

# Options for increasing the openness and transparency of Sweden's arms exports and arms export controls

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## I. Introduction

The Parliamentary Committee on Swedish arms exports has been tasked with investigating whether and how to increase the openness and transparency of Sweden's arms export controls, including within the Exportkontrollrådet (EKR, Export Control Council). To facilitate this investigation, this study provides an analysis of the approach to openness and transparency in arms exports taken in 10 states: Denmark, Finland, France, Germany, the Netherlands, Norway, Sweden, Switzerland, the United Kingdom and the United States.<sup>1</sup> It is intended to provide comparisons with Sweden's approach to openness and transparency in arms exports and arms export controls and highlight good practices that might be of interest for Sweden.

This paper draws on available open source information and interviews with export licensing officials and parliamentarians to address two main issues. Section II examines the provision of information to international reporting instruments and the general public by the above 10 states on arms export licences issued and denied and arms deliveries. Section II also considers the ways in which the case study states approach the issue of providing information on decision making on potentially controversial exports. The section concludes with examples of good practice in the provision of information on arms export licences and deliveries of arms. Section III considers the role of parliaments in the formation and implementation of arms export policies, and the parliamentary scrutiny and oversight function in the 10 case study states. It outlines some of the differing approaches taken by the parliaments in the case study states to arms exports policies, including oversight and scrutiny of potentially controversial exports.

<sup>1</sup> The terms of reference for the Parliamentary Committee call for consideration of the export control systems in the Nordic states, the Netherlands, Germany, the UK and the USA. At the request of the Secretary for the Parliamentary Committee, this study also includes France and Switzerland.

## II. The provision of information on arms export licences and deliveries of arms to international reporting instruments and the public

Each of the states considered in this paper provides some information on its arms export licences or deliveries of conventional arms on an annual basis to the United Nations Register of Conventional Arms (UNROCA) and via a national report provided for the parliament and the general public. In addition, all seven of the European Union (EU) member states surveyed for this study provide information on export licences issued to the EU Annual Report on arms exports.

### **Reporting to the UN Register of Conventional Arms**

UNROCA, which was established in 1992, is the key international mechanism for official transparency on arms transfers. Each year all UN member states are requested to report information to UNROCA on the export and import of seven categories of conventional weapons in the previous calendar year.<sup>2</sup> States are also invited to provide information on their international transfers of small arms and light weapons (SALW) and their holdings and procurement from domestic production of major conventional weapons.

All 10 states studied here annually provide information to UNROCA on their exports of major conventional arms. Nine of the 10 states have reported every year to UNROCA since the first reports were provided in 1993: France is the only exception, having not reported on transfers carried out during 2009. All 10 states provide additional information on the items being transferred, in particular the designation of the arms.

All but one of the states report the numbers of units transferred. The exception is Sweden, which has not provided information on the number of missiles or missile launchers transferred.<sup>3</sup> However, most of the states importing missiles and missile launchers from Sweden (the only exception being Australia) provide this information to UNROCA. For example, although Sweden ‘classified’ the number of RBS 70 missiles transferred to Finland in 2010, Finland reported the import of 20 RBS 70 man-portable air defence systems (MANPADS) from Sweden.<sup>4</sup>

Nine of the 10 states have also provided background information on their exports of SALW at least once. The USA is the only exception. However, Finland has only provided background information on SALW exports once, with the eight other states reporting fairly consistently since 2008 (see table 1).

<sup>2</sup> These 7 categories are battle tanks, armoured combat vehicles, large-calibre artillery systems, combat aircraft, attack helicopters, warships, and missiles and missile launchers.

<sup>3</sup> Australia is the only other state that provides information to UNROCA but omits the number of units of missiles or missile launchers being transferred.

<sup>4</sup> United Nations Register of Conventional Arms, Report of the Secretary-General, UN Doc. A/766/127, 12 July 2011, p. 17; United Nations Register of Conventional Arms, Report of the Secretary-General, UN Doc. A/766/127/Add.1, 18 June 2012, p. 19.

**Table 1.** Background information on international transfers of small arms and light weapons

An ‘x’ indicates that the state provided background information on international transfers of SALW to the UN Register.

State	2003	2004	2005	2006	2007	2008	2009	2010	2011
Denmark	–	–	–	x	x	x	x	x	x
Finland	–	x	–	–	–	–	–	–	–
France	–	–	–	x	x	x	x	x	x
Germany	–	–	x	x	x	x	x	x	x
Netherlands	x	x	x	x	x	x	x	x	x
Norway	–	–	–	–	x	x	x	x	x
Sweden	x	–	–	–	x	x	x	x	x
Switzerland	–	–	–	–	x	x	x	x	x
UK	x	x	x	x	x	x	x	x	x
USA	–	–	–	–	–	–	–	–	–

Sources: UN Register of Conventional Arms, <<http://www.un-register.org/SmallArms/Index.aspx>>.

### National and regional arms export reports<sup>5</sup>

Since the early 1990s, an increasing number of governments have published data on arms export licences issued, licence denials and deliveries of conventional arms in annual, biannual, quarterly or monthly national reports. The initial push to publish national reports containing information on arms exports came from national parliaments and non-governmental organizations (NGOs) demanding greater oversight of government implementation of arms export policies. National reports on arms exports were therefore primarily intended as a tool for public and parliamentary oversight, helping to inform discussions on implementation of national export control regulations.

The USA was the first country to publish a national report on arms exports; the US Government has been legally obliged to publish a report since 1961. Sweden was the second state to publish a national report, reporting on activities in 1984.<sup>6</sup> Since the early 1990s, an increasing number of governments have published national reports on arms exports.<sup>7</sup> As of January 2013, 35 states had published at least one national report on arms exports since 1990, including 32 that had done so since 2009.<sup>8</sup> Of these states, 21 are EU member states, and a further 8 are European. A key factor behind the large number of EU states providing information on arms export licences issued and arms deliveries has been the adoption of the 1998 EU Code of Conduct on Arms Exports and its successor, the 2008 EU Common Position defining common rules governing the control of exports of military technology and equipment. Under the EU Common Position, arms-exporting EU member states are now obliged to produce a national report on arms exports.<sup>9</sup>

<sup>5</sup> The only regional report referred to in this section is the EU Annual Report on arms exports, which has been published since 1999.

<sup>6</sup> Weber, H. and Bromley, M., ‘National reports on arms exports’, SIPRI Factsheet, <[http://books.sipri.org/product\\_info?c\\_product\\_id=423](http://books.sipri.org/product_info?c_product_id=423)>, Mar. 2011, p. 2.

<sup>7</sup> A database of the published reports is maintained by SIPRI at <[http://www.sipri.org/research/armaments/transfers/transparency/national\\_reports](http://www.sipri.org/research/armaments/transfers/transparency/national_reports)>. See also Weber and Bromley (note 6).

<sup>8</sup> The 3 states that have produced a report since 1990 but not since 2009 are Australia, Belarus and the Former Yugoslav Republic of Macedonia.

<sup>9</sup> Six EU member states have yet to produce a national report on arms exports, although they have provided information on arms export licences or deliveries for the EU Annual Report: Cyprus, Greece, Latvia, Lithuania, Luxembourg and Malta.

National reports vary enormously, both in terms of the amount of information they contain and the level of detail they provide on arms export licences issued or denied and arms deliveries. At a minimum, these reports tend to contain background information on the states' national export control systems and details of the arms export licences granted. Some reports contain considerable detail on arms export licences granted or denied, arms deliveries, and arms-brokering licences issued or denied.

This section considers the information provided by the 10 case study states on (a) arms export licences issued; (b) arms deliveries; (c) arms export licence denials; and (d) arms brokering licences and denials.<sup>10</sup> Particular attention is paid to the following factors: (a) the availability of data (e.g. the method of presentation, clarity of reporting); (b) comprehensiveness (e.g. whether open licences are also covered, or whether all categories of arms are included); (c) the level of disaggregation; and (d) the relevance of the information provided (i.e. whether it is sufficient and appropriate for answering key questions). The information contained in this section is based on national reports on arms exports published in 2012 on export licences issued or denied and arms deliveries carried out in 2011; however, the practice of these 10 states in their reports on 2011 is representative of their general level of openness in recent years.

### *Arms export licences issued*

The provision of information on arms export licences helps to show how states are implementing their national controls on arms exports. In particular, it gives an indication of states' interpretation of national arms export criteria. Over time, this data can be used to reveal changes in decision-making on arms exports, but only if detailed information—such as a description of the goods involved, the number of items or the type of end-user—is provided on the licences granted. All 10 states provide at least some data on export licences issued (see table 2).<sup>11</sup> However, there are differences with regards to the detail of the information provided.

**Table 2.** Reporting arms export licences issued, 2011

	Den- mark	Finland	France	Ger- many <sup>a</sup>	Nether- lands	Norway	Sweden	Switzer- land <sup>b</sup>	UK	USA
<i>Export licenses issued</i>										
No. of licences	x	x	x	x	x	x	x	x	x	—
Financial value	x	x	x	x	x	—	x	x	x	x
Destination	x	x	x	x	x	—	x	—	x	x
Control list category	x	x	x	x	x	—	x	—	x	x
Description of goods	—	—	—	x	x	—	—	—	x	x
No. of items	—	x	—	—	—	—	—	—	—	x
Type of end-user	x	—	—	—	—	—	—	—	—	—
<i>Disaggregated by</i>										
Destination	x	x	x	x	x	—	x	—	x	x

<sup>10</sup> Information referred to in this study is taken from national reports on arms exports published in 2012 on export licences issued or denied and arms deliveries carried out in 2011.

<sup>11</sup> In addition to its annual report, the UK provides information on export licences issued, denied and revoked at 'Strategic Export Controls: Reports and Statistics Website', <<https://www.exportcontroldb.bis.gov.uk>>.

Control list category	x	x	x	x	x	–	–	–	x	x
Individual licence	–	–	–	–	x	–	–	–	–	–

x = information included; – = information not included.

<sup>a</sup> Disaggregation by destination and control list category is provided in separate tables.

<sup>b</sup> Switzerland provides a separate report on exports of small arms and light weapons that provides more detailed information than for exports of all other types of conventional arms.

Most of the states studied for this report provide information on the number of export licences issued, and the aggregated financial value for destinations and categories of military equipment exported. Germany, the Netherlands, the UK and the USA provide a description of the items to be exported that is more detailed than simply providing aggregated data for each military list category, while Finland provides information on military list subcategories.<sup>12</sup> Only Finland and the USA provide information on the number of items to be exported. Denmark distinguishes between licences for ‘temporary’ and ‘permanent’ exports, as well as providing information on the type of end-user according to three categories: military, industry or police.

Eight of the 10 case study states provide a breakdown of the value of export licences for each military list category for each destination—Norway and Switzerland are the exceptions. The Swedish annual report on arms exports provides data on export licences issued in an aggregated format, as well as the total value and all military list categories for licences issued for each destination. However, Sweden provides this information in a disaggregated format for the EU Annual Report. In addition, it goes beyond other states by providing separate information on authorizations for re-export, with information on re-exporter and destination, and a short description of the items.<sup>13</sup>

Denmark, Germany, Norway, Sweden and Switzerland provide separate information on export licences issued for SALW. Four of these five states (the exception being Sweden) include information on export licences issued for civilian (i.e. hunting and sporting) firearms. These states take different approaches when providing this information. For example, Norway provides a list of states and aggregates the numbers for all types of SALW for each destination. Switzerland provides a separate annual report on SALW exports that provides detailed information on export licences issued for SALW broken down by destination, with information on the number and value of SALW to be exported broken down by type of SALW.<sup>14</sup> It also provides a breakdown of types of end-user for SALW delivered according to five categories: army, police, other state bodies, industry and private (i.e. civilian) end-

<sup>12</sup> The USA uses a variety of different mechanisms for arranging arms exports. This paper deals with the 2 most common forms: (a) Foreign Military Sales (FMS), which are government-to-government deals and; (b) Direct Commercial Sales (DCS), which are sales negotiated directly between US companies and foreign buyers. In addition, the transfer of ‘excess defence articles’ is discussed below.

<sup>13</sup> The Netherlands provides information on the re-exporter and destination, and a brief description of items in its online reports by month but not in its annual report. Tabell 14. Beslut om godkänd vidareexport av svensk krigsmateriel, Strategisk exportkontroll 2011 – krigsmateriel och produkter med dubbla användningsområden, Regeringens skrivelse 2011/12:114, 15 Mar. 2012, p. 65.

<sup>14</sup> The report offers 8 categories: (a) revolvers and semi-automatic pistols; (b) other SALW; (c) rifles; (d) sub-machine guns; (e) assault rifles; (f) light machine guns; (g) heavy machine guns; (h) grenade launchers. Le contrôle à l’exportation dans le domaine des armes légères et de petit calibre (ALPC) relevant de la législation sur le matériel de guerre 2011, Confédération suisse, Département fédéral de l’économie DFE, Secrétariat d’Etat à l’économie SECO, Relations économiques bilatérales Contrôles à l’exportation / Matériel de guerre, pp. 9–13.

users.<sup>15</sup> While Germany and Sweden also provide separate data on export licences issues for ammunition, the information is not particularly detailed.

### *Arms deliveries*

There is often a difference between information provided in national arms export reports on export licences issued and arms deliveries. This is either because not all of the arms licensed for export are delivered to their destination, or because the deliveries can take place long after the licence has been granted. Licensing statistics can also exclude exports of surplus weapons. Therefore, in order to gain an accurate picture of the international arms trade, information is needed on arms deliveries—this is especially so in the light of the increased use of open licences in the EU. This information can also show how particular states are interpreting and implementing their national controls on arms exports, especially if the state involved does not provide information on arms export licences issued. It can also help to identify destabilizing arms build-ups and is also a means of informing other states' export licensing decisions. Not all of the 10 case study states provide information on arms deliveries for all items covered by their military lists (see table 3). Furthermore, for those that do report on arms deliveries, the type of information is often more limited than the information on arms export licences issued.

**Table 3.** Reporting arms deliveries, 2011

	Den- mark	Finland	France	Ger- many <sup>a</sup>	Nether- lands <sup>b</sup>	Norway	Sweden	Switzer- land	UK	USA
<i>Actual arms exports</i>										
Financial value	–	x	x	x	–	x	x	x	–	x
Destination	–	x	x	x	–	x	x	x	–	x
Control list category	–	x	–	–	–	x	x	x	–	–
Description of goods	–	x	–	–	–	x	–	–	–	–
No. of items	–	–	–	–	–	x	–	–	–	–
Type of end-user	–	–	–	–	–	–	–	–	–	–
<i>Disaggregated by</i>										
Destination	–	x	x	x	–	x	x	x	–	x
Control list category	–	x	–	–	–	x	x <sup>c</sup>	x	–	–
Individual licence	–	–	–	–	–	–	–	–	–	–

x = information included; – = information not included.

<sup>a</sup> Germany provides information on the export or delivery of 'weapons of war' and not for exports of all items contained in the German Military List.

<sup>b</sup> The Netherlands does not provide information on arms deliveries or actual exports in its national reports but does provide this information for the EU Annual Report on arms exports.

<sup>c</sup> Disaggregation by destination and control list category is provided in separate tables.

A number of states have problems collecting accurate data on arms deliveries because they lack effective information-gathering mechanisms. Denmark and the UK provide information on arms deliveries for neither national reports nor the EU Annual Report on arms exports. In

<sup>15</sup> Le contrôle à l'exportation dans le domaine des armes légères et de petit calibre (ALPC) relevant de la législation sur le matériel de guerre 2011, Confédération suisse, Département fédéral de l'économie DFE, Secrétariat d'Etat à l'économie SECO, Relations économiques bilatérales Contrôles à l'exportation / Matériel de guerre, p. 14.



the case of the USA, the financial value of arms deliveries under the Direct Commercial Sales (DCS) programme is aggregated by destination, making it impossible to see which conventional arms or items from which military list categories have been delivered. However, information for every deal worth more than \$2 million is provided on deliveries under the Foreign Military Sales (FMS) programme to the US Congress each financial year. This information is broken down according to destination, exporting company, contract number, financial value and description of the military equipment.<sup>16</sup> The Netherlands provides information on arms deliveries for the EU Annual Report on arms exports but does not provide this information in its national annual report. France and Germany provide information on arms deliveries in their annual reports but not for the EU Annual Report on arms exports. In the case of Germany, it provides information on deliveries of ‘weapons of war’ (a German-specific categorization of conventional arms that are also covered by the EU Military List) but not for items contained in all military list categories. While Norway provides limited information on export licences issued in its national report, among the states studied it provides the most detailed information on arms deliveries. It provides information for each destination broken down by military list category, as well as a description of items and whether they are parts or complete systems, the number of parts of complete systems delivered, and the value of the delivery or export for these items.

France, Germany, the Netherlands, the UK and the USA provide specific information on deliveries of surplus. France lists gifts and donations by the Ministry of Defence, with destination country and financial value. Germany provides only an aggregated value for exports of surplus. The UK provides information on destination, quantity, and a short description of the surplus military equipment exported. The Netherlands provides information on the destination, the recipient, the company involved in the export, and a description of the surplus military equipment exported. The USA provides very detailed information on exports of ‘excess defense articles’ via an online database, which contains information on destination, a description of items, date of authorization, units, value of authorization and value of delivery.<sup>17</sup>

### *Arms export denials*

Information on arms export licence denials provides important insights into how states interpret their national arms export policies. The exchange of this information between governments can also help national authorities make decisions on applications for export licences. However, since information on export licence denials can reveal which states are interested in acquiring which type of military equipment and thus identify opportunities for others suppliers of similar goods, many supplier states have traditionally been reluctant to provide detailed information on arms export licence denials. Some governments have also expressed concerns about potential diplomatic sensitivities concerning a public refusal to provide a state with certain military equipment. The case study states are among those that are willing to provide information on arms export licence denials (see table 4).

While 8 of the 10 case study states are willing to provide some information on arms export licence denials, the level of detail provided varies greatly. France only provides aggregated

<sup>16</sup> Under Secretary of Defense for Acquisition, Technology and Logistics, *Report to Congress on sales of significant military equipment to foreign entities fiscal year 2011*, May 2012.

<sup>17</sup> Defense Security Cooperation Agency, Excess Defense Articles database, <<http://www.dsca.osd.mil/programs/eda/search.asp>>.

data on the number of export licences denied and the reasons for the denials, but does not provide information on the destinations. Norway provides information on the total number of denials and the destinations for which export licences have been denied, but aggregates the information provided according to the types of equipment and reasons for denial. Denmark, Germany and the Netherlands provide aggregated data on arms export denials and also disaggregate the information for each destination, including a description of the items to be exported and the reason for the denial, citing the relevant criteria of the EU Common Position. The Netherlands also provides the date of the denial and names the recipient and end-user.

The UK's annual report on arms exports provides aggregated information on standard and open individual export licences denied and revoked and the total number of times that particular criteria were used to justify a denial or revocation of a licence. At the same time, the UK is particularly open about the process for deciding on whether to permit or deny a licence in certain cases of concern. The British annual report includes case studies illustrating its approach to reviewing licence applications. The report also explains decisions for export licence approvals or denials for particular destinations and describes particular licence applications or destinations in some detail, as well as the goods to be exported and end-users. Furthermore, the report outlines the potential risks, some of the sources consulted when making an assessment, and the final decisions on licences issued, denied and revoked. For example, the 2012 report explained decisions with regard to licences issued, denied and revoked in 2011 for military equipment and riot control equipment for Bahrain, Egypt, Indonesia, Libya, Saudi Arabia, Thailand and Venezuela.<sup>18</sup>

**Table 4.** Reporting arms export denials, 2011

	Den- mark	Finland	France	Ger- many	Nether- lands	Norway	Sweden	Switzer- land	UK	USA
<i>Export licence denials</i>										
No. of licences	x	–	x	x	x	x	x	x	x	–
Financial value	–	–	–	x	–	–	–	x	–	–
Destination	x	–	–	x	x	x	x	–	x	–
Control list category	x	–	–	x	–	–	–	–	x	–
Description of goods	x	–	–	–	x	x	–	x	x	–
No. of items	–	–	–	–	–	–	–	–	–	–
Type of end-user	–	–	–	–	x	–	–	–	–	–
Reason for denial	x	–	x	x	x	x	–	–	x	–
<i>Disaggregated by</i>										
Destination	x	–	–	x	x	–	x	–	x	–
Control list category	x	–	–	–	–	–	–	–	–	–
Individual licence	x	–	–	–	x	–	–	–	–	–

x = information included; – = information not included.

<sup>18</sup> United Kingdom Strategic Export Controls Annual Report 2011, Presented to Parliament pursuant to Section 10 of the Export Control Act 2002, Ordered by the House of Commons to be printed 13 July 2012, pp. 17–19.

*Arms-brokering licences and denials*

Information on licences granted for legal entities (i.e. persons or companies) to broker arms deals between suppliers and recipients in third countries is useful for demonstrating that a state has effective controls on arms brokering and is able to regulate brokering activities carried out by its nationals. This is important because arms brokers have been implicated in facilitating the supply of arms to states and entities subject to UN arms embargoes, as well as to other ‘undesirable’ end-users. Effective controls on arms brokering are therefore regarded as necessary for limiting illicit arms transfers.

The number of states providing information on licences for brokering has increased in recent years. Civil society demands for increased oversight in this area were an important initial driver for the provision of this information. A further boost occurred in 2008 when EU member states agreed to publish information on approvals and denials of brokering licences in the EU Annual Report.<sup>19</sup> Six of the 10 case study states provide information on arms brokering licences (see table 5).

The information provided by states on brokering licences varies greatly in terms of detail. Norway reported that it had denied a brokering licence in 2011, but did not provide any information on the supplier state, the recipient, the goods involved or their value.<sup>20</sup> Sweden has provided information on arms brokering licences issued in its national report and also to the EU Annual Report, but in different formats. For the EU Annual Report it provides information on the Military List categories for each destination, also indicating the country of origin. In the national report, it provides aggregated data on the total number of licences, all of the military list categories and a list of countries but does not indicate if these are countries of origin for goods or countries of destination. This is less detailed than the information provided by the Netherlands, which provides information for each destination on the country of origin, value of licence and items, number of items, and the Military List categories.<sup>21</sup> Germany and the UK provide information on licences issued and denied for brokering, with information on the value of the licence, destination and country of origin and a description of the goods.<sup>22</sup>

Switzerland does not provide information on brokering licences in its annual report, but does provide information on brokering licences issued for SALW. However, it only reports the geographic region of the countries of origin and destinations, the types of item and financial value of the licence.

<sup>19</sup> Council of the European Union, Tenth Annual Report according to Operative Provision 8 of the European Code of Conduct on Arms Exports’, Official Journal of the European Union, C300, 22 Nov. 2008, p. 3

<sup>20</sup> Eksport av forsvarsmateriell fra Norge i 2011, eksportkontroll og internasjonalt ikke-spredningssamarbeid, Meld. St. 8 (2012–2013), Melding til Stortinget (Exports of defense of Norway in 2011, export controls and international non-proliferation cooperation, Sign. St. 8 (2012-2013), White Paper), p. 34.

<sup>21</sup> Council of the European Union, Fourteenth Annual Report according to Article 8(2) of Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment, *Official Journal of the European Union*, C386, 14 Dec. 2012, p. 414.

<sup>22</sup> See <<https://www.exportcontroldb.berr.gov.uk/>>.

**Table 5.** Reporting arms brokering licences, 2011

	Den- mark	Finland	France	Ger- many	Nether- lands <sup>a</sup>	Norway	Sweden <sup>a</sup>	Switzer- land	UK	USA
<i>Arms brokering licences issued</i>										
No. of licences	–	–	x	x	x	x	x	–	x	–
Financial value	–	–	–	x	x	–	–	–	–	–
Destination	–	–	–	x	x	–	x	–	x	–
Control list category	–	–	–	x	x	–	x	–	–	–
Description of goods	–	–	–	x	–	–	–	–	x	–
No. of items	–	–	–	x	–	–	–	–	x	–
Type of end-user	–	–	–	x	–	–	–	–	–	–
Country of origin	–	–	–	x	x	–	x	–	x	–
<i>Disaggregated by</i>										
Destination	–	–	–	x	x	–	x	–	x	–
Control list category	–	–	–	x	x	–	–	–	–	–
Individual licence	–	–	–	x	–	–	–	–	–	–

x = information included; – = information not included.

<sup>a</sup> The Netherlands and Sweden do not provide information on arms brokering licences in national reports but do provide this information for the EU Annual Report on arms exports.

## Good practice

This survey of national reports on arms exports indicates that there are a number of areas in which Sweden could increase its openness and transparency on arms export licences issued and denied and arms deliveries. The aggregated tables for arms exports in the Swedish national report do not provide sufficiently detailed information for a considered appraisal of the rationale for particular licensing decisions and could lead to misunderstandings and misinformed public discussions on Swedish arms exports. The following recommendations for new practices by the Swedish government are derived from existing practices carried out by at least one of the nine other states surveyed for this report.

1. *The Swedish government should provide explanations for licensing decisions that are expected to provoke public discussion.* Like the UK, Sweden could consider explaining decisions to issue, deny or revoke an arms export licence for particular goods for particular destinations in its arms export reports. (Explanations for licensing decisions are also discussed in section III.)

2. *The Swedish government should provide more detailed information on arms export licences issued or denied and arms deliveries.* While Sweden already provides disaggregated data for the EU Annual Report, it does not do this in its national arms export report. Sweden could harmonize its reporting on arms exports in this area. In addition, it could consider providing:

- (a) more detailed information in its monthly reports, following the example of the Netherlands;
- (b) information on the number of items licensed for export or delivered, as occurs in Finland and the USA;

- (c) information on the type of end-user for every destination or each licence, perhaps using the Danish approach;
- (d) information on the destination and type of military equipment for each export licence, as in Finland and Germany; and
- (e) information on the destination, type of military equipment, volume or value and criteria for each licence denial, drawing on the approaches taken by Denmark, Germany and the Netherlands.

3. *Provide more detailed information on export licences issued for SALW and deliveries.* Sweden already provides aggregated data in its national arms export report for SALW and ammunition, but this information is much less detailed than that provided by other states considered for this study. For example, there is no information on the number of units exported or the value of the licence for each destination.<sup>23</sup> Information on exports of MANPADS is aggregated, giving only the total financial value for all MANPADS exports and a list of destinations to which parts, training and services were delivered in 2011.<sup>24</sup> As noted above, this is much less detailed than the information provided by other states, with Norway and Switzerland also providing information on exports of hunting and sporting rifles for civilians. Switzerland produces a separate report on SALW transfers that is much more detailed than the information provided in its annual report on arms transfers.<sup>25</sup>

<sup>23</sup> Table 12, Strategisk exportkontroll 2011 – krigsmateriel och produkter med dubbla användningsområden, Regeringens skrivelse 2011/12:114, 15 Mar. 2012, p. 64.

<sup>24</sup> Table 13, Strategisk exportkontroll 2011 – krigsmateriel och produkter med dubbla användningsområden, Regeringens skrivelse 2011/12:114, 15 Mar. 2012, p. 65.

<sup>25</sup> SECO, <[http://www.seco.admin.ch/themen/00513/00600/00614/02414/index.html?lang=fr#sprungmarke1\\_66](http://www.seco.admin.ch/themen/00513/00600/00614/02414/index.html?lang=fr#sprungmarke1_66)>.

### III. The role of parliaments in the formation, implementation, oversight and scrutiny of arms export policies

Parliaments carry out at least three specific functions with regard to arms exports: (a) policy formulation; (b) decision making on policy implementation; and (c) oversight and scrutiny of policy decisions that have been taken. The first two of these functions are primarily—and in many countries exclusively—performed by the executive. Another indirectly relevant function is budgetary control, since implementation through licensing and enforcement requires budget allocations for the relevant authorities.

The role of parliaments in policy formulation can take different forms, including the review and adoption of laws that provide the legal framework and basis for policy (e.g. objectives and licensing criteria); representing and providing a platform for different opinions and stakeholders; and motions for a resolution or recommendations for changes to export control legislation, implementation or particular aspects of arms export policy.

As outlined below, parliaments have a limited role in decision making on policy implementation—for example, decisions on whether to authorize a particular arms export or subject a particular destination or recipient to an arms embargo. In general, there are two ways in which a parliament can have a role in decision making on policy implementation. First, it may have the power to veto a proposed arms export and is therefore invested with a powerful role in decision making. Second, a parliament—or a subcommittee or small group of parliamentarians—can provide advice or other forms of input to the executive for consideration on whether to authorize an arms export.

Parliaments are most visible in the context of the third function—the oversight and scrutiny of policy decisions that have been taken (e.g. on arms export licences issued or denied or arms deliveries). However, there are more routine forms of oversight and scrutiny via parliamentary tools, including specialized bodies, reports, oral and written questions to government, investigative committees, committee discussions and parliamentary debates (all of which can also take evidence from the government, non-governmental experts and various stakeholders). It is worth noting that while systematic reporting on arms export decisions has only become widespread in Europe since the late 1990s, the ad hoc provision of information on arms exports has been common practice for many decades, mostly in the form of government responses to parliamentary questions. However, the extent to which the provision of information on arms exports leads to scrutiny and oversight depends on whether the parliament uses the information provided to hold the government to account.

While access to information is a precondition for a parliament to be able to play a role in policy formation, decision making on implementation or scrutiny of policies, the quality and volume of information provided by the government does not necessarily correlate with the level of parliamentary scrutiny. Factors that influence the role of the parliament include the interest in the issue of political parties and individual members of parliament; international and domestic political contexts (e.g. the Arab spring, individual scandals or controversial deals etc.); expertise (available in-house or requested from outside); and available resources (i.e. finance and personnel) and the degree of institutionalization (e.g. whether a specialized committee or subcommittee exists that deals with arms export issues). The key issue in this respect concerns the type of information that is provided to the parliament, and the procedures and mechanisms via which it is provided.

The USA is currently the only country whose parliament (the US Congress) has a role in all three parliamentary functions on arms exports, although its role in decision making is limited by certain financial thresholds and the President can override a veto by the Congress. Parliamentary functions in arms export policies in Europe are largely limited to policy formulation and oversight of implementation. Sweden is an exception in this regard as members of its parliament (the Riksdag) play a consultative role in decision making on exports of military equipment, although the parliaments in other European states also have a role in decision making on exports of surplus military equipment.

### **Policy formulation**

All parliaments are legislative bodies that adopt laws and regulations, including the principles and detail of foreign trade regulation and related penal provisions. A parliament can use its legislative function to adopt specific guidelines and criteria, control lists, legal assumption of approval or denial regarding arms exports, and reporting obligations (e.g. deadlines, contents, procedures). The extent to which the parliament uses these powers or leaves these decisions to executive decrees, or even ad hoc decisions by the government, differs from state to state. In Germany, for example, only the control lists and the assumption of approval or denial involve the parliament. Currently the export of weapons of war is prohibited, with the government authorising exceptions, whereas the export of other armaments is based on the principle of foreign trade being free but subject to certain authorisation requirements. The German Parliament (Bundestag) has chosen not to provide criteria for export decisions or reporting obligations.

Parliamentary committees can make recommendations for changes to policies. For example, the Control Committees of the Swiss Federal Assembly can make recommendations for changes to Swiss export control practices. However, its recommendations and responses from government are confidential, except when it calls for an investigation into particular incidents (see below).<sup>26</sup>

In 2000 the first ever parliamentary report on French arms export control policy was produced by the Defence Committee of the French National Assembly (the lower house of the French Parliament).<sup>27</sup> It examined the French export control system, the European and international context (including other countries' policies), and the question of transparency.<sup>28</sup> The section on transparency covers the economic viability of arms exports, legal provisions, transparency practices in Germany, the UK, Italy, Sweden and the USA, and the first government report on arms exports. The parliamentary report suggested specific ways to improve the government report, all of which were adopted.<sup>29</sup> Other recommendations included annual briefings of the National Assembly's Foreign and Defence committees by the defence and foreign ministers, followed by a public debate. However, it was not until November 2012 that the government's national report was presented to the French Parliament

<sup>26</sup> Interview with Swiss export control official, 7 June 2013.

<sup>27</sup> Rapport d'information sur le contrôle des exportations d'armement', présenté par Jean-Claude Sandrier, Christian Martin et Alain Veyret, Députés, French National Assembly doc no. 2334 (Paris, 25 Apr. 2000).

<sup>28</sup> In terms of the French export control system, the report covered the legal framework, licensing procedures, competent authorities and ministries, and export control mechanisms.

<sup>29</sup> According to the parliamentary report, the government should cover small arms in detail, name recipient countries, provide the reasons for denials of export licences, and include transfers in the context of military and defence co-operation.

for the first time (by the Minister of Defence) and even then the presentation was not followed by debate.<sup>30</sup>

The British parliamentary report includes a series of detailed recommendations, to each of which the government is obliged to respond.

Not all parliaments have a tradition of drafting parliamentary reports. For instance, there is no such practice in Germany. Parliamentary guidance for executive decision making can be exercised through resolutions (Bundestagsbeschlüsse). The Bundestag has adopted several resolutions on the German Government's reports on arms exports.<sup>31</sup> The government has only implemented some of the recommendations made in these resolutions. The Bundestag has also adopted resolutions on export policy. For example, in 2004 it requested that the German Government maintain the arms embargo against China.

### Decision making on policy implementation

The only example of a parliament that has made its own decision on policy implementation is the US Congress, which is not only notified of arms sales valued above \$2 million in accordance with section 36 of the 1976 Arms Export Control Act, but has also been granted the power to block a proposed arms sale. However, it is extremely difficult for the Congress to 'legally prevent any sale' due to the short space of time in which both the Senate and House of Representatives must pass resolutions of disapproval. Nevertheless, the US President generally takes the Congress's views into account if there are serious objections.<sup>32</sup>

#### *Advice and consultation*

Of the nine European states surveyed for this report, it is only in Sweden that current and former members of the Riksdag have a formal consultation role, providing input to decision making on policy implementation. Parliamentarians' advice is provided via the Exportkontrollrådet, which meets regularly to discuss certain export licence applications that have yet to be approved or denied.<sup>33</sup> The EKR is not strictly a parliamentary body but rather an advisory body to the Swedish export control agency, the Inspectorate General for Strategic Products (ISP). Its consultations are confidential.

Since 2012 the Dutch Government has been obliged to inform the parliament (the States General) within two weeks of issuing a licence for the export of weapon systems with a value over €2 million to all destinations other than Australia, Japan, New Zealand, Switzerland and other member states of the EU and the North Atlantic Treaty Organization.<sup>34</sup> Notifications

<sup>30</sup> *Damoclés*, no. 141, 4/2012, Observatoire des armements, <<http://obsarm.org>>.

<sup>31</sup> The 2001 resolution on the 1999 report requested that the annual report cover dual-use goods, statistics on breaches of export control law/cases dealt with by judicial authorities, newly concluded governmental agreements on armaments co-operation, and military assistance. In addition, the Economics Committee requested to be informed, in confidence, on export credit guarantees for arms exports (the Budgetary Committee already receives this information). The resolution (Bundestagsdrucksache no 14/5671 of 28 Mar 2001) was adopted by the plenary on 28 June 2001. A 2004 resolution referred to the reports for 2001 and 2002. It suggested that further detail be provided on exports licensed to developing countries, and on actual exports. It also made recommendations with regard to German arms exports policy (Bundestagsdrucksache no 15/3597 of 14 July 2004).

<sup>32</sup> Schroeder, M. and Stohl, R., 'US export controls', *SIPRI Yearbook 2005* (Oxford: Oxford University Press, 2005), pp. 732–33.

<sup>33</sup> Swedish Ministry for Foreign Affairs, 'Strategic export control in 2011—military equipment and dual-use products', 15 Mar. 2012, pp. 19–20.

<sup>34</sup> Dutch Estates General, Second Chamber, 'Brief van de staatssecretaris van economische zaken,



also include information on the government's risk assessment of the deal in the light of its own export licensing criteria. In Norway, the government consulted with the parliament (the Storting) in April 2010 on policies on export to states in the Middle East and North Africa.<sup>35</sup> Norway has reportedly an established practice whereby the Storting is consulted 'in cases of particular foreign policy interest', including before significant decisions on arms exports.

The British Parliament has for years requested—and been denied—a prior scrutiny function.<sup>36</sup>

### *Advice and consultation for exports of surplus military equipment*

The one area of decision-making on arms exports where some European parliaments play a role with regards to advice and consultation is exports of arms and military equipment designated as surplus to the requirements of the armed forces.

In Germany, the Budgetary and Foreign Affairs committees of the Bundestag are notified in advance of the transfer of surplus equipment of the German armed forces and military assistance. This notification is primarily connected with budgetary issues. In the past, the Budgetary and Defence committees were informed about surplus weapons transferred abroad, in advance in some cases and retrospectively in other cases.<sup>37</sup> German military assistance to other countries requires parliamentary approval, not only with regard to the recipient country, but also the financial value per country. Agreements cannot be concluded without the involvement of the Foreign Affairs and Budgetary committees.<sup>38</sup>

The Dutch States General receives prior confidential notification from the defence minister of significant exports of surplus Dutch weapon systems. The Standing Committee on Defence and eventually the plenary session of the Second Chamber (the lower house) can question the government on a proposed transfer of surplus military equipment, although the decision on individual transactions remains with the executive.

### **Oversight and scrutiny**

In several states, governments make information available about decisions made on arms export controls to the parliament as a whole or to specific parliamentary committees. In certain cases, this information is made available on a confidential basis and so does not contribute to the overall transparency of the states' arms exports. In other cases, this information is also made available to the public and thus contributes to the overall transparency of the states' arms exports. National reports on arms exports are the prime

landbouw en innovatie' [Letter from the secretary of state for economic affairs, agriculture and innovation], Arms Export Control Policy no. 192, The Hague, 12 Apr. 2012, <<https://zoek.officielebekendmakingen.nl/kst-22054-192.html>>.

<sup>35</sup> Eksport av forsvarsmateriell fra Norge i 2011, eksportkontroll og internasjonalt ikke-spredningssamarbeid [Exports of defence from Norway in 2011, export controls and international non-proliferation cooperation], Melding til Stortinget, (2012-2013), White Paper, p. 915.

<sup>36</sup> See for example Quadripartite Committee (Defence, Foreign Affairs, International Development, Trade and Industry), First Joint Report, Strategic Export Controls: Annual Report for 2004, Quarterly Reports for 2005, Licensing Policy and Parliamentary Scrutiny, 3 Aug. 2006, <<http://www.publications.parliament.uk/pa/cm200506/cmselect/cmquad/873/87302.htm>>.

<sup>37</sup> E.g. a government reply to a written question of Mar. 1998 listed past and planned transfer of surplus equipment, broken down by type and number of armaments and recipient country. Bundestagsdrucksache no 13/10239 of 27 Mar. 1998. A different reply announced the export of 2 submarines formerly used by the German Army to the United Arab Emirates, as well as military assistance and collaborative armaments projects to that destination. Bundestagsdrucksache no 14/3619 of 9 June 2000.

<sup>38</sup> Bundestagsdrucksache no 13/11322 of 4 Aug 1998, p 3.

example of the latter (see above). The following subsections give examples of current practice in the parliaments of the case study countries related to standing committees, parliamentary hearings and ad hoc investigations.

### *Standing committees*

In the UK, a specialized committee was established in 1999 to scrutinize the government's arms export policy. It was initially called the Quadripartite Committee since it is composed of members of the defence, trade and industry, international development, and foreign affairs committees of the House of Commons (the lower house). It was set up due to a major export scandal. Its current name is the Committee on Arms Export Controls (CAEC). The British Parliament has increasingly demanded and consequently received information, some of it in confidence (although some of this confidential information was later declassified upon request of the committee). In addition to making recommendations for changes to the export control system and government policy, the committee has played an important role in pushing for—and securing—greater openness in the UK's arms exports and decision making. For example, it is partly in response to the committee's request for more timely information on arms export licensing decisions that the British Government has gone from issuing annual reports to quarterly reports and a frequently updated online database.

The CAEC publishes detailed reports analysing government policy, including licensing decisions, at least annually, and hears evidence from NGOs, industry and the government, including ministers. These evidence sessions are public and even broadcast live on the Internet. The British Government is required to respond to parliamentary reports and recommendations within a certain time frame. The committee has also travelled to other countries, including the USA and Sweden, to familiarize itself with other parliamentary approaches and traditions, and its chair has in addition presented the committee's work in other countries and parliaments.

In July 2012, the CAEC published its annual report on British strategic export controls.<sup>39</sup> During the compilation of the report, the committee requested and received information on the reasons why certain export licences were granted or refused during 2011. The committee also requested and received details on the equipment covered by arms export licences for transfers to China during 2011 and the reasons the licences were issued. This information, which is more detailed than the information in the British annual report, was reproduced in full in the committee's final report.

Recently, there have been initiatives from all political groups in the Bundestag requesting strengthened transparency in German arms exports, albeit with different specific demands regarding the timing and extent of information provided and the role of the parliament. The Green party has requested increased parliamentary control: while the decision should be left up to the executive, controversial exports should first be discussed in a parliamentary body, which can meet in confidence if required, similar to the parliamentary committee overseeing the work of the intelligence services.<sup>40</sup> Both the option of creating a dedicated new parliamentary committee or tasking the Subcommittee on Disarmament, Arms Control and

<sup>39</sup> British House of Commons, Business, Innovation and Skills, Defence, Foreign Affairs and International Development Committees, *Scrutiny of Arms Exports (2012): UK Strategic Export Controls Annual Report 2010, Quarterly Reports for July to December 2010 and January to September 2011, the Government's Review of arms exports to the Middle East and North Africa, and wider arms control issues, First Joint Report of Session 2012–13, vol. 1* (Stationery Office: London, July 2012).

<sup>40</sup> The party positions were elaborated in an extensive plenary debate on 31 Jan. 2013.

Non-proliferation of the Bundestag's Foreign Affairs Committee have been mentioned. The Social Democratic party also has requested a parliamentary body to deal with arms export issues, and has presented detailed proposals.<sup>41</sup> The most far-reaching demand in the current debate is probably the request by Christian Democratic parliamentarian Roderich Kiesewetter for a parliamentary veto by a Bundestag committee in the case of decisions by the Federal Security Council (which is chaired by the Chancellor and is responsible for particularly important, sensitive or precedent-setting decisions).<sup>42</sup>

The focus of the debate in Germany is on when and how comprehensively the parliament should be informed, while there is largely a consensus that there should be no parliamentary participation in the licensing process.

The number of plenary and committee discussions on the issue of transparency and the role of the Bundestag in arms exports has increased considerably in Germany over the past two years, including public hearings on this issue. A main reason for this was the media reporting in 2012 that the Federal Security Council had decided to export tanks to Saudi Arabia. The Bundestag was not informed, even members from the governing parties, and had no information on hand for responding to questions. This led to a cross-party consensus—highly unusual in the rather partisan German Parliament—that this was unacceptable and incompatible with a parliamentary democracy.

#### *Regular parliamentary hearing on the national arms export report*

Arms reports to parliament can be confidential or public. If reports are confidential, the meetings discussing them will also be confidential.

In the Netherlands, the reports to the States General (see section II) are followed by a general consultation of the Second Chamber's Standing Committee on Economic Affairs, with the minister of foreign trade and foreign affairs. These general consultations are public.

Since 1996 the Storting has received the Norwegian annual reports on exports, and is also provided with an account of the Foreign Ministry's application of the guidelines. There is a regular annual debate in the Riksdag on the Swedish arms export report as well.

In Switzerland a confidential annual report containing detailed information on every export licence issued and denied as well as deliveries is provided to the Control Committees, which are 'mandated by the Federal Assembly to exercise parliamentary oversight of the activities of the Federal Government and the Federal Administration'.<sup>43</sup> The information is very detailed and includes information not only on items, volume, and recipient but also on the company involved in the export.<sup>44</sup> This information is confidential and is not released to the public. The report is prepared in March and approved by the government. It is then discussed in the Control Committees in April. However, due to the confidential nature of the report the members of the Control Committees may not take it away; instead, the report is provided for consultation on four occasions before it is considered in the Control Committees' annual hearing on arms exports. The annual hearing is a closed session which is attended by the

<sup>41</sup> Deutscher Bundestag, Motion, 'Frühzeitige Veröffentlichung der Rüstungsexportberichte sicherstellen – Parlamentsrechte über Rüstungsexporte einführen' [Ensuring timely publication of the arms export reports – Introducing parliamentary powers over arms exports], Bundestagsdrucksache no. 17/9188, 28 Mar. 2012.

<sup>42</sup> <<http://www.tagesspiegel.de/politik/abgeordnete-fordern-bundestag-soll-ruistungsexporte-stoppen-koennen/7584644.html>>.

<sup>43</sup> On the Control Committees see <<http://www.parlament.ch/e/organe-mitglieder/kommissionen/aufsichtskommissionen/geschaeftspruefungskommissionen/Pages/sachbereiche-gpk.aspx>>.

<sup>44</sup> Interview with Swiss export control official, 7 June 2013.

minister for economic affairs and the head of the State Secretariat for Economic Affairs (SECO), the export control agency. Because of the confidential nature of the hearing, the Control Committees does not hear evidence from industry or civil society and does not provide a statement on cases discussed or recommendations. In addition to these regular annual hearings, Swiss parliamentarians can—and do—ask questions relating to arms exports during regular parliamentary sessions and the government is expected to provide an answer.

### *Ad hoc investigations*

The French National Assembly's investigative function has been applied to arms exports on several occasions, for example regarding arms exports to Rwanda.<sup>45</sup> In Germany there have been a number of parliamentary inquiries into arms exports to specific recipient countries, such as South Africa.

In Switzerland, the parliamentary subcommittee on foreign affairs can ask the Control Committees to have a hearing or investigation on a particular export decision, delivery or other issue relating to Swiss arms exports.<sup>46</sup> For example, in July 2012 the Foreign Affairs Committee of the National Council (the lower house) considered a media report that alleged that Swiss hand grenades were being used by rebel forces in Syria and requested that the Control Committees investigate the issue.<sup>47</sup> The Control Committees met to discuss the issue in September 2012 and took into account the preliminary findings of an investigation conducted by the Swiss Federal Council (the Swiss Government) and SECO, which indicated that the hand grenades were the subject of an unauthorized re-export by the United Arab Emirates (UAE). The Control Committees reported that SECO had taken measures with regards to transfers to the UAE and that a joint Swiss–UAE investigative commission had been established. The Control Committees requested that it be informed of the results of this commission and would then consider whether any further action should be taken by parliament. The Control Committees considered the issue during meetings in October and November, when it also had the opportunity to examine the confidential report from the investigative commission; it reported in November 2012 that it was satisfied with the report and the government's actions in this case.<sup>48</sup> Although the report remains classified, some elements of the investigation were published in a press release issued by the Control Committees to support its conclusions that there was no need for further parliamentary action.

## **Good practice**

1. *The Swedish government should provide explanations for licensing decisions that are expected to provoke public discussion to the public, in a timely manner. At a minimum, it*

<sup>45</sup> Rapport d'information de MM. Pierre Brana et Bernard Cazeneuve, déposé en application de l'article 145 du Règlement par la mission d'information de la commission de la Défense, sur les opérations militaires menées par la France, d'autres pays et l'ONU au Rwanda entre 1990 et 1994, French National Assembly document no 1271, Paris, 15 Dec 1998, URL <<http://www.assembleenationale.fr/dossiers/rwanda.asp>>.

<sup>46</sup> Interview with Swiss export control official, 7 Jun. 2013.

<sup>47</sup> 'Utilisation présumée de grenades à main de fabrication suisse dans le conflit syrien: La CdG-N décide de demander des clarifications auprès du Conseil fédéral', Secretariat of the Control Committees Press Release, 7 Sept. 2012, <<http://www.parlament.ch/e/mm/2012/pages/mm-gpk-n-2012-09-07.aspx>>.

<sup>48</sup> 'Utilisation de grenades à main de fabrication suisse dans le conflit syrien: Déclarations de non-réexportation de matériel de guerre: mesures adéquates du Conseil fédéral', Secretariat of the Control Committees Press Release, 12 Nov. 2012, <<http://www.parlament.ch/e/mm/2012/pages/mm-gpk-n-2012-11-12b.aspx>>.

would be worth considering providing information on the destinations or cases of concern discussed by the EKR.

*2. The Riksdag should call for more transparency in investigations into cases of unauthorized re-export or cases of concern, and provide information to reassure the public.*