

# VOLUNTARY PAPER OUTLINING THE ELEMENTS OF A PROCESS FOR ASSESSING THE RISK OF DIVERSION<sup>1</sup>

## Introduction

The ATT obliges States Parties to “seek to prevent the diversion of the transfer of conventional arms through its national control system, established in accordance with Article 5 (2), by assessing the risk of diversion of the export and considering the establishment of mitigation measures ...”. This paper, in accordance with the mandate given to the WGETI sub-working group on Article 11, identifies the “key elements for a process for assessing the risk of diversion” when considering an export authorization.

Many States Parties undertake a comprehensive risk assessment before authorizing an export of items contained on their national control list. Therefore, an assessment for the risk of diversion is often undertaken alongside an assessment of the risks outlined in Article 7 (1) of the treaty.

This document is intended for use in conjunction with the ATT treaty text, the [list of possible reference documents](#), the [possible measures to prevent and address diversion](#), and other relevant national guidelines/handbooks, international/multilateral best/good practice guidelines etc. This document is a living documents of a voluntary nature, which may be reviewed and updated by the Working Group.

## Elements in a process

1. **Key elements of a national transfer system for the diversion risk assessment process.** In order to be able to conduct a diversion risk assessment, it is recommended that a national transfer system has the following key elements in place:
  - An appropriate legal and regulatory framework for the regulation of international arms transfers and appropriate sanctions for violations;
  - Clear administrative procedures for the regulation of international arms transfers;
  - Appropriate resources, training programmes, personnel with [appropriate] skills and knowledge to implement and enforce the transfer control system;
  - Inter-agency information-sharing mechanisms;
  - The capacity and willingness to participate in international cooperation and international exchange mechanisms; and
  - Appropriate measures for conducting outreach to industry, including, *inter alia*, awareness raising events, easily accessible information on transfer control procedures and risk indicators via websites, publications and manuals, and provisions for bilateral consultations.

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<sup>1</sup> Annex A to WGETI Chair’s Draft Report to the Seventh Conference of States Parties (CSP7) ([ATT/CSP7.WGETI/2021/CHAIR/675/Conf.Rep.](#)), endorsed by CSP7 as a living document of a voluntary nature to be reviewed and updated regularly by the Working Group.

2. **Guidance for the application process for an export authorization.** Encourage ATT States Parties to provide clear guidance on the requirements regarding the application form and other required documentation to be provided to the competent authorities in the exporting State as part of an application for an authorization to export conventional arms.
  - The competent national authority could use a government website, handbook, or other measures to provide guidance on the application process and requirements to be satisfied before an application can be accepted for consideration. This could extend to including measures to take to prevent diversion and help to detect possible diversion attempts.
  - Several ATT states Parties provide guidance for an internal compliance programme for commercial enterprises that engage in the international arms trade, covering issues relating to the appointment of a “responsible person”, training, record-keeping, understanding of law and regulations, reporting requirements.
3. **Application form and documentation to be used for an application for an export authorization.** In order to conduct a comprehensive, consistent, and objective risk assessment, the exporting state party needs to receive information on the proposed international arms transfer. ATT States Parties require applicants for an export authorization to complete an application form and require particular documents to be provided in support of an application for an export authorization. The application form and required documents will provide details on the parties to the transfer, the intended end user and end use, the conventional arms to be exported, as well as other information determined to be of relevance for an assessment to determine the risk of diversion.
  - An application form will request the applicant for an export authorization to provide the necessary detailed information on the proposed international arms transfer.
  - Required documentation could include end-use/r certificates (EUC), international import certificates (IIC), import authorizations, transit/transshipment authorizations, brokering authorizations, contracts or agreements, and other documents providing information on the proposed transfer or assurances from the end user or other parties to the transfer. The [possible measures to prevent and address diversion](#) provides the recommended essential and optional details to be contained in an EUC issued by the competent authorities in the importing state. Some of these details could also be contained in an import authorization.
4. **Authentication of documents provided in an application for an export authorization.** In order to prevent the use of forged or fraudulent documents being used to facilitate diversion, when deemed necessary, ATT States Parties should authenticate the required documentation submitted as part of an application for an export authorization. There are several methods and modalities for the document authentication process:
  - Conduct a check via appropriate diplomatic channels and/or the ATT national point of contact.
  - Maintain records of required documents (EUCs, licences, permits etc.) and signatures from the importing countries with which the State is engaged in arms transfers. Check the documents against the records to ensure consistency with documents, including the authorized signatories and their signatures, previously received from the importing country.

- Maintain a database of the competent authorities for issuing and certifying EUC for every country. The database may also include the names and positions of persons authorised to sign such documents.
- Other examples of methods used to reduce the risk of forgery and support the authentication process include:
  - Several ATT States Parties request that importing certificates issued by the importing state are delivered to the exporting State via the appropriate diplomatic channels in the importing state.
  - Where appropriate, only accept legalised documents or documents accompanied by an apostille.
  - The proper document could be on “bank” paper or other forms of anti-forgery paper.
  - The possible use of a standardised electronic signature.

5. **Verify the details provided in the application for export authorization to contribute to the prevention of diversion as part of a comprehensive, consistent, and objective case-by-case export risk assessment.** As noted above, an assessment of the risk of diversion is often undertaken as part of a broader risk assessment process conducted before a decision is made on whether to authorize or not authorise an export of conventional arms [items contained in a national control list]. ATT States Parties have emphasized that proper documentation, such as an EUC, plays an important role in the risk assessment process. A rigorous examination of the application for export authorization and accompanying documents against other relevant sources of information is essential for determining the risk of diversion.

The following relevant sources, among others, can be utilized to verify the information provided in an export authorization application and related documents as part of a comprehensive, consistent, and objective case-by-case export risk assessment:

- Databases of the competent authority regarding previous applications that have been authorized or denied, or other relevant databases that identify natural or legal persons previously sanctioned and /or involved in illicit trafficking, corruption, illicit sources of supply, trafficking routes, etc.
- Other relevant government agencies, departments or ministries and their databases (e.g. diplomatic service, customs, intelligence services, finance, etc.).
- Competent authorities, relevant government agencies, departments or ministries in other states involved in the transfer chain.
- Bilateral or multilateral information exchange frameworks– i.e. the ATT Diversion Information Exchange Forum.
- Industry associations and [trusted] arms trading entities.
- International and regional organizations’ databases and reports.

- Authoritative and credible NGO databases and reports on individual diversion cases and patterns of diversion.
  - Open sources, such as media.
6. **Consideration of risk indicators.** States Parties can turn to existing multilateral guidance for risk indicators and questions to address regarding the proposed export, as outlined in the [list of possible reference documents](#) and the [possible measures to prevent and address diversion](#). When seeking to determine the risk of diversion, the following elements of a proposed transfer could be scrutinised:
- The importing state's security requirements (e.g. are the arms being purchased consistent with the importing state's defence needs according to quantity, model, calibre?);
  - The importing state's capacity to control the arms being transferred (e.g. does the importing state have an adequate system of laws and administrative procedures in place to effectively regulate the movement, storage, possession and use of the arms being transferred?);
  - Risks associated with the type of conventional arms and related items (e.g. do the arms to be transferred contain sensitive technologies that could have a major impact if diverted? Is the proposed export high-tech in nature and does this fit with the importing state's defence profile?);
  - Legitimacy and reliability of the intended end user/end use of the exported conventional arms and related items (e.g. have any arms exported by the exporting state to the importing state been diverted in the past? Does the importing state have a good record of honouring EUC conditions or assurances given to the exporting state in the context of previous transactions?);
  - Legitimacy and reliability of the other entities involved in the proposed export (e.g. has the importing entity been able to provide details of the brokers, shipping agents, freight forwarders, distributors and other entities involved in the export and are these entities authorized by the importing state?);
  - The importing state's geographic position in relation to the states under arms embargo and war-affected areas, the state's record of respecting arms embargos as well as importing state's defence cooperation agreements;
  - The importing state's past conduct with regards to ascertained diversion (e.g. has the importing state addressed previous cases of diversion and taken implemented mitigating measures?).
7. **Consideration of measures to mitigate the risk of diversion.** The [list of possible reference documents](#) and the [possible measures to prevent and address diversion](#) provide guidance on measures that can be used to further mitigate the risk of diversion in cases where an export is authorized.

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