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ATT DIVERSION INFORMATION EXCHANGE FORUM CHAIR'S¹ REPORT TO CSP7

INTRODUCTION

1. This report by the Chair of the Diversion Information Exchange Forum (DIEF) to the Seventh Conference of States Parties (CSP7) to the Arms Trade Treaty (ATT) summarizes the work that was conducted after States Parties at CSP6: 1) established the DIEF as a *sui generis* subsidiary body of the CSP; 2) adopted the [Terms of Reference](#) to govern the functioning of the DIEF; 3) mandated the CSP7 President to organize the first formal meeting of the DIEF in 2021; and 4) decided to review the usefulness of the DIEF at CSP8. As the DIEF did not have its inaugural meeting in 2021 due to the COVID-19 pandemic, this report is limited to: 1) a description of the Chair's presentation on the DIEF during the virtual meeting of the Working Group on Transparency and Reporting (WGTR) of 29 April 2021; 2) the Chair's conclusions about the inaugural meeting and the evaluation of the DIEF; 3) an overview of the Chair's past and proposed awareness-raising and outreach efforts regarding the DIEF; and 4) the Chair's recommendations about the DIEF for adoption by CSP7.

DIEF CHAIR 29 APRIL 2021 PRESENTATION

2. On 29 April 2021, the co-chairs of the WGTR invited the DIEF Chair to provide an update on the general formal arrangements of the first meeting of the DIEF.

3. In his presentation, the DIEF Chair first drew attention to the new [webpage concerning the DIEF on the website of the ATT Secretariat](#), and especially to the DIEF Terms of Reference that are available on that page. This publication was always intended as a measure of transparency after the adoption of the document, in the run-up to the first round of ATT meetings in the CSP7 cycle.

4. Concerning the first meeting of the DIEF, the Chair pointed out that the specific nature of the meeting and the ongoing covid-19 pandemic had made setting a meeting difficult. Because of the confidential nature of the DIEF and the sensitivity of the information that is the essence of its work, it was considered that meaningful and effective DIEF meetings require in-person participation and that it was therefore not feasible to conduct DIEF meetings in a virtual setting. This consideration entailed that at that point, the inaugural meeting of the DIEF could only take place during the CSP7 cycle if CSP7 itself would be organized as a physical meeting. The DIEF Chair further indicated that if the inaugural meeting could not take place at CSP7, and needed to be postponed to the CSP8 cycle, this would collide with the decision of States Parties at CSP6 to review the usefulness of the DIEF at CSP8. The intention behind that decision was that an evaluation would be made after at least two full cycles of meetings

¹ The current Chair of the Diversion Information Exchange Forum is Mr. Tom NIJS of Belgium.

(one Dief meeting in the CSP7 cycle and one or two Dief meetings in the CSP8 cycle). In that respect the Dief Chair concluded that if the inaugural meeting would effectively have to be postponed to the CSP8 cycle, the evaluation of the usefulness of the Dief should accordingly be postponed to CSP9, so that it would still cover two cycles of meetings.

5. In his presentation the Dief Chair did emphasize that the postponement of the inaugural meeting does not mean that no exchange of diversion-related information under the auspices of the Dief can take place. As explicitly included in rule 13 of the Dief Terms of Reference, States are in any case encouraged to share relevant information via the Information Exchange Platform in the restricted area of the ATT website, whenever this is feasible, taking into account legal considerations. The Dief Chair also indicated that sharing such information via the Information Exchange Platform is important more generally – even if Dief meetings are taking place – because it will extend the reach of relevant information beyond those officials participating in Dief meetings, and thereby maximize its potential impact. The same applies to the encouragement in rule 20 to exchange up-to-date contact details of relevant enforcement authorities (through the Secretariat), which could allow for more efficient and effective exchanges of operational diversion-related information in the field.

6. The Dief Chair called on all States Parties and Signatories to start sharing relevant information via the Information Exchange Platform now, as well as to start considering cases they should share once the Dief will be able to meet in person. In that regard, the Dief Chair made a plea to States Parties and Signatories to mainstream sharing relevant information with other States Parties and Signatories through the Dief every time they suspect or detect diversion. The Chair indicated that except when there are legal objections in play, with the Dief in place, including its confidential nature and strict Terms of Reference, there are no compelling reasons left why States Parties and Signatories would not do so by default.

7. Finally, the Dief Chair addressed the role that civil society organisations and other non-State actors could play in making the Dief into an instrument that effectively contributes to preventing and addressing diversion. The Chair indicated that although the Dief is a confidential body – for pertinent reasons – all States Parties and Signatories value the important contribution of civil society organisations and other non-State actors that are involved in preventing and addressing diversion, especially those actors working with States in investigating, identifying and/or addressing cases of diversion. In that respect the Dief Chair appealed to those actors to encourage the States that they are working with to share relevant information in the Dief, or even assist those States in presenting diversion cases in a manner that is feasible. As to the broader role of civil society organisations and other non-State in helping States to develop effective frameworks to prevent and address diversion, the Dief Chair reiterated that policy discussions will still exclusively be conducted in the WGETI sub-group on article 11, where States value the broader diversion-related expertise of non-State experts.

CONCLUSIONS ABOUT INAUGURAL MEETING AND EVALUATION

8. Following the decision of States Parties to hold CSP7 in a hybrid format, with a limited number of delegates physically present at the conference venue, the Dief Chair considered the feasibility and desirability of including an in-person Dief meeting at CSP7, also taking into account the points raised during the 29 April WGTR meeting. Eventually, the Dief Chair, the CSP7 President and the ATT Secretariat concluded that even with the hybrid format, it would be extremely difficult to conduct a meaningful and effective inaugural in-person meeting of the Dief, because of the simple fact that, by nature, it draws on experiences of capital experts – if possible enforcement officers – who will most likely not be able to participate. It would therefore be appropriate to defer the inaugural meeting of

the DIEF and, accordingly, to defer the review the usefulness of the DIEF to, in order to respect the original intention of the review covering at least two full cycles of DIEF meetings.

9. The general conclusion is thus not only that the confidential nature of the DIEF and the sensitivity of the relevant information requires in-person meetings, but also that meaningful and effective DIEF meetings require the broadest possible participation of States Parties and Sig in those in-person meetings. In that regard, with the COVID-19 pandemic still ongoing, we can aspire to organize such meeting in the CSP8 cycle, but not take it for granted that this will actually be possible yet. Therefor it seems appropriate to instruct the next CSP8 President to organize the inaugural DIEF meeting as soon as possible, but also to provide some flexibility, including on the evaluation of the usefulness of the DIEF (by linking it explicitly to the aforementioned intention for the evaluation to cover at least two full cycles of meetings).

10. These conclusions are reflected in the recommendations below.

AWARENESS-RAISING AND OUTREACH

11. As the DIEF is a forum for information exchange and not for policy discussions, the quintessential role of DIEF Chair next to conducting the meetings is to raise awareness about the DIEF and its potential role in preventing and addressing diversion, and to encourage use of DIEF meetings and the Information Exchange Platform by States Parties and Signatories to effectively share operational diversion-related information. In that respect, over the past year the DIEF Chair promoted the DIEF in the context of several fora that deal with diversion of conventional arms or arms transfer control in general (with possible synergies in mind). In these meetings and in his exchanges with States, the DIEF Chair also reiterated his aforementioned plea for States Parties and Signatories to mainstream sharing relevant information with other States Parties and Signatories through the DIEF about every case of diversion that was prevented or addressed. In line with his intervention during the 29 April WGTR meeting, he also raised with relevant non-State experts the role that they could play in encouraging States Parties and Signatories to make use of the DIEF.

12. As the DIEF is still to have its inaugural meeting, this awareness-raising and outreach evidently needs to continue beyond CSP7. This not only a duty of the DIEF Chair, but of all ATT stakeholders, including the CSP President, the ATT Secretariat, regional organizations, civil society and, evidently States Parties and Signatories themselves.

13. Beyond CSP7, an important target group for awareness-raising and outreach should be the enforcement community, in line with the strong encouragement in rule 7 of the Terms of Reference of participation of enforcement officers in DIEF meetings. This outreach should not only focus on the DIEF as such, but also explain the relevance of operational diversion-related information for licensing officers conducting risk assessments in the different step of the transfer chain, and the impact that sharing operational diversion-related information through the DIEF could have on diversion risk assessment conducted in all States Parties and signatory States. Especially this kind of awareness-raising and outreach will obviously, in large part, rely on States Parties and Signatories themselves and not (just) the DIEF Chair.

14. These elements are not reflected in the recommendations below, as recommendations about the use of the DIEF are already included in the Working Paper presented by Argentina about "Transparency and Exchange of Information: Its Role in The Prevention of Diversion". In that respect the DIEF Chair is grateful to Argentina for its role in the promotion of the DIEF.

RECOMMENDATIONS FOR CSP7

15. Based on the above, the DIEF Chair recommends that at CSP7 States Parties:

- 1) *recognize that because of the confidential nature of the DIEF and the sensitivity of the relevant information, and in order to be meaningful and effective, DIEF meetings need to be held in-person and allow broad participation of States Parties and Signatories;*
- 2) *therefor instruct the CSP8 President to organize the first formal meeting of the Diversion Information Exchange Forum as soon as broad in-person participation is feasible, within the timeframe and budget allocated for ATT meetings in 2022, and in line with its Terms of Reference; and*
- 3) *decides that the usefulness of the Diversion Information Exchange Forum will be reviewed at the first CSP following two cycles of DIEF meetings.*
