition.<sup>35</sup>

AR assault rifles were originally produced under licence from Russia as Kalashnikov assault rifles. When the original licence for production expired, Arsenal made no moves to renew it and subsequently altered the original design to produce the domestic version, the AR assault rifle. The production of these and other products has become a serious matter of concern to Russian defence companies and to the Russian Government as Bulgaria has made no moves to enforce the original licence agreement. Russia retains no control over the production levels or transfer markets of the Bulgarian-produced AR assault rifles despite their Russian origins.

The spread of technology and production know-how and the proliferation that results from under-regulated licensed production overseas (LPO) agreements can not be ignored. As is the case elsewhere in the EU, Bulgarian law does not currently regulate the licensed production of Bulgarian ADGT overseas and as such fails to address the potential for LPO arrangements to undermine the EU Code. Bulgaria must introduce provisions in the new Law on Export Control to control LPO, including a requirement for case-by-case licensing approval for companies seeking to establish licensed production facilities overseas, a production ceiling permitted under the licence, a list of proscribed uses and a prohibition on unauthorised re-export of the ADGT produced in the LPO facilities.

Despite the initial failure of defence conversion policies during the transition period and the lack of any concerted effort to address these shortcomings, it appears that, at least in some limited areas, some Bulgarian defence manufacturers are currently pursuing civilian conversion programmes. For example, VMZ will reportedly launch the production of orthopaedic appliances over the next two years as part of its conversion from military to civilian production. It also plans to start making dental instruments and is in talks with Eurocopter to manufacture Airbus parts.<sup>36</sup>

Arms production in Bulgaria is regulated by the 1998 Firearms and Explosives Law. The first part of the law lays down the rules for production, internal trade and transport of all firearms, explosives, and ammunition. It stipulates that all three activities may only be conducted by registered companies, which must keep a detailed register of the products and clients concerned. According to national standards, all arms manufactured in Bulgaria must be marked at the point of manufacture with a unique, user-friendly, alphanumeric identifier which allows the manufacturer and year of manufacture to be identified.<sup>37</sup> Those engaged in producing, trading, exchanging, renting, or repairing explosives, firearms or munitions are required to register the type, mark, model, calibre and serial number of weapons, as well as the name and address of the supplier and recipient.<sup>38</sup>

The legacy of the Bulgarian defence industry in terms of its strategic, geopolitical and economic impact cannot be ignored. However, the importance of the Bulgarian defence industry and in particular defence exports to the Bulgarian economy today is open to debate; the links are more political than economic.<sup>39</sup> The Bulgarian defence industry is insignificant compared to the rest of national economy, accounting for just fewer than two percent of all national exports.<sup>40</sup>

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<sup>35</sup> Arsenal Company, see website <<http://www.arsenal-bg.com>>

<sup>36</sup> AMTOnline, *Bulgaria VMZ to Manufacture Orthopaedic Appliances*, 09 October 2006. <[http://www.amtonline.org/document\\_display.cfm?section\\_id=15&document\\_ID=36416&top=0&level=>](http://www.amtonline.org/document_display.cfm?section_id=15&document_ID=36416&top=0&level=>)

<sup>37</sup> 2002 National Report by Bulgaria to the UN Department for Disarmament Affairs the implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, <<http://disarmament.un.org/cab/nationalreports/bulgaria2report.pdf>>

<sup>38</sup> *1998 Law on the Control of Explosive Substances, Firearms and Ammunition*, Article 10.3

<sup>39</sup> *Op cit*, interview: Mr Dimitar Dimitrov

<sup>40</sup> Email from Mr Dimitar Dimitrov, Associate Professor, University of National and World Economy, 13 December 2006, based upon figures for 2005: entire national exports accounted for EUR9,454 million, with national defence exports only accounting for EUR120 million.

## 5. Licensing of transfers

Licensing of ADGT transfers has not always corresponded with best international practice. Human Rights Watch reported in 1999 that significant arms exports from Bulgaria reached sensitive destinations, countries under international or regional arms embargoes and armed forces known to commit gross violations of human rights and international humanitarian law. These included Sierra Leone, the armed forces in Iraq, the former Yugoslavia, Angola, Eritrea, Ethiopia, Rwanda, Uganda, separatist forces in southern Yemen and West Bengal, a Colombian drug cartel operating in the US, Congolese rebels in the Democratic Republic of Congo and both sides to the conflict in Burundi.<sup>41</sup> In 2000, the UN Security Council Committee investigating violations of the Security Council sanctions regime on Angola's National Union for the Total Independence of Angola (UNITA) forces found that Bulgarian-made weapons were sold to UNITA rebels under fake end-user certificates in 1997 and 1999. Although there is no evidence that the Bulgarian Government was aware of the final destination, arms brokers exploited the loopholes in the Bulgarian system to export the weapons.<sup>42</sup>

### Recent arms transfers

Bulgaria's aspirations to join the EU and NATO, along with pressure from the international community, have led to a marked strengthening of Bulgaria's arms transfer controls, and there have been no subsequent reports of Bulgarian arms entering conflict zones or embargoed destinations. Nevertheless, exports continued to be licensed to sensitive destinations, including: exports of battle tanks, armoured combat vehicles and large-calibre artillery systems to Eritrea<sup>43</sup>; SALW to Colombia, Indonesia and Pakistan in 2005<sup>44</sup>; exports of large-calibre artillery systems to Georgia, Israel, and Eritrea; training combat aircraft to Ethiopia<sup>45</sup> and 64,000 Kalashnikovs to India<sup>46</sup> in 2004.

While this limited information was obtained from the UN Register of Conventional Arms and the NISAT database on SALW, more recent data on arms exports are difficult to obtain as Bulgaria has only just published its first national report on transfers of ADGT covering 2005 (see Section 13 - Transparency and reporting). According to the report 393 export licences were approved in 2005, worth some EUR320 million.<sup>47</sup> This included temporary exports, exports for repair, exhibitions and demonstrations. Along with traditional buyers of Bulgarian weapons in Asia<sup>48</sup> and Africa<sup>49</sup>, Bulgaria licensed arms transfers to the United States<sup>50</sup>, Canada<sup>51</sup> and the EU<sup>52</sup>.

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<sup>41</sup> Human Rights Watch, 'Bulgaria: Money Talks - Arms Dealing with Human Rights Abusers', April 1999, <[http://www.hrw.org/reports/1999/bulgaria/Bulga994.htm#P51\\_990](http://www.hrw.org/reports/1999/bulgaria/Bulga994.htm#P51_990)>

<sup>42</sup> United National, Panel of Experts established by the Security Council pursuant to resolution 1237, Report of the Panel of Experts on Violations of Security Council Sanctions Against UNITA, (UN Document S/2000/203, 10 March 2000)

<sup>43</sup> UN Register of Conventional Weapons, reporting year 2005, <[http://disarmament.un.org/UN\\_REGISTER.nsf](http://disarmament.un.org/UN_REGISTER.nsf)>

<sup>44</sup> Nisat Database, 'Imports to Colombia, Indonesia and Pakistan from Bulgaria in 2005,' <[http://balder.prio.no:8080/PublicResults\\_SQL.aspx?C1=355&C2=2&p=Exports&Dep1=0&Dep2=False&r=True&W=100&dtl=3&Y=2005&d=99&t=3&dls=True&csv=False&EY=2005&scp=3](http://balder.prio.no:8080/PublicResults_SQL.aspx?C1=355&C2=2&p=Exports&Dep1=0&Dep2=False&r=True&W=100&dtl=3&Y=2005&d=99&t=3&dls=True&csv=False&EY=2005&scp=3)>

<sup>45</sup> UN Register of Conventional Weapons, reporting year 2004, <[http://disarmament.un.org/UN\\_REGISTER.nsf](http://disarmament.un.org/UN_REGISTER.nsf)>

<sup>46</sup> New Delhi Mid-Day, 'Ministry gets AK-47s without tenders' 22 July 2004.; & The Hindu 'Centre denies irregularities in AK-47 deal' 6 April 2004 and Nisat Database 'Imports to India from Bulgaria 2004'

<[http://balder.prio.no:8080/PublicResults\\_SQL.aspx?C1=355&C2=-2&p=Exports&Dep1=0&Dep2=False&r=True&W=100&dtl=3&Y=2004&d=99&t=3&dls=True&csv=False&EY=2004&scp=3](http://balder.prio.no:8080/PublicResults_SQL.aspx?C1=355&C2=-2&p=Exports&Dep1=0&Dep2=False&r=True&W=100&dtl=3&Y=2004&d=99&t=3&dls=True&csv=False&EY=2004&scp=3)>

<sup>47</sup> Data from the Bulgarian 2005 Annual Report, accessed at <<http://www.mi.government.bg/ind/lic/arms.html?id=200497>>

<sup>48</sup> In 2005, Bulgarian approved 109 export licences for military goods to Asia, totalling EUR 98,684,328, data from 2005 Annual Report, available at <<http://www.mi.government.bg/ind/lic/arms.html?id=200497>>

<sup>49</sup> In 2005, Bulgarian approved 56 export licences for military goods to Africa, totalling EUR 20,520,439, *ibid*

<sup>50</sup> In 2005, Bulgarian approved 62 export licences for military goods to the USA, totalling EUR 6,447,340, *ibid*

<sup>51</sup> In 2005, Bulgarian approved 4 export licences for military goods to Canada, totalling EUR 14,772, *ibid*

<sup>52</sup> In 2005, Bulgarian approved 155 export licences for military goods to Europe, totalling EUR 15,501,601, *ibid*

### Licensing process for ADGT

On paper, the Bulgarian export control system is based upon an inter-agency model with all the major government ministries playing an equal role at all stages of the process. In practice, however, it appears that the MOEE and the MOD wield significantly more power than their counterparts in the other ministries.

In terms of its administrative structure, the current Bulgarian transfer licensing system operates on three levels:

- (i) licensing of companies and individuals engaged in international trade and transportation of ADGT (including brokers);
- (ii) licensing on a case-by-case basis of individual ADGT transfers or transportation conducted by the companies and individuals licensed under (i);
- (iii) post-licensing controls – delivery verification

### General licences to trade in ADGT

General licences to conduct foreign trade in, to transport and to broker ADGT are issued by the Interministerial Council on the Issues of Military Industrial Complex and Mobilisation Preparedness of the Country (the Interministerial Council) within the Council of Ministers.<sup>53</sup>

The Interministerial Council is composed of a Chairman (the Deputy Prime Minister and Minister of Economy), Vice-Chairman (the Minister of Defence), and includes the Deputy Ministers of Energy and Economy, Foreign Affairs, Defence, Finance, Interior, Transport and Telecommunications, regional Development and Public Works, the Director of the National Intelligence Service and the Deputy Chief of Staff of the Bulgarian Army.<sup>54</sup>

When assessing licence applications the Interministerial Council takes into account the financial stability, criminal record, security clearance and tax status of the candidate before reaching a decision. If any party raises suspicions or questions concerning the candidate the application can be postponed for investigation until the next monthly session of the Interministerial Council.<sup>55</sup> Companies may be issued with either a full or a limited licence which permits them to trade in a range of goods laid down in the *List of ADGT* (see Section 9). The Law on Export Control also covers 'intangible transfers' by electronic means, adopting the definition of "export" as defined in Article 2(b) of Regulation 1334.<sup>56</sup>

Companies are subject to a number of additional controls and permits that include:

- A permit from the Control of Hazardous Devices Office of the National Police Service;
- Inspection by the Customs Agency and National Security Service at specific border crossing point;
- Monitoring by the intelligence agencies within the Ministry of Economy and Ministry of Defence;
- Maintaining an export control specialist within the company; and
- The need for all MOD defence companies to obtain the personal approval from the Minister of Defence for every foreign export transaction.<sup>57</sup>

The last control was put in place to allow the MOD to become more actively involved in regulating arms trading after it was revealed in October 2002 that *Terem*, a state-owned company with a trading licence, which is accountable to the MOD and monitored by the Deputy

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<sup>53</sup> Law on Export Control, Article 6.1

<sup>54</sup> Email interview with Mr Benko Lambev, Advisor, Interdepartmental Council on the Issues of the Military Industrial Complex and the Mobilisation Readiness of the Country, Council of Ministers, 15 December 2006

<sup>55</sup> Saferworld interview with General Ivan Dochev, Interagency Council on Military-Industrial Complex and Mobilisation, Council of Ministers, 30 November 2006

<sup>56</sup> Law on Export Control, Additional Provisions 2(1)

<sup>57</sup> *Op cit*, *Weapons under scrutiny*, pp. 8, 34 & 37

Minister of Defence, was caught violating export controls.<sup>58</sup> However, the requirement for personal approval by the Minister of Defence could cause a conflict of interest to arise due to the MOD's role in the Interministerial Council and Interdepartmental Commission, providing the MOD with additional influence in the licensing decision process. The MOD should appoint external export control specialists to regulate all of its manufacturing and trading companies, thereby ensuring a full separation of the MOD's defence manufacturing and trading interests with their legislative requirements to execute an impartial and effective transfer control regime.

### **Individual export licences for ADGT**

Companies which successfully acquire a licence to trade in ADGT must then obtain a permit for each individual export, import, transit or re-export of ADGT. While the relevant officials assured the research team that all transfers, including surplus stocks, components and platforms, intangible transfers, government-to-government transfers and donations, are subject to the same licensing process as standard exports, it is difficult to verify these claims given the previous lack of public reporting of licensing decisions and the general tendency for government-to-government deals to be approved by the Interdepartmental Commission.<sup>59</sup> It is essential that the Government apply and be seen to apply the same transfer criteria to all transfers including government-to-government deals.

The individual permits are valid for one year but may be renewed for an additional six months.<sup>60</sup> Permit applications are considered on a case-by-case basis by the Interdepartmental Commission. The Secretariat of the Interdepartmental Commission is based at the Military Economic Co-operation and Internationally Controlled Trade Directorate of the MOEE. The Interdepartmental Commission is chaired by the Minister for Economy and Energy and includes representatives from the Ministries of Economy and Energy, Foreign Affairs, Defence, Interior, and the Ministry of State Policy for Disasters and Accidents.<sup>61</sup>

Until January 2007 the decision-making process within the Interdepartmental Commission was consensus-based, which effectively gave each participating agency a right of veto. This theoretical veto did not take into account the relative strengths and weaknesses of the various ministries involved in the decision-making process, and the fact that no single transfer control decision was made in isolation. In reality the situation is likely to be more complicated. Each ministry has a dedicated department or employee that analyses the documents supplied in a particular case and then advises the Minister as to what the ministry's position should be. The recently adopted Law on Export Control abandons the system and replaces it with one based on qualified majority.<sup>62</sup> This effectively removes the power of veto from any of the participating agencies.

The Interdepartmental Commission considers individual export licence applications on a case-by-case basis based on a range of criteria, including:

- Validity of presented documents (including inspection via diplomatic channels);
- Type of goods;
- The intermediary;
- The shipper;
- The end-user;
- Political considerations;
- Notified denials from members of the EU or the Wassenaar Arrangement; and

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<sup>58</sup> *Ibid* p37

<sup>59</sup> Saferworld interview with a representative of the US Embassy, 29 November 2006

<sup>60</sup> Law on Export Control, Article 30.8

<sup>61</sup> Angarev, P., "The MRF to Watch over Arms Trade", *Dnevnik Daily*, 1 February 2007

<sup>62</sup> Law on Export Control, Article 30.7

- The foreign political and economic interests of the Republic of Bulgaria and its national security, as well as the presence of bilateral or multilateral legal or political commitments such as the EU Code and the EU Common Position on Brokering.<sup>63</sup>

The primary duties of each ministry in the licensing process are as follows:

- MOEE – document accuracy
- MFA – foreign political assessment
- MOI – security intelligence information
- MOD – specific military assessment<sup>64</sup>

### **Decision-making and the EU Code**

With the primary responsibility for assessing export licence applications against the EU Code criteria falling on the MFA, it is unclear to what extent the other ministries take this into account, if at all. While some interviewees clearly understood that the EU Code is in theory an integral part of the decision-making process and were familiar with tools such as the User's Guide, others apparently regard this as MFA territory and did not mention either the EU Code or the User's Guide as relevant to their role in the process. Indeed, some interviewees appeared to believe that Bulgaria's foreign policy obligations begin and end with the list of proscribed destinations and that other concerns raised in relation to the EU Code criteria, such as human rights, conflict and development, are spurious if the country in question does not appear on the list. The view in some quarters seems to be that if there is no obvious written legal requirement to turn an application down, such as the destination appearing on the proscribed list, then it will be permitted. Such a narrow approach to export licence decision-making from some ministries leaves no room for the sophisticated assessment necessary to interpret obligations arising under the EU Code. This clearly gives cause for concern, particularly given the move towards a qualified majority approvals process under the newly adopted Law on Export Control removed the MFA's veto (see below).

It was made clear to the research team that if there are any changes to the conditions under which an individual export licence has been granted, for example changes to the end-use(r) or to the value of the goods, the Interdepartmental Commission has the right to revoke it. However, there was no mention to the research team about revoking licenses if the situation changes in the recipient country.

Once the export licence has been exhausted (either because the permitted quantity of ADGT has been exported or the period of the licence has expired) the exporter must return the licence to the Interdepartmental Commission along with the following information about the completed transaction:

- Price;
- Parties on the transaction;
- Name of the goods;
- Quantity;
- Terms of delivery;
- Term of execution; and
- A provision for non-permission of re-export by the buyer and/or the end-user without the written consent of the Interdepartmental Commission.<sup>65</sup>

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<sup>63</sup> Zakov D, Ivanov L, *Strengthening of the Arms Export Control System in the Context of Bulgaria's Membership of NATO*

(Sofia, NATO Information Centre Sofia, September 2003), p 8; and Saferworld interviews with Bulgarian officials, 29 November–1 December 2006.

<sup>64</sup> PowerPoint presentation by Ms Ivelina Bahchevanova Head of Internationally Controlled Trade and Security Directorate, MOEE. 1 December 2006

<sup>65</sup> Regulation on the Implementation of the *Law on Control of the Foreign Trade in Arms and Dual-Use Goods and Technologies*, Additional Provisions, Articles 14(2) & (4) due to be replaced by a new Regulation on Implementation of the Law on Export Control – Additional Provisions of the Law on Export Control Article 13

The MOEE provides information on fees for different licence authorisations on its website, but any informal pre-licence application advice appears to be given on an ad hoc basis via personal contacts between industry and ministry officials.<sup>66</sup>

Under the Law on Export Control the above mechanism is likely to change in many respects. Potentially the most significant change is the replacement of the consensus-based decision-making process previously employed by the Interdepartmental Commission with a system of qualified majority decision-making, effectively removing the power of veto from all participating agencies<sup>67</sup> (see Section 12 – Inter-agency relationships/processes). During the parliamentary debates on the Law on Export Control, both the Parliamentary Foreign Policy Commission and the Commission on European Affairs expressed concern that either the consensus-based principle should be kept, or that a more precise mechanism should be elaborated.<sup>68</sup> Some interviewees expressed concern that this change would effectively isolate the voice of the MFA, and as a result marginalise the consideration of the EU Code criteria within the licensing process. Others felt that this was a good thing as it would protect Bulgaria's national interests over 'arbitrary' foreign policy interests.

An important change aimed at reducing opportunities for corrupt activities (for more on corruption see Section 15 – Enforcement) is the proposal to issue all permit decisions within 30 days of the submission of the application and to report them to the applicant within seven days.<sup>69</sup> In the past, slow decision-making has been a catalyst for bribes and other corrupt practices although interviews with officials suggest this lower-level corruption is decreasing. It was beyond the scope of this report to carry out a detailed investigation of larger-scale corruption linked to the arms trade in Bulgaria.

In terms of permits for individual transactions the following new provisions are included in the Law on Export Control:

- Under the Law on Export Control there are three types of export permits for dual-use goods and technologies – individual, global, and general.
  - An individual export permit is needed for the goods listed in Annex I of European Council Regulation 1334 (Regulation 1334) to countries outside the EU, or for transfers within the EU if it concerns goods in Annex IV of the regulation. This permit is valid for one year.
  - A global permit is valid for two years and is needed only for certain types and categories of goods in Annex I but excluding some goods specified in Annex II-2 of Regulation 1334.
  - The general permit is also valid for two years, and it includes the goods listed in Annex I, but excluding some goods specified in Annex IV-1. Goods listed in Annex II of Regulation 1334 need only a general permit. A general permit could be issued to carry out exports to one specific country, to several countries, or for transfers within the EU.<sup>70</sup> Part IV of the Law on Export Control, entitled "Transfer of Dual-Use Goods", states that to carry out transfers, companies need to obtain a registration from the Commission for a 3-year period (Article 54). To export within the EU the goods specified in Annex IV of Regulation 1334, the companies would need to obtain a permit for each export, stating the end use(r), the type and origin of the goods (Article 55).
- Imports of dual-use goods and technologies from other EU Member States are not subject to the law's regulations. When the goods imported come from outside the EU they simply need to be registered with the Interdepartmental Commission.

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<sup>66</sup> Saferworld interview with Mr Borislav Georgiev, Deputy Managing Director, Norwood, 30 November 2006

<sup>67</sup> Law on Export Control, Article 30.7

<sup>68</sup> Plamen Rankov, Reporter of the Foreign Policy Commission, Transcript of National Parliament Debates, 25 October 2006

<sup>69</sup> Law on Export Control, Article 31

<sup>70</sup> *Ibid*, Article 44.5

## 6. Exemptions

In 2002 a new article was introduced in the 1995 ADGT Trade Law.<sup>71</sup> It stipulated that the armaments, ammunition, and other military equipment of Bulgarian and foreign military or police forces transiting or residing in Bulgaria were not subject to this law. This was only valid for cases that fell within international agreements, peacekeeping operations, military exercises, humanitarian, environmental, show and sports events. The new Law on Export Control reiterates these principles<sup>72</sup>.

The research team was given assurances by several interviewees that transfers of components and surplus weapons must follow the same process as standard exports. There is no apparent exemption for government-to-government transfers or for donations of weapons, such as the arms and ammunition Bulgaria reportedly supplied to the Afghan National Army. However, given the lack of parliamentary or public oversight of transfer licensing decisions, it is hard to verify systematically the extent to which these types of transaction take place and the level of scrutiny applied.

The exemptions for certain transfers of dual-use goods are consistent with Regulation 1334.

## 7. Brokering

Under the Law on Export Control, unlike other trading activities, brokerage of ADGT will not be subject to a general licensing requirement but to a registration scheme. Registration will be carried out by the Interministerial Council, initially for a period of three years but with the opportunity for renewal (Art. 20.1). In order to register, the broker must be a physical or legal entity and a registered company (regulated under the Control of Trade Act). All brokering credentials have to be submitted to the Interministerial Council for consideration and decisions are made by a two-thirds majority.<sup>73</sup> The information provided to the register will then be distributed to all relevant ministries, and will be available on a public database (Art. 21.1).

In terms of general trade licensing, under the Law on Export Control:

- ❑ The definition of intermediary activities has been defined more narrowly and is now consistent with the definition of brokering in the EU Common Position on Brokering and the OSCE Principles on the control of brokering in SALW.<sup>74</sup> The Law on Export Control also includes third-party brokering.
- ❑ Brokers are not issued trading licences (as intermediaries were under the 1995 law) but instead need only to be registered. According to Atanas Atanasov MP, this could allow brokers that have participated in illegal activities to register.<sup>75</sup>
- ❑ Import, export and transfer of arms could only be carried out by physical and legal persons registered in accordance with the Trade Act, which means that any EU-registered company must re-register in Bulgaria in order to obtain an ADGT trade licence.<sup>76</sup>

While it is welcome that the Law on Export Control includes provisions to control third-party brokering, the scope does not extend to extraterritorial brokering activities by Bulgarian

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<sup>71</sup> Article 4 State Gazette 75/2002

<sup>72</sup> Law on Export Control, Article 3

<sup>73</sup> Art. 15.1 of the Regulation of the Activities of the Interministerial Council on the Issues of Military Industrial Complex and Mobilisation Preparedness of the Country, adopted with decision No. 51 of the Council of Ministers in 1994. First adopted in SG/29 of 5 April 1994, last amended SG/10 from 30 January 2007.

<sup>74</sup> Council Common Position 2003/468/CFSP of 23 June 2003 on the control of arms brokering; & OSCE Decision No. 8/04, OSCE Principles on the Control of Brokering in Small Arms and Light Weapons, 437<sup>th</sup> Plenary Meeting

<sup>75</sup> Atanas Atanasov (MP – Democrats for Strong Bulgaria -DSB), Transcript of National Parliament Debates (25 October 2006)

<sup>76</sup> Law on Export Control, Article 5

nationals. Therefore a Bulgarian national conducting such business while outside Bulgarian territory will not require a licence.

Furthermore, during several interviews it became apparent to the research team that many officials within the licensing structure do not fully grasp the concept of third-party brokering or extraterritoriality. If this is indicative of the knowledge base of licensing officials across the relevant ministries it raises questions over the ability of the Bulgarian government to fulfil its obligations with regards to ADGT transfers and should be addressed through training programmes and other capacity-building activities.

The Law on Export Control requires registered brokers to obtain a permit on a case-by-case basis for each arms-related transaction.<sup>77</sup> The permit is issued for a period of one year but it can be extended once for an additional six months.<sup>78</sup>

According to the MOEE, the Law on Export Control is consistent with UN Security Council Resolution 1540 (2004) with regards to the control of brokering of dual-use items associated with Weapons of Mass Destruction (WMD).<sup>79</sup> This will take Bulgarian legislation further in this area than current Regulation 1334 on the control of exports of dual-use items and technologies by requiring the registration of brokers of dual-use items, and is to be commended. The European Commission submitted a proposal to the Council of Ministers to "recast" the Regulation 1334 in light of UN Security Council (UNSC) Resolution 1540; the Council has yet to consider the proposal.<sup>80</sup> UNSC Resolution 1540 calls on states to establish *inter alia* 'controls on providing funds and services' such as 'financing and transporting' with regards to the proliferation of nuclear, chemical or biological weapons and their means of delivery.<sup>81</sup> In order for the Law on Export Control to be consistent with this, the challenge for Bulgaria will be to ensure that activities such as financing, which have been removed from the definition of 'intermediary activities' in the Law on Export Control, are covered in relation to the brokering of dual-use items associated with WMD.

Finally, the Law on Export Control requires registered brokers to keep records for ten years on each deal<sup>82</sup>. Spot-checks can be made on the internal compliance of registered brokers, and at least one individual in a registered company must be responsible for compliance and record keeping<sup>83</sup>. It is envisaged that the new registration system will help make verification and risk assessment more efficient by maintaining a co-ordinated and centralised system of information on registered brokers and transporters.

## 8. Transit and transshipment

Transit and transshipment of ADGT is subject to regulation under the Law on Export Control. A Bulgarian transport company wishing to transport ADGT must first apply for a trade licence from the Interministerial Council. For this the company will need permission from the MOI, a permit from the MOTT and certificates of suitability from the various State transport inspectorates.<sup>84</sup>

In addition to the licence to act as a carrier of ADGT, each individual shipment of arms or dual-use goods and technologies requires a separate 'permit for transit shipment', from the

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<sup>77</sup> *Ibid*, Article 30.4

<sup>78</sup> *Ibid*, Article 30.8

<sup>79</sup> *Op cit*, interview: Ms Ivelina Bahchevanova

<sup>80</sup> European Commission proposes new measures on export of Dual Use goods and technologies Brussels, 19 December 2006, available at <[http://ec.europa.eu/trade/issues/sectoral/industry/dualuse/pr191206\\_en.htm](http://ec.europa.eu/trade/issues/sectoral/industry/dualuse/pr191206_en.htm)>

<sup>81</sup> Article 3(d), UNSC Resolution 1540 (2004) adopted by the Security Council at its 4956<sup>th</sup> meeting, 28 April 2004

<sup>82</sup> Law on Export Control, Article 69.2

<sup>83</sup> Law on Export Control, Article 71.6; & *Op cit*, interview: Mr Borislav Georgiev

<sup>84</sup> Regulation on Implementation of the *Law on Control of the Foreign Trade in Arms and Dual-Use Goods and Technologies*, Additional Provisions, 3 (1); also Law on Export Control, Art.(10.3)

Interdepartmental Commission which follows the same process as for an individual export permit.<sup>85</sup>

In order to obtain the permit for transit shipment, the company organising the shipment must present permits for the export and further passage of the goods as supplied by the exporting and importing countries at least 15 days before the shipment enters Bulgarian territory.<sup>86</sup> Under the Law on Export Control, 'transit' has been defined to include goods which are transported through the territory of Bulgaria or are reloaded from one vehicle to another on Bulgarian territory.<sup>87</sup>

After EU accession two of Bulgaria's current borders have effectively become internal EU borders. They will ultimately no longer require the same resources from the Intelligence and Investigations Directorate in the National Customs Agency, which will prioritise checks on goods in transit following Bulgaria's entry into the EU.<sup>88</sup>

Despite conflicting responses from interviewees, the new Law on Export Control contains a licensing requirement for Bulgarian-registered carriers wishing to take part in the transportation of arms from one third country to another (without passing through Bulgarian territory).<sup>89</sup> This is a welcome policy which goes beyond EU standard practice although it is unclear how it will be enforced and what the penalties are for non-compliance.

## 9. Control lists

The scope of the goods and technologies subject to control under the Law on Export Control is determined by the List of Arms and Dual-Use Goods and Technologies, initially adopted in 1998 and last amended in March 2006.<sup>90</sup> It includes the EU Common Military List and Annex I of the EU List of Dual-Use Goods. It is consistent with the Wassenaar Arrangement (WA) Munitions List. In addition it includes a category covering the delivery of education and training.<sup>91</sup>

## 10. End-use control and certification

Every ADGT transaction requires an end-use(r) certificate (EUC) and/or an International Import Certificate issued by the competent authorities in the end user's country<sup>92</sup>. The EUC must be an original (not a copy) and it must comply with the recommended standards set out in the User's Guide to the EU Code.<sup>93</sup>

The EUC is authenticated by experts trained in EUC verification working within the Interdepartmental Commission, including: the MOEE (in consultation with the recipient country's import control authorities where necessary); the MFA (via diplomatic channels such as in-country embassies or defence attaches. If Bulgaria lacks the diplomatic capacity checks can be made through neighbouring missions or friendly states such as the US or UK); the MOI (through intelligence information and the Secret Services); and the MOD (via intelligence information and military assessments). Unfortunately, the research team was not able to establish the capacity or expertise of Bulgarian embassy staff to verify such documents, or the

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<sup>85</sup> Law on Export Control, Article 30.6

<sup>86</sup> *Ibid*, Chapter I, Section III, C. Article 20 ; & Chapter II, Section IV, Article 33 ;

<sup>87</sup> Law on Export Control, Additional Provisions 2.6

<sup>88</sup> Saferworld interview with Mr Roumen Danev, Head of Intelligence and Investigations, National Customs Agency. 1 December 2006

<sup>89</sup> Law on Export Control, Article 6.3

<sup>90</sup> Decree No. 59/2006 for adoption of List of Arms and Dual-Use Goods and Technologies.

<sup>91</sup> *Op cit*, interview: General Ivan Dochev

<sup>92</sup> Law on Export Control, Article 70.2 and 70.3

<sup>93</sup> Email interview with Ms Ivelina Bahchevanova, Head of Internationally Controlled Trade and Security Directorate, MOEE. 14 December 2006

level of co-operation with partner countries, and thus to establish whether they provide a sufficient means for checking the validity of end users and end use.

Exporting companies are required to apply to the Interdepartmental Commission for an amendment or an addition to the export permit "when the circumstances under which the permit has been issued have changed" (this includes change of end use/r)<sup>94</sup>. The companies should do so within 14 days of the change of the circumstances, and the Commission issues a decision as to whether to amend and/or add to the permit.<sup>95</sup>

The system also includes a post-shipment verification element: the Regulation for the implementation of the 1995 ADGT Trade Law requires the exporter to submit a Delivery Verification Certificate to the Interdepartmental Commission within three months of delivery, confirming the end use(r) authorised by the competent authorities at the point of destination. The Interdepartmental Commission and Interministerial Council may require an exporter to include a contractual provision for the physical inspection of the delivery by Bulgarian authorities after shipment.<sup>96</sup> There are no set criteria for when such a contractual provision would be required and it is based on the discretion of the licensing bodies. Furthermore, several interviewees stated to the research team that due to capacity and resourcing issues it is likely that physical inspections of this nature would be rare at best.

However, under the Law on Export Control the Interdepartmental Commission will no longer be required to approve the re-export, re-transfer, or change of end use(r) if it concerns a country which is a party to the Wassenaar Arrangement, and when permission for the above changes is provided by the arms control authority in the country of import.<sup>97</sup>

## 11. Administrative capacity

Despite understandable resourcing issues caused by the preparation for EU accession, none of the interviewees considered there to be a lack of administrative capacity in relation to ADGT transfer controls. In relation to the *acquis communautaire*, the European legislation that must be adopted on entering the EU, the EC reported in 2005 that in Bulgaria 'the full implementation of the Code of Conduct of Arms Exports and the fight against unauthorised weapons transfers deserves further attention.' However, it went on to state that '[t]he administrative structures in this area are in place and satisfactory.'<sup>98</sup>

In 2005, 393 export licences were approved, including temporary exports as well as exports for repairs, exhibitions and demonstrations.<sup>99</sup> While this may not pose a significant burden on a purely administrative basis, neither the MFA nor the MOI appear sufficiently staffed to conduct extensive investigations into each applicant or end user. Given that the MFA appears to be the sole ministry required to carry out any in-depth analysis of foreign policy considerations such as obligations arising under the EU Code, Bulgaria's administrative capacity to ensure it fulfils these obligations with regards to ADGT transfers is limited.

While the Interdepartmental Commission is the main body for making licensing decisions (see section 5 – Licensing of transfers), in practice it seems that the MOEE is the lead agency in terms of its responsibility for, and institutional knowledge of, the export control system. When questioning officials in the MFA and the MOD, the research team was frequently referred to the MOEE for information on relatively general transfer control issues which are deemed to fall within its area of expertise or responsibility. This illustrates the difference in knowledge and

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<sup>94</sup> Law on Export Control, Article 36.1

<sup>95</sup> Law on Export Control, Article 36.2

<sup>96</sup> *Ibid*, Article 71.6

<sup>97</sup> *Ibid*, Article 70

<sup>98</sup> European Commission - Bulgaria 2005 Comprehensive Monitoring Report. Brussels, 25 October 2005. SEC (2005) 1352. p.72

<sup>99</sup> Data from the Bulgarian 2005 Annual Report, accessed at <<http://www.mi.government.bg/ind/lic/arms.html?id=200497>>

perceived responsibility and the unequal relationship between the key ministries which play a significant part in making licensing decisions.

As noted above, Bulgaria's capacity to authenticate end use(r) information and to verify delivery of ADGT in states where it has little or no diplomatic presence is augmented via alternative diplomatic channels, including Bulgarian missions in neighbouring states and EU and US allies.<sup>100</sup> In terms of expertise, all agencies tasked with export licence decision-making have personnel who are trained to verify the authenticity of EUCs and to assess whether it contains the requisite information.<sup>101</sup>

The use of tools which could increase administrative capacity by speeding up the process of interagency communication, such as the US-supplied Tracker system, (see Section 12. Inter-agency relationships/processes) is currently limited. Housed in the MOEE and designed to maintain a database of denials, current export control regimes and extant export licence applications to enable all agencies responsible for licensing to access documentation quickly, the system is in need of further hardware and technical updates to ensure the secure connections necessary for the transfer of sensitive material between departments.<sup>102</sup>

## 12. Inter-agency relationships/processes

On paper, the Bulgarian export control system is based upon an inter-agency model with all the major government ministries playing a significant and equal role at all stages of the process. In practice, however, it appears that the MOEE and the MOD wield significantly more power than other ministries. Specifically, the Interdepartmental Commission is chaired by the Minister of Economy and Energy and its primary members are at the Deputy Ministerial level. It includes two representatives from the MOEE, two representatives from the MOD and one representative each from the MOI and the MFA. It seems that the MOEE and the MOD hold a stronger position within the Interdepartmental Commission than the other agencies. This is especially true of the MOEE, who are in a stronger position in both rank and numbers.

This ministerial power disparity is reinforced by the qualified majority decision-making process under the new law which replaces the previous consensus-based system. Any ministry which raises concerns over a particular transfer could be marginalised and effectively silenced by the others. This may not be such a worrying development if all the ministries had an equal responsibility to consider the EU Code in their licensing decisions, but with the primary responsibility for advising on foreign policy and regional and international obligations including the EU Code falling on the MFA, it is unclear to what extent the other ministries take this into account, if at all. As noted above, while some interviewees clearly understood the EU Code to be an integral part of the decision-making process and were familiar with tools such as the User's Guide, others apparently regard this as MFA territory and did not mention to the research team either the EU Code or the User's Guide as relevant to their role in the process. This clearly gives cause for concern.

The participating agencies should have access to the relevant documents for each licence application, whether a general trading licence or a case-by-case export permit, and each application is discussed between the agencies before the decision to approve, postpone or deny the licence is taken.<sup>103</sup> The focal points of the system are the Interministerial Council and the Interdepartmental Commission<sup>104</sup> (see Section 5 – Licensing of transfers).

Established in 1993, the Interministerial Council designs and implements the state's policy on manufacturing and trading in ADGT. It is chaired by the Deputy Prime Minister and Minister of

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<sup>100</sup> Saferworld interviews with representatives of US and British Embassies, Tbilisi. 29 November 2006

<sup>101</sup> *Op cit*, email: Ms Ivelina Bahchevanova

<sup>102</sup> *Op cit*, interview: Mr Christo Atanasov

<sup>103</sup> *Op cit*, interview: Ms Ivelina Bahchevanova

<sup>104</sup> Law on Export Control, Article 6.1

Economy and Energy and meets once a month. Its members are the Deputy Ministers of Economy and Energy, Foreign Affairs, Defence, Finance, Interior, Transport and Telecommunications, Regional Development and Public Works, as well as the Director of the National Intelligence Service and the Deputy of the General Staff of the Bulgarian Armed Forces. The Secretary of the Interministerial Council is appointed by the Prime Minister and is responsible for supervising the implementation of its decisions.

The Interministerial Council's main duties relate to the issuance of various ADGT trading and manufacturing licences and the maintenance of a register of persons licensed to trade and transport ADGT (see Section 5). The Council attempts to respond to trading licence applications within 30 days.<sup>105</sup> In addition it advises on the inclusion of new items to the ADGT control list and on issues related to Bulgaria's membership of the Wassenaar Arrangement, the OSCE, the Nuclear Suppliers Group, as well as to its commitments within the Australia Group and, among other control regimes, the Missile Technologies Control Regime and the Zangger Committee. The Interministerial Council acts as an arbiter in cases where the Interdepartmental Commission cannot reach consensus on an export licence application.<sup>106</sup>

Both these inter-agency structures potentially provide a platform for informed, regular and balanced debate on export control policy and practice. However, the previous lack of publicly available information on export licensing decisions and how they are reached (for example, what status is given to obligations arising under the EU Code compared with that given to Bulgaria's economic interests?), and the weighting of both structures in favour of the larger, more influential ministries (for example, both are chaired by the Minister of Economy), does nothing to dispel the sense that all is not necessarily quite so equal behind closed doors. The removal of consensus decision-making in the Interdepartmental Commission only heightens these concerns.

An initiative of the US Government to facilitate communication between the various institutions responsible for arms control and to reduce the bureaucracy and time involved in issuing an export licence was the introduction of the Tracker system, an export control software package. The package is designed to assist agencies in making licensing decisions by allowing them to scan relevant documents into the system and circulate them electronically to all interested parties who will be able to view them simultaneously. Original documents can still be viewed at the MOEE for further authentication if necessary. In theory the system also allows officials in one country to directly consult with experts in another. Although MOEE staff has received training in the use of this package,<sup>107</sup> it has so far not been implemented across the ministries due to legal, administrative and security difficulties. However, officials told the research team that it is expected to be functioning as intended in 2007.<sup>108</sup>

### 13. Transparency and reporting

Bulgaria's record on transparency has in the past been poor. Bulgaria suffers from a legislative and historical tendency towards secrecy, in particular where security issues are concerned. The old 1995 Law did not make provision for public reporting on transfers of conventional ADGT. The law only obliged the Interministerial Council and the Interdepartmental Commission to report to the Council of Ministers on the law's implementation. This report then had to be submitted to the National Assembly.<sup>109</sup> There was no legal requirement for the report to be made public. Therefore, prior to the publication of the first Annual Report on Export Controls covering licensing decisions in 2005, there was a significant lack of meaningful information about ADGT export control policy and practice in the public domain. This rendered accurate analysis of Bulgaria's performance in this field problematic.

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<sup>105</sup> *Op cit*, email: Mr Benko Lambev

<sup>106</sup> *Op cit*, *Weapons under scrutiny*, pp. 31-32

<sup>107</sup> Report by the Bulgarian MFA to COARM, 19 March 2003, DS 8/2003.

<sup>108</sup> *Op cit*, interview: Ms Ivelina Bahchevanova

<sup>109</sup> *Law on Control of Foreign Trade Activity in Arms and Dual-Use Good and Technologies*, Article 18

The Law on Export Control requires the Interministerial Council and the Interdepartmental Commission to submit annual reports on their activities to the Council of Ministers. These reports are in turn presented to Parliament by the Council of Ministers by 30 June of the following year. Both reports should then be published in accordance with the 'agreed format of the consolidated report of the European Union to the EU Code, which is published annually in the Official Newspaper of the European Communities'.<sup>110</sup>

Subsequently, in February 2007, the Bulgarian MOEE published its first national report on imports and exports of arms and dual-use goods and technology covering the period 2005. Concerns over the correct administrative procedure and the publication of sensitive information delayed its publication, but the content of the Report was approved by all relevant ministries and therefore the Law on Classified Information (which severely limits access to information on 'special production'<sup>111</sup> and imports and exports of ADGT) did not affect publication.<sup>112</sup>

The national report consists of statistical information covering the imports and exports of ADGT for 2005, as well as providing a short overview outlining the Bulgarian Government's national and international commitments on transfer controls. The report provides information on:

- ❑ Licence applications to trade (to conduct foreign trade in, to transport and to broker arms and dual-use goods and technologies), identifying the name of the company applying for the licence, type of licence applied for, whether it was received or refused, the legal status of the company, and the duration of the licence.
- ❑ Summary information on exports of military goods, by destination country, identifying the total number of licences issued, the total value of licences issued and actual exports and the identification of the items covered under the Bulgarian military list category.
- ❑ Summary information on imports of military goods, by supplier country, identifying the total number of licences issued, the total value of licences issued and actual imports and the identification of the items covered under the Bulgarian military list category.
- ❑ Summary information on exports of DUGT by destination country, identifying the total number of licences issued, the total value of licences issued and actual exports and the identification of the items covered under the Bulgarian dual-use list category.
- ❑ Summary information on imports of DUGT by supplied country, identifying the total number of licences issued, the total value of licences issued and actual imports and the identification of the items covered under the Bulgarian dual-use list category.

This significant improvement in transparency and information-sharing is welcomed, and it is hoped that this is the first step towards a new culture of meaningful public transparency in Bulgaria. While the statistical information represents a vast improvement in transparency some basic information is still lacking. In future reports Bulgaria should look to improve its reporting by providing timely national reports and by adopting best practice from EU member states, including providing information on:<sup>113</sup>

- ❑ The narrative contextual overview of the national transfer control policy, national legislation and the format of the national licensing authority;
- ❑ The number of licence applications denied, including identifying the recipient country and the reason for denial<sup>114</sup>;
- ❑ Identification of end use(r);<sup>115</sup>
- ❑ Data on re-export, transit or transshipment;<sup>116</sup> and

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<sup>110</sup> Law on Export Control, Article 74.1-3. The annual consolidated reports are available at: <[http://www.sipri.org/contents/armstrad/atlinks\\_gov.html#REG](http://www.sipri.org/contents/armstrad/atlinks_gov.html#REG)>

<sup>111</sup> "Special production" is a term used in Bulgarian to denote any type of arms and dual-use goods and technologies.

<sup>112</sup> *Op cit*, interview: Ms Ivelina Bahchevanova

<sup>113</sup> Analysis by J. Macalesher, Saferworld, London, 12 December 2006. It should be noted that some of the following information was provided in national arms export reports for 2000-2002.

<sup>114</sup> Best Practice example: Germany and the Netherlands.

<sup>115</sup> Best Practice example: Denmark, France and Portugal.

- ❑ Data on current investigations and prosecutions under the transfer controls legislation.<sup>117</sup>

Furthermore, under the Law on Export Control and with Bulgaria's EU membership, a number of amendments have been made to encourage more transparency, these include:

- ❑ The Interministerial Council will be obliged to maintain a public register of all physical and legal persons who:
  - (i) are licensed to trade and transport arms, providing information about the current state of the licence; and
  - (ii) have been registered to carry out brokerage services and the state of their registration.<sup>118</sup>
- ❑ In accordance with Regulation 1334 the Interdepartmental Commission is responsible for maintaining a public register of all physical and legal persons who are registered through the Interministerial Council to trade and transport dual use goods and technologies.<sup>119</sup>

The exchange of information on ADGT trade at the inter-governmental level is now a routine practice for Bulgaria, as the country regularly submits reports to the UN Register on Conventional Arms (UNROCA) and provides information as part of the WA. In November 2000 Bulgaria signed the OSCE Document on SALW and since then has made timely submissions to the OSCE on SALW transfers within the OSCE area, as required by the document. Bulgaria has also submitted four national reports on its implementation of the UN Programme of Action (PoA) on SALW.<sup>120</sup>

One area of serious concern is the lack of parliamentary scrutiny of transfer licensing decisions. Parliamentarians do have a right to question the government's record on licensing before the publication of the annual report either publicly through Ministers' question-times or in writing to Ministers. Relevant ministerial responses are published on the MOD website.<sup>121</sup> However the political will to do this (as well as the public interest) is severely lacking, and as a result the government is rarely questioned about its licensing decisions. Parliament was described by one interviewee as 'neutral' on the issue.<sup>122</sup> This lack of systematic parliamentary scrutiny of licensing decisions is problematic as it means there is little external pressure in Bulgaria to ensure high quality decision-making in this area. Bulgaria should significantly develop parliamentary oversight and political will in order to establish an institutional framework that would require responsible ministers and officials to answer relevant questions from a parliamentary body (for example an appropriate Parliamentary Select Committee), which would publish its own review of government policy and practice. Consideration should be given to establishing a process for pre-licensing information-sharing and consultation with an appropriate parliamentary body acting in an advisory capacity. Decisions-making powers would continue to rest in solely in the hands of the Government.

Of similar concern in Bulgaria is the lack of independent civil society, journalistic and academic expertise on Bulgaria's transfer control obligations. The absence of such expertise means that there is little independent public scrutiny of transfers and licensing decisions beyond a handful of well-informed individuals and organisations, and little pressure on relevant government

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<sup>116</sup> Best practice example: Estonia.

<sup>117</sup> Best practice example: Estonia (overview of offences committed under both national and international standards in the reporting year. Information includes the nature of the offence, relevant penal code and case outcome), Germany (includes data on criminal prosecution and an outline of preliminary criminal proceedings. Contains data on the number of convictions under the relevant acts and what penalties were received. Also includes data on both concluded and pending cases, including the recipient country, the outcome of the proceedings and the goods involved) and the UK (includes data on all successful prosecutions, including the name of the person/company prosecuted, identification of recipient country and goods which were involved and the penalty received).

<sup>118</sup> Law on Export Control, Articles 19 & 23

<sup>119</sup> *Ibid*, Article 42.2.6

<sup>120</sup> Reports submitted in 2002, 2003, 2005 and 2006 to the UN Department for Disarmament Affairs. For the 2006 report see <<http://disarmament.un.org/cab/nationalreports/2006/bulgaria.pdf>>

<sup>121</sup> Saferworld interview with Mr Nikola Mihaylov, Head of International Co-operation Directorate, MOD. 29 November 2006.

<sup>122</sup> *Op cit*, interview: Mr Dimitar Dimitrov

officials and departments to maintain high standards. The media reporting on ADGT control issues that does take place is infrequent and mostly related to cases of corruption involving arms transfers.<sup>123</sup> As a result, it should be a priority for the Bulgarian Government and international organisations to develop the capacity of civil society organisations, journalists and academics to provide independent expert oversight of the national control system.

## 14. Information gathering and sharing

The Interministerial Council meets on a monthly basis. During the general trading licence application process, all relevant documents are circulated to the participants in advance of their meetings and views are sought from all agencies, including the Interdepartmental Commission.<sup>124</sup> If any agency has doubts about a particular application which cannot be resolved in the same meeting the Interministerial Council has the power to postpone the decision until the next meeting in order to gather further information.<sup>125</sup> The Council notifies the Ministry of the Interior, the Central Customs Department of the Customs Agency and the Interdepartmental Commission of licences issued or renewed within five working days of its decision. The Council notifies the applicant within seven days of the decision being taken.<sup>126</sup>

The Interdepartmental Commission meets at least twice every month. The Chair may summon an extraordinary meeting if necessary and if there is consensus within the Commission.<sup>127</sup> The Commission may postpone a decision on individual ADGT export licence applications if any part of the application warrants further inspection, for example via diplomatic channels.<sup>128</sup> Once the Commission has reached a decision, the first copy of the permit is given to the applicant within seven days, a second copy is sent to the MOI, a third copy is sent to the Central Customs Department of the Customs Agency and a fourth copy kept with the Interdepartmental Commission.<sup>129</sup> Members of the Commission have the right to access application documents, minutes of Commission meetings and other materials filed at the Commission.<sup>130</sup> All documents are held by the Internationally Controlled Trade Directorate in the MOEE or in the security unit of the MOI.<sup>131</sup>

The MFA is responsible for sharing information with other relevant ministries to inform them of their international or regional obligations and any changes which occur. For example, changes to UN or EU arms embargoes, control lists and other foreign policy developments.<sup>132</sup> In accordance with international and regional agreements such as the UNPoA and Stability Pact Regional Implementation Plan on SALW, Bulgaria has appointed a National Focal Point (NFP) to co-ordinate information exchange on SALW issues. Like many countries, Bulgaria has chosen an appointee from the MFA, in this case the Head of the Directorate for NATO and International Security. The NFP is responsible for ensuring that government ministries and agencies are compliant with the UN PoA, the Regional Implementation Plan and the OSCE Document on SALW. The NFP is also tasked with ensuring that Bulgaria is represented at

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<sup>123</sup> See for example: Radu, P. C. and Zashievici, V., '6 Million Pounds Wanted from the Politicians', *Jurnalul National*, 09 June 2006, <[http://www.jurnalul.ro/articol\\_54573/6\\_million\\_pounds\\_wanted\\_from\\_the\\_politicians.html](http://www.jurnalul.ro/articol_54573/6_million_pounds_wanted_from_the_politicians.html)>, accessed 19 November 2006.

<sup>124</sup> *Strengthening of the Arms Export Control System in the Context of Bulgaria's Membership in NATO: Policy Paper*, Sofia 2003. p.15

<sup>125</sup> *Op cit*, interview: General Ivan Dochev

<sup>126</sup> Law on Export Control, Article 12

<sup>127</sup> Regulation on Implementation of the *Law on Control of the Foreign Trade in Arms and Dual-Use Goods and Technologies*, Additional Provisions, Article 65(2) – due to be replaced by Regulation on Implementation of the Law on Export Control. Additional Provisions of the Law on Export Control Article 13

<sup>128</sup> Law on Export Control, Article 31(4)

<sup>129</sup> Law on Export Control, Article 30.9

<sup>130</sup> Regulation on Implementation of the *Law on Control of the Foreign Trade in Arms and Dual-Use Goods and Technologies*, Additional Provisions, Article 61 - due to be replaced by Regulation on Implementation of the Law on Export Control. Additional Provisions of the Law on Export Control Article 13

<sup>131</sup> *Ibid*, Additional Provisions, Article 70

<sup>132</sup> Saferworld interview with representatives of the MFA, Sofia. 29 November 2006

international meetings on the subject of SALW, including the routine meetings of the OSCE, UN and Wassenaar Arrangement.

Information is also available on the MOEE website which gives advice to exporters and contains the updated control lists.<sup>133</sup> Information is shared formally with industry through a variety of seminars and workshops, which happen on an ad hoc basis every year. There is also an informal process of information exchange between Government and industry.<sup>134</sup> However, industry has repeatedly suggested that the government could improve information sharing by using emails to inform licensed ADGT traders and producers of changes to laws, regulations or foreign policy.<sup>135</sup>

One area of information and intelligence sharing which has reportedly proved problematic in the past has been fuelled by the mutual suspicion between the agencies of the MOI and the National Customs Agency (part of the MOF). Both sides reportedly maintain separate intelligence databases and risk assessment systems and information exchange has been 'on demand' only. Informal connections and meetings are common among representatives of the Customs Agency, the National Security Service and the Police (such as Border Police or Fight against Organized Crime Directorate), but it is unclear whether the relationship has improved at an institutional level.<sup>136</sup>

The Director of the Customs Intelligence and Investigation Directorate assured Saferworld that there were no such problems of information exchange between government agencies.<sup>137</sup> The Customs Agency reports monthly and annually to the National Statistical Institute and maintains regular contacts with other agencies responsible for ADGT transfer control.

Information-sharing among enforcement officials on a regional basis has been helped by Bulgaria's involvement in regional mechanisms, including Interpol, Europol, the Black Sea Economic Co-operation Organisation (BSEC), the Central European Initiative (CEI) and the Southeast European Co-operative Initiative (SECI) Centre for Combating Transnational Crime.<sup>138</sup>

Bulgaria participated in the SECI Centre's SALW Task Force's information exchange, Operation 'Ploughshares' (November 2002 to April 2003). Information exchanged by the Bulgarian authorities during Operation 'Ploughshares' indicated the amount and type of weaponry interdicted during that period. The most significant seizures involved an attempt to smuggle three Rocket Propelled Grenade launchers; 46 handguns; 73 rifles; 13 AK47 assault rifles; and 16 hand-made explosive devices.<sup>139</sup> While information exchange within the SECI Centre Task Force could be considered successful, this sub-regional initiative is undermined by flaws in the data collection and reporting mechanisms, a lack of analytical capacity and varying degrees of commitment by participating states. More significantly, Bulgaria did not participate in the 2005 information exchange, Operation 'Safe Place', which makes it hard to judge the current capacity of relevant Bulgarian agencies to interdict trafficked ADGT.

## 15. Enforcement

According to the Law on Export Control, the Interministerial Council, Interdepartmental Commission, MOEE, MOI and Customs Agency are together responsible for the law's

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<sup>133</sup> <<http://www.mi.government.bg>>

<sup>134</sup> *Op cit*, interview: Mr Borislav Georgiev

<sup>135</sup> *Ibid*

<sup>136</sup> Interviews with V. Gaidarski of the National Police's Main Directorate "Combating Organized Crime", and F. Parlev of National Police's Main Directorate "Border Police", June – July 2004.

<sup>137</sup> *Op cit*, interview: Mr Roumen Danev, Director

<sup>138</sup> *Ibid*

<sup>139</sup> SECI Center: Task Force – Combating Trafficking in Small Arms, Light Weapons and Explosives. Analysis Report – Operation Plowshares

implementation.<sup>140</sup> Each of these institutions has the legal right to request information from companies that could help with the control of exports or to check the authenticity of documents connected to a licence application. The Interdepartmental Commission and Interministerial Council may require an exporter to include a contractual provision for the physical inspection of the delivery by Bulgarian authorities after shipment, though in practice, as noted above, these inspections are rare.<sup>141</sup>

Training on enforcement of export controls has been conducted jointly across government agencies including the MOD, MOI, MOEE, MFA, Ministry of Security and the Agency of Nuclear Regulation (depending on the specific topic). According to the Director of Customs Intelligence, communication between customs officials and the Interdepartmental Commission and Interministerial Council is very good, both in formal and informal terms. Customs officers feel they can contact relevant ministries at any time of day to confirm the authenticity of a licence or to share information on shipments of ADGT.<sup>142</sup>

All licences and permits are forwarded to Customs officers so they can be checked at border points. Customs are authorised to perform on-site inspections at customs points or to make enquiries with other state bodies or foreign governments where necessary. Customs officers physically check almost 100% of all arms-related exports, identifying the goods and matching them to the licence. For dual-use goods customs officers will conduct a physical inspection if the transfer is irregular or a risk-assessment highlights any cause for concern.<sup>143</sup> Customs officials also have the right to physically inspect goods transiting or being transhipped through Bulgarian territory. According to the Customs Intelligence and Investigation Directorate, this process could be better managed with earlier notification of the movement of goods (at the EU level) before they are transited or transhipped through Bulgarian territory to allow more time to analyse the appropriate and necessary level of control for each shipment.<sup>144</sup>

Customs officials undertake initial training and further specialist training on transfer controls as required, including identification of dual-use items, WMD and SALW. Customs training includes joint training with the other government ministries and the secret services, at a national training facility. All customs officials have access to an intranet site which contains up-to-date information relevant to customs activities, which provides them with changes in legislation and regulations as well as information on dual-use equipment and technologies.<sup>145</sup> The US government has offered proactive support via its Export Control and Border Security (EXBS) training programme for customs officers.<sup>146</sup>

The Customs Agency has also developed and implemented an Automated Risk Analysis and Management package, which is part of the Enforcement Module of Bulgaria's Integrated Customs Information System (BICIS) linking all inland and border crossing customs offices. This module links a number of risk factors and advises customs officers on particular steps that should be taken to prevent smuggling activities and customs fraud. Over 500 customs officers had undergone training by the end of 2005 on the use of this module.<sup>147</sup>

However, in terms of enforcement, the EC Monitoring Report for 2006 states that there is still a lack of border police officers to carry out checks at certain border crossing points.

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<sup>140</sup> Law on Export Control, Article 71.1; & Regulations on the Implementation of the *Law on Control of the Foreign Trade in Arms and Dual-Use Goods and Technologies*, Additional Provisions, Article 79

<sup>141</sup> Law on Export Control, Article 71.6

<sup>142</sup> *Op cit*, interview: Mr Roumen Danev

<sup>143</sup> *Ibid*

<sup>144</sup> *Ibid*

<sup>145</sup> *Ibid*

<sup>146</sup> There is some anecdotal evidence of success – in the last two years Bulgarian border officials have reportedly stopped two separate shipments of radioactive material going from the UK to Iran via Bulgaria. *Outcry as border guards seize British 'dirty bomb' lorry heading for Iran*, the Mail on Sunday, 22 July 2006; & Saferworld interview with a representative of the US Embassy, Sofia. 29 November 2006

<sup>147</sup> Dragomir Markov, National Customs Agency, Presentation at the "Training seminar: Customs Control of Shipments of Dual-Use Goods and Technologies in the Western Balkans", Sofia 4-7 October 2005, <<http://www.csd.bg/en/euro/fileSrc.php?id=1430>>

Additionally, even if an operational risk analysis capacity generally exists, improvements at local level are still required.<sup>148</sup>

Another potential problem is corruption within the government agencies tasked with running Bulgaria's transfer control system. Studies by a range of national and international organisations indicate that corruption remains widespread among government agencies. For example, a recent EU report highlights widespread corruption as an area of 'serious concern'.<sup>149</sup> The 2006 EC Monitoring report states that while some progress has been made in fighting corruption including the introduction of new constitutional and legislative changes as well as the introduction of a new anti-corruption committee, these changes now need to produce results. The report also notes that overall administrative capacity needs to be further enhanced, as track records remain poor and the implementation of the new anti-corruption strategy and action plan needs to be monitored closely.<sup>150</sup>

## 16. Penalties and sanctions

The Law on Export Control presents the scope of penalties and sanctions in a precise manner, distinguishing between:

- 'physical and legal persons who trade, transport, carry out brokerage activities in arms without the necessary licence, registration, or permit'
- 'physical and legal persons that carry out activities in violation of the limitations and conditions of their licence, registration, or permit'
- 'physical and legal persons that do not adhere to the range of duties and responsibilities outlined in Art.69 – 70 (regarding the in-house company regulations related to the ADGT trade, trade contracts, and co-operation with regulatory authorities).

The fines range between BGN 2000 – 200,000 (EUR 1000 - 100,000).<sup>151</sup>

The illegal trade in ADGT is also sanctioned by the Penal Code. Article 233 penalises the illegal trade in dual-use goods and technologies with up to eight years imprisonment or a one million Leva (EUR 500,000) fine. Article 337 penalises illegal trade, production and transfer of explosives, arms, and ammunition with up to six years imprisonment (two to eight years for civil servants). Article 339 penalises the illegal acquisition and ownership of explosives, arms and ammunition.

The research team was unable to find information about the number of successful prosecutions per year or the status of any prosecutions ongoing.

## 17. Interaction with industry

As a result of the legacy of state ownership of the ADGT sector, interaction between government and industry in Bulgaria is complex. On one hand, several major ADGT traders and producers are still state-owned. On the other hand, there are no formal legal requirements that mandate communication between the authorities and industry representatives, whether privatised or state-owned. At present there are no official programmes to facilitate such contacts in a systematic way. Ad-hoc seminars for industry are carried out two or three times per year by the Government, where control mechanisms, legislation, and international practices are discussed. The Interministerial Council discusses the export control process with

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<sup>148</sup> Commission of the European Communities, *Bulgaria: May 2006 Monitoring Report, Commission Staff Working Document*, Brussels, 16 May 2006, pp. 8-9. Available at, <[http://ec.europa.eu/enlargement/pdf/key\\_documents/2006/monitoring\\_report\\_bg\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2006/monitoring_report_bg_en.pdf)>

<sup>149</sup> *Bulgaria: 2005 Comprehensive Monitoring Report*, Brussels, 25 October 2005, pp. 11-12. Available at, <[http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2005/sec1352\\_cmr\\_master\\_bg\\_college\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2005/sec1352_cmr_master_bg_college_en.pdf)>

<sup>150</sup> Commission of the European Communities, *Bulgaria: May 2006 Monitoring Report, Commission Staff Working Document*, Brussels, 16 May 2006, pp. 8-9. Available at, <[http://ec.europa.eu/enlargement/pdf/key\\_documents/2006/monitoring\\_report\\_bg\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2006/monitoring_report_bg_en.pdf)>

<sup>151</sup> Law on Export Control, Articles 76 – 81

individuals and companies when they apply for a general trading licence and highlights changes when existing licensed traders and producers apply for licence renewals.<sup>152</sup> Industry has repeatedly requested to be kept up-to-date via email or other means of communication on legislative amendments, in particular on changes to the control lists and to the list of countries and organisations towards which the Republic of Bulgaria applies prohibitions or restrictions.<sup>153</sup> The relevant authorities already hold the contact details of all licensed ADGT producers and traders and it therefore does not seem unreasonable to expect them to inform industry of changes relevant to their trade. There are no restrictions on the movement of staff between industry and government, and in fact this is a disturbingly common practice.

The current export control system obliges defence manufacturers to keep a detailed register of all transactions that are subject to the Law on Export Control, retaining all the documentation for a period of ten years.<sup>154</sup> Companies are obliged to report all changes related to their own status and any changes to a particular transaction to the authorities.

## 18. Conclusion

Bulgaria can no longer be considered a major ADGT exporter, with the bulk of Bulgarian exports consisting mainly of SALW and their ammunition, which, while relatively cheap, can prove immensely damaging in the wrong hands. Given Bulgaria's recent history in this field, it is essential that despite the relatively small economic value of Bulgarian exports, licensing of transfers is conducted in a responsible, rigorous and transparent manner.

In the last ten years Bulgaria has come a long way. From international condemnation for its involvement in supplying arms to conflict zones and human rights abusers, to an accepted and valued partner in NATO and the EU, the rapid pace of legislative change should not be underestimated. However, this progress has been primarily the result of external pressure from the US, NATO and the EU, rather than domestic pressure from government, parliamentarians and civil society. The export control culture in Bulgaria remains one of secrecy, state-industry complicity and the promotion of narrow national interests over international obligations. As a new EU member it is incumbent on the Bulgarian government to respect its regional and international obligations with regards to ADGT transfers. Parliament and civil society must demand genuine independent scrutiny and oversight as a cornerstone of democratic accountability.

These goals should not be mutually exclusive. Bulgaria can and should play a progressive and provocative role as a new Member State of the EU, challenging other Member States to live up to, explain and implement the standards they have set for ADGT transfers. Bulgaria should also use its EU status to encourage and facilitate the improvement of transfer control systems in the European neighbourhood.

The table on the following pages provides a summarised assessment of Bulgaria's present compliance, or ability to comply with, EU standards.

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<sup>152</sup> *Op cit*, interview: General Ivan Dochev

<sup>153</sup> *Op cit*, interview: Mr Borislav Georgiev

<sup>154</sup> Law on Export Control, Article 69.2

**Table 3. Summary of national arms transfer standards versus EU obligations and practice**

EU STANDARD	LEGAL OR POLITICAL BASIS	NATIONAL COMPLIANCE	LEGISLATIVE, REGULATORY OR POLITICAL REFERENCE
Criteria-based licensing system (eight criteria)	EU Code Draft EU Common Position Defining Common Rules Governing the Control of Exports of Military Technology and Equipment (Draft Common Position)	Yes	Decree No. 91/2001 'List of states and organizations towards which the Republic of Bulgaria applies embargoes or restrictions for sale or delivery of arms and related equipment', amended November 2005 by Decree No. 244 whereby a new Article 5 was added to include reference to the EU Code.
Military control list	Common Military List of the European Union	Yes, the list was adopted in 1998 and complies in terms and content with the Wassenaar Arrangement Munitions List and the EU List of Dual-Use Goods and Technologies.	Decree No. 59/2006 which includes the Dual-Use List (Annex I) of Council Regulation No. 394/2006 and the Common Military List of EU (2005/C 127/01) including the amendments of the ML adopted by the 2005 WA Plenary Session.
Controls on dual-use goods (including control list and catch-all clauses)	EU Dual-Use Regulation	Customary use of Wassenaar List – application of catch-all clause on dual-use goods and technologies.	SG 11/2007 Law on Export Control of Arms and Dual-Use Goods and Technologies
Control of arms brokers	EU Common Position on Arms Brokering	"Intermediaries" required to obtain a licence to trade from the Interministerial Council, includes brokering activities as well as transportation, finance, forwarding and consultation.	SG 11/2007 Law on Export Control of Arms and Dual-Use Goods and Technologies
Controls on intangible transfers	Draft Common Position	Yes - in the current law there is a definition of terms "technology" and "export" which include intangible transfers. The new Draft Law has a definition of intangible transfers which is in compliance with EU legislation.	SG 11/2007 Law on Export Control of Arms and Dual-Use Goods and Technologies

EU STANDARD	LEGAL OR POLITICAL BASIS	NATIONAL COMPLIANCE	LEGISLATIVE, REGULATORY OR POLITICAL REFERENCE
Controls on transit and/or transshipment	Draft Common Position	Licence required for all transits. Inspections of transiting arms and dual-use goods shipments by Customs (only as part of standard inspection practices for all goods)	SG 102/95 Regulation on Implementation of the Law on Control of the Foreign Trade in Arms and Dual-Use Goods and Technologies [due to be replaced by Regulation on Implementation of Law on Export Control of Arms and Dual-Use Goods and Technologies]
Control of export of production capacity (including, for example, licensed production)	Draft Common Position	Weak – state may control exports in arms and dual-use goods if they are intended or may be used for production of WMD (no mention of production capacity or licensed production).	SG 11/2007 Law on Export Control of Arms and Dual-Use Goods and Technologies
End-use controls and certification requirements (including controls on re-transfers)	Draft Common Position EU User's Guide	End-use certification and/or International Import Certificate, and delivery verification certificate are required. Exporters required to include re-transfer clause in all contracts and may be required to include a provision for physical inspection of the delivery by Bulgarian authorities.	SG 11/2007 Law on Export Control of Arms and Dual-Use Goods and Technologies  SG 115/2002 Regulation on the Implementation of the Law on Control of the Foreign Trade in Arms and Dual-Use Goods and Technologies [due to be replaced by Regulation on Implementation of Law on Export Control of Arms and Dual-Use Goods and Technologies]

EU STANDARD	LEGAL OR POLITICAL BASIS	NATIONAL COMPLIANCE	LEGISLATIVE, REGULATORY OR POLITICAL REFERENCE
Power to revoke transfer licences	Best practice	Individual permits can be revoked by the Interdepartmental Commission, and trading licences can also be revoked by the Interministerial Council.	SG 11/2007 Law on Export Control of Arms and Dual-Use Goods and Technologies  SG 115/2002 Regulation on the Implementation of the Law on Control of the Foreign Trade in Arms and Dual-Use Goods and Technologies [due to be replaced by Regulation on Implementation of Law on Export Control of Arms and Dual-Use Goods and Technologies]
Registration of actors (e.g. manufacturers, traders, shippers)	Best practice EU Common Position on Arms Brokering (recommended)	Intermediaries need to be registered.	SG 11/2007 Law on Export Control of Arms and Dual-Use Goods and Technologies
Legal penalties and sanctions	Best practice EU Common Position on Arms Brokering	Sanctions for individual law-breakers but not for legal entities; only non-custodial tariffs	Penal Code, Chapter 6 "Offence Against the Economy", Chapter 11 "Generally Dangerous Crime", Chapter 13 "Military Offences", Chapter 14 "Outrage on Peace and Humanity"
Inter-departmental consultation	Best practice	Close consultations between the members of the Interministerial Council and the Interdepartmental Commission for both trading licences and permits. Each agency is made up of relevant ministries, and decisions are taken on a consensus basis (due to change to a qualified majority if the new Draft Law is adopted without amendment in January 2007)	SG 11/2007 Law on Export Control of Arms and Dual-Use Goods and Technologies  SG 115/2002 Regulation on the Implementation of the Law on Control of the Foreign Trade in Arms and Dual-Use Goods and Technologies [due to be replaced by Regulation on Implementation of Law on Export Control of Arms and Dual-Use Goods and Technologies]

EU STANDARD	LEGAL OR POLITICAL BASIS	NATIONAL COMPLIANCE	LEGISLATIVE, REGULATORY OR POLITICAL REFERENCE
Information-exchange with other governments (including circulation of licensing denials among EU member states and subsequent consultations)	EU Code, Draft Common Position Best practice	Regular reporting to UN Register on Conventional Arms, the Wassenaar Arrangement and the OSCE on SALW transfers.  Party to EU denial notification and consultation mechanism as an 'active observer'	See Table 1 above N/A
Industry outreach	Best practice	There is no formal legal requirement to conduct outreach with industry, however ad hoc seminars have been carried out annually, and industry does have good informal lines of communication with the relevant ministries.  All updated legislation or regulations can be located by industry in the State Gazette.	None State Gazette
Parliamentary accountability	Best practice	Not legally required (though parliamentarians may in principle question government officials both orally and in writing)	None
Regular production and publication of national report	Draft Common Position	Yes, in February 2007 the MOEE published its first ever annual report covering imports and exports of ADGT for the year 2005.	SG 11/2007, Law on Export Control of Arms and Dual-Use Goods and Technologies

## 19. Recommendations

### To the government of Bulgaria

- ❑ Continue to improve policy and practice on licensing ADGT transfers, using accession to the EU as a spur to bring the Bulgarian transfer control system into complete compliance with EU obligations and norms as a minimum, and wherever possible up to the standards of EU and /or international best practice;
- ❑ The Bulgarian regulatory framework should be reviewed to ensure that:
  - The *Law on Export Control of Arms and Dual Use Goods and Technologies*, is amended to include:
    - enumeration of the EU Code criteria and an obligation for all government agencies involved in transfer licence decisions to consider licence applications against them in a consensus-based process
    - extraterritorial coverage of ADGT brokers so that a Bulgarian citizen resident or acting outside Bulgarian territory would still need to register and apply for a licence if brokering controlled goods
    - the full range of brokering activities, including the financing, insurance, transportation, facilitation or expedition of transfers
    - controls on licensed production agreements, placing clear and binding contractual obligations on production ceilings and permitted export markets. Production or export over and above terms specified in the original licensed production agreement should require an additional licence
    - severely punitive penalties to discourage breaches of Bulgaria's national transfer control system
    - the explicit power to revoke licences for ADGT transfers (including spare parts and servicing) if conditions in the country of end use change or the end user is in breach of the conditions of the original licence
- ❑ In addition to the above, the Government of Bulgaria should look to:
  - institutionalise understanding of the EU Code by developing a comprehensive training programme on transfer controls for officials from all relevant branches of government, including licensing and enforcement ministries, as well as staff in Bulgarian missions abroad. This training programme must address *inter alia* the licence assessment process, with particular and in-depth reference to the EU Code criteria
  - separate ownership of defence and dual-use goods manufacturers and traders from those ministries and/or individuals who regulate the licensing regime. It is essential for any transparent and accountable exporting regime to have in place separate checks and balances over commercial and public interest, including a system of declaration of interest and refusal
  - ensure that the Tracker system is functional at the earliest possible opportunity
  - create or enhance mechanisms to exchange information with foreign states on the activities of Bulgarian brokers

- ensure proper mechanisms are in place to verify international import certificates, end-use certificates, delivery control certificates, and to monitor end use; and
  - step up industry outreach in 2007 to ensure that industry is kept informed of any regulatory changes to the control system following EU accession, including:
    - changes to the EU Common Military List and the EU list of Dual-use Goods and Technologies
    - changes to the list of restricted countries and organisations towards which Bulgaria applies prohibitions or restrictions on the sale and supply of ADGT
- ☐ Bulgaria should undertake the following commitments to significantly improve transparency and oversight:
- Publish timely and comprehensive national reports on transfers of ADGT in line with their commitments under the Law on Export Controls. These reports should reflect best practice across the EU by providing data on:
    - re-exports, transit and transshipment;
    - intended end use and end user(s) of the transfer;
    - investigations and prosecutions related to the national control system;
    - national transfer control policy, national legislation, the licensing authority and relevant international and regional agreements; and
    - number of denials including the proposed country/end-use(r), a description of the goods and reason for the denial.
  - Ensure consistent and timely provision of information to related international mechanisms and fora, including reporting to the UN Register of Conventional Arms and national reports to the UNDDA on implementation of the UNPoA;
  - Work with Parliament to develop a procedure for parliamentary scrutiny, drawing on best practice from EU member states. Any system should establish an institutional framework that would require responsible ministers and officials to answer relevant questions from a parliamentary body (for example an appropriate Parliamentary Select Committee), which would publish its own review of government policy and practice. Consideration should be given to establishing a process for pre-licensing information provision to, and consultation with, an appropriate parliamentary body—though decision-making powers would continue to rest solely in the hands of Government (Parliament’s role would be advisory only).
- ☐ Support the development of independent civil society oversight of the national control system and encourage parliament to consult regularly with civil society on policy and practice in this area.
- ☐ In terms of border management, the Government should:
- in conjunction with its European partners, undertake a comprehensive risk analysis of likely ADGT trafficking following accession to the EU and ensure that intelligence and risk analysis is used to inform anti-trafficking programmes;

- maintain close co-operation on anti-trafficking issues with its neighbours and other EU member states;
- continue to provide adequate financing, manpower and equipment to border management;
- ensure comprehensive training for all customs staff to ensure the uniform application of customs procedures and to inform them in a timely manner of any changes to ADGT regulations;
- develop procedures for identifying and improving the capacity of customs staff to identify dual-use goods;
- boost commitment to fighting corruption within the customs administration

### **To the international community**

- ❑ Countries with developed transfer control regimes and, in particular, with relatively sophisticated procedures for parliamentary oversight should encourage information exchange between Bulgarian parliamentarians and their counterparts from other states who have experience in this area;
- ❑ Provide support to Bulgarian civil society so as to build indigenous capacity to analyse and monitor Bulgaria's policy and practice in this area;
- ❑ Provide any necessary assistance to Bulgaria in verifying international import certificates, end-use certificates and delivery control certificates, as well as in monitoring the end use of ADGT transfers;
- ❑ Increase measures to exchange information with Bulgaria on the activities of Bulgarian brokers;
- ❑ Provide any necessary support to ensure that Bulgaria's present and future surpluses are properly destroyed;
- ❑ The EU in particular should:
  - assist the Bulgarian authorities to prioritise improvements to its licensing system to ensure that Bulgaria is capable of implementing its EU commitments and bringing its transfer control system up to EU best practice. On the basis of these agreed priorities, provide appropriate financial and technical assistance;
  - in conjunction with Bulgaria, undertake a comprehensive risk analysis of likely ADGT trafficking following Bulgaria's accession to the EU. On the basis of this analysis develop a comprehensive anti-trafficking programme and provide appropriate financial and technical assistance;
  - support Bulgaria in ongoing initiatives to combat corruption in the customs administration.