

Arms Trade Treaty

**Second Meeting of the Working Group on Transparency and Reporting**

Geneva, 6 April 2017

## **WORKING PAPER ON INFORMATION EXCHANGE MECHANISM TO PREVENT DIVERSION OF CONVENTIONAL ARMS TO THE ILLICIT MARKET**

### **1. Purpose**

We recognize the need for additional measures in order to achieve the full observance of common international standards for regulating or improving the regulation of the international trade in conventional arms, to prevent and eradicate the illicit trade in conventional arms and prevent their diversion in accordance with the Arms Trade Treaty. We also recognize that the purpose of the CSP process is to make progress on substantive issues concerning implementation of the Treaty. With this in mind, this proposal aims to support the full implementation of the Treaty provisions on diversion and information exchange.

This paper proposes the establishment of a mechanism for exchanging comprehensive and detailed information on conventional arms transfers (co-partnership) to avoid the risk of diversion and to implement mitigation measures by SP.

### **2. Rationale**

The Treaty establishes obligations regarding exchange of information and diversion prevention, as well as other relevant obligations (Article 11, 15, 16). However, despite its significance, the ATT does not provide on ways or means to implement those obligations. Therefore, the proposed mechanism is intended to facilitate the interpretation and practical application of said provisions.

Especially, the proposal aims to cover the States Parties obligations to take action to prevent diversion (Article 11.1, 11.2), to mitigate the risks of diversion (Article 11.3), to respond to cases of diversion when they are detected (Article 11.4), to share information on measures to tackle diversion (Article 11.5) and to report to the Secretariat on measures taken to address diversion (Articles 11.6, 13.2).

The Mechanism shall apply in the following cases: (i) pre-authorization stage, during the risk analysis, when there is a need to obtain assessment elements or mitigations measures, (ii) during the transfer, once diversion is detected or an early warning is issued, (iii) when the transfer has reached the end user.

The purpose of sharing information through co-partnership would be to –essentially- provide SP with the basis for adopting national measures to address diversion challenges and for the jointly development of relevant actions to prevent diversion or mitigation measures to tackle diversion. The mechanism would also offer SP

recommendations to strengthen national control systems and risk analysis process with a focus on prevention of diversion.

Furthermore, a coordinated approach to prevent the diversion of transfers of conventional arms, by those SP directly involved, might contribute to develop common global standards to respond optimally to diversion challenges and to prevent and eradicate the diversion of arms to the illicit market.

The co-partnership would require two or more SP to exchange information to prevent and eradicate diversion on specific transfers of conventional arms. Co-partnership SP would submit -for transparency purposes- a report to the CSP containing the joint conclusions and recommendations on actions to be taken, and the agreements to follow up their implementation to assess their effects.

The ATT Secretariat would process the requests for a co-partnership – i.e., obtain the counterpart’s consent and matchmaking-, act as Facilitating Body for the co-partnership (meetings, roadmaps) and would facilitate the preparations of the co-partnership report. The ATT Secretariat would-for transparency purposes- submit a report to the CSP containing relevant information on the requests, consents or denials, the co-partnerships taking place and options for making the procedures more effective.

Initially the activities related to the co-partnership, such as meetings or visits, would be funded by concerned SP or donors.

### **3. Decisions**

- The Working Group on Transparency and Reporting should proceed to elaborate the draft template for requesting the co-partnership, a model terms of reference to outline its scope (drafts attached), and procedures.
- CSP should act on the issue and invite SP to participate in the mechanism, both as participating SP in a co-partnership or donors.

## Annex 1

### DRAFT REQUEST FOR THE MECHANISM

#### Purpose of the template

The template is intended to serve as a tool for SP seeking the establishment of a co-partnership under the Information Exchange Mechanism to prevent diversion of conventional arms to the illicit market, or as a basis to launch consultations between SP authorities to engage in a process to identify means of collaboration on the issue.

#### How to request the mechanism

Individual requests or jointly agreed requests may be submitted to the ATT Secretariat by using this template.

#### I. Summary of the request

Short summary of your request:

#### II. Elements of the request

<b>Date of submission</b>	
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**Requesting State/States**

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**Requested State/States involved in a transfer**

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**Stage of transfer of conventional arms requiring subsequent action by SP regarding preventing diversion:**

- Pre-authorization stage, during the risk analysis, when there is a need for assessment elements or mitigations measures
- During the transfer, once diversion is detected or an early warning is issued
- When the transfer has reached the end user
- Other

**Information on the transfer**

Category of arms	
Description of items (number, value)	
State of origin	
Final importing State	
Final end user	

**Any additional information:**

**III. Funding source**

- Self-funded
- Partner(s): \_\_\_\_\_

**IV. Point(s) of Contact**

Name	Position, Organisation:	E-mail Address, Phone No.

## **Annex 2**

### **MODEL ToR**

Involved SP in a co-partnership should exchange relevant information to contribute to the implementation of the provisions of Article 11 of the Treaty, especially Articles 11.2 and 11.5.

Any information received under the co-partnership by a SP shall be deemed and treated as confidential. Said information shall be subject to each Party's information protection regulations and policies. Information received may be disclosed, prior written consent of the concerned Party, only to authorities (including courts and administrative bodies) in relation with enforcement or prosecution to prevent and combat diversion of conventional arms to the illicit market.

The commitment to exchange information under Article 11 should be interpreted broadly and based on reciprocity. However, the information should bear relevance to the prevention and mitigation of diversion.

The requested or exchange information should be –essentially- open-ended and depend on the circumstances of the transfer and the end user, such as:

- Information needed to complete the file of the end user, brokers, shipping company, official address of an individual or company, or records in national databases;
- Information on price, cost, commission, taxes, routes of a transfer to investigate in situations involving risk of diversion
- Information on the common procedures by which particular transactions or activities are customarily conducted;
- Information which may be useful to a State as a check on the effectiveness of its activities, such as, date and time, volume of transfers acknowledged by the receiving country

Co-partnership SP should decide on the means of communication –e.g., meetings in capitals and/or designation of a focal point of one State to receive/provide information from/to the competent authority and discuss it-.