



Romania's arms transfer control system at EU accession: an analysis

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Acronyms

ADGT	arms and dual-use goods and technologies
ANCESIAC	National Agency for the Control of Strategic Exports and the Prohibition of Chemical Weapons (national control agency prior to September 2003)
ANCEX	Romanian National Agency on Export Controls
BAFA	German Federal Office of Economics and Export Control
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	<i>Corespondance Européenne</i>
DTI	Department for Trade and Industry (UK)
EC	European Commission
EU	European Union
EURISC	European Institute for Risk, Security and Communication Management
IISS	International Institute for Strategic Studies
MAI	Ministry of Administration and Interior
MEC	Ministry of Economy and Commerce
MFA	Ministry for Foreign Affairs
ML	Military List
MND	Ministry of National Defence
NATO	North Atlantic Treaty Organisation
NGO	non-governmental organisation
NISAT	Norwegian Initiative on Small Arms Transfers
OCSPS	Central Office of State for Special Issues
OSCE	Organisation for Security and Co-operation in Europe
RACVIAC	Regional Arms Control Verification and Implementation Assistance Centre
RBP	Romanian Border Police
SALW	small arms and light weapons
SECI	Southeast European Cooperative Initiative
SEESAC	South Eastern and Eastern European Clearinghouse for Small Arms and Light Weapons
UN PoA	United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects
UN	United Nations
UNDDA	United Nations Department of Disarmament Affairs
UNITA	<i>União Nacional para a Independência Total de Angola</i> (National Union for the Total Independence of Angola)
US	United States
WA	Wassenaar Arrangement
WMD	weapons of mass destruction

Executive summary

Since the end of the Cold War, Romania's policy on transfer controls for arms and dual-use goods and technologies (ADGT) has undergone substantial revision, from one focused on maintaining the national military-industrial base and maximising exports regardless of their consequences, to one more in line with international best practice in this field. In preparation for accession to the European Union (EU) on 01 January 2007, Romania adopted new laws and regulations to bring it into line with EU standards on ADGT transfer controls.

Overall, however, while relevant Romanian officials displayed good knowledge of the EU Code and accepted its importance for stringent arms export controls, it is unclear whether the EU Code has been consistently applied in decision-making on individual transfer applications in 2005 and 2006 due to the absence of publicly available information for this period. In light of the poor transparency on transfers in 2005 and 2006, concerns remain over the practical implementation of policy in licensing decisions and consequently full compliance with EU standards. While Romanian legislation is sound, it should be further improved to bring it into line with EU and international best practice. Principally, this would involve changing the decision-making process for licensing transfers. At present, the system is potentially open to inappropriate political pressure and does not set the consensus-based decision-making process on a legislative footing.

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. In recognition of this, the Romanian Government in late 2006 made a commendable commitment to improve transparency through the publication of annual and quarterly reports from the beginning of 2007. However, it remains to be seen whether Romania will be able to produce comprehensive regular reports in a timely manner, as past commitments to do so have not been realised.

Encouraging steps have been taken by Romania to bring its national policy and legislation into line with EU standards. A relatively high level of capacity to enforce legislation, substantial industry outreach to encourage compliance and moves to improve transparency have complemented these steps. As a new EU member it is incumbent on the Romanian 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. Romania 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. Moreover, Romania should also use its EU status to encourage and facilitate the improvement of transfer control systems in the European neighbourhood.

Principal recommendations To the Government of Romania

- ❑ Continue to improve policy and practice on licensing ADGT transfers, using accession to the EU as a spur to bringing the Romanian transfer control system into complete compliance with EU obligations and norms, and wherever possible up to the standards of EU and/or international best practice;
- ❑ Specifically, the Romanian regulatory framework should be reviewed to ensure that:
 - The EU Code criteria are set out in law;
 - Legislation relevant to the control regime for dual-use goods and technologies clearly states that the EU Code is applicable not only for direct transfers to the military and

security services, but also transfers to the producers and manufacturers of goods for use by the military and internal security services;

- Relevant legislation on both military goods and dual-use goods and technologies includes a comprehensive and consistent definition of both transit and transshipment;
 - Decisions on issuing licences/permits for all types of transfers, including transit, transshipment and non-commercial activities, are made on the basis of consensus within the respective inter-ministerial councils.
 - Legislation clearly states that the Romanian authorities have the power to revoke licences and permits for ADGT transfers, including for spare parts and servicing, in the event of changes in the conditions in the country of end use following the initial licensing decision;
 - New stipulations are introduced to specifically regulate the transfer of production capacity, eg through licensed production by Romanian companies or persons;
 - All foreign nationals and incorporated companies must be registered for brokering activities by their relevant national licensing authority, if applicable. If they are not required to register by their relevant national licensing authority they should be required to register with the Romanian authorities;
 - A valid international import certificate, or equivalent document, should be required for all applications to acquire an individual export licence for transfers of dual-use goods and technologies;
 - Legislative mechanisms and sufficient capacity exist to allow for end-use monitoring of ADGT transfers;
 - Penalties and sanctions are sufficiently punitive to discourage breaches of Romania's national transfer control system; and
 - The updated EU Common Military List is incorporated into Romanian law at the earliest possible opportunity.
- ❑ Romania should make all efforts necessary to implement its commitment to publishing comprehensive and regular reports on both a quarterly and annual basis.
- ❑ In addition, the Government should undertake the following commitments to improve transparency and oversight:
- 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 (eg an appropriate committee), which would publish its own review of government policy and practice. Consideration should be given to establishing a process for the provision of pre-licensing information 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); 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.
- ❑ In addition to the above, the Government of Romania should look to:
- Ensure that present and future surplus weaponry is properly destroyed, in accordance with Romania's political commitments;
 - 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 Romanian missions abroad. This training programme must address *inter alia* the licence assessment process, with particular and in-depth reference to the EU Code criteria; and

- Step up industry outreach in 2007 to ensure that industry is properly informed of the regulatory changes to the control system entailed by EU accession.

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 Romanian parliamentarians and their counterparts from other states who have experience in this area; and
 - Provide support to Romanian civil society so as to build indigenous capacity to analyse and monitor Romania's policy and practice in this area.
- The EU in particular should:
 - Assist the Romanian authorities in developing a set of prioritised requirements for any necessary improvements to the licensing system, so as to ensure that Romania is capable of implementing its EU commitments and bringing its transfer control system in line with EU best practice. On the basis of these agreed priorities, provide appropriate financial and technical assistance;
 - In conjunction with Romania, undertake a comprehensive risk analysis of likely ADGT trafficking now Romania has acceded to the EU. On the basis of this analysis develop a comprehensive anti-trafficking programme and provide appropriate financial and technical assistance; and
 - Provide support to Romania to ensure proper implementation of the EU Code's criteria. In particular, provide additional support with regard to assessments under criterion 8, which relates to the impact of arms procurement on the sustainable development of the recipient.

1 Introduction

Since the end of the Cold War, Romania's policy on transfer controls for arms and dual-use goods and technologies (ADGT) has undergone substantial revision, from one focused on maintaining the national military-industrial base and maximising exports regardless of their consequences, to one more in line with international best practice in the field. In particular, and in preparation for its accession to the European Union (EU) on 01 January 2007, Romania has adopted new laws and regulations to bring it into line with EU standards on ADGT transfer controls and has given state institutions clear mandates in line with its EU commitments. Most importantly, the EU Code of Conduct on Arms Exports (EU Code) now appears to be well understood and generally accepted by the relevant Romanian officials. As a result of these legislative and attitudinal changes, Romanian practice on licensing exports has improved from a low point in the 1990s, when Romanian arms reached a range of sensitive destinations, including Rwanda, the forces of the National Union for the Total Independence of Angola (UNITA)¹ and the Democratic Republic of Congo.

Although the Romanian arms industry has reduced significantly since the 1980s, it retains the capacity to produce and export a range of armaments, particularly small arms and light weapons (SALW). Romania exported military equipment worth more than US\$43 million in 2002 (approximately 50% of which comprised SALW), US\$69 million in 2003 (approximately 45%, SALW), and US\$41.5 million in 2004 (approximately 48%, SALW).² Although the relative value of Romanian exports is small when compared with major exporting nations, SALW and their ammunition, while relatively cheap, can still prove immensely damaging in the wrong

¹ *Unión Nacional para a Independência Total de Angola*.

² Romanian military list categories ML1, ML2 and ML3. ML2 could include non-SALW items. ANCEX, *Romanian Report on Arms Export Controls 2002, 2005*, available at, <http://www.ancex.ro/site_rom/raport_arme.htm>, accessed 30 October 2006. Previews of national arms export reports for 2003 and 2004.

hands. Given Romania's significant production/export potential,³ it is essential that the Romanian Government remains committed to stringent export controls and that the licensing of transfers is conducted in a responsible, rigorous and transparent manner.

Nevertheless, in 2004, the last year for which detailed information on transfers was available to the research team, a significant proportion of Romanian exports continued to reach sensitive destinations such as Eritrea, Ethiopia, Iraq, Israel and Pakistan, where there are serious concerns over human rights abuses and/or the potential for the exports to fuel conflict.⁴

There are indications that Romanian licensing decisions for ADGT exports and implementation of the EU Code's criteria may have improved in 2005 and 2006. The Romanian transfer control system has benefited from close co-operation with EU member states since June 2005, when Romania joined the EU as an 'active observer' thereby gaining access to the *Corespondance Européenne* (COREU) denial notification database and seats in the European Council Working Group on Conventional Arms (COARM), the Dual-Use Working Group, and the Co-ordination Group established by Article 18 of European Council Regulation 1334/2000 (Regulation 1334/2000). According to the Romanian Government, application of the EU Code resulted in the denial of one export in 2005 and eight exports in 2006.⁵ For example, it is claimed that Romania refused several applications to export military goods to Eritrea in this period on the basis that the proposed exports would breach criteria 3 and 4 of the EU Code. Similarly, a proposed export of ammunition to Iraq was denied for breaching criterion 7.

Overall, however, while relevant Romanian officials displayed good knowledge of the EU Code and accepted its importance for stringent arms export controls, the research team has been unable to substantiate whether the EU Code has been consistently applied in decision-making on individual transfer applications in 2005 and 2006 and hence overall compliance with EU standards, due to the absence of publicly available information on ADGT transfers licensed and denied for this period. In light of the poor transparency on transfers in 2005 and 2006, these decisions mean that concerns remain over the practical implementation of policy in licensing decisions and consequently full compliance with EU standards.

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. In recognition of this, the Romanian Government in late 2006 made a commendable commitment to improve transparency through the publication of annual and quarterly reports from the beginning of 2007.⁶ However, it remains to be seen whether Romania will be able to produce comprehensive regular reports in a timely manner, as past commitments to do so have not been realised.⁷

³ The creation of surplus weaponry by ongoing security sector reform in the county may represent a further source of potential arms transfers that needs to be adequately controlled. As part of its military reform, the number of Romania's military personnel should reduce to a peacetime strength of 75,000 military and 15,000 civilians by the end of 2007, from more than 300,000 (the present level of military personnel is 97,200. Military Balance 2005-2006, IISS). The Romanian Government maintains that destruction rather than sale is the national policy for disposing of surpluses held by the armed forces, police and other authorised bodies. However, as the last reported destruction took place in 2003 and no information is available on the size of present surpluses, doubts remain over the practical implementation of this commitment.

⁴ Previews of the 2003/2004 national arms export reports provided to the research team. The majority of exports to Israel comprised components, rather than complete weapons systems. The exports to Pakistan on the whole comprised helicopter components.

⁵ Romanian Government comments on draft report, January 2007.

⁶ Interview: Paul Pasnicu, Director, Conventional Arms Division, ANCEX, Bucharest, 27 October 2006.

⁷ At the time of writing, the last publicly available annual report for Romania covers the period 2002. Government officials have cited a lack of financial and human resources for the failure to produce timely and detailed annual reports in the intervening period. See for example: Interview with Paul Pasnicu, Director, Conventional Arms Division, ANCEX, 23 March 2005, quoted in *South Eastern Europe SALW Monitor 2005*, SEESAC, Belgrade, 2005, p. 137.

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 (eg non-governmental organisations and the media) to provide independent scrutiny is minimal. 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. The absence of domestic independent scrutiny and oversight has also meant that the research team was almost exclusively reliant on information provided by government sources for the present report and was generally not able to find independent sources of detailed information. This should be borne in mind while reading the study.

Aside from continued question marks over implementation of the EU Code, the Romanian control system could be strengthened in a number of ways. While Romanian legislation is sound, it should be further improved to bring it into line with EU requirements and/or international best practice. Principally, this would involve changing the decision-making process for licensing transfers. At present, the final decision on licensing transfers is made by the President of the Romanian National Agency on Export Controls (ANCEX) on the basis of advice by two inter-ministerial councils, one of which advises on transfers of military goods and the other on transfers of dual-use goods and technology. The importance of the President of ANCEX during the licensing process is of concern because it diminishes the reliance on inter-agency co-operation and information exchange. Also, as the President of ANCEX is appointed directly by the Prime Minister, this decision-making process could allow for inappropriate political pressure on individual licensing decisions. Best practice within the EU and internationally is for transfer control legislation to stipulate that licensing decisions are made on the basis of consensus in an inter-ministerial council. However, it should be noted that, according to ANCEX, there have been no occasions when the President of ANCEX has authorised a licence that was previously objected to by members of one of the two inter-ministerial councils. If this is the case, placing the existing consensus-based practice on a legislative basis should not prove problematic for Romania.

The Romanian Government should also consider strengthening legislation so that all transfers are licensed in the same manner, regardless of the type of transfer in question (transits and transshipments of military goods are not presently considered within the relevant inter-ministerial council) or who the final recipient is (transfers of military goods to NATO military structures are presently exempt from the transfer regime). In addition, changes to Romanian legislation following accession to the EU have resulted in the control regime for dual-use goods becoming less stringent. Of particular concern is the absence of specific stipulations regulating the transit and transshipment of dual-use items. The Romanian Government should take all necessary steps to ensure that controls of dual-use goods and technology are as stringent as possible, while still conforming to EU norms and obligations. A number of other suggested legislative changes can be found in the recommendations at the end of this report.

Border management is a further area where improvements are needed to ensure implementation of Romania's control system. In particular, the ability of relevant Romanian institutions to properly protect the external EU borders that Romania has been tasked with managing from 01 January 2007 is far from certain. Significant steps have been taken in this regard, but more investment is needed in human, physical and financial resources for border controls. Corruption in the customs administration is also a residual problem that requires further action.

Romania should be commended for the progress that it has made in improving its national transfer control system since the 1990s. However, areas for improvement remain. Romania's accession to the EU on 01 January 2007 should consequently be used as a spur to bringing the Romanian transfer control system into complete compliance with EU obligations and norms, and wherever possible up to the standards of EU and/or international best practice. The

following report provides detailed analysis of present Romanian policy and practice on transfer controls. Recommendations to further improve the national transfer control system are provided at the end of the report in section 19.

2 International commitments and adherence

The Romanian Government has in recent years demonstrated greater commitment to effective transfer control management by aligning the country with a range of regional and international ADGT control initiatives (see table 1). Furthermore, Romania aligned itself to the EU statements on transfer controls at the United Nations (UN) Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (UN PoA)⁸ Preparatory Committee in January 2006 and the UN PoA Review Conference in June-July 2006. On 26 October 2006, the Government subsequently signalled its support for an international Arms Trade Treaty, which would commit governments worldwide to preventing the transfer of conventional weapons in those cases when the transferred goods could be used in human rights abuses or to fuel conflict, by co-sponsoring a UN First Committee Resolution to develop a draft treaty.⁹

Table 1: Romania's commitments to arms transfers or SALW Control agreements¹⁰

ARMS OR SALW CONTROL AGREEMENT	ROMANIA'S COMMITMENTS
Wassenaar Arrangement	April 1996
EU Code of Conduct on Arms Exports	July 1998
OSCE Document on SALW	November 2000
UN Programme of Action on SALW	July 2001
Stability Pact Regional Implementation Plan	November 2001
OSCE Decision on MANPADS	2003
EU Common Position on Arms Brokering	June 2003
OSCE Document on Stockpiles of Conventional Ammunition	December 2003
OSCE Decision on End-User Certificates	2004
OSCE Decision on Brokering	2004
UN Firearms Protocol	April 2004

3 Legislation and regulation

The legal basis for Romania's ADGT transfer control regime is now well developed, with both overarching primary legislation and a series of supplementary government decisions and agency orders, which set out procedures and practices for the application of that legislation. The following table outlines the main relevant primary legislation, as well as selected secondary legalisation in the field.¹¹

⁸ United Nations *Programme of Action to Prevent Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects*, available at, <<http://disarmament.un.org/cab/poa.html>>, accessed 15 December 2006.

⁹ UN First Committee Resolution, *Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms* (A/C. 1/61/L.55), which establishes a Group of Governmental Experts 'to examine the feasibility, scope and draft parameters for a comprehensive, legally binding instrument establishing common international standards for the import, export and transfer of conventional arms', available at, <http://www.controlarms.org/latest_news/Arms-Trade-Treaty-L55.pdf>, accessed 15 December 2006.

¹⁰ Romania is also a party to several conventions/initiatives aimed at combating the proliferation of weapons of mass destruction (WMD), such as the Biological Weapons Convention, the Chemical Weapons Convention, the Nuclear Non-Proliferation Treaty and the Australia Group.

¹¹ Other relevant secondary legislation includes the following ANCEX/ANCESIAC President Orders: 69/2004; 46/2004; 43/2004; 631/2003; 59/2005; 166/2003; 676/2003; 238/2006; 322/2006 324/2006; 275/2002.

Table 2: Summary of main Romanian legislation and regulations relevant to transfers of military and dual-use equipment

DATE	LEGAL REFERENCE	TITLE
19 October 1999	Government Ordinance No. 158/1999; Official Gazette No. 519, 26 October 1999	On the Control Regime of Exports, Imports and other Operations with Strategic Goods
28 August 2001	Government Decision No. 844/2001; Official Gazette No. 586, 19 September 2001	Concerning the List of Weapons, Ammunition and Other Military Products to be Regulated by the Import and Export Control Regime
12 February 2002	Order of the President of ANCESIAC No. 71/2002; Official Gazette No. 130, 19 February 2002	Regarding Application of the Control Regime Scheduled by Government Ordinance No. 158/1999 for Products not Contained in the List of Arms, Munitions and other Military Products
30 September 2003	Law No. 387/2003; Official Gazette No. 698, 06 October 2006	Concerning the Export Control Regime for Dual-Use Goods and Technologies
15 December 2004	Law No. 595/2004; Official Gazette No. 1239, 22 December 2004	For the Approval [with amendments] of Government Ordinance Number 158/1999 regarding the Export and Import Regime for Strategic Goods
21 December 2004	Government Decision No. 2429/2004; Official Gazette No. 18, 06 January 2005	Concerning the Organisation and Operation of the Council for Endorsing Licences for Operations with Dual-Use Goods and Technologies
21 March 2005	Law No. 62/2005; Official Gazette No. 258, 29 March 2005	Concerning adoption by Romania of the documents representing Common Positions adopted within the framework of the Common Foreign and Security Policy of the European Union
25 August 2005	Government Decision No. 983/2005; Official Gazette No. 835, 15 September 2005	For Approving the List of Dual-Use Goods and Technologies to be Regulated by the Control Regime for Import and Export (operable from 01 October inclusive)
21 December 2006	Government Ordinance No. 129/2006; Official Gazette No. 1045, 29 December 2006	Concerning the Export Control Regime for Dual-Use Goods and Technologies

Relevant Romanian legislation is on the whole in line with EU norms and standards. Key legislation regulating transfers of military goods are Government Ordinance No. 158/1999, *On the Control Regime of Exports, Imports and Other Operations with Strategic Goods*, and Law 595/2004, *For the Approval [with amendments] of Government Ordinance Number 158/1999 regarding the Export and Import Regime for Strategic Goods*.¹² Government Ordinance 158/1999 states that the import and export control regime 'must be accomplished in compliance with' the principles and criteria of the EU Code and includes stipulations covering the majority of EU standards.¹³ However, this law still falls short of EU standards in a number of areas (see below). Transfers of civilian weapons within the EU area are regulated by Law No. 295/2004, *On the Firearms and Ammunitions Regime*, which introduces the provisions of European Commission (EC) Directive No. 91/477/ECC, including provisions for a European passport for the carrying of arms and requiring authorisation from the Ministry of Administration and Interior (MAI) to transport arms and explosives within the EU.¹⁴

¹² All references in this analysis, inclusive of amendments made by Law 595/2004, are to Gov. Ord. 158/1999. Previous to the adoption of Law 387/2003 Gov. Ord. 158/1999 also regulated the transfer of dual-use goods and technologies.

¹³ Art. 8, Law 158/1999.

¹⁴ Official Correspondence from the Explosives and Toxic Substances Directorate, Ministry of Administration and Interior, 03 January 2007. EC Directive 91/477/EEC can be found at <http://ec.europa.eu/enterprise/regulation/inst_sp/dir91477_en.htm>, accessed 04 January 2007.

Previous to Romania's accession to the EU on 01 January 2007, Law 387/2003, *Concerning the Export Control Regime for Dual-Use Goods and Technologies*, laid out the transfer control regime for dual-use goods and technologies. Law 387/2003 contained provisions taken from Regulation 1334/2000 and EU Common Position 401/2000. However, as indicted by an EC peer review in March 2005, further legislative changes were needed to ensure compliance with EU provisions on dual-use goods controls.¹⁵ To this end, Government Ordinance 129/2006, *Concerning the Export Control Regime for Dual-Use Goods and Technologies*, came into force on 01 January 2007. While the new regulation is more in line with EU norms and standards, it does not make specific reference to those cases when the EU Code should be applied during licensing decisions for dual-use goods and technologies, and also suffers from a number of other problems (see below).

In addition to national legislation, related EU regulations, including Regulation 1334/2000, *setting up a Community regime for the control of exports of dual-use items and technology*, became law in Romania on 01 January 2007.

4 Production

During the Cold War, Romania developed a substantial arms industry that catered for the majority of Romania's domestic demand as well as a large export market. As a result, in the 1980s the country was ranked as the ninth largest arms exporter in the world, with average exports of around US\$600 million,¹⁶ and an arms industry comprising more than 100 companies and a workforce of nearly 200,000.¹⁷ Romania's arms industry has since experienced a dramatic decline due to the loss of traditional markets and a reduction in state orders, following changes in the international political and security environment. By 2004, exports had reduced to US\$41.5 million and the workforce had fallen below 35,000.¹⁸

The core of Romania's arms industry is still state-owned with the two principal companies being RomArm¹⁹ and the trade company RomTehnica. However, the Government has encouraged limited privatisation and the creation of joint ventures with foreign partners.²⁰ In particular, the Romanian defence industry has strategically aligned itself with several partners in Western Europe, including Eurocopter, DaimlerChrysler and BAE Systems.²¹ In addition, outside of the EU, Romania has developed significant co-operative ventures with Turkish and Israeli companies. In 1998, Romania's RomTehnica won a US\$30 million one-year contract, ahead of Spanish and Israeli competitors, to supply bombs to the Turkish Air Force,²² while RomArm developed armoured personnel carriers with the Turkish company Nurol Machinery in 1999.²³ There is also evidence of co-operation between Israeli manufacturers, such as Elbit Systems Ltd and Israel Aircraft Industries, and the Romanian arms industry.²⁴ This has included upgrading Romanian Air Force aircraft, such as the training and light attack aircraft

¹⁵ In March 2005, the German Federal Office of Economics and Export Control (BAFA) and the UK's Department of Trade and Industry (DTI) conducted a peer review of Romania's transfer control system for dual-use goods for the European Commission. The result report included an analysis of Romanian policy and practice in the field as well as recommendations for ensure compliance with relevant EU norms and obligations.

¹⁶ Mariani B and Hirst C, *Arms Production, Exports and Decision-Making in Central and Eastern Europe*, Saferworld, June 2002, p. 142.

¹⁷ Kiss Y, *Small Arms and Light Weapons Production in Eastern, Central, and Southeast Europe*, Small Arms Survey, October 2004, p. 18.

¹⁸ Preview of national arms export report for 2004; *Op cit*, *South Eastern Europe SALW Monitor 2005*.

¹⁹ RomArm is the parent company of 15 producers and one R&D institute: S.C Arsenal Resita S.A; S.C Automecanica Moreni S.A; S.C I.C.P.S.P S.A; S.C Metrom S.A; S.C Electromecanica Ploiesti S.A; S.C.U.M. Sadu S.A; S.C Fabrica de Arme Cugir S.A; S.C U.M. Cugir S.A; S.C U.P.S. Dragomiresti S.A; S.C U.M. Mija S.A; S.C Carfil S.A; S.C U.M. Plopeni S.A; S.C Pirochim Victoria S.A; S.C UPS Fagaras S.A; S.C U.M. Tohan S.A; S.C U.M. Bucuresti S.A; Capseea Clinceni.

²⁰ *Op cit*, Mariani B and Hirst C.

²¹ Analysis conducted by an independent research foundation.

²² *Ibid*

²³ *Ibid*

²⁴ *Ibid*; Report by Czech news agency CTK 07.05.2001; See for example, 2004 slideshow on Romanian Aeronautical Industry, <http://web.rosa.ro/InfoDay_FP6_dec2004/IAROM.pdf>, accessed 05 December 2006.

IAR 99 SOIM, MIG-21 Lancer fighters, MIG-29 Sniper fighters and the IAR 330 Puma Helicopter.

While Romania maintains the capability to develop major weaponry, mainly through joint ventures with foreign partners, the country's main defence products are now in low-technology areas, with the majority of production comprising SALW. For example, according to RomArm, approximately 80 percent of its current production consists of SALW.²⁵ The importance of SALW for the national arms industry is also demonstrated by available information on exports of military goods. In 2002, approximately 50% of military exports consisted of SALW, while the figure is approximately 45% for 2003 and 48% for 2004.²⁶

Arms production is controlled by Law No. 295/2004, *On the Arms and Ammunition Regime*, Government Decision No. 130/2005, *On Approval of the Methodological Norms for the Implementation of Law No. 295/2004*, Government Decision No. 679/1997, *On the Approval of the Firearms and Ammunition Regulation*, and Law No. 131/1996, *On the Regime of State Monopoly*. According to this legislation, the Ministry of Economy and Commerce (MEC) is responsible for authorising arms production and for ensuring proper marking and registration of all production. Markings should indicate the country of origin, the producer, the category of arms, the year of manufacture and the number of weapons of that type manufactured in the same year.²⁷ Records of all arms manufacturers and arms manufactured in Romania must be kept in special registers, which are maintained by the General Inspectorate of the Romanian Police.²⁸ The manufacturer is obliged to keep a register of arms and ammunition produced for a period of ten years, after which time these records are archived by the Romanian Police.

Previously to 01 January 2007, Law 387/2003, *Concerning the Export Control Regime for Dual-Use Goods and Technologies*, required producers and brokers of dual-use items to register with ANCEX.²⁹ There does not appear to be any similar stipulations in Government Ordinance 129/2006.

No reference is made in the principal legislation to the control of licensed production. However, legislation does cover intangible transfers for both military goods and dual-use goods and technology.³⁰ In order to avoid confusion, the Romanian Government should consider revising relevant legislation to include specific stipulations covering licensed production.

5 Licensing of transfers

Licensing of ADGT transfers has not always corresponded with best international practice. Indeed, during the 1990s, significant arms exports from Romania reached sensitive destinations and end-users under embargo. According to Amnesty International, in 1997, the Rwandan army received 80 tonnes of armaments from Romania, including machine-guns and ammunition.³¹ A UN investigation in 2000 revealed that from 1996 to 1999, significant quantities of SALW and ammunition originating from Romania were diverted to UNITA forces in Angola, courtesy of false end-user certificates provided by the Governments of Togo and

²⁵ Interview: Serban Ianculescu, Export Department, RomArm, 25 October 2006.

²⁶ Romanian military list categories ML1, ML2 and ML3. ML2 could include non-SALW items. *Op cit*, *Romanian Report on Arms Export Controls 2002*; Previews of national arms export reports for 2003 and 2004.

²⁷ Art. 89, Law 295/2004. The markings themselves should consist of three alphanumeric groups (Art. 94, Gov. Dec. 130/2005). The first group consists of five capital letters; the first two indicate Romania as the country of production (RO); the remaining three indicate the manufacturer. The second group consists of a capital letter from A to D, corresponding to the category of arms production, as well as two figures identifying the arms characteristics. The third group consists of three figures; the first two indicate the manufacturing year (eg 04 for 2004); the remaining indicates the number of weapons established for the indicated category of weapon that year. *Report on Implementation of the United Nations Programme of Action to Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects*, 2005, available at, <<http://disarmament.un.org/cab/nationalreports/2005/Romania.pdf>>, accessed 25 October 2006.

²⁸ Art. 89 & Art. 90, Law 295/2004.

²⁹ Art. 8 (i) & Art. 10, Law 387/2003.

³⁰ Gov. Ord. 158/1999; Gov. Ord. 129/2006.

³¹ *Rwanda – The hidden violence: “disappearances” and killings continue*, Amnesty International, 23 June 1998, p. 10

Burkina Faso.³² Companies registered in third-countries played a crucial role in brokering these deals.³³ In addition, there have been reports that in May 2001 20,000 AK-47s were shipped from Romania to Uganda, from where they allegedly reached rebel forces in the Democratic Republic of Congo, although there has been no official confirmation of this transfer from Romanian Government officials.³⁴ These cases indicate that Romania's arms transfer control system has not in the past been able to prevent significant quantities of arms reaching areas suffering from human rights crises and conflict.

Since the Uganda deal, it would seem that Romanian licensing practice has improved in keeping with its rhetorical commitment to high control standards and the EU Code. Nevertheless, national arms export reports provided by ANCEX to the research team demonstrate that in the period 2002-2004 exports continued to be licensed to sensitive destinations, including Eritrea, Ethiopia, Iraq, Israel and Pakistan.

Recent arms transfers

According to information provided by ANCEX, Romania exported military goods worth more than US\$43 million in 2002, US\$69 million in 2003, and US\$41.5 million in 2004. No official information was available on exported dual-use goods and technologies or any ADGT imports during this period. As noted below, transparency on arms transfers into and from Romania from the end of 2004 is low and does not allow for detailed analysis of Romania's transfers during this period. However, from the limited information that is available on transfers since the end of 2004, it is clear that Romania is investing heavily in its own defence industry, through arms imports,³⁵ while also exporting significant amounts of arms.

Romania's main export destinations in 2004, the last year for which official Romanian information is available, were the US, the United Arab Emirates, Eritrea, Iraq, India, Israel and Afghanistan (see figure 1).

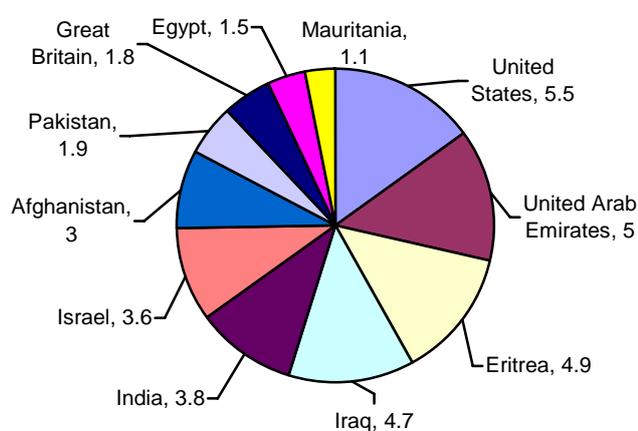


Figure 1: Exports of military goods by value (US\$ million) and destination, 2004³⁶

³² *Op cit*, Mariani B and Hirst C, p.152; *UN Final Report of the Monitoring Mechanism on Angola Sanctions*, S/2000/1225, 21 December 2000. The Romanian Government does not consider itself responsible for the diversion of these goods by the Governments of Togo and Burkina Faso. Romanian Government comments on draft report, January 2007.

³³ *Ibid*. Starco Investment and Trade, registered in Israel and East European Shipping Corporation, a firm based in the Bahamas and represented in Europe by Trade Investment International Limited, a UK-based company.

³⁴ 'Leftover arms fuel continent's ruinous wars - Cold War surplus wreaks havoc', Paul Salopek, *Chicago Tribune*, 23 December 2001; *Small Arms and Human Rights: The Need for Global Action – A Human Rights Watch Briefing Paper for the UN Biennial Meeting on Small Arms*, available at, <<http://www.hrw.org/backgrounder/arms/small-arms-070703-03.htm>>, accessed 25 October 2006.

³⁵ Some information on imports into Romania is available from international sources such as UN COMTRADE. The increase in imports for military restructuring is in part demonstrated by the fact that the Romanian defence budget actually increased from US\$1.34 billion in 2003 to US\$2.10 billion in 2005, while troop numbers have decreased. *The Military Balance 2005-2006*, IISS. It is of course not clear what percentage of the military budget in these years was used to import weaponry.

³⁶ Preview of national arms export report for 2004. Other destinations are (rounded to nearest US\$1,000): Algeria, 169; Australia, 47; Austria, 5; Bangladesh, 65; Belgium, 388; Brazil, 25; Bulgaria, 7; CHAD, 543; Czech Republic,

The principal types of military goods exported in 2004, according to the value of exports were: military aircrafts for training, inward processing for military aircrafts, aero-engines, spare parts and components for military aircrafts and helicopters (US\$16,54 million – ML10); ammunition and components for arms with a calibre less than 12.7mm (US\$10.5 – ML3); arms with a calibre less than 12.7mm (US\$9.7 – ML1); and military purpose ground vehicles and their components (US\$3.1 – ML6).

Several of the recipient countries of Romanian military goods in 2004 were countries where there are serious concerns about human rights abuses or where there exists real possibility for the exported goods to fuel conflict. As such, these exports raise questions under a number of the EU Code criteria. Of particular concern are the exports to Eritrea (weapons and ammunition; military list category ML1 and ML3), Ethiopia (spare parts for ground vehicles for military use; ML6), Iraq (weapons and ammunition; ML1 and ML3), Israel (a range of ammunition, equipment and components; ML3, ML4, ML5, ML6, ML10, ML11, ML15, ML17 and ML18) and Pakistan (ammunition and components for military aircraft; ML3 and ML10).

Licensing process for military goods

Government Ordinance No. 158/1999 and its amendments in Law 595/2004 establish a two-stage licensing system, whereby legal and physical entities are first authorised to trade in military goods. Individual transfers are then approved on a case-by-case basis either through a licence (for import, export or extra-territorial brokering activities) or permit (for transshipment, transit or non-commercial activities, such as the export of display goods for arms fairs).

ANCEX, a government agency subordinated to the Ministry of Foreign Affairs (MFA), is the principle licensing authority and is responsible for issuing authorisations to trade in military goods.³⁷ However, authorisations for economic agents subordinated to the national defence and security institutions are issued separately by the Ministry of National Defence (MND).³⁸ Authorisations indicate the type of transfer that the trader is permitted to engage in (eg import, export or brokering), as well as the categories of military goods that can be traded. Applications for an authorisation to trade in military goods must be issued or refused within 60 days of receipt of the application.³⁹ Authorisations are valid for one year from the date of issue and are therefore subject to review on an annual basis.⁴⁰

Once authorised to trade, traders can apply for one of two types of licences for the direct import or export of military goods – individual licences or global 'open individual' licences.⁴¹ An individual licence allows a specified Romanian legal entity to trade in a specified volume of a particular category of military goods with a single foreign partner. A global licence allows a specified Romanian legal entity to trade in an unrestricted volume of one or several categories of military goods with one or several named partners. Traders wishing to broker transfers may only apply for an individual licence.⁴² Present legislation does not indicate in which cases it is permissible to issue global rather than individual licences. While this is the case, according to ANCEX, the level of sensitivity of the goods to be traded and the history of the trader are also taken into consideration when issuing a global licence for military goods.⁴³ Legislation does also not seem to place any restrictions on the number of shipments that can be made under either a global or an individual licence.

787; Ethiopia, 123; France, 755; Germany, 321; Hungary, 1; Italy, 170; Jordan, 167; Morocco, 536; Turkey, 174; Turkmenistan, 121.

³⁷ The status and reporting structure of the agency were established by Art. 3, Law 387/2003 and updated in Art. 4 of Gov. Ord. 129/2006. Previously to Law 387/2003, the agency was called the National Agency for the Control of Strategic Exports and the Prohibition of Chemical Weapons (ANCESIAC).

³⁸ Art. 21 (b) & Art. 26 (1), Gov. Ord. 158/1999.

³⁹ Art. 12 (4), Gov. Ord. 158/1999.

⁴⁰ Art. 15 (1), Gov. Ord. 158/1999.

⁴¹ Art. 12, Gov. Ord. 158/1999.

⁴² Art. 12 (2), Gov. Ord. 158/1999.

⁴³ *Op cit*, interview: Paul Pasnicu.

All permits for transits and transshipments are issued on a case-by-case basis and there are no provisions for global permits for these types of transfers. All licences, as well as permits for non-commercial transfers, are valid for a maximum of one year. Transit and transshipment permits are valid for a maximum of 45 days.⁴⁴

ANCEX is responsible for conducting the initial assessment of each application, as well as verifying the legality and accuracy of relevant documentation, including international import certificates.⁴⁵ If the application is for a licence (for import, export or brokering activities) and if no problems are uncovered at this stage, ANCEX then submits the licence application to the Inter-Ministerial Council for Export Control for review.⁴⁶ The Council meets once a week to review licence applications and council members are provided with information on licence applications prior to the Council's sessions in order to allow for a thorough assessment.

The President of ANCEX, who also chairs the Council, approves or rejects each licence application on the basis of the Council's advice in the sessions.⁴⁷ However, decisions on whether to issue licenses do not have to be made on the basis of consensus within the Council, as the President of ANCEX has the final say on each licensing decision. As a result, the Council is ultimately an advisory rather than a decision-making body. Nevertheless, according to the MFA, each participant's point of view is taken into account and there have been no occasions when one of the Council members has objected to a proposed transfer that has subsequently been authorised.⁴⁸ In the case of permit applications (for transshipment, transit or non-commercial activities), the President of ANCEX can approve or reject a permit application without recourse to the Council.⁴⁹

The importance of the President of ANCEX during the licensing process is of concern, not only because it diminishes the reliance on inter-agency co-operation and information exchange, but also because the President of ANCEX is appointed directly by the Romanian Prime Minister.⁵⁰ This could allow the Prime Minister's office to unduly influence the decision-making process. It would therefore be better to require that decisions on issuing both licences and permits are made on the basis of consensus within the Council.

As well as the official licensing/permit process, there are also provisions allowing for pre-licensing enquiries (see section 12). A decision to issue or deny a licence (for import, export or extra-territorial brokering) as well as a permit for non-commercial transfers must be provided to each applicant within 30 days of the application, with the possibility of a 15-day extension.⁵¹ Applications for a transit or transshipment permit must be answered within five days of submission of the documents, with the possibility of a two-day extension 'under special circumstances'.⁵²

ANCEX has the discretion to suspend and revoke/cancel a licence or permit at any stage, if there has been a violation of transfer control regulations or if the original conditions on the license have changed (eg changes to the destination or recipient of the transfer, or the owner of the trading company).⁵³ A licence issued by ANCEX has only been suspended on one

⁴⁴ Art. 15 (2/3), Gov. Ord. 158/1999.

⁴⁵ Art. 21 (d/e), Gov. Ord. 158/1999.

⁴⁶ The Inter-Ministerial Council comprises representatives (holding the rank of Director) of the MFA (the Directorate for Non-proliferation, Arms Control and the Fight Against Terrorism), MND, MEC, MAI, the Romanian Intelligence Service, the Foreign Intelligence Service, the National Customs Authority, and ANCEX. Art. 23 (1), Gov. Ord. 158/1999.

⁴⁷ Art. 23 (4), Gov. Ord. 158/1999.

⁴⁸ Interview: Dan Neculaescu, Director, Non-Proliferation and Arms Control Department, MFA, Bucharest, 25 October 2006.

⁴⁹ Art. 21 (i) & Art. 24, Gov. Ord. 158/1999.

⁵⁰ The president of ANCEX is appointed by the Prime Minister at the proposal of the MFA (Gov. Dec. 920/2005), following negotiations among political parties. According to Romanian legislation, all state secretaries and undersecretaries, and heads and deputy heads of specialised agencies are appointed by a Decision of the Prime Minister, as published in the Official Gazette. Romanian Government comments on draft report, January 2006.

⁵¹ Art. 13 (5), Gov. Ord. 158/1999.

⁵² Art. 13 (6), Gov. Ord. 158/1999.

⁵³ Art. 21 (k) & Art. 14, Gov. Ord. 158/1999.

occasion, in 2002. Following investigations the licence was cancelled.⁵⁴ However, there is no provision in legislation for licences or permits to be revoked if conditions in the country of final destination change following the original licensing decision, so that one of the EU Code's criteria is breached (eg an outbreak of conflict or a worsening human rights situation). ANCEX maintains that, although not specifically mentioned in legislation, existing provisions do allow it to revoke licences/permits in such cases. However, in order to clarify the situation, the Government should consider amending legislation to include a concrete obligation for ANCEX to revoke licences/permits in the event of changes in the conditions in the country of end use.

It should be noted that in addition to the control regime outlined above, the Ministry MAI is responsible for authorising the transfer of weapons for civilian use, such as sports guns, hunting weapons and self-defence weapons.⁵⁵ As such, prior to issuing a licence for the transfers of weapons included in the Romanian military control list for civilian use, ANCEX checks whether the importer/exporter has the appropriate licence from the MAI.⁵⁶ The import and export of weapons that are not included in the Romanian military control list, such as smooth-bore hunting and sports weapons,⁵⁷ is not licensed by ANCEX according to the national control system. Instead, the transfer of such weapons is authorised directly by the MAI.⁵⁸ In practice, the MAI almost exclusively regulates import rather than export activity. For example, during 2005, the MAI licensed the import of 15,000 individual weapons for civilian use, while no weapons were authorised for export.⁵⁹

Licensing process for dual-use goods and technologies

Prior to Romania's accession to the EU on 01 January 2007, Law No. 387/2003 regulated transfers of dual-use goods and technologies. Similar to the licensing of military goods, Law No. 387/2003 established a two-stage licensing system, whereby legal and physical entities are first required to register with ANCEX before applying for a licence (for imports, exports and brokering) or permit (for transit, transshipment and non-commercial transfers) for individual transfers.⁶⁰ In addition to individual and global licences, dual-use goods traders could also apply for a general licence, which could be granted to all importers/exporters for the import/export of one or several categories of goods to one or more determined countries.

Following Romania's accession to the EU, European Council Regulation 1334/2000 has gained legal force in Romania. In addition, Government Ordinance 129/2006 updates national legislation in line with Romania's obligations under Regulation 1334/2000. The introduction of these two pieces of legislation has a number of important implications for Romania's control regime for dual-use goods and technologies. Romania no longer licences transfers to other EU member states of dual-use items listed in Annex I of Regulation 1334/2000. Romania will, however, continue to licence intra-community transfers of dual-use items listed in Annex IV to the regulation. In addition, Romania is obliged to licence transfers of dual-use items in Annex I to EU member states, if the end-user is outside the EU. Further, Romania no longer requires producers, manufacturers, traders and brokers to first register with ANCEX before applying for a licence for each transfer, as this is considered to be incompatible with the free movement of dual-use items within the single market. Only traders who wish to transfer goods under a general licences are presently required to first register with ANCEX.

⁵⁴ *Op cit*, interview: Paul Pasnicu.

⁵⁵ Official Correspondence from the Explosives and Toxic Substances Directorate, MAI, 03 January 2007.

⁵⁶ Romanian Government comments on draft report, January 2007.

⁵⁷ See category ML1, Gov. Dec. 844/2001.

⁵⁸ Telephone interview with Paul Pasnicu, Director, Conventional Arms Division, ANCEX, 10 January 2007.

⁵⁹ Interview: Representatives of the Firearms, Explosives and Toxic Substances Directorate, MAI, Bucharest, 26 October 2006.

⁶⁰ In contrast to Gov. Ord. 158/1999, Law 387/2003 used the language 'licence' throughout, although it distinguished between licences for transit/transshipment/non-commercial operations and other licences. For ease of understanding, this report will use the terms licence and permit to indicate this distinction.

Under the New Law, three different types of licences can now be issued for transfers of dual-use items included in Annex I and Annex IV of Regulation 1334/2000; individual export licences, global export licences and national or community general export licences.⁶¹

There are no restrictions on which legal and physical persons can apply for an individual export licence. However, in order to apply for a global licence, or to transfer goods under a national or community general export licence, the applicant trader must be able to demonstrate a minimum of three years experience in the domain of export control, as well as a functioning internal control regime ('internal compliance programme').⁶² The trader must also provide a declaration to the effect that: the end-user does not intend to use the products to violate human rights or fundamental liberties; that the transfers will not precipitate conflict or undermine regional stability; and that the country of destination does not sustain or facilitate terrorists or organised crime.⁶³ In addition, global licences can only be issued when there is an entrenched relationship between the exporter and the end-user.⁶⁴ Finally, as stated above, those wishing to export dual-use items under general export licences are required to first register with ANCEX.⁶⁵

In order to export items included in Annex I and Annex IV outside the EU, traders must receive either an individual export licence or global export licence, or be registered under a national general export licence. In addition, traders can be registered under a community general export licence in order to transfer controlled goods to the countries listed in Annex II of Regulation 1334/2000, except for the most sensitive items in Annex IV. Traders are not required to obtain a licence for intra-community transfers of items listed in Annex I of Regulation 1334/2000. However, in order to conduct intra-community transfers of items in Annex IV of Regulation 1334/2000, traders must apply for either an individual or global export licence (for items in part I or II of Annex IV) or be registered under a national general export licence (for items in part I of Annex IV only).⁶⁶

ANCEX is responsible for checking the validity of applications and attached declarations/certificates. The Council for Endorsing Licences for Operations with Dual-Use Items and Technologies is the inter-ministerial advisory body for licensing controlled transfers.⁶⁷ Similar to the system for controlling military goods, the President of ANCEX makes the final decision on each licence application. The same concern highlighted above regarding the prominence of the President during the licensing process for military goods also applies to dual-use goods and technologies. However, it is not clear whether the President makes decisions on applications for the transit and transshipment of dual-use goods without recourse to the advisory council, as these types of transfer are not listed in law (see below).

A valid international import certificate may be required for applications for individual export licences, but not for global and general licences.⁶⁸ Decisions on applications for all types of licences should be made in a 45-day period.⁶⁹ Individual export licences are valid for one year, although the period of validity can be extended by an additional year.⁷⁰ Global export licences are valid for three years from the date of issue, with the possibility of a one-year extension.⁷¹

⁶¹ Art. 9, Gov. Ord. 129/2006. The application of global export licences and individual export licences is the same as for individual licences and global 'open individual' licences, as defined above for transfers of military goods. General licences are as described above, are granted by order of the President of ANCEX for determined situations and are published in Part 1 of the General Gazette of Romania (Art. 13 (2), Gov. Ord. 129/2006).

⁶² Art. 10 & Art. 12 (3), Gov. Ord. 129/2006.

⁶³ Art. 10, Gov. Ord. 129/2006.

⁶⁴ Art. 12, Gov. Ord. 129/2006.

⁶⁵ Art. 13 (3), Gov. Ord. 129/2006.

⁶⁶ Art. 14, Gov. Ord. 129/2006.

⁶⁷ Art. 4 (4) Art. 31 & Art. 32, Gov. Ord. 129/2006. The Council comprises representatives from the MND, the MAI, the MFA, the Ministry of European Integration, the National Customs Authority, the MEC, the Romanian Intelligence Service and Foreign Intelligence Service and the National Commission for Control of Nuclear Activities.

⁶⁸ Art. 11 (4), Gov. Ord. 129/2006.

⁶⁹ Art. 9 (5), Gov. Ord. 129/2006.

⁷⁰ Art. 11 (2), Gov. Ord. 129/2006.

⁷¹ Art. 12 (2), Gov. Ord. 129/2006.

General export licences are valid until revoked by an order of the President of ANCEX.⁷² Present legislation does not seem to place any restrictions on the number of shipments that can be made under either a global or an individual licence.

Similar to the control system for military goods, ANCEX has the discretion to revoke licences for transfers of dual-use goods only in the case of violations of related laws, or changes in the conditions on the licence. No mention is made in legislation regarding revocation of licences following changes in conditions of the country of end use.

The exact scope of the above licences is not clear, as present legislation only states that the national control regime encompasses export and 'any other transfer operation', brokering and technical assistance, without directly referencing transit, transshipment and non-commercial transfer activities.⁷³ As such, it is not clear how these types of transfers are licensed, if at all. In addition, the absence of references to transit and transshipment in legislation means that, in contrast to the control system for military goods, global (and general) licences could be issued for the transit and transshipment of dual-use goods.

In compliance with Regulation 1334/2000, dual-use goods traders are obliged to keep registers including sufficient documents to identify the quantity of exported items, the name and address of the exporter and consignee and the end use and end-user of the items.⁷⁴ These records should be kept for at least five years.⁷⁵ Holders of global export licences, and those registered under national general export licences and community general export licences should also report within 30 days of end of each calendar year on export operations conducted under these licences.⁷⁶

Decision-making and the EU Code

ANCEX issues, on average, more than 2,000 licences and permits each year.⁷⁷ When reaching a decision on whether to issue a licence for transfers of military goods, the Inter-ministerial Council and the President of ANCEX, or the President of ANCEX alone in the case of applications for permits, must take the following into consideration:⁷⁸

- The fundamental guidelines of Romania's foreign policy;
- Romania's national security and economic interests;
- The principles and criteria of the EU Code;
- The obligations deriving from the implementation of embargoes on arms transfers imposed by a resolution of the UN Security Council, a common position or joint action adopted by the Council of the European Union, an OSCE decision, or established by NATO member states;
- The objectives of non-proliferation of weapons of mass destruction, of missiles carrying such weapons, and of other military goods used for the purpose of destabilising accumulations;
- International conventions, treaties and agreements, the non-proliferation mechanisms Romania is a party to, and other international undertakings assumed by Romania as a state participating in the international non-proliferation and export controls regimes; and
- The principle of co-operation with the states promoting non-proliferation policies similar to Romania's policies in this field.

Licence applications for military goods are automatically rejected if the final recipient state is under an arms embargo imposed by the UN Security Council, a Common Position or Joint Action of the EU Council, or a decision by the OSCE.⁷⁹ It is claimed that the licensing process also takes into consideration 'the best practices in the field' and 'other relevant information

⁷² Art. 14 (2), Gov. Ord. 129/2006.

⁷³ Art. 7 (a), Gov. Ord. 129/2006.

⁷⁴ Art. 16, Regulation 1334/2000.

⁷⁵ Art. 30, Gov. Ord. 129/2006.

⁷⁶ Art. 12 (4) & Art. 14 (4), Gov. Ord. 129/2006.

⁷⁷ Romanian Government comments on draft report, January 2007.

⁷⁸ Art. 8, Gov. Ord. 158/1999: 'The import and export control regime must be accomplished in compliance with...'

⁷⁹ Art. 28 (1), Gov. Ord. 158/1999.

such as the conduct of the exporter, importer, transporter and end user', although this is not referenced in legislation.⁸⁰ Despite assurances that in practice all licensing decisions are made on the basis of consensus in the relevant inter-ministerial councils, it is unclear how differences of opinion within the councils are resolved, and hence the amount of weight given to the above considerations.

According to ANCEX, the following is also taken into consideration when issuing a global licence for military goods: the level of sensitivity of the goods to be traded and the history of the trader.⁸¹ As noted above, such stipulations are not included in national legislation and do not, therefore, legally have to be taken into consideration during decision-making and do not provide adequate guidance on when global licences, rather than individual licences, can be issued. The use of global licences is undergoing a pilot process and the first global licence for import was issued to one Romanian company at the beginning of October 2006 for repairs of C-130 Hercules of the Romanian MoD.⁸² No global licences have yet been issued for exports of military goods.

ANCEX maintains that the licensing process for transfers of dual-use goods and technologies is more rigorous in Romania than most EU member states. This is because ANCEX claims that it applies the EU Code to all proposed transfers of dual-use items, not just those destined for the armed forces or internal security forces of the recipient country.⁸³ While this may be the case in practice, neither Law No. 387/2003 nor Government Ordinance 129/2006 directly reference application of the EU Code in any cases. Indeed, Government Ordinance 129/2006 does not include any criteria for use during licensing decisions. Article eight of Regulation 1334/2000 does state that member states should take into consideration the 'national foreign and security policy, including those covered by the EU Code of Conduct on Arms Exports' during the licensing process. However, it would be better for Romanian legislation to include an interpretation of the EU Code's Operative Provision No. 6, which outlines when the EU Code should be considered in decision-making on transfers of dual-use items. Such an interpretation should clearly state that the EU Code is applicable not only for direct transfers of dual-use goods and technology to the military and security services, but also their transfer to the producers and manufacturers of goods for use by the military and internal security services. Implementation of EU norms and standards should have been aided by closer co-operation with EU member states since June 2005, when Romania joined the EU as an 'active observer' thereby gaining access to the COREU denial notification database and a seat in COARM and the Dual-use Goods Working Group. This should have helped Romanian officials to interpret the EU Code's criteria in a manner similar to the other EU states, as well as ensuring that Romania does not unwittingly 'undercut' other EU States. From 01 January 2007, Romania as a full EU member has full access to relevant EU information exchange mechanisms. Indeed, according to the MFA, knowledge of the EU Code has developed substantially among the relevant agency officials since the beginning of 2005, and is now at a good level.⁸⁴ As a result, it is argued that each application to transfer ADGT is properly assessed by each agency participating in the two advisory councils against the eight criteria set out in the EU Code. During the councils' sessions, the participating agencies then discuss their objections (if any) to each potential transfer with specific reference to one or a number of the EU Code's criteria.

According to ANCEX, COARM information exchange is referred to prior to every licensing decision on military goods.⁸⁵ Since the start of its participation in COARM, Romania has only once authorised an export similar to one previously denied by an EU member state⁸⁶ while, in

⁸⁰ *Op cit*, interview: Paul Pasnicu.

⁸¹ *Op cit*, interview: Paul Pasnicu.

⁸² Romanian Government comments on draft report, January 2007.

⁸³ Interview: Paul Pasnicu. Operative Provision No. 6 of the EU Code state that the Code's criteria only apply to dual-use goods specified in the dual-use control list 'where there are grounds for believing that the end-user of such goods will be armed forces or internal security forces...in the recipient country'.

⁸⁴ *Op cit*, interview: Dan Neculaescu.

⁸⁵ *Op cit*, interview: Paul Pasnicu.

⁸⁶ *Op cit*, interview: Dan Neculaescu. On this occasion the country in question was approached for further information regarding the licence denial. No reply was provided and no objection to Romania licensing a similar transfer was made.

2006, Romania refused more than five applications for licences on the basis of the EU Code and following information received on denials issued by EU member states for similar transfers.⁸⁷ Overall, compliance with the EU Code during the licensing process resulted in the denial of one export in 2005 and eight exports in 2006.⁸⁸ It is for example claimed that Romania refused several applications to export military goods to Eritrea in this period on the basis that the proposed exports would breach criteria 3 and 4 of the EU Code. Similarly, a proposed export of ammunition to Iraq was denied for breaching criterion 7.

Some officials felt that application of the EU Code when assessing licence applications is made difficult by the fact that the EU Code is not clear enough in a number of areas and allows for various interpretations by EU member states.⁸⁹ Of particular difficulty for implementation is criterion eight, which relates to the impact of arms procurement on the sustainable development of the recipient country.⁹⁰

Unfortunately, the research team was unable to corroborate with independent sources utilisation of the EU Code during the licensing process in 2005 and 2006. Combined with the absence of information on ADGT transfers since the end of 2004, it is consequently unclear whether Romania's rhetorical commitment to the EU Code has been reflected in licensing practice during this period.

6 Exemptions

The licensing regime applies to all legal and physical persons wishing to transfer ADGT to, from or through Romanian customs territory, as well as Romanian legal and physical persons wishing to engage in extra-territorial brokerage. However, the import, export, transit or transshipment of military goods for use during Romania's participation in military missions abroad or for the military structures of other NATO member states, are exempt from the national transfer control system. While this is an important exemption, its precise implication is not clear, as the law does not specify what constitutes a 'military structure'.⁹¹ Nevertheless, according to EU standards, all transfers of military goods should be licensed in the same manner, no matter who the recipient is. As such, the Government should consider removing this exemption.

In addition, transit, transshipment and non-commercial transfers of military goods do not undergo as rigorous a licensing process as other types of transfers, as a decision on whether to issue the relevant permit can be made directly by the President of ANCEX without recourse to the advisory councils. While ANCEX might assess each application for these types of transfers against the same criteria as for other types of licences, its ability to make informed decisions in these cases may be diminished by the lack of inter-ministerial consultation. In addition, as noted above, the fact that the President of ANCEX is appointed directly by the Romanian Prime Minister could allow the Prime Minister's office to unduly influence the decision-making process for transits, transshipments and non-commercial transfers. It would therefore be better to require that decisions on issuing both licences and permits are made on the basis of consensus within the two inter-ministerial councils. It is not clear whether this exception also applies to transit and transshipment of dual-use goods, as was the case prior to 01 January 2007, as these types of transfers are not listed in Government Ordinance 129/2006.

According to ANCEX, the relevant inter-ministerial council is not involved in the licensing of transits and transshipments of military goods for administrative reasons, as decisions on whether to issue a transit or transshipment permit should be made within five days of receipt of

According to the MFA, this is because the situation in the recipient country had changed substantially since the initial denial and, at the time of Romania's decision to license the export, all of the Code's eight criteria were met.

⁸⁷ Romanian Government comments on draft report, January 2006.

⁸⁸ Romanian Government comments on draft report, January 2007.

⁸⁹ *Op cit*, interview: Dan Neculaescu.

⁹⁰ *Op cit*, interview: Dan Neculaescu.

⁹¹ Art. 1 (2), Gov. Ord. 158/1999.

the application, with the possibility for a two-day extension. It is argued that this does not allow enough time for consultation with the inter-ministerial councils.⁹² This rationale would not apply in the case of dual-use goods and technologies, as decisions on all licence applications have to be made in a 45-day period. The Romanian Government should consider revising present legislation so that all types of transfers of controlled goods are licensed in the same way. One potential means to do this would be to require companies wishing to transfer military goods through Romanian territory to inform ANCEX at least a month prior to the proposed transit/transshipment, thus allowing adequate time for inter-ministerial consultation.

The research team was not made aware of any other circumstances where licensing exemptions apply.

7 Brokering

Romanian legislation contains provisions to control brokering of both arms and dual-use goods and technologies. Any Romanian citizen or any company incorporated in Romania that engages in brokering activities involving military goods, including those that are executed without the ADGT touching Romanian soil, must first register with ANCEX and then apply for a licence for each individual transfer.⁹³ While this two-stage system was also previously applicable under Law 387/2003 to the transfer of dual-use goods and technologies, following accession to the EU and alignment with EU norms, brokers no longer have to register before being able to apply for licences.⁹⁴ Similar to direct transfers, licence applications to broker military goods will be considered against the EU Code's eight criteria, while applications to broker dual-use goods and technologies are considered against the EU Code only when there is reason to believe that the end-user will be the military or internal security services. Foreign nationals or incorporated companies wishing to broker Romanian ADGT to foreign destinations, with the exception of intra-community transfers of dual-use items listed in Annex I to Regulation 1334/2000, must apply for and receive a Romanian export licence for each transaction. In addition, ANCEX states that it requires that all foreign nationals and incorporated companies must be registered for brokering activities by their relevant national licensing authority, if applicable,⁹⁵ although this requirement is not listed in legislation.

It should be noted that the definition of brokering previously differed between Government Ordinance 158/1999 and Law 387/2003. Following entry into force of Government Ordinance 129/2006, the standard definition of brokering activities is activities that involve the negotiation or organisation of transactions involving military goods, or the purchase sale or arrangement of transfer.⁹⁶

According to Romanian officials, the present legal provisions covering brokerage are difficult to enforce, as Romanian nationals and companies incorporated in Romania can easily execute brokering operations while situated outside the Romanian customs territory without the knowledge of the Romanian Government.⁹⁷ Freedom of movement of most dual-use items within the EU economic area provides an additional problem for control over the brokering of dual-use goods and technologies.⁹⁸ The capacity of the Government to enforce legislation in this area is, therefore, dependent on information exchange with foreign governments.⁹⁹ As a result, only one prosecution has been launched against illegal brokering activity by a Romanian broker.¹⁰⁰

⁹² Romanian Government comments on draft report, January 2007.

⁹³ Art. 1 (c), Art. 3(3), Art. 5 (e) & Art. 10, Gov. Ord. No. 158/1999; Art. 2, Art. 8 & Art. 10, Law 387/2003.

⁹⁴ Art. 2, Art. 8 & Art. 10, Law 387/2003.

⁹⁵ Romanian Government comments on draft report, January 2007.

⁹⁶ Art. 5, Gov. Ord. 158/1999; Art. 3 (h), Gov. Ord. 129/2006.

⁹⁷ *Op cit*, interview: Paul Pasnicu.

⁹⁸ Telephone interview with Paul Pasnicu, Director, Conventional Arms Division, ANCEX, 10 January 2007.

⁹⁹ Interview: Representative of the Directorate for Combating Transborder Crime, Bucharest 25 October 2006.

¹⁰⁰ On this occasion a licensed broker had requested an extension to its brokering authorisation, but transferred controlled goods seven days before the extension had been issued.

8 Transit and transshipment

According to ANCEX, there are few transits or transshipments of ADGT through Romanian customs territory, as Constanta, the main Romanian port, is not a major transshipment/transit centre.¹⁰¹ Nevertheless, the Romanian national transfer control system does regulate these types of transfers of military goods according to the same criteria as other types of transfers. In addition, only Romanian companies are permitted to conduct transits and transshipments of military goods through Romanian customs territory and each cargo must be guarded by the Gendarmerie and can only be executed through customs points indicated in the permit.¹⁰² However, one potential weakness in the system for issuing transit/transshipment permits for military goods is that the relevant advisory inter-ministerial council need not be consulted prior to ANCEX issuing a permit. As noted above, the lack of opportunity for inter-departmental consultation may undermine decision-making in these cases. In addition, controls over these types of transfers may be undermined by the absence of a definition of transit and transshipment in relevant legislation. Perhaps most importantly, there are no specific stipulations in Government Ordinance 129/2006, for licensing the transit and transshipment of dual-use goods and technology. As such, it is not clear whether these types of transfers are covered by present legislation.

9 Control lists

The Romanian transfer control system applies to all military goods included in the 2001 *List of Weapons, Ammunition and Other Military Items subject to the Import and Export Control Regime* (Government Decision No. 844). The Romanian military control lists is based upon the Wassenaar Arrangement (WA) *List of Dual-Use Goods and Technologies* and the *Common Military List of the European Union (equipment covered by the EU Code)*.¹⁰³ The Romanian military list has not been revised to reflect the latest version of the EU Common Military List from 13 March 2006 (66/01). However, at the beginning of 2007, ANCEX prepared a draft Government Decision to update the Military List to include amendments to the EU Common Military List.¹⁰⁴

Prior to Romania's accession to the EU, the control list for dual-use goods and technologies was provided by the 'List of Dual-Use Goods and Technologies', detailed in Annex 1 to Government Decision 983 (2005) *For Approving the List of Dual-Use Goods and Technologies to be Regulated by the Control Regime for Import and Export*. Following accession to the EU, controlled dual-use goods and technologies are listed in Annexes I and IV of Regulation 1334/2000.¹⁰⁵

At present, the Government approves changes to the Romanian control lists on the recommendation of ANCEX (MFA), the MEC, the MND and the Ministry of Justice,¹⁰⁶ although draft legislation would ensure that changes to the EU and WA lists automatically become law.¹⁰⁷

10 End-use control and certification

Romania has established a number of mechanisms to control the end use of ADGT transfers from its territory. Through the introduction of these mechanisms the Romanian Government does more than most states to control the end use of transferred goods, and should be commended for doing so. At the international level, Romania has also been involved in

¹⁰¹ *Op cit*, interview: Paul Pasnicu.

¹⁰² *Op cit*, interview: Paul Pasnicu; Art. 16. Gov. Ord. 158/1999.

¹⁰³ Available at, <[http://www.wassenaar.org/controllists/WALIST%20\(05\)%201%20Corr.pdf](http://www.wassenaar.org/controllists/WALIST%20(05)%201%20Corr.pdf)>; <http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c_066/c_06620060317en00010028.pdf>, accessed 02 December 2006.

¹⁰⁴ Romanian Government comments on draft report, January 2007.

¹⁰⁵ Art. 5, Gov. Ord. 129/2006.

¹⁰⁶ Art. 22(r), Gov. Ord. 158/1999.

¹⁰⁷ *Op cit*, interview: Paul Pasnicu.

attempts to improve certification of end use through its role as chair of the WA Task Force on Export Control Documentation, which at the time of writing was in the process of developing a standard end-user certificate for use in those cases when the importing country does not have a well developed national control system.¹⁰⁸

In order to be licensed to execute individual transfers of military goods (export, broker, transit and transshipment) the exporter/broker must declare to ANCEX the destination of the goods to be exported together with the beneficiary and end-user.¹⁰⁹ In addition the exporter/broker is obliged to obtain from its external partner an international import certificate or relevant document (such as an end-user certificate), issued or certified by the appropriate authority in the importer's country.¹¹⁰ In this document the importer should commit to respect the stated final usage and destination of the goods and not to re-export these goods without prior written approval from the Romanian Government.

For non-commercial exports of military goods an international import certificate is not required. Instead, the applicant should obtain from its foreign partner documents 'guaranteeing that the transferred goods will not be used for purposes causing prejudice to Romania's international obligations or undertakings'.¹¹¹ This requirement does not itself go far enough. Instead, the documents should contain the provision that the goods will only be used for the purpose agreed in the permit.

For transfers of dual-use goods and technologies licensed by an individual export licence, the exporter is obliged to declare the destination and end-user, and may be required by ANCEX to obtain from its external partner an international import certificate.¹¹² Following Romania's accession to the EU, these control measures no longer apply for global and general licences. Instead the trader is simply required to inform ANCEX on an annual basis of the transfer conducted under such licences.

ANCEX claims to check rigorously the validity of international import certificates or corresponding documents through Romanian embassies or the embassies of partner countries where necessary.¹¹³ It is claimed that as a result licences have been refused on more than one occasion following the discovery of inaccuracies in the end-user certificate. Unfortunately, the research team was not able to establish from independent sources the capacity of Romanian embassies to verify the validity of such documents, or the level of co-operation with partner countries. As such, it is not clear how often such mechanisms are used or whether they provide a sufficient means for checking the validity of end-users and end use.

In the case of all transfers of military goods and transfers of dual-use items conducted under an individual export licence, the exporter/broker is subsequently obliged to obtain from its foreign partner a delivery control certificate, issued or certified by the competent authority in the importer's country, confirming that the exported goods have reached the intended recipients in compliance with the licence application and international import certificate (or equivalent document).¹¹⁴ The original copy of this document must be submitted to ANCEX within four months of delivery. It should be noted that following Romania's accession to the EU this stipulation no longer applies for transfer of dual-use goods conducted under global and general licences (see above).

While the requirement for the exporter/broker to provide a delivery control certificate is a positive control mechanism, it is only successful in ensuring that diversion has not taken place when the recipient country issuing the delivery control certificate is not party to any fraud to divert the transferred goods. Additional mechanisms for post-delivery control and to monitor

¹⁰⁸ *Op cit*, interview: Paul Pasnicu, Director.

¹⁰⁹ Art. 13 (3), Gov. Ord. 158/1999.

¹¹⁰ Art. 17, Gov. Ord. 158/1999.

¹¹¹ Art. 19, Gov. Ord. 158/1999.

¹¹² Art. 11 (3/4) Gov. Ord. 129/2006.

¹¹³ *Op cit*, interview: Paul Pasnicu.

¹¹⁴ Art. 17, Gov. Ord. 158/1999; Art. 11 (5), Gov. Ord. 129/2006.

end use are needed for those cases when a recipient submits a false delivery control certificate or knowingly diverts the traded goods (as was the case with the arms re-exported from Togo and Burkina Faso to UNITA in the period 1996 to 1999. See above).

11 Administrative capacity

ANCEX is relatively well resourced compared to other national transfer control agencies in the region, with a staff of 45, including the President and Executive. ANCEX is composed of three divisions: the Conventional Arms Division; the Dual-Use Goods Division; and Human Resources. Human and physical capacity in the agency has been boosted by foreign donor assistance since the early 1990s. This has included the provision of hardware and software, such as the Tracker export control computer system by the US and Dutch Governments.¹¹⁵ In addition, the national control system has benefited from training in dual-use goods recognition and counter-proliferation, as well as bilateral consultations with (among others) the UK, Japan, Norway, Germany, France, Poland and Bulgaria.

The Government's expertise on and willingness to implement international best standards regarding transfer controls, and the EU Code in particular, has improved since 2001. At this time the then president of ANCEX (ANCESIAC at the time) referred to the problems posed by the "conservative approach of some senior Romanian experts, 'founding members' of the export control community in Romania".¹¹⁶ Those government officials interviewed during research for this report appeared to not only have a sound knowledge of the EU Code and the requirements of the Code's eight criteria, but also to understand its importance and utility. MFA officials have attributed this level of knowledge and a change in attitude toward arms transfer control to a gradual process of familiarisation stemming from discussions on licensing decisions in sessions of the two advisory councils described above.¹¹⁷ The MFA appears to have been the key driver for the promotion of EU transfer control concepts and standards within the Romanian Government. However, while the technical understanding of EU standards and the administrative capacity to implement them exists, as noted above, it is impossible to judge whether the EU Code is consistently applied in all licensing decisions, due to the absence of public information on licences issued since the end of 2004 (see below). Administrative capacity regarding end-user verification is discussed above in section 10. Capacity regarding law enforcement is discussed in section 16.

12 Inter-agency relationships/processes

The two advisory councils represent the principal mechanisms for government bodies to exchange information on the national ADGT transfer control system, licensing requests and decisions, completed transfers and law enforcement. The councils comprise representatives of ANCEX, the MFA, MEC, MND, MAI, the National Customs Authority, and the internal and external Intelligence Services.¹¹⁸ As noted above, Romania has also been provided with the Tracker system to facilitate information exchange during the licensing process, although this system was not operable at the end of 2006.¹¹⁹ None of the representatives interviewed flagged any problems with inter-agency co-operation and information exchange. However, as noted previously, the research team was not able to gain an independent opinion on the way

¹¹⁵ Tracker is an US Government-automated system designed to process arms transfer licence applications. It acts as a central location for inputting, processing, tracking, reviewing and deciding licence applications. For more information, see <<http://www.trackernet.org>>, accessed 28 October 2006.

¹¹⁶ Mrs Nineta Barbulescu, President of ANCESIAC; Foreword to *Report on Arms Export Controls 2000-2001*, <http://www.ancex.ro/raport_arme/arms_rep.pdf>, accessed 20 November 2006.

¹¹⁷ *Op cit*, interview: Dan Neculaescu. According to Mr Neculaescu, in the early councils' meetings following alignment with the EU Code, none of the participant officials understood the Code's criteria. As a result, on each occasion when the MFA objected to a potential transfer on the basis of the EU Code, it would have to explain the criteria upon which the objection was based and its relevance to the case.

¹¹⁸ Art. 23 (1), Gov. Ord. 158/1999; Art. 28, Gov. Ord. 129/2006. The Council for Endorsing Licences for Operations with Dual-Use Items and Technologies also included representatives from the Ministry of European Integration and the National Commission for Control of Nuclear Activities.

¹¹⁹ While the software/hardware for Tracker has been provided to ANCEX and other relevant ministries, the system was not fully operational at the end of 2006, as secure links had not be established to allow for information exchange between different government departments.

inter-agency relationships and processes function in practice. Inter-agency relationships and processes for law enforcement are discussed in section 16.

13 Transparency and reporting

Romanian transparency on ADGT transfers and licensing decisions has in the past been patchy. Since March 2001, ANCEX has made information on the Romanian control system publicly accessible via its website.¹²⁰ The website includes details of the national system's guiding legislation, control mechanisms and procedures, Romania's international obligations and commitments, and on ANCEX itself. Romania has also published national reports for the years 2000-2002,¹²¹ detailing its transfer policy and providing disaggregated information on licenses and authorisations issued for military goods, as well as deliveries. While the reports did not include detailed description of the types and quantities of licensed and exported military goods and their end users,¹²² and no information was provided on transfers of dual-use goods and technologies, the production of the reports was an important step towards improved transparency within, and oversight of, Romania's transfer control regime. As the first government in South Eastern Europe to publish such a report, the Romanian Government set an important precedent. However, no reports have yet been published for subsequent years. The failure of the Romanian Government to publish supplementary reports was consequently a lost opportunity for ensuring good transparency and public oversight in this area.

In addition, transparency on ADGT transfers through publicly available sources has been poor. For example, transfers have not been regularly declared to the United Nations Commodities Trade Statistics Division (UN COMTRADE). This is demonstrated by the fact that Romania has not reported any SALW exports in 2005. However, Austria, Finland, France, Germany, Italy, Norway, Saudi Arabia, Spain, Switzerland and the US have all reported imports of SALW from Romania in the same period.¹²³ Further, Romania has not reported any imports of SALW since 1996, while other countries have reported SALW exports to Romania for nearly every year since this date.

Both the Romanian MFA and the national regulatory body, ANCEX, have admitted that the failure to produce regular reports on transfers and licensing decisions has helped to undermine Romania's credibility as a transparent and responsible exporter.¹²⁴ As a result, ANCEX has stated its intent to produce retrospective reports on military goods for the years 2003, 2004 and 2005 and regular and timely annual reports for 2006 onwards. In addition, ANCEX has undertaken to produce quarterly reports, the first of which is to cover the period January to March 2006. The reports will be divided into two chapters.¹²⁵ The first chapter will provide information for each recipient country on:

- The number of licences issued for military goods;
- The type of goods licensed (according to Romanian military list categories);
- The value of exported goods;
- The number of denials issued;
- The EU Code criteria for denial; and
- A description of military goods exported.

¹²⁰ <www.ancex.ro>

¹²¹ ANCEX, *Report on Arms Export Controls 2000–2001*, September 2002; *Op cit*, *Romanian Report on Arms Export Controls 2002*.

¹²² Saferworld comments on the first annual report 2000-2001 on arms exports of the Romanian National Agency for Export Control (ANCEX, formerly ANCESIAC), October 2003.

¹²³ Information on SALW transfers available on the NISAT database, <<http://www.nisat.org/>>, accessed 20 December 2006.

¹²⁴ *Op cit*, interviews: Dan Neculaescu; Paul Pasnicu.

¹²⁵ Preview of national arms export reports for 2003, 2004 and 2005, and quarterly report for January-March 2006.

The second chapter will comprise a matrix of the financial value of goods exports by category of export and destination. It is significant that these reports will also provide information on licences for brokers and transfers conducted by brokers. See Box 1 (below) for the reporting template.

Box 1: Reporting template			
Chapter 1: Romanian Arms Exports per Destination			
DESTINATION COUNTRY (eg AFGHANISTAN)			
a	Licence category (eg ML 1)	Licence category (eg ML 2)	TOTAL
b	Number of licences	Number of licences	Total licenses issued
c	Value of exports	Value of exports	Total value of exports
d	Number of denials	Number of denials	Total denials
e	Criteria for denial (eg Criteria 1)	Criteria for denial (eg Criteria 2)	-

Military goods exported: *Description of goods exported*

Chapter 2: Summary of the Arms Exports per Destination				
COUNTRY OF FINAL DESTINATION	The category of military goods provided by the list of armaments, ammunition and other military goods, annex to Government Decision no. 844/2001			TOTAL [USD]
	ML1	ML2	Etc.	
eg AFGHANISTAN	Value of exports	Value of exports	-	Total value
eg ALGERIA	Value of exports	Value of exports	-	Total value
eg AUSTRALIA	Value of exports	Value of exports	-	Total value
TOTAL	Total value	Total value	-	Total value

The retrospective reports should be available on the ANCEX website in early 2007, with the promise of annual and quarterly reports being produced in a timely manner for 2006 onwards.¹²⁶ If they cover all transfers of military goods comprehensively and are published regularly, these reports will represent a significant improvement over those produced for the period 2000-2002. However, it remains to be seen whether Romania will be able to produce regular reports, as ANCEX has committed to producing regular reports in the past but failed to deliver, citing administrative problems and low capacity.¹²⁷ Unfortunately, publication of the reports for 2003-2005 will be too late to allow for proper independent scrutiny and oversight of transfers licensed during this period.

While these regular reports will be welcomed, they represent the minimum that Romania should produce for the EU's annual consolidated report.¹²⁸ Romania should look to further improve its reporting by adopting best practice from EU member states.¹²⁹ The principal

¹²⁶ *Op cit*, interview: Paul Pasnicu.

¹²⁷ Interview: Paul Pasnicu, Director. Quoted in *South Eastern Europe SALW Monitor 2005*, p. 137.

¹²⁸ The EU Code Users' Guide require EU member states to provide information on values of actual exports (which is only required to be reported if that data is available); number of consultations initiated and received; and the number of undercuts (which does not have to be published directly in the EU Annual Report). The Romanian proposed reporting format provides an additional description of exported goods, which is not required in the Users Guide. The annual consolidated reports are available at <http://www.sipri.org/contents/armstrad/atlinks_gov.html#REG>, accessed 02 December 2006.

¹²⁹ The best examples of regular reports are those released by the Czech Republic, Germany and the UK, available at, <http://www.sipri.org/contents/armstrad/atlinks_gov.html#REG>, accessed 02 December 2006.

weakness of the Romanian reports is that they will be restricted to reporting on transfers of goods included in the Romanian military list, and do not provide information on transfers of dual-use goods and technologies. In addition, the reports would benefit from more information on:¹³⁰

- National transfer control policy, national legislation, the licensing authority and relevant international and regional agreements;
- The value of licences (at the moment only the value of exports is provided);¹³¹
- The intended end use and end-user(s) of the transfer;¹³²
- Data on imports (eg number of licences issued, value, type of equipment, origin of goods).
- Identification of importing and exporting companies, registered brokers and transportation companies (preferably a list of all such companies, categorised by activity);¹³³
- Data on re-export, transit or transshipment (in the proposed reporting format there is no disaggregated information on these types of transfers);¹³⁴ and
- Data on current investigations and prosecutions.¹³⁵

Aside from these public reports, ANCEX is not obliged to provide regular submissions on its activities to Parliament and there is no specific law allowing Parliament to review the Government's national transfer control policy and practice. Although the Committees on Defence, Public Order and National Security of both the Senat and the Chamber of Deputies can request access to information relating to the national transfer control system, this has not happened in the past due to low capacity and the relatively low importance attached to parliamentary oversight of ADGT transfers.¹³⁶ The lack of systematic parliamentary scrutiny of licensing decisions is problematic, as it means that there is little external pressure to ensure high quality decision-making in this area.

Of equal concern in Romania, given its sizable industrial-military production base and continued significance as an exporter, is the lack of independent civil society and journalist expertise on the transfer control system. The research team was not able to interview any independent parties with substantial knowledge in this area in order to verify information provided by government officials. The absence of such expertise means that there is no independent public scrutiny of transfers and licensing decisions, and little pressure on relevant government 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.¹³⁷ As a result, it is a priority for the Romanian Government and international organisations to develop the capacity of civil society organisations and journalists to provide independent expert oversight of the national control system.

¹³⁰ Analysis by J. Macalesher, Saferworld, London, 12 December 2006. It should be noted that some of the following information was provided in previous national arms export reports for 2000-2002.

¹³¹ Best Practice example: Belgium, Czech Republic, Finland, France, Germany and Spain.

¹³² Best Practice example: Denmark, France and Portugal.

¹³³ Best practice example: Denmark, Estonia (information is provided on all newly registered Brokers during the reporting year – this includes the name of the legal/physical entities providing brokering services, registration number and the date that the entry to the register was made), Italy and Slovakia.

¹³⁴ Best practice example: Estonia.

¹³⁵ 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).

¹³⁶ Interview: Mihail Popescu, Vice President, the Committee on Defence, Public Order and National Security, Senat, 26 October 2006.

¹³⁷ See for example: Radu, P. C. and Zaszchivici, 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>, accessed 19 November 2006.

14 Information gathering and sharing

ANCEX is responsible for collating information on licence applications, licensing decisions, transfers conducted and the end use of ADGT goods. In order to fulfil this obligation, ANCEX is allowed unrestricted access to documents, data and information relevant to ADGT control.¹³⁸ This means that ANCEX has the right to conduct on-site controls of any company undertaking transactions with strategic items, at any stage of the authorisation, licensing and post-delivery process.

Companies engaged in the transfer of military goods are obliged to keep records of all related operations for fifteen years, while companies trading in dual-use goods and technologies should keep records for five years.¹³⁹ Holders of global export licences, national general export licences and community general export licences to export dual-use items should report within 30 days of end of each calendar year on export operations conducted under their licence.¹⁴⁰ In the case of military goods, companies should provide a report to ANCEX on transactions completed every three months.¹⁴¹ The National Customs Agency is required to present all data concerning transfers of ADGT to ANCEX upon request.¹⁴² All government agencies with an investigative function are also required to relay information regarding potential violations of Romania's ADGT transfer control legislation to ANCEX.

The MAI maintains a separate national database of information relating to arms ownership and movements in the country. The database includes personal data on arms owners, the description of arms owned, accreditations to work with arms, lost or stolen weapons, arms under observation and arms transfers within the country.¹⁴³

ANCEX is responsible for information exchange within the control system and the advisory councils hosted by ANCEX are the main bodies for intra-governmental information exchange (see above). Outside of the control process, ANCEX is obliged to inform the Government (but not Parliament) on an annual basis of all transfer activities regarding military goods.¹⁴⁴

ANCEX is also the main government body for facilitating information exchange on transfer controls with similar bodies in other states.¹⁴⁵ Inter-governmental exchange on ADGT transfers, ADGT control and licensing decisions occurs through a number of different multilateral and bilateral mechanisms. Most significantly, since June 2005, ANCEX and the MFA have participated as observers on behalf of Romania in the Dual-Use Working Group, the Co-ordination Group established by Article 18 of Regulation 1334/2000 and COARM, which, among other things, provides a forum for the exchange of information on export licence refusals between EU member states. During its participation in COARM, Romania has provided information on eight denial notifications and claims to consult the COARM denial database prior to each licensing decision.¹⁴⁶ Participation at COARM and the Dual-Use Working Group meetings also allows Romanian officials to access discussions on EU member states' national control policies and control systems. Unfortunately, due to the absence of independent opinions or information on Romanian transfers since the end of 2004, it is impossible to assess the impact of information exchange with the EU on Romanian licensing practice.

In addition to COARM and the Dual-Use Working Group and Co-ordination Group, Romania participates in various international and regional mechanisms relating to ADGT control. The most significant of these is the WA, which includes mechanisms for information exchange on transfers licensed, transfers executed and/or denied for goods covered by the WA's control

¹³⁸ Art. 22 (3) & Art. 29 (2), Gov. Ord. 158/1999; Art. 21, Art. 29 (4/5) & Art. 31, Gov. Ord. 129/2006.

¹³⁹ Art. 30, Gov. Ord. 129/2006.

¹⁴⁰ Art. 12 (4) & Art. 14 (4), Gov. Ord. 129/2006.

¹⁴¹ *Op cit*, interview: Serban Ianculescu.

¹⁴² Art. 29 (5), Gov. Ord. 158/1999; 31 (5), Gov. Ord. 129/2006.

¹⁴³ *Op cit*, interview: Representatives of the Explosives and Toxic Substances Directorate.

¹⁴⁴ Art. 21 (l), Gov. Ord. 158/1999.

¹⁴⁵ Art. 21 (q), Gov. Ord. 158/1999; Art. 4, Gov. Ord. 129/2006.

¹⁴⁶ *Op cit*, interview: Paul Pasnicu.

lists. Other information exchange mechanisms related to arms include those under the OSCE Document on SALW, the UN PoA on SALW and the UN Firearms Protocol.

The Arms Control and Verification Directorate within the Central Office of State for Special Issues (OCSPS) is responsible for gathering information that is exchanged with other countries under these regional and international mechanisms, as well as for monitoring their implementation.¹⁴⁷ In addition, Law 9/2004 designated ANCEX as the national focal point for the UN Firearms Protocol.¹⁴⁸ Although Romania does not have a National SALW Commission, a stipulation of the UN PoA, the Directorate for Non-proliferation, Arms Control and the Fight against Terrorism within the MFA acts as the national point of contact for implementation of the UN PoA.¹⁴⁹

Unfortunately, despite its commitments under these regional and international agreements, reports have been submitted to the relevant organisations and forums with varying frequency. For example, only two reports have been filed with the UN Department of Disarmament Affairs (UNDDA) on implementation of the UN PoA (in 2003 and 2005).¹⁵⁰

Regarding information exchange on law enforcement, the MAI's Directorate of Firearms, Explosives and Toxic Substances has particular responsibility for exchanging information with other relevant structures in Romania and with international partners.¹⁵¹ In addition, the Romanian Intelligence Service's Directorate for Combating Transborder Crime is tasked with countering transborder threats and is consequently responsible for collating and distributing information related to organised crime and trafficking. No information was available on the quality of information exchange conducted by these two agencies.

Romania has concluded numerous bi-lateral and regional agreements to improve co-operation in countering organised crime, illicit trafficking and terrorism.¹⁵² It is unclear how successful the bilateral relationships have been in combating cross-border crime, as it is not possible to quantify their direct results. The most significant regional mechanisms related to combating transborder crime and trafficking, of which Romania is a member, are Interpol, Europol and the South Eastern European Co-operative Initiative (SECI) Centre for Combating Transnational Crime.

According to representatives from the MAI, co-operation between the Directorate of Firearms, Explosives and Toxic Substances and Interpol and Europol is very good. In the first nine months of 2006, the Directorate investigated forty-three firearm-related cases on the basis of Interpol and Europol requests.¹⁵³ In the same period the Directorate asked Interpol and Europol for 14 investigations in relation to 46 weapons. Of these investigations, four were positive. Romania has also participated in both of the SECI Centre's SALW Task Force's information exchanges, Operations 'Ploughshares' (November 2002 to April 2003) and 'Safe Place' (March to December 2005). While the MIA considers information exchange within the SECI Centre Task Force to be 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.

¹⁴⁷ The OCSPS is an independent agency reporting directly to the Prime Minister. It is also responsible for national mobilisation during war and national crises (Interview: Representatives of the OCSPS, Bucharest, 25 October 2006).

¹⁴⁸ Official Gazette No. 179/2004, 02 March 2004).

¹⁴⁹ *Op cit*, *Report on Implementation of the United Nations Programme of Action to Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspect*, 2005.

¹⁵⁰ <<http://disarmament2.un.org/cab/nationalreports/2002/romania.PDF>>;

<<http://disarmament2.un.org/cab/nationalreports/2005/Romania.pdf>>, accessed 28 November 2006.

¹⁵¹ *Op cit*, interview: Representatives of the Firearms, Explosives and Toxic Substances Directorate, MAI.

¹⁵² Romania has concluded such agreements with: Hungary (Budapest, 19 February 1997); Trilateral Romania-Bulgaria-Turkey (Antalya, 16 April 1998); Turkey (Antalya, 16 April 1998); Trilateral Romania-Bulgaria-Greece (Sofia, 08 September 1998); Trilateral Romania-Moldova-Ukraine (Kiev, 06 June 1999); Croatia (Zagreb, 30 September 2000); Slovenia (Bucharest, 04 October 2000); Poland (Warsaw, 12 June 2001); Israel (Jerusalem, 17 June 2001); Armenia (Yerevan, 31 October 2001); Czech Republic (Prague, 13 November 2001); Albania (Bucharest, 06 June 2002); Bulgaria (Sofia, 10 June 2002); Moldova (2005); Ukraine (three different agreements between November 2005 and February 2006).

¹⁵³ *Op cit*, interview: Representatives of the Firearms, Explosives and Toxic Substances Directorate, MAI.

Finally, Romania is member of the South Eastern Europe Stability Pact's Regional Implementation Plan on SALW and supports the operations of the Regional Arms Control Verification and Implementation Assistance Centre (RACVIAC) and the South Eastern and Eastern European Clearinghouse for Small Arms and Light Weapons (SEESAC).¹⁵⁴

15 Enforcement

According to relevant Government officials, illicit SALW trafficking in Romania is minimal and mostly involves the smuggling of individual weapons into the country.¹⁵⁵ While this may be the case, control over Romania's borders may become more problematic following Romania's accession to the EU on 01 January 2007. Romania's Eastern and Northern borders, and parts of the Southern border, now constitute EU external borders and may become targeted by traffickers. Indeed, in its '2006 Monitoring Report' the EC, while indicating that significant progress has been made in preparation for the Schengen *acquis* and management of future EU external borders, highlighted a number of areas relating to border management that still need urgent action to ensure that an integrated border management system is operational by 2009.¹⁵⁶

Border management policy and practice

Government Ordinance No. 104/2001, which became a law in 2002, ensures physical control at border checkpoints of imports and exports of ADGT. Control of Romania's borders is the responsibility of the Romanian Border Police (RBP) and of the National Customs Authority. The RBP is responsible for combating trafficking along Romania's green and blue borders and as such is tasked with identifying groups involved in trafficking.¹⁵⁷ The National Customs Authority, which is situated within the National Agency for Fiscal Administration, is responsible for checking goods against import and export licences, verifying related documents, as well as combating trafficking in ADGT at customs checkpoints.

Border management policy and practice have improved substantially since 2003, when Romania adopted a strategy for integrated border management covering the period 2003-2006. Further, in March 2003, the National Customs Authority agreed a co-operation protocol with the RBP covering joint actions to combat smuggling. A Government Decision in April 2004 subsequently approved an updated national strategy for integrated border management for the period 2004-2006.¹⁵⁸ The strategy included modernisation of border infrastructure and equipment, and substantial increases in staffing levels.

Preparation of national border controls for EU accession accelerated during 2005-2006. An updated Schengen Action Plan was adopted in June 2005 and followed by the *Concept for the Implementation of the Integrated Border Security System* in October 2005. As a result, the police, RBP and National Customs Authority have formed joint working groups along the Southern and Eastern borders in order to ensure high levels of inter-agency co-operation.¹⁵⁹ In addition, the Romanian Intelligence Service claims to have improved information exchange with the RBP and National Customs Authority in the South and East of the country in preparation for EU accession, although no information was provided on the substance of these improvements.¹⁶⁰

¹⁵⁴ See websites: <<http://www.seesac.org>>; <<http://www.racviac.org>>.

¹⁵⁵ *Op cit*, interview: Representatives of the Firearms, Explosives and Toxic Substances Directorate, MAI.

¹⁵⁶ Commission of the European Communities, *Romania: May 2006 Monitoring Report, Commission Staff Working Document*, Brussels, 16 May 2006 pp. 34–35, available at, <http://ec.europa.eu/comm/enlargement/report_2006/pdf/monitoring_report_ro_en.pdf>, accessed 31 May 2006.

¹⁵⁷ *Op cit*, *Report on the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons (SALW) in all its Aspects, 2005*.

¹⁵⁸ *2004 Regular Report on Romania's progress towards accession*, The European Commission, October 2004, p 124, available at, <http://europa.eu.int/comm/enlargement/report_2004/pdf/rr_ro_2004_en.pdf>, accessed May 2005.

¹⁵⁹ *Op cit*, interview: Representatives of the Firearms, Explosives and Toxic Substances Directorate, MIA.

¹⁶⁰ *Op cit*, interview: Representative of the Directorate for Combating Transborder Crime.

However according to the EC, further steps are needed in a number of areas:¹⁶¹

- The RBP suffers from staff shortages, especially IT and communications experts to deploy and implement the border management system;¹⁶²
- Equipment endowment in the RBP is at 75 percent of projected needs;
- Training is needed for new RBP recruits and contractual staff, in accordance with the Police Status Law;
- While training has improved the uniform application of customs procedures, more needs to be done;
- While training has been delivered to enable operational risk analysis, use of analysis needs to improve in both the RBP and National Customs Authority; and
- Surveillance capacity along the Black Sea coast and Danube needs to be enhanced.

Most significantly, the 2005 Regular Report indicates that procedures for identifying dual-use goods by customs officials need improvement and that increased co-operation between the National Customs Authority and ANCEX is crucial in this regard.

An additional potential problem is corruption within the government agencies tasked with upholding Romania's transfer control system. While none of the interviewees for this paper raised corruption as an issue, studies by a range of national and international organisations indicate that corruption remains widespread among government agencies and directly affects the implementation of national legislation. In particular, EC regular reports consistently highlight corruption within the customs administration as a serious concern.¹⁶³

Progress on fighting corruption in the National Customs Authority has been made since the beginning of 2005. In addition to the national anti-corruption Strategy and Action Plan for 2005-2007, sectoral strategies and action plans were developed in 2005 for those institutions 'particularly at risk from corruption', including the police, the Financial Guard and the National Customs Authority. As a result of the National Customs Authority's action plan, during 2005 it sent 29 files to the General Prosecutor's Office and applied administrative sanctions in 195 cases.¹⁶⁴ While this is to be welcomed, according to the EC, the fight against corruption should remain the National Customs Authority's top priority.¹⁶⁵

Intelligence, investigations and interdictions

As well as the RBP and the National Custom Authority, the MAI and the Romanian Intelligence Service also play a role in investigating and preventing ADGT trafficking. The MAI is tasked with combating arms trafficking and proliferation in the country, and carries out related investigations in co-operation with the other relevant bodies. The Romanian Intelligence Service's Directorate for Combating Transborder Crime has two principal units with a responsibility for maintaining Romania's national control system. The first counters threats posed by weapons, while the second deals with organised crime. As such it has a responsibility for 'collecting and collating' information on organised crime and arms trafficking.

If any of the above agencies become aware of violations of Romanian law regarding the control system they should inform the General Prosecutor's Office, which is responsible for opening any investigation. In matters related to the trafficking of arms, responsibility for conducting investigations is passed to the Directorate for Serious Crime (within the MAI), although the mandate can subsequently be given to the police. Once investigated, the case is then handed back to the General Prosecutor's Office for prosecution.¹⁶⁶

¹⁶¹ *Op cit, Romania: May 2006 Monitoring Report, Commission Staff Working Document; Romania: 2005 Comprehensive Monitoring Report.*

¹⁶² As of May 2006 staffing levels estimated at 85-90 % of those necessary for the EU external border (*Op cit, May 2006 Monitoring Report*).

¹⁶³ *Op cit, Romania: 2005 Comprehensive Monitoring Report, Brussels.*

¹⁶⁴ *Op cit, Romania: May 2006 Monitoring Report, Commission Staff Working Document.*

¹⁶⁵ *Ibid*

¹⁶⁶ *Op cit, interview: Representatives of the Firearms, Explosives and Toxic Substances Directorate, MAI.*

It is hard to judge the capacity of relevant Romanian agencies to interdict trafficked ADGT, due to the absence of a comprehensive publicly available risk analysis or more detailed information on operational practice. In particular, no information was available on the use of intelligence and risk-analysis when planning anti-trafficking operations.

Information exchanged by the Romanian authorities during the SECI Centre's Firearm Task Force's information exchange on trafficking between March and September 2005, 'Operation Safer Place', indicates the amount and type of weaponry interdicted during that period. The most significant seizure involved an attempt to smuggle ten percussion caps for light missiles on the Romanian-Hungary border. Other cases involved the trafficking of three grenades on the Chisinau-Bucharest train, a gas pistol at Nadlac-Nagylak checkpoint, a gun at Calafat checkpoint, a gun at Sculeni checkpoint, a pistol and cartridges at Timisoara airport. These interdictions have not been linked to trafficking networks or organised crime and seem to confirm the official opinion that smuggling is presently primarily of individual arms.¹⁶⁷ However, these limited seizures do not provide an indication of the Romanian authority's ability to interdict trafficked weapons.

16 Penalties and sanctions

Legal sanctions for violating the laws and regulations of the national transfer control system are established by the Penal Code of Romania.¹⁶⁸ Relevant Penal Code articles are: Article 406, regarding non-compliance with the regime on arms and ammunitions; Article 452, regarding non-compliance with the transfer control regime for military goods; and Article 302, regarding non-compliance with the control regime for dual-use goods and technologies. According to Article 452 of the Romanian Penal Code, all breaches of the transfer control regime for military goods are punishable with between two and seven years' imprisonment.¹⁶⁹ In addition, if not 'crimes under the law', ANCEX can levy various fines of between US\$500 and US\$32,000 for various breaches of Romania's transfer control legislation.¹⁷⁰ These fines are not prohibitive enough to discourage breaches of the Romanian transfer control system.

According to ANCEX, it has informed the General Prosecutor's Office of three proposed prosecutions since January 2004.¹⁷¹ One of the cases was rejected and closed by the General Prosecutor's Office. The remaining two, both of which referred to dual-use goods and technologies, were still undergoing judicial inquiry and official examination at the time of writing. Unfortunately, from this limited information it is impossible to assess the capacity of the relevant government agencies to enforce these penalties and sanctions, or their possible effect in curbing breaches of the national control system.

17 Interaction with industry

ANCEX is tasked with informing industry about the national ADGT transfer control system.¹⁷² As such, it holds conferences, thematic seminars and workshops on transfer control issues and the implementation of the law. It has also made it compulsory for companies that trade in military goods to possess strategic goods export control guides. The guides contain primary and secondary legislation, as well as samples of the documentation required during the licensing process.¹⁷³ This information is also publicly available on the ANCEX website. In

¹⁶⁷ *Operation Safe Place: Preliminary Analysis*, forthcoming, Saferworld.

¹⁶⁸ *Op cit*, *Report on Implementation of the United Nations Programme of Action to Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects*, 2005; Art. 30, Gov. Ord. 158/1999; Art. 30, Gov. Ord. 387/2003.

¹⁶⁹ *Op cit*, *Report on Implementation of the United Nations Programme of Action to Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects*, 2005.

¹⁷⁰ Art. 32 & Art. 33, Gov. Ord. 158/1999; Art. 32 & Art. 33, Law 387/2003; Arts. 32 & Art. 34, Gov. Ord. 129/2006.

¹⁷¹ Correspondence with Bg. Sp. Septimu Caceu, EURISC Foundation, 17 January 2007.

¹⁷² Art. 21 (m/n), Gov. Ord. 158/1999; Art. 4 (i), Gov. Ord. 129/2006.

¹⁷³ Interviews: Paul Pasnicu, Director, Conventional Arms Division, ANCEX, 4 February 2004/ 23 March 2005.

addition, since 2002 Romania has taken steps to inform the industry of changes to the licensing regime, especially for dual-use goods and technology, entailed by entry to the EU.¹⁷⁴

The Government has so far actively engaged with industry, but more needs to be done to ensure the industry adapts to changes to the control regime entailed by accession to the EU, particularly regarding transfers of dual-use goods and technologies. For example, at the end of 2005 the EC recommended that more should be done to make exporters aware of those items contained in Annex IV of Regulation 1334/2000 that will not be subject to free movement in the single market.¹⁷⁵

As well as general information dissemination, the Romanian Government interacts with industry by allowing pre-licence enquiries regarding possible export operations. Pre-licence enquiries are commonly used by producers/exporters to gain an indication of whether a proposed transfer will be licensed or rejected.¹⁷⁶ As a first stage, ADGT producers/exporters can consult with ANCEX in order to classify their products and for a 'political appraisal' of the proposed transfer. A trader can subsequently submit a formal written question to ANCEX for information on whether the proposed destination is under international or unilateral embargo, or whether other EU member states have denied any similar licence applications. In addition, ANCEX employees can be asked their personal opinion on the proposed transfers. Lastly, and in more complex cases, it is possible to ask the MFA for advice. As pre-licence enquiries are relatively informal, no records are kept of the amount of enquiries, the responses provided by ANCEX or the MFA, or the producer/exporter's decision on whether to submit a formal licence application. This is problematic, as any potential transfers stopped at this pre-licensing stage will not be recorded in national reports or circulated to other EU member states as a denial notification.

18 Conclusion

Encouraging steps have been taken by Romania to bring its national policy and legislation into line with EU standards. A relatively high level of capacity to enforce legislation, substantial industry outreach to encourage compliance and moves to improve transparency have complemented these steps. Most importantly, knowledge and acceptance of the EU Code appears to be genuinely high among relevant government officials. This overall improvement in policy and practice on ADGT transfer controls is to be commended.

However, emphasis now needs to be placed on tightening Romanian legislation and practice to ensure that it is comparable with the best examples among EU member states. Specifically, questionable licensing decisions in 2004 combined with poor transparency on exports in 2005 and 2006 means that concerns remain over the standard of licensing decisions and full compliance with EU norms and obligations. Transparency must be improved so that external observers can readily assess to what extent government policy and practice reflect Romania's commitments to the EU and utilisation of the EU Code in individual licensing decisions. The Romanian Government has made a commitment to improve transparency through the publication of comprehensive regular reports. It is to be hoped that such reports will be forthcoming. There is also the need to develop the inclination and capacity of both parliament and civil society to provide genuine independent scrutiny and oversight, and thus maintain pressure for high standards within the national transfer control system.

Aside from continued question marks over implementation of the EU Code, the Romanian control system could be strengthened in a number of ways, principally by ensuring that all licensing decisions are made on the basis of consensus within the relevant inter-ministerial councils. Legislation could also be strengthened so that all transfers are licensed in the same manner, regardless of the type of transfer in question or who the final recipient is. In addition, the Romanian Government should take all necessary steps to ensure that controls of dual-use goods and technology are as stringent as possible, while still conforming to EU norms and

¹⁷⁴ Romanian Government comments on draft report, January 2007.

¹⁷⁵ *Op cit*, *Romania: 2005 Comprehensive Monitoring Report*, p. 74.

¹⁷⁶ *Op cit*, interview: Dan Neculaescu.

obligations. More attention also needs to be given to ensuring that Romania is able to protect its EU external borders.

The table on the following pages provides a summarised assessment of Romania's present compliance, or ability to comply with, EU standards. Recommendations follow in section 19.

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)	Applies to all military goods as well as dual-use goods and technologies. However, no specific reference is made in national legislation to application of the EU Code in licensing decisions for dual-use goods There seems to be good knowledge and consistent use of criteria, with lower capacity to use criterion 8	Art. 1, Art. 11 & Art. 12, Gov. Ord. 158/1999; Art. 8, Regulation 1334/2000; Art 15, Gov. Ord. 129/2006
Military control list	Common Military List of the European Union	Utilises the EU Common Military List, although not updated for 2006 Main legislation provides catch-all clause for software and technology that could be used for developing, manufacturing, maintaining or stockpiling military goods	Gov. Dec. No. 844/2001 Art. 7, Gov. Ord. 158/1999
Controls on dual-use goods (including control list and catch-all clauses)	EU Dual-Use Regulation	Yes Main legislation provides catch-all clause for dual-use items if: they could be used in operations involving chemical, biological or nuclear weapons; the goods have 'military end use'; the destination of the goods is under embargo	Regulation 1334/2000; Art. 5 & Art. 8 (a), Gov. Ord. 129/2006 Art. 4, Regulation 1334/2000; Art. 8 (b), Gov. Ord. 129/2006
Control of brokers	EU Common Position on Arms Brokering Draft Common Position	Yes, including extra-territorial activity	Art. 1 (c), Art. 3 & Art. 5 (e) Gov. Ord. 158/1999; Art. 7, Gov. Ord. 129/2006
Controls on intangible transfers	Draft Common Position	Yes, for both dual-use goods and military goods and equipment.	Art. 5 (b/d) & Art. 7, Gov. Dec.158/1999; Art. 7, Gov. Ord. 129/2006

EU STANDARD	LEGAL OR POLITICAL BASIS	NATIONAL COMPLIANCE	LEGISLATIVE, REGULATORY OR POLITICAL REFERENCE
Controls on transit and/or transshipment	Draft Common Position	<p>Yes for military goods, although transits and transshipments, are licensed directly by the President of ANCEX without recourse to the advisory councils</p> <p>It is not clear if and how transits and transshipments of dual-use goods and technologies are controlled in new legislation</p>	Art. 1 (d/e), 10, 11 and 12 of Gov. Ord. 158/1999
Control of export of production capacity (including, for example, licensed production)	Draft Common Position	No specific references to licensed production of Romanian goods abroad, although intangible ADGT transfers are controlled	Gov. Ord. 158/1999; Gov. Ord. 129/2006
End-use controls and certification requirements (including controls on re-transfers)	Draft Common Position EU User's Guide	<p>Traders applying to transfer military goods or dual-use goods traders with an individual export licence (but not global/general licence) must state the final destination or end use</p> <p>An international import certificate, obliging the recipient to respect intended end use and not re-export without permission, is required to transfer military goods, and dual-use goods under an individual export licence (but not global/general licence)</p> <p>Requirement to submit a Delivery Control Certificate, apart from global/general dual-use goods licence, although no apparent post-export monitoring takes place</p>	<p>Art. 13 (3), Gov. Ord. 158/1999; Art/ 11 (3), Gov. Ord. 129/2006</p> <p>Art. 17, Gov. Ord. 158/1999; Art. 11 (4), Gov. Ord. 129/2006</p> <p>Art. 17, Gov. Ord. 158/1999; Art. 11 (5), Gov. Ord. 129/2006</p>
Power to revoke transfer licences	Best practice	<p>Yes, for both military goods and dual-use goods and technologies in the case of violation of law or changes to the terms of the permit/licence/authorisation/ registration</p> <p>No clear stipulation in law allowing revocation of licences in those cases when the situation in the country of end use changes</p>	Art. 14, Art. 21 (k) & Art. 38, Gov. Ord. 158/1999; Gov. Ord. 129/2006

EU STANDARD	LEGAL OR POLITICAL BASIS	NATIONAL COMPLIANCE	LEGISLATIVE, REGULATORY OR POLITICAL REFERENCE
Registration of actors (eg manufacturers, traders, shippers)	Best practice EU Common Position on Arms Brokering (recommended)	Manufacturers of military goods are required to register Brokers of military goods are required to register For dual-use goods, trader need only register in order to transfer goods under a general export licence	Law No. 295/2004 Art. 10, Gov. Ord. 158/1999 Art. 13, Gov. Ord. 129/2006
Legal penalties and sanctions	Best practice EU Common Position on Arms Brokering	According to the penal code, breaches are punishable by imprisonment of between two and seven years or a fine of between US\$190 and US\$32,000	Art. 302, Art. 406 & Art. 452, Penal Code; Art. 30-33, Gov. Ord. 158/1999; Art. 32 & Art. 34, Gov. Ord. 129/2006
Inter-departmental consultation	Best practice	Yes, for both dual-use items and military goods. However, the inter-departmental councils have the status of advisory rather than decision-making bodies	Art. 20 (g) & 23 (1/4), Gov. Ord. 158/1999; Art. 28, Gov. Ord. 129/2006
Information exchange with other governments (including circulation of licensing denials among EU member states and subsequent consultations)	EU Code Draft Common Position Best practice	ANCEX responsible agency Reporting to UNDDA, UN Register of Conventional Arms, COMTRADE and OSCE Party to EU denial notification and consultation mechanisms	Gov. Ord. 158/1999; Gov. Ord. 129/2006
Industry outreach	Best practice	Good outreach through ANCEX, including pre-licensing enquiries	Art. 21 (m/n), Gov. Ord. 158/1999; Art. 4 (i), Gov. Ord. 129/2006
Parliamentary accountability	Best practice	No systematic parliamentary scrutiny of Romania's export control system or of individual licensing systems	None
Regular production and publication of national reports	Draft Common Position	Yes, but limited to the period 2000-2002 and contained limited 'global' information. More detailed retrospective annual reports for 2003-2005, and annual and quarterly reports from January 2006 onwards to be made public in early 2007 Reports do not include information on dual-use goods and technologies	None

19 Recommendations

To the Government of Romania

- ❑ Continue to improve policy and practice on licensing ADGT transfers, using accession to the EU as a spur to bringing the Romanian transfer control system into complete compliance with EU obligations and norms, and wherever possible up to the standards of EU and/or international best practice;
- ❑ Specifically, the Romanian regulatory framework should be reviewed to ensure that:
 - The EU Code criteria are set out in law;
 - Legislation relevant to the control regime for dual-use goods and technologies should include an interpretation of EU Code Operative Provision No. 6, which outlines when the EU Code should be considered in decision-making on transfers of dual-use items. Such an interpretation should clearly state the EU Code is applicable not only for direct transfers of dual-use goods and technology to the military and security services, but also their transfer to the producers and manufacturers of goods for use by the military and internal security services;
 - Legislation relevant to the control regime for dual-use goods and technologies clearly defines the types of transfer regulated by it. This list should include transit, transshipment and non-commercial transfer activity, and indicate under which licences (individual, global and general) such activities can be conducted;
 - Relevant legislation on both military goods and dual-use goods and technologies includes a comprehensive and consistent definition of both transit and transshipment;
 - Decisions on issuing licences/permits for all types of transfers, including transit, transshipment and non-commercial activities, are made on the basis of consensus within the respective inter-ministerial councils. In terms of military goods, this may necessitate a stipulation requiring traders to inform ANCEX at least a month prior to the proposed transit/transshipment;
 - All transfers of military goods should be licensed in the same manner, no matter who the recipient is. As such, the exemption of the military structures of NATO member states from the national transfer control system should be removed;
 - The rationale for when to issue global as opposed to individual licences for transfers of military goods is clearly set out in legislation;
 - Any additional criteria or standards applied for the issuing of global/general licences, such as consideration of the level of sensitivity of the goods to be traded and the history of the trader, are set out in law;
 - Legislation clearly states that ANCEX has the power to revoke licences and permits for ADGT transfers in the event of changes in the conditions in the country of end use following the initial licensing decision;
 - New stipulations are introduced to specifically regulate the transfer of production capacity, eg through licensed production by Romanian companies or persons;
 - All foreign nationals and incorporated companies must be registered for brokering activities by their relevant national licensing authority, if

- applicable. If they are not required to register by their relevant national licensing authority they should be required to register with the Romanian authorities;
- Applications for permits for non-commercial transfers of military goods should be accompanied by documents guaranteeing that the transferred goods will only be used for the purposes agreed in the permit;
 - A valid international import certificate, or equivalent document, should be required for all applications to acquire an individual export licence for transfers of dual-use goods and technologies;
 - Legislative mechanisms and sufficient capacity exists to allow for end-use monitoring of ADGT transfers;
 - Penalties and sanctions are sufficiently punitive to discourage breaches of Romania's national transfer control system; and
 - The updated EU Common Military List is incorporated into Romanian law at the earliest possible opportunity.
- ☐ Romania should make all efforts necessary to implement its commitment to publishing comprehensive and regular reports on both a quarterly and annual basis. In addition, it is recommended that these reports be expanded to reflect EU best practice and to include more information on:
- National transfer control policy, national legislation, the licensing authority and relevant international and regional agreements;
 - Imports (eg number of licences issued, value, type of equipment, origin of goods);
 - The value of licences issued;
 - Intended end use and end-user(s) of the transfer;
 - Information on imports (eg number and value of licences issued, type of equipment licensed, origin of goods);
 - Identification of importing and exporting companies, registered brokers and transportation companies (preferably a list of all such companies, categorised by activity);
 - Disaggregated data on re-export, transit and transshipment; and
 - Data on current investigations and prosecutions related to the national control system.
- ☐ In addition, the Government should undertake the following commitments to improve transparency and oversight:
- Ensure consistent and timely provision of information to related international mechanisms and forums, including the UNDDA on implementation of the UN PoA, the UN Register of Conventional Arms and COMTRADE;
 - 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 (eg an appropriate committee), which would publish its own review of government policy and practice. Consideration should be given to establishing a process for the provision of pre-licensing information 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); 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.
- ☐ In terms of border management, the Government should:
 - Ensure adequate financing, manpower and equipment to border management;
 - Ensure comprehensive training for all Romanian Border Police (RBP) staff in accordance with the Police Status Law;
 - Ensure comprehensive training to customs staff to ensure the uniform application of customs procedures;
 - Institutionalise the use of operation risk analysis by both the RBP and the National Customs Authority;
 - Develop procedures for identifying and improving the capacity of customs staff to identify dual-use goods;
 - Take any necessary additional steps to fight corruption within the customs administration;
 - 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; and
 - Maintain close co-operation on anti-trafficking issues with Romania's neighbours and EU member states.
- ☐ In addition to the above, the Government of Romania should look to:
 - Ensure that present and future surplus weaponry is properly destroyed, in accordance with Romania's political commitments;
 - 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 Romanian missions abroad. This training programme must address *inter alia* the licence assessment process, with particular and in-depth reference to the EU Code criteria;
 - 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 Romanian brokers to ensure law enforcement in this area;
 - Build up the capacity of embassy staff and other relevant officials to effectively verify international import certificates, end-use certificates, delivery control certificates, and to monitor end use;
 - Include information on pre-license enquiries as part of information exchanges on denials with EU member states; and
 - Step up industry outreach in 2007 to ensure that industry is properly informed of the regulatory changes to the control system entailed by EU accession.

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 Romanian parliamentarians and their counterparts from other states who have experience in this area;

- ❑ Provide support to Romanian civil society so as to build indigenous capacity to analyse and monitor Romania's policy and practice in this area;
- ❑ Provide any necessary assistance to Romania in verifying international import certificates, end-use certificates and delivery control certificates, as well as in monitoring the end use of ADGT transfers;
- ❑ Create or improve mechanisms to exchange information with Romania on the activities of Romanian brokers;
- ❑ Provide any necessary support to ensure that Romania's present and future surpluses are properly destroyed; and
- ❑ The EU in particular should:
 - Assist the Romanian authorities in developing a set of prioritised requirements for any necessary improvements to the licensing system, so as to ensure that Romania 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 Romania, undertake a comprehensive risk analysis of likely ADGT trafficking now Romania has acceded to the EU. On the basis of this analysis develop a comprehensive anti-trafficking programme and provide appropriate financial and technical assistance;
 - Provide support to Romania to ensure proper implementation of the EU Code's criteria. In particular, provide additional support with regard to assessments under criterion 8, which relates to the impact of arms procurement on the sustainable development of the recipient;
 - Support Romania in ongoing initiatives to combat corruption in the customs administration; and
 - Assist Romania to inform its industry on the regulatory changes to the control system entailed by accession to the EU.