

**Seventh Conference of States Parties to the Arms Trade Treaty
Working Group on Effective Treaty Implementation**

**Response to WGETI Sub-working Group on Article 11 Draft Paper
'Elements of a process for assessing the risk of diversion'¹
23 June 2021**

Control Arms welcomes the ongoing efforts to address the important issue of the diversion of transferred arms, and appreciates the prominence it has been and is being given in a variety of contexts within the ATT process. We see the document 'Elements of a process for assessing the risk of diversion' as another useful contribution to these efforts.

In summary, the paper identifies the following elements:

- Having in place a comprehensive national transfer control system
- Ensuring potential exporters understand the application process and their responsibilities regarding that process
- Effective documentation requirements
- An effective documentation authentication process
- A consideration of risk factors
- A consideration of possible diversion-risk mitigation measures.

While agreeing that states should have these elements in place, we note that several are not specific to diversion, but rather are fundamental to any properly-functioning export control system. Within this context, we suggest that it may be possible to enhance the added value of this paper by elaborating further on some of the elements.

For example, in reference to outreach to industry and clear guidance on the requirements regarding the application form and other documentation, there is further scope for stressing and elaborating to industry their due diligence obligations, such as:

- to actively consider the risks that their products could be diverted
- to assess any diversion risks in the context of intermediaries involved in the transfer (shipping agents, brokers, etc.)
- to alert licensing and/or customs authorities of any risks
- to not export when they identify a significant diversion risk, unless explicitly confirmed by the relevant authorities that it is safe to export

¹ ATT/CSP7.WGETI/2021/FAC/710/Conf.EleRiskAss

- to follow all these procedures with equal rigour before as well as subsequent to any licence being granted. This comprehensive approach is critical, as licences can remain extant for many years during which circumstances can undergo significant change. Considering potential for ongoing relationships (e.g. for servicing, maintenance, repairs, etc.), the exporter may have access to detailed relevant information over time.

The level of attention given to the authentication of documentation is impressive. However this stands in comparison to the relatively lesser amount of detail with respect to the consideration of risk indicators and of mitigation measures. Control Arms recognises that the Elements paper includes links to other ‘possible reference documents’ and ‘possible measures to prevent and address diversion’, nevertheless we are concerned that the relative balance of the Elements paper could be taken to overemphasise the importance of documentation authentication at the expense of other steps that should be taken to prevent diversion. We therefore suggest that it may be useful to extract more substantive content from each of these other documents referred to generally and include them directly with the body of this paper.

Control Arms notes the reference to the Diversion Information Exchange Forum (DIEF) as an information source. While we are hopeful that the DIEF becomes a useful resource, it is a closed source that can be accessed only by ATT States Parties and Signatories. Because this resource is not open to all, including those that may have information on diversion, we would caution against over-reliance on the DIEF with regard to information-gathering. However, we welcome the frequent communication between the DIEF and the WGETI sub-working group on Article 11 to encourage transparency.

We also note that while the Elements paper sets out a relatively comprehensive list of information sources to draw upon in a diversion risk assessment, there is little detail on the actual nature of the information that might usefully be gathered from those sources. While this might be sufficient for licensing authorities that already have experienced and sophisticated control systems in place, it may prove helpful to provide more assistance in this area for the authorities that are newer to assessing diversion risk. There are also recent developments in information-gathering, for example the use of open-source intelligence, which fall outside the expertise and familiarity of many experienced licensing officials, and to which attention could usefully be drawn here.

Control Arms encourages the consideration of additional key documents developed by ATT stakeholders that provide practical suggestions on how to conduct a diversion risk assessment. For example, a Stimson Center report titled [Diversion and the Arms Trade Treaty: Identifying Good Practice and Opportunities for Progress](#) contains detailed and accessible information on diversion typologies and risks, suggestions for implementing a diversion risk assessment, and several positive examples of current state practice. The publication also includes clear guiding questions that licensing officials can employ when conducting diversion risk assessments. In addition to this publication, we would also like to suggest updating the ‘possible reference documents’ document to include valuable input developed in October 2020 by [UNIDIR, Conflict Armament Research, Small Arms Survey and The Stimson Center](#), as well as in March 2017 by [Saferworld](#).