

# RISK ASSESSMENT IN THE EU (COVERING ATT ARTICLES 6 AND 7)



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**Implementation Issues**

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# EU Common Position 2008/944 (CP)

defining common rules governing control of exports  
of military technology and equipment

- legally binding on EU Member States
- is a basis for national laws applicable directly to individuals and legal entities
- recognizes ATT and serves to facilitate its application

8 criteria for denials → provisions of ATT Art. 6 and 7

- 1) **international obligations and commitments** → Art. 6.1, 6.2, 7.1(b)(iii) and (iv)
- 2) **respect for human rights and IHL** → Art. 6.3, 7.1(b)(i) and (ii), 7.4
- 3) **internal situation (tensions or internal armed conflicts)** → Art. 7.1(a)
- 4) **regional peace, security and stability** → Art. 7.1(a)
- 5) national security of EU Member States, friendly and allied countries
- 6) **behaviour of the buyer/recipient country towards the international community** → Art. 7.1(b)(iii)
- 7) risk of diversion or unauthorised re-export
- 8) technical and economic capacity of the recipient country

Q1, Q17, Q21

# User's Guide

- non-legally binding document
- for export licensing officials
- agreed guidance and best practices for interpreting criteria and implementing articles.
- Does not exclude national interpretations
- publicly available to enhance transparency and predictability in licensing decisions.

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- *Q1, Q17*



## Scope of application of risk assessment associated with 8 Criteria

- licenses for export, transit, trans-shipment, and brokering, including equipment and technologies for licensed production of arms.
- also brokers, carriers, transport service providers
- overall attitude of the recipient country towards principles of HR and IHL
- behaviour of the buyer or recipient country with regard to the international community (e.g. terrorism, organized crime, use of force, proliferation)

## The nature of the equipment

- realistic potential use
- track record of the state
- possible escalation of conflict
- internal diversion relevant to HR violations
- without prejudice to national assessment

Q2



## The past and present record of the recipient state

- Government's commitment to improving human rights and prosecuting violators
- Implementation of human rights instruments in national law and practice
- Ratification of relevant human rights instruments.
- Cooperation with international human rights mechanisms, like UN bodies.
- Respect for democratic principles. Democracy is inextricably linked to the full respect of all human rights.
- Political will for transparent dialogue on human rights issues with the EU and other partners, including civil society.

Q3, Q4

## Risk

„Clear risk" in CP and UG is broader than "overriding risk" in ATT Article 7, possibly requiring less evidence.

- Historical evidence
- Current circumstances
- Trends and future events
- Mitigating factors
- Role of reliable data sources



## **Seriousness and patterns**

- Individual assessment
- Systematic, widespread, various scale
- Have violations been reported by UN, EU, etc.?

## **Serious IHL violations**

- Committed by state actors / actors under state's responsibility?
- Punished?
- Role of arms producers and exporters in ensuring respect for IHL
- National legislation prohibiting IHL violations?
- Orders for military commanders to suppress violations?
- Ratification of Rome Statute of the ICC
- User's Guide: overview of provisions and customary rules on protection of various groups of persons under IHL.

## **Gender-Based Violence**

- Conditions on the ground
- Concerns of international bodies
- Cooperation with other international actors in prosecuting violations

Q5

## Positive and negative consequences of arms export

- If the proposed export helps to reinforce the national security, the assessment will be favourable *a priori* without prejudice to the analysis regarding HR, IHL, and regional security.
- If export would directly or indirectly threaten the defence and security interests of friends, allies and other Member States, the *a priori* assessment will be unfavourable.

### Factors:

- maintenance of strategic balance
- offensive nature of the equipment exported
- sensitivity of the material
- increase in operational performance which would be brought about by the material exported
- deployability of the equipment exported and/or the Deployability conferred by that equipment
- end-use of the material
- risk that the material will be diverted

Q7

## Procedural and institutional elements (1/3)

- no EU recommendations for national system structures
- extensive advice on information sources.

### Actors

- foreign affairs desk officers
- diplomatic missions
- governmental intelligence sources.
- European External Action Service and EU delegations

### Information sources (examples)

- Heads of Mission (HOMs) reports
- Public EU Council conclusions and statements
- lists of restrictive measures and arms embargoes
- EU guidelines for protecting and promoting human rights abroad
- Documentation from the UN, ICRC, and other international bodies
- Reports from international and local NGOs and civil society
- non-binding political commitments of EU Member States in the multilateral export control regimes.
- a (non-exhaustive) list of relevant websites contained in the User's Guide.

*Q11, Q12, Q14, Q15, Q16*



## Procedural and institutional elements (2/3)

### Elements specific to the EU:

- consultations on denials
- mandatory notifications to a confidential database of denials;
- tour de table
- policy discussions at COARM
- national updates at COARM
- use of AAMVS system by (prospective) end users and sharing anonymised information.

*Q11, Q12, Q14, Q15, Q16*



## Procedural and institutional elements (3/3)

### European Peace Facility's Integrated Methodological Framework

- for the purpose of planning EPF assistance measures which may take a form of free-of-charge deliveries of items covered by the ATT to partner third states.
- does not replace national licensing procedures of Member States;
- is performed by the European External Action Service;
- follows the same considerations, mutatis mutandis, as national risk assessment procedures;
- Contains some additional elements, such as
  - Detailed appraisal of the absorption capacity of the beneficiary country;
  - Physical security and stockpile management (PSSM);
  - Traceability:
  - Stockpile management and reduction, meaning that EPF assistance could be conditioned on the disposal of excessive stocks;
  - Ownership, Sustainability and Preservation of EPF-provided equipment.

*Q11, Q12, Q14, Q15, Q16*



## Information and documentation necessary for export authorization

- EU outlines obligatory and optional end-user documentation elements.
- binding list of elements of end-user certificates for SALW.
- obligatory elements: exporter and end-user details, goods description, quantity, value, and signatures.
- optional elements: commitments to civil end-use, re-export terms, intermediary details, delivery verification certificates, and on-site verification agreement, assurances of secure weapons and stockpile management and unique Certificate/Statement numbers
- verification: via diplomatic channels and with the license requester.
- Recommendations to use Wassenaar Arrangement and OSCE templates and standards as additional best practices.

## Monitoring and reassessment

- post-shipment verification: suggested
- exchange of experiences and best practices
- reassessment of licenses: recommended (without prejudice to legal obligations and commitments, especially to enforce arms embargoes or restrictive measures)

Q13



The EU has provided assistance to partner states under its ATT Outreach Project to establish efficient national export control systems, including also training in risk assessment for licensing officers.

The EU remains open for further providing such assistance if requested by partner states.

*Thank you for your attention,*

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