

# Scrutinizing Arms Exports in Europe: The Reciprocal Relationship Between Transparency and Parliamentary Control\*

Diederik Cops, Nils Duquet & Gregory Gourdin

**Abstract:** Information on exports of conventional military equipment was traditionally kept out of the public and political realm. In recent decades this gradually changed, and within the EU, Member States are legally bound to publish an annual report on arms exports since the implementation of Common Position 2008/944. However, Member States remain free to determine the extent of transparency they wish to apply to their reporting on arms exports. In this article, we compare the level of transparency on arms exports in eight Member States by using qualitative criteria such as frequency, comparability, comprehensiveness and disaggregation. The findings on transparency are then related to the level of parliamentary control on arms export control policies. The article concludes by illustrating how levels of transparency on arms exports and parliamentary control interact.

**Keywords:** Arms exports, European Union (EU), transparency

**Stichwörter:** Waffenexporte, Europäische Union (EU), Transparenz

## 1. Transparency on arms exports: inter-state and intra-state rationales

Historically national governments have not been keen to make information on exports of military equipment available to parliament or other governments, let alone to the general public. During most of the twentieth century, national arms export policies were not open to political and/or public scrutiny. This has mainly been motivated by referring to either strategic and military security reasons or to concerns about contractual confidentiality. Consequently, the international trade in conventional military equipment has long been covered under a veil of secrecy.

This slowly changed since the beginning of the 1990s, with the 1991 Gulf War serving as a watershed event (Stohl & Grillot, 2009: 31). Awareness about the need for more openness on arms exports was triggered when coalition troops were confronted with Iraqi armed forces heavily equipped with Western arms, exported by their own governments in the years before the war (Haug et al., 2002; Phytian, 2016). Consequently, a global effort to more effectively control the international trade in conventional arms emerged. A more pronounced transparency regime would allow a better sight on arms transfers and would help to prevent the build-up of a weapons arsenal by a state going unnoticed (Stohl & Grillot, 2009: 31).

Transparency is originally understood in terms of trust-building between nations, as a means to tackle the irresponsible behaviour of states at the international level. Greater transparency on arms exports could help to strengthen international peace and stability. It could moreover help to enhance good governance by curbing corruption associated with the weapons trade, to diminish the diversion of legally supplied arms into the black market, and to provide some baseline information for international initiatives for disarmament (Haug et al., 2002: 5).

The relevance of transparency originated in other words at the level of international relations and the inter-state perspective. The idea that transparency on conventional arms transfers can help to determine if destabilizing accumulations of arms are taking place and therefore transparency can contribute to preventive diplomacy, resulted in the establishment of the United Nations Register of Conventional Arms in 1992. This was the first attempt to increase global transparency on conventional arms transfers and UN Member States are asked to submit (voluntarily) information on their annual imports and exports of conventional weapons. The initial success of the UN Register has, however, gradually decreased<sup>1</sup> (Holtom, 2010; SIPRI Yearbook 2016).

A second rationale behind the need for more transparency refers to the possibility of holding national governments accountable for their arms export policy. At the intra-state level, transparency on arms exports is important for two reasons. First, it is a necessary condition for different actors – members of parliament, civil society, and media – to hold their government accountable for its arms export policy (Schroeder, 2005; Depauw, 2011). Transparency may support parliaments to persuade their government to refrain from making transfers that for example contribute to human rights abuses (Haug, 2002: 5), help fuel internal or regional armed conflict or may conflict with national security interests. Second, transparency on arms exports is a precondition for good-quality legislation: without valid and reliable information on governmental activities, legislation remains to be based on guesswork (Depauw, 2011: 70; Surry, 2006). In other words, transparency is presented as a (necessary) means for a more effective parliamentary control on the arms export policy of national governments.

To summarize, the idea of recording, assessing and controlling the trade in conventional armaments draws upon a number of different rationales (Wezeman, 2003), at both the inter-state and the intra-state level. In this paper, we focus on the latter rationale. We aim to analyze levels of transparency and of parliamentary control and to discuss the extent to which transparency on arms

\* This article draws on the empirical results of a study on arms export control systems in different EU Member States carried out by the Flemish Peace Institute and published in 2016. See Cops, Duquet & Gourdin (2016) for the complete research report.

1 While in 2001 up to 126 national reports were submitted, these numbers dropped since then to 60 submissions in 2014 (SIPRI Yearbook 2016).

exports relates to the possibility for parliamentary control. We focus on the framework of the European Union (EU), as EU legislation has played a significant role in determining public transparency on arms exports of its Member States.

## 2. The EU and transparency on arms exports

Since the 1990s, EU Member States are characterized by growing levels of transparency on arms exports. This is the indirect result of a broader quest by the EU to harmonize Member States' arms export control systems. The EU has since 1991 been striving to install high common standards to assess the extra-EU export of conventional arms in order to implement a more responsible European arms export practice. In the aftermath of the 1991 Gulf War, the European Council sought to strengthen control on arms exports to tackle more effectively secret build-up of arms arsenals. One of the most important initiatives in this respect was the adoption of eight common criteria for the evaluation of export licence applications. These criteria were further formalised in the 1998 Code of Conduct on Arms Exports. This politically binding code at the same time also stipulated that Member States needed to circulate '*in confidence*' an annual report on their defence exports to other Member States (Article 8 Code of Conduct, 1998). Under pressure by the Finnish presidency of the European Council, the European Parliament and by civil society, the consolidated EU-report has been made public since 1999 (Depauw and Baum, 2016: 60).

In 2008, the Code of Conduct was upgraded into a legally binding Common Position, making it obligatory for Member States to align their national policy with the principles set out in it (Bromley, 2011). Besides defining common rules for the evaluation of export applications, the Common Position states that the consolidated EU annual report is published in the Official Journal of the EU (article 8.2 Common Position, 2008). In addition, the Common Position also obliges the Member States to "*publish a national report on its exports of military technology and equipment*" (Article 8.3 Common Position 2008/944: 103).

EU Member States are thus since 2008 legally obliged to publish annual reports on arms exports. In this respect, the EU diverges from the tendency to lesser transparency at the global level. However, the operative provisions of this European regulatory framework remain limited, as no further substantive guidelines on which information should be made public are included in the Common Position, and also not in the Code of Conduct (Bauer & Remacle, 2004: 117). Moreover, a Common Position merely obliges Member States to accord their national policy to the principles set out in this document, it does not include an obligation for states to adapt their national legal framework.<sup>2</sup>

It remains therefore relevant to determine the extent and nature of transparency in the EU Member States and to assess how public transparency relates to the level of parliamentary control on the governments' arms export policy.

<sup>2</sup> Most importantly, the Common Position consists of the Common Criteria for the assessment of extra-EU arms export applications, that relate to considerations on issues such as human rights, conflict prevention, illegal diversion, national and collective security. It moreover contains an obligation for Member States to publish annually a report on arms exports.

## 3. Transparency in arms exports

We selected eight Member States to analyse their arms export control system and more in particular the respective levels of transparency and parliamentary control. More specifically, Belgium (Flanders)<sup>3</sup>, the Netherlands, Germany, France, United Kingdom, Portugal, Sweden and Hungary are included in this analysis. For each member state, an in-depth analysis of its arms export control system was conducted.<sup>4</sup> The relevant legal framework, policy documents, administrative guidelines and annual reports published by the government were used to draw a comprehensive picture of each national system.<sup>5</sup>

Before comparing transparency on arms exports in EU Member States, some specific definitional issues regarding the concept of 'transparency' need to be dealt with. In general, transparency refers to the opposite of secrecy. In the context of arms exports, we focus here on the extent to which national governments report publicly on arms exports and its arms export policy. Transparency remains however a broad concept, covering different aspects. We therefore operationalize it via different indicators (Grünhage, Krauter, Schmidt & Zavelsberg, 2013; Bauer, 2006). In this context, four qualitative indicators can be seen as relevant:

1. *availability*: this indicator refers to the accessibility and frequency of official reports – it indicates in other words the extent to which such reports are easily accessible and how often information on arms exports is made public by the government;
2. the *comparability* of official reports on arms exports is determined by the extent to which the reported data can be compared to each other, in this case both through time within a country as well as between different countries;
3. *comprehensiveness* indicates the type, size and content of the information in the official reports;
4. *disaggregation* taps into the level of detail of the information reported. The more information is reported in a disaggregated manner, the more relevant the information becomes.

### 3.1 Formal reporting requirements and practices

A first aspect of transparency refers to the formal reporting requirements and practices in the eight selected Member States. Here, we look at four elements: (1) when governments started publishing national reports on arms exports to their parliaments, (2) whether the obligation to publish this report is legally binding, (3) how often do governments publish these

<sup>3</sup> In Belgium competence for arms export control was regionalized in 2003. Since then no longer the federal government, but the regional governments are competent for arms export control, with each Region developing its own legal framework and policy. Licensing exports by the Belgian armed forces and the police remains a federal competence.

<sup>4</sup> The analyses are part of a broader research project directed at comparing the arms export control legislation and policy in eight EU Member States. This study was commissioned by the Committee on Foreign Policy of the Flemish Parliament and was conducted by the Flemish Peace Institute, an independent research institute for peace research affiliated to the Flemish Parliament (Cops, Duquet & Gourdin, 2016).

<sup>5</sup> The website of the Stockholm International Peace Research Institute (SIPRI) offers a useful oversight and links to the EU Member States' reports (and other states' reports): [www.sipri.org/databases/national-reports](http://www.sipri.org/databases/national-reports).

reports, and (4) possible reporting moments in addition to the legally obliged reporting frequency.

This allows gathering information on the *availability*-indicator of relevant information on arms exports. Table 1 gives an overview of these aspects for all eight Member States.

Table 1: Formal aspects of national reports on arms exports

Country	Annual report since	Legally obliged frequency	Additional reports
Flanders (Belgium)	2004	Annual + bi-annual	Monthly
France	1998	Annual since 2013	None
Germany	1999	No legal obligation	Annual + bi-annual (since 2014) + parliament informed within 2 weeks after decision by Federal Security Council
Hungary	2003	Annual	None
Netherlands	1997	Annual	bi-annual, monthly + ad-hoc report to parliament if license valued > €2 million
Portugal	1996	No legal obligation	Annual
Sweden	1984	Annual	Monthly
United Kingdom	1998	Annual	Three-monthly

The selected Member States have a significant tradition of publishing annual reports on arms exports. Most notably is the Swedish government, which has published a national report on arms exports since 1984. The ‘(armed) neutrality’- principle of Swedish foreign policy and its non-alignment to one of the (former) military blocs – NATO and Warsaw Pact – has had a profound impact on the arms export control regime of Sweden. One of the consequences of this has been that the Swedish government started to publish data on arms exports much earlier than other EU Member States.

Most EU Member States covered in this study have included the obligation to report in their national legislation; governments can thus not easily decide to stop reporting on arms exports. From among the Member States we focus on, only Germany and Portugal have no explicit *legal* obligation to publish an annual report. In Germany, this obligation is included in the Policy Principles, an official policy document setting out *politically* binding guidelines for German arms export policy; Portugal refers to the Common Position as legal base for its annual report.

Moreover, five governments have additional moments of reporting on arms exports. Germany publishes a bi-annual report since 2014, the British government publishes a report on arms exports every three months, and three countries – Flanders, the Netherlands and Sweden – even have monthly reports on arms exports.

Interestingly, two Member States also have ad-hoc reporting obligations to national parliament in case of (politically) sensitive and significant licenses: Germany and the Netherlands foresee certain circumstances when a report must be sent to parliament within two weeks after granting an export license. In the Dutch case, licenses with a value higher than € 2 million, and in Germany licenses dealt with by the Federal Security Council have to be reported to parliament within a two-week timeframe.

### 3.2 Substantive elements of reporting

Furthermore, we analyse the substantive elements of public transparency on arms exports to determine the levels of *comparability*, *comprehensiveness* and *disaggregation* (table 2).

*Disaggregation* refers to the level of detail in the information on licences issued for arms exports. The basic unit of analysis is the specific licence, but public information can be aggregated. We therefore analyse at which level the reports present information on arms exports.

We analyse *comprehensiveness* of the national arms export reports by examining the different types of licences they report on<sup>6</sup> and by examining what information is made public on end-users of the exported goods, on refusals of licence applications, on the actual value of arms exports and possible other information included in the reports.

To get a better idea of the *comparability* of national reports on arms exports, we focus on the categorization of goods exported. The higher the level of similarity of this categorization, the more reliably reports can be compared.

With regard to *comparability*, a strong extent of harmonization exists. All reports refer to the categories on the Common Military List of the EU (ML). This allows a reliable comparison between countries. Moreover, as national reports over time apply the same categorisation, a reliable comparison over time *within* a country on which goods are exported is equally feasible.

The content of the reports – the level of *comprehensiveness* – equally reflects a basic level of European harmonization. Most national reports contain information on refused export applications and several reports contain some information on the effectively realised value of arms exports. Meanwhile differences remain with regard to other information discussed in national reports. Such additional data are often related to the specific national context. Countries in which the export of surplus military equipment by the MoD represents an important part of total arms exports, such as the Netherlands and the UK, for example, report separately on this aspect.

However, some important elements are almost consistently lacking in national reports. It is remarkable that Member States with the largest defence-industrial base – Germany, France and the UK – do not report on arms exports realized with general licenses. The use of general licenses is also not reported on in the Netherlands. As a result, a significant amount of effective arms exports from EU Member States is not reported on. It remains unclear why countries do not report on the use of general licences, but some use the argument of commercial interests to not report on the actual value of arms exports (via these general licences). In addition, none of the reports of the selected Member States contain comprehensive information on the actual number of

6 Member States have three types of licenses for arms exports. Individual, global and general licences can be used to transfer military equipment. Global licences still require a prior approval, but are more flexible because they are valid for several consignees in several countries, for an undetermined amount of goods. General licences allow all competent companies to transfer goods without prior approval; they only need to report afterwards on the effective transfers. Although originally implemented by EC Directive 2009/43 on intra-EU trade, several countries also apply these types of licences for extra-EU trade in military equipment.

Table 2: Substantive aspects of information on arms exports

	Disaggregation	Comprehensiveness					Comparability
Country	Level of reporting	Types of licenses reported	Information on end-users	Information on refused licenses	Value of actual arms exports	Additional substantive information	Categorization of goods
<b>Flanders (Belgium)</b>	License	Individual, global general	Ten types of end-users	Country of destination, ML, criteria	General & global licenses	<ul style="list-style-type: none"> <li>■ preliminary advices</li> <li>■ highlighting remarkable licences</li> </ul>	ML <sup>7</sup>
<b>France</b>	Country of destination	Individual & global	No info	Aggregated by geographical area and criteria	Country of destination	<ul style="list-style-type: none"> <li>■ gifts by MoD by country of destination and value</li> <li>■ approved re-export per country of end use, ML and number of applications</li> <li>■ export SALW by country of destination, description of the product and number</li> </ul>	ML
<b>Germany</b>	Country of destination	Individual & global	No info	Yes	Export war weapons and surplus defence material	<ul style="list-style-type: none"> <li>■ export SALW to non-EU and non-NATO countries</li> </ul>	National
<b>Hungary</b>	Country of destination	Individual, global general	No info	No	Yes	/	ML
<b>Netherlands</b>	Annual report: Country of destination Monthly reports: license	Individual and global	Only for refusals & surplus military equipment	date, country of destination, type of goods, consignee, name of end-user, criteria	No	<ul style="list-style-type: none"> <li>■ surplus goods MoD (end-user, description goods and value)</li> </ul>	National + ML
<b>Portugal</b>	Country of destination	Individual, global & general	No info	Number of refusals	Yes	/	ML
<b>Sweden</b>	Country of destination	Individual, global & general	No info	Country of destination, ML, value	Yes	<ul style="list-style-type: none"> <li>■ approved re-export by exporting state, country of destination and goods</li> <li>■ effective export per company</li> <li>■ SALW by country of destination (no value)</li> </ul>	National + ML
<b>United Kingdom</b>	Country of destination	Individual & global	No info	Criteria per country of destination	No	Case studies Performance targets Gifted controlled equipment (country, end-user, goods, value) Surplus military equipment (country, goods, quantity)	National + ML

goods exported; only for exports of small arms and light weapons (SALW), several countries (France, Sweden and Germany) report the number of firearms or light weapons exported. Equally, information on the end-users of the exported goods is generally not made public, despite the high relevance of such information. Only reports in the Netherlands (name of end users in refused license applications) and Flanders (types of end-users for all license applications) contain information on this topic.

This latter finding relates to the indicator of *disaggregation*. Most studied countries report on the level of the country of destination of the military goods: the number of licenses, of goods exported and of summed up value of these licenses are reported per country. However, two notable exceptions – Flanders and the Netherlands – report on a more detailed level and use the specific license as unit of reporting. For each license issued (or refused), information is included on country of destination (and of end-use), type of goods exported and the value of the license.

Although the basic principles of transparency on arms exports are similar in the Member States – annual reports using the categories of the EU Military List – significant differences continue to exist. Sweden has a long tradition in reporting on its arms exports and scores quite high on transparency because of the high frequency of the reports (monthly) and the significant amount of additional information in them. Flanders and the Netherlands also report monthly and, moreover, score best on the disaggregation indicator, as they report on each licence issued. In addition, the reports in Netherlands and especially Flanders score high on comprehensiveness. France, Germany and the UK score generally on average on transparency, while Portugal and Hungary score low on transparency because of their low frequency of reporting, the high level of aggregation and the low level of comprehensiveness.

<sup>7</sup> 'ML' is an abbreviation of 'Munitions List', which are the different categories of defence-related goods (e.g. firearms, armoured vehicles, aircraft, ammunition, etc.) included in the EU Common Military List.

#### 4. Parliamentary control and arms exports

Indicators such as the number of written and oral parliamentary questions and interpellations on arms exports, the existence and content of parliamentary debates on the annual government reports (in committees and plenary meetings) and the existence of thematic committees on arms export are taken into account to determine the extent of national parliamentary controls.

Just as with transparency, the selected Member States differ on the extent of parliamentary control on governmental arms exports policies. Some countries such as Portugal and Hungary score low on parliamentary control, as no substantial parliamentary debates on arms exports take place, and almost no parliamentary questions are formulated. The parliaments of other countries (Belgium/Flanders, Sweden, the Netherlands, the UK and Germany) are more actively involved in controlling their government on arms exports, through various parliamentary activities. In these Member States, parliamentary questions are regularly asked on arms export policy in general and specific licences issued in particular. Equally, the annual reports on arms exports are discussed in public committee meetings.

Furthermore, two Member States have a specific parliamentary committee on arms exports: the Committee on Arms Export Controls (CAEC) in the UK and the Export Control Council in Sweden. This latter committee is even formally involved in the appreciation of licence applications in politically sensitive cases. The resignation in 2012 of a Swedish minister after an arms export scandal equally reflects the high parliamentary significance of arms export in Sweden. The French context is highly specific: parliamentary attention on arms exports is above all directed to promoting arms exports instead of controlling critically the French government's arms export policy.

#### 5. Transparency and parliamentary control: necessity and reciprocity

In this article, we argued that transparency is not a goal in itself, but is an instrument to promote trust-building between countries and stimulate parliamentary control within a country; in the previous sections, we analysed the extent of transparency and parliamentary control on arms exports in a selected group of EU Member States. To conclude this analysis, we want to examine the possible relationship between transparency and parliamentary control in the EU. Figure 1 illustrates this relationship. All eight Member States are situated on two dimensions: the level of transparency on arms exports and the level of parliamentary involvement and control on arms export policy of the government.

Figure 1 suggests that transparency is a necessary condition for parliamentary involvement. Countries with low levels of transparency tend to have a low level of parliamentary involvement while Member States with high levels of transparency tend to have an active parliamentary control on national arms export policies.

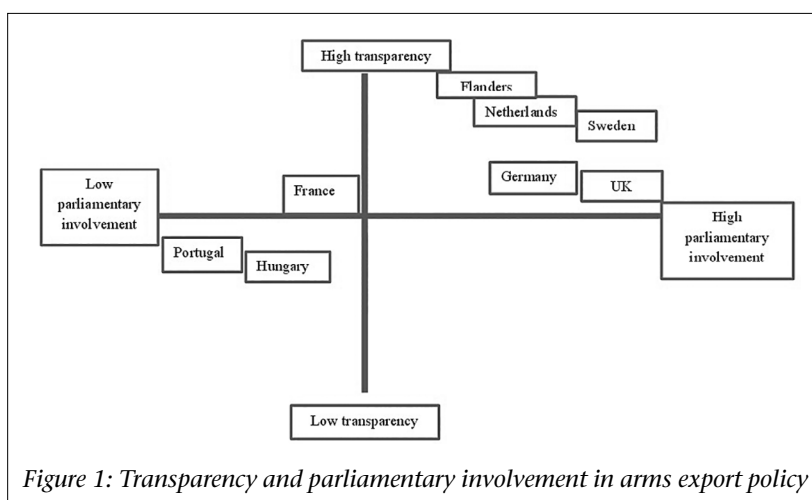


Figure 1: Transparency and parliamentary involvement in arms export policy

Hungary and Portugal are examples of the former, while Flanders, the Netherlands, Germany and Sweden illustrate the latter aspect.

Two Member States do not seem to fit neatly into this relation, suggesting that other, contextual factors can affect this relation. In France, discussions on arms exports are strongly influenced by principles of national independence and sovereignty, and global geopolitical presence that dominate the political-cultural discourse in France (Marcussen et al., 1999). Although France scores on average on transparency, the parliamentary involvement with regard to arms export control is rather limited in France and mainly focused on one aspect (promoting French arms exports). In the UK, in contrast, a very active parliamentary control on arms exports exists, despite the only moderate levels of transparency. This reflects the general and traditional high importance of parliamentary debate and control in the British political system.

Moreover, it is important to note that transparency is a dynamic concept: higher levels of political attention for the arms export policy of the government seem to be able to result in higher levels of transparency. A reciprocal relation exists, with transparency being stimulated by parliamentary initiatives, pressing governments to be more open on their arms export policy; and with more stringent parliamentary attention as a result of this growing transparency. The German case clearly illustrates this. For a long time, both transparency and parliamentary control were low in Germany. In 2011, parliamentary discontent about the lack of transparency on a supposed arms sale to Saudi Arabia resulted in additional obligations by the government for additional reporting moments, i.e. the bi-annual report and the ad-hoc reports on sensitive licences. The increasing level of transparency has resulted in a stronger parliamentary control on German arms exports and heightened the political salience of this topic. Interestingly, this increased transparency and parliamentary control has not been accompanied with decreasing arms exports. In fact, German arms export has reached record highs in recent years (German government, 2016).<sup>8</sup> This seems to contradict the often heard objection against more transparency on arms exports that this would be a competitive disadvantage for domestic defence companies.

<sup>8</sup> The same holds for other countries, such as Sweden or the Netherlands. Even 'despite' having high levels of transparency on arms exports, both countries have a viable defence industry, the success of which seems not to be affected by the significant amount of information on arms exports made public.

Two future developments are important to keep in mind because of their possible negative impact on transparency and parliamentary control on arms export in the EU. First, Directive 2009/43/EC aimed at facilitating and stimulating intra-EU trade in defence-related products has led to the implementation of general and global licenses, in addition to pre-existing individual licenses, across all EU Member States. However, our analysis indicates that several EU Member States – and especially countries with substantive defence-industrial bases such as Germany, UK and France – only report on foreign trade via individual (and global) licences. As a significant part of the foreign arms trade from these countries takes place by general (and global) licences, transparency is in reality currently decreasing within the EU. In other words, continuous awareness of the possible side-effects of the measures to facilitate intra-EU arms trade on the current levels of transparency remains necessary. A second and related aspect in this regard is the role of the European Parliament (EP). Although this article focuses on national parliaments, the role of the EU in the realm of arms export controls has in recent decades become increasingly important. The EU has developed several legislative initiatives and currently is attempting to stimulate the further development of a European Defence Union. Yet, up to now the EP has not paid much attention to the issue of arms export control. As the relevance of the EU in this domain is expected to increase, a more actively involved EP needs to be encouraged.

## 6. Conclusion

Public transparency by national governments on arms exports is a highly controversial issue. While, at the global level, support for this endeavour seems to be gradually declining, the situation in the EU is more encouraging, with public transparency on arms exports by Member States becoming more apparent, extensive and legally binding. This article illustrates, however, that significant differences (continue to) exist between EU Member States in both the extent of public transparency and parliamentary involvement with regard to arms exports and the governments' arms export policy. An analysis of both public transparency and parliamentary involvement on arms exports indicates that, despite some notable exceptions, high levels of transparency seem to coincide with an active parliamentary control on arms export policies.

Importantly, transparency on arms exports does not necessarily result in a competitive disadvantage for domestic defence companies, nor does it per definition negatively affect national security. Members of both national parliaments and the European parliament are in other words able to influence their governments to increase the level of public transparency on arms exports without necessarily jeopardizing domestic employment and national security interests. From a democratic perspective, in which members of parliament hold their government accountable for its policies – in this case, its arms export policy – frequent, disaggregated and comprehensive information on arms exports is required. Both members of national parliaments and of the European parliament have the competence of pushing their governments to make such information publicly available and should do so more intensively in order to allow for a more profound democratic control on their governments' arms export policies.



**Dr. Diederik Cops** is a researcher at the Flemish Peace Institute, an independent institute on peace research affiliated to the Flemish Parliament in Brussels, Belgium. His research focuses on both national and international arms transfers and on conventional arms export controls.



**Nils Duquet** is senior researcher at the Flemish Peace Institute, an independent institute on peace research affiliated with the Flemish Parliament in Brussels, Belgium. His research focuses on national and European arms export controls, domestic gun policy, illicit firearms trafficking and gun violence.



**Gregory Gourdin** holds a PhD in social sciences from the KU Leuven (Belgium). He is currently a researcher at the Flemish Peace Institute, an independent research institute affiliated to the Flemish Parliament in Brussels, Belgium. Within the programme on arms trade and arms production, his work concentrates on the regulation of the trade in arms and dual use goods.

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