



Organization for Security and Co-operation in Europe

The Secretariat

Conflict Prevention Centre

Vienna, 3 August 2012

To: All OSCE Delegations in Vienna

Re: Updated Summary Report on replies provided by participating States on the one-off information exchange with regard to OSCE Principles on the Control of Brokering in Small Arms and Light Weapons

In accordance with the OSCE Plan of Action on SALW (FSC Decision 2/10) and FSC Decision 17/10 and the tasking of the FSC Chair, the CPC is distributing an updated summary report on replies provided by participating States on the one-off information exchange with regard to OSCE Principles on the Control of Brokering in Small Arms and Light Weapons. Should delegations have any questions or inquiries regarding data presented in this Summary Report, FSC Support Section of the CPC will be happy to provide answers or further assistance (maria.brandstetter@osce.org, tel. +43 1 514 36 6737).

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SUMMARY REPORT

ON REPLIES PROVIDED BY PARTICIPATING STATES
ON THE ONE-OFF INFORMATION EXCHANGE WITH REGARD TO

OSCE PRINCIPLES ON THE CONTROL OF BROKERING IN SMALL ARMS AND LIGHT WEAPONS

1. Introduction

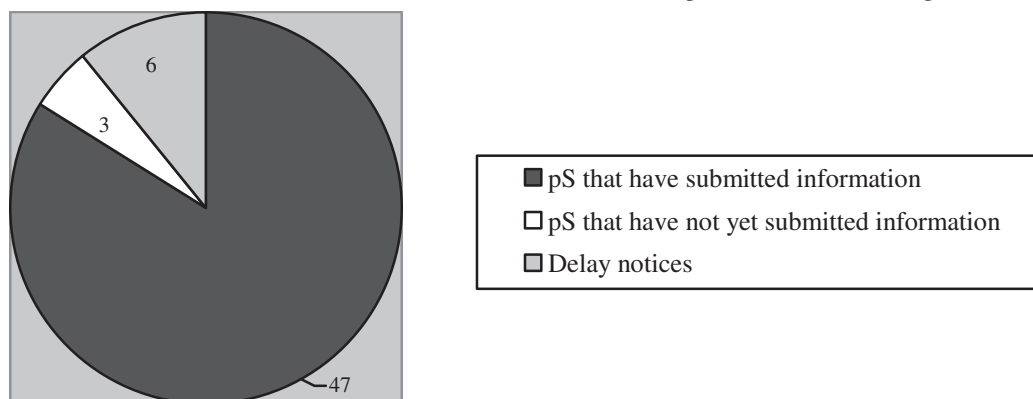
Following FSC Decision No. 11/07, adopted in October 2007, in 2008 participating States (pS) conducted a one-off information exchange on their regulations concerning brokering activities related to small arms and light weapons (SALW). As per tasking of the decision, the Conflict Prevention Centre (CPC) produced a Summary Report on the replies.¹

By FSC Decision No. 17/10, adopted on 24 November 2010 (Annex D), pS again committed themselves to exchanging information, by 30 June 2010, on a one-off basis, on their current regulations concerning brokering activities related to SALW according to the agreed questionnaire and to review progress made since 2008. This decision also tasked the CPC to produce a Summary Report on the replies by 1 September 2011. The report was distributed under reference number FSC.GAL/95/11. A number of participating States provided their national reports after the publishing of the CPC Summary Report. Therefore, in line with the tasking of the FSC Chair, the CPC prepared an Updated Summary Report.

The Updated Summary Report on replies provided by participating States on the one-off information exchange with regard to OSCE Principles on the Control of Brokering in Small Arms and Light Weapons (henceforth referred to as “Summary Report”) is based on the replies of 47 out of 56 pS (31 reports were provided by 29 August 2011 and included in the original CPC Summary Report) and includes information submitted by OSCE States through 2 August 2012.

¹ The original Report was based on the submissions of 39 pS. Shortly after the CPC produced the Report, a number of pS submitted their replies or provided additional, updated information. Therefore, in line with the tasking of the FSC Chair, the CPC circulated an updated report reflecting the information provided by 46 pS (the report can be found under FSC.GAL/25/08/Rev.1).

Figure 1: Number of submissions to the one-off information exchange on SALW brokering²



The purpose of the Summary Report is to help the pS evaluate the existing SALW brokering controls and the progress achieved since 2008 on the implementation of relevant OSCE commitments. This Summary Report could serve as a basis for pS to provide common ground for possible further action.

The categories, in which the pS exchanged information, follow the questionnaire that was negotiated in FSC Decision No. 17/10 and based on FSC Decision No. 8/04 on OSCE Principles on SALW Brokering and cover, *inter alia*, measures undertaken by participating States to control SALW brokering activities within and outside their territory; a description of existing legal framework for lawful brokering activities; processes for licensing, record-keeping, registration and authorization; and enforcement measures used to punish illegal brokers.

This Summary Report is organized according to the following categories: scope, licensing procedure, types of transactions, registration system, sanctions and enforcement, international assistance and co-operation, and publishing. In the beginning of each section, references to the relevant paragraphs of FSC Decision No. 8/04 are made to help in the interpretation of the replies. The above Decision is also attached as Annex II to this report. Additionally, references to the OSCE Best Practice Guide on National Control of Brokering Activities (BPG) from 2003 are included in footnotes where relevant.³

It should be noted that according to the FSC tasking, this report was produced within existing CPC resources and is limited to the provision of statistical data on the implementation of FSC Decision No. 8/04. It does not compare national policies or assess implementation. Certain data may be subject to interpretation. Where possible, the wording of the original submissions has been followed.

Comparing the answers of pS was in some instances complicated as some information was provided as a response to different questions and due to the variety of detail submitted by States. There were also cases when answers to some questions contradicted the answers of the follow-on questions. One pS reported “no changes” since the previous one-off exchange on control of brokering activities in SALW conducted in 2008. However, all other replies followed the questionnaire agreed in FSC Decision No. 17/10.

² Submissions through 2 August 2012 are included in the statistics.

³ OSCE Handbook of Best Practices on Small Arms and Light Weapons, FSC Decision No. 5/03, pp. 33-46.

2. Scope

The OSCE Principles on the Control of Brokering in SALW establishes that “[t]he participating States will establish a clear legal framework for lawful brokering activities.” (*Section II, paragraph 3, FSC Dec 8/04*)

Questionnaire for an information exchange with regard to OSCE principles on the control of brokering in SALW

Question 1: Does your country have laws, regulations and/or administrative procedures governing brokering in SALW?

Question 2: List laws and/or administrative procedures regulating SALW brokering in your country.

Question 3: Are these laws part of national export control system?

Of the 47 pS that provided national reports, 39 pS inform that their country has laws, regulations and/or administrative procedures to control brokering activities of SALW. Eight pS report the absence of the relevant legislation with one of them stating that this is due to the specific nature of that State. Of the 39 pS that inform that their country has laws, regulations and/or administrative procedures to control brokering activities of SALW, 38 pS note that elements of brokering controls are included in the legislative framework, governing exports, imports and transit of weapons, military goods, strategic items and/or dual-use items, and one pS informs that it is covered partly by this legislative framework. Most answers to the question on laws contain the existing legal framework for the export, import, transfer and/or possession of weapons (covering for example SALW or “military weapons” or “war materiel” more generally). One State notes that it does not have specific legislation that would address brokering activities, although some related regulations might be relevant to it.

While the legislative framework reported to cover brokering activities in many pS dates back to the 1970–1990s, at least 6 States make reference to revisions made to the relevant legislation adopted during 2009-2012 (following the previous one-off information exchange on brokering controls in SALW). Most of the updates to the legislation include laws, legislative acts and decrees supplementing already existing brokering controls. One State reports a new statutory instrument establishing brokering controls during the period of 2009-2012.

Questionnaire for an information exchange with regard to OSCE principles on the control of brokering in SALW

Question 4: Does your country have a definition of brokering activities by persons and entities?

Question 4a: If yes, provide.

In the OSCE Principles on the Control of Brokering in SALW (FSC Decision 8/04) pS agreed the following definition of brokering activities:

- Negotiating or arranging transactions that may involve the transfer of items referred to in the OSCE Document on Small Arms and Light Weapons, and in particular its preamble, paragraph 3, from any other country to another country;

or

— Who buy, sell or arrange the transfer of such items that are in their ownership from any other country to another country.⁴ *Section II, paragraph 4, FSC Dec 8/04*

In their replies, 34 pS provide the national definition of brokers or brokering activities. Of the 39 pS that answer affirmatively to the question on the existence of laws, regulations and/or administrative procedures governing brokering of SALW, 33 pS provide a definition. One State provides a definition of brokering activities and brokers in relation to commercial acts and contracts although it mentions that it currently does have specific legislation concerning the control of arms brokering. Twenty eight States provide a definition of “brokering activities”, including definitions of “brokering services”, “brokerage” and “brokering”. One pS provides a definition of “broker”. Four reports contain definitions of both “brokering activities” and “brokers”.⁵ Finally, one State refers to intangible form of circulation of goods when providing the definition of brokering activities.

Of the 39 pS that answer affirmatively to the question on the existence of laws, regulations and/or administrative procedures governing brokering of SALW, 7 pS report that no national definition of “brokering activities” or “broker” exists.⁶ Of these, one State notes that brokering in military goods is permitted only for one state-owned company. One other State reports the absence of the definition as such, however provides a description of the scope of controlled activities covering any goods: “prohibition or regulation of a) their acquisition and disposal; b) their movement; or c) activities which facilitate or are otherwise connected with their acquisition, disposal or movement.” Figure 2 depicts the replies with regard to this question.

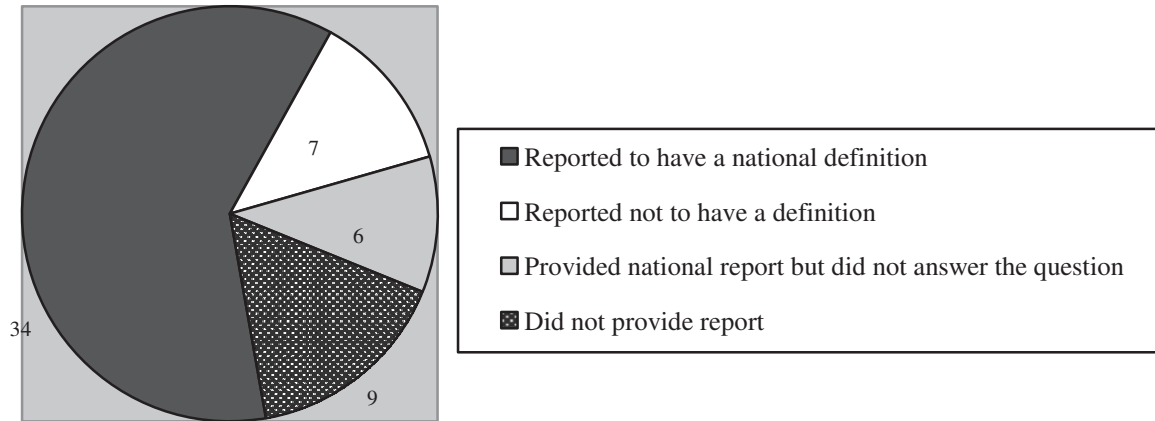
⁴ In this paragraph, it is also noted that “This paragraph shall not preclude a participating State from regulating brokering activities to the maximum extent of their national law or defining brokering activities in its national legislation to include cases where SALW are exported from its own territory or from exempting from its own licensing obligations brokering activities related to the transfer of such items to or from another participating State.”

⁵ The United Nations Group of Governmental Experts that convened three times during 2006-2007 produced the first international definition of “brokering”. The definition was also recognized by the UN General Assembly during its 62nd session. According to the Group, a SALW broker “can be described as a person or entity acting as an intermediary that brings together relevant parties and arranges or facilitates a potential transaction of small arms and light weapons in return for some form of benefit, whether financial or otherwise.”

It further notes that “within the context of these intermediary activities involving small arms and light weapons, a broker might: (a) Serve as a finder of business opportunities to one or more parties; (b) Put relevant parties in contact; (c) Assist parties in proposing, arranging or facilitating agreements or possible contracts between them; (d) Assist parties in obtaining the necessary documentation; (e) Assist parties in arranging the necessary payments.” *The illicit trade in small arms and light weapons in all its aspects, A/62/163, 30 August 2007, pp. 8-9.*

⁶ In discussing the definition of the terms ‘brokering’ and ‘broker’, the BPG notes that “provided that brokering activities are sufficiently clearly defined, an explicit definition of the term ‘broker’ might be dispensable” (BPG, pp. 40-39).

Figure 2: Definitions of brokers and brokering activities



Those States that refer to the issue of definition follow different practices in defining brokering and brokering activities. Eleven pS follow closely the definition used in the EU Council Common Position⁷ and EU Council Regulation 428/2009⁸ and 8 others cover similar same areas as referred to in the OSCE Brokering Decision or the EU Council Common Position.

The definition of brokering and brokering activities in nine States explicitly includes both legal and natural persons that are the object of controls. In one State the definition talks only about legal entities, one State's definition talks only about natural persons. References to "third countries" are used in the replies of EU Member States to refer to non-EU countries, whereas other pS use the term to refer to any country apart from their own that performs the third party role in the brokering transaction.

Instead of referring to small arms and light weapons or the OSCE Decision on Brokering, reference in terms of subjects of brokering is often made to "goods designed for military purposes", "defence articles", "specific goods", "war weapons" or "war materiel", or noted to follow the lists of the European Union or the Wassenaar Arrangement, for example. Only one reply makes specific reference to SALW, however no reference is made to SALW definition as provided in the OSCE Document on SALW. One national definition refers to brokering activities in general and makes no reference to military goods or services.

⁷ "Activities of persons and entities: - negotiating or arranging transactions that may involve the transfer of items on the EU Common List of military equipment from a third country to any other third country; or - who buy, sell or arrange the transfer of such items that are in their ownership from a third country to any other third country." EU Council Common Position 2003/468/CSFP, 23 June 2003.

⁸ "Brokering services shall mean: - the negotiation or arrangement of transactions for the purchase, sale or supply of dual-use items from a third country to any other third country, or - the selling or buying of dual-use items that are located in third countries for their transfer to another third country.

For the purposes of this Regulation the sole provision of ancillary services is excluded from this definition. Ancillary services are transportation, financial services, insurance or re-insurance, or general advertising or promotion;

Broker shall mean any natural or legal person or partnership resident or established in a Member State of the Community that carries out services defined under point 5 from the Community into the territory of a third country." EU Council Regulation No 428/2009, 5 May 2009.

In addition to the activities listed in the OSCE Brokering Decision (buying, selling, negotiating, and arranging transactions), activities covered under the national definition of brokering in four pS explicitly include facilitating conduct of international transfers, transport, financial services, insurance, freight forwarding, training, insurance with a view to arranging or negotiating the arrangement of transactions.⁹ In this regard, following the Decision's remark about the possibility for pS to regulate brokering activities to the maximum extent of their national law or defining brokering activities in their national legislation to include further cases, many national definitions go further than the OSCE Decision. For instance, a number of pS mention that the definition of brokering also applies to brokering in transfers of technology. In addition, one State notes that it controls all activities related to financing, transportation, freight forwarding or taking any other action that facilitates the manufacture, export or import of a defence article or defence service on that country's munitions list. More details can be found in the next section (see below Questions 24 and 25).

Questionnaire for an information exchange with regard to OSCE principles on the control of brokering in SALW

Question 24: Does your country regulate activities that are closely associated with the brokering of SALW?

Question 24a: If so, which of the following activities are regulated?

Question 25: Are these activities regulated by legislation on brokering or any other legislation?

Thirty five States provide information on whether activities that are closely associated with the brokering of SALW are controlled in their countries. Twenty eight pS report that such activities are controlled. Particularly one State notes that such activities are regulated only if links are established between activities, supply and delivery. One other pS notes that there is no specific legislation to control brokering activities, and the firearms are controlled pursuant to the Criminal Code. Seven note that such activities are not included in the scope of brokering controls of SALW.

The OSCE Questionnaire included ten categories for subsidiary activities related to brokering that could be controlled by States. The table identifying the number of States that report to have national controls on subsidiary activities related to brokering in SALW is provided below:

| Type of activity | Nr of pS that report to control the selected activity |
|-------------------------------------|--|
| Acting as dealers or agents in SALW | 21 |
| Providing for technical assistance | 18 |
| Training | 16 |
| Transport ¹⁰ | 22 |
| Freight forwarding | 19 |
| Storage | 22 |

⁹ The BPG divides “core brokering activities” and “optional activities” and notes that optionally, also activities related to brokering could be included, such as financing, transportation, or insurance services. (BPG, p.39.)

¹⁰ With regard to arranging and/or providing transportation services for SALW transfers, one State notes that under certain circumstances these services can be excluded from controls.

| | |
|-------------|----|
| Finance | 11 |
| Insurance | 8 |
| Maintenance | 18 |
| Security | 15 |

Five States report to control other services that are closely associated with brokering activities. Some activities mentioned by States include benefits providing, rights transfer, development, manufacture, assembly, testing and negotiations.

Eighteen pS note that such ancillary activities are regulated by legislation on brokering or other legislation. Among them, three States provide references to specific laws. One State notes that the controls are regulated by normative acts in the area of military technical co-operation, foreign trade, export, currency, financial, tax and customs controls. Eight States that report to control activities closely associated with brokering in SALW note that no relevant legislation exists to this effect.

3. Licensing procedure

In the OSCE Principles on the Control of Brokering in SALW pS agreed that “[f]or brokering activities, a licence or written authorization shall be obtained from the competent authorities of the participating State where these activities take place and where required by national legislation where the broker is resident or established.”

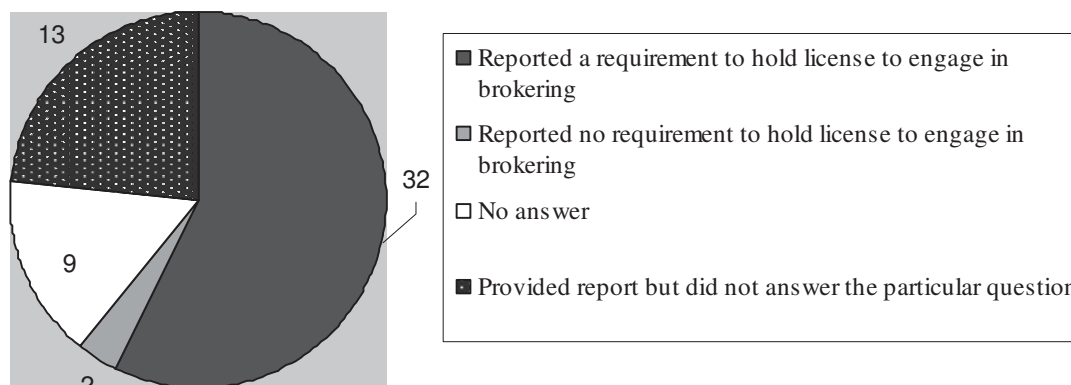
Questionnaire for an information exchange with regard to OSCE principles on the control of brokering in SALW

Question 6: Does your country require a licence to engage in brokering activities?

Forty States provide a response to the above question. Of the 39 States that report to have laws, regulations and/or administrative procedures governing brokering of SALW, thirty four pS provide a reply to this question.

Thirty two States report that there is a licence requirement to engage in brokering activities in SALW. Among them, one State reports of the licence requirement to engage in brokering activities although it informs not to have laws, regulations and/or administrative procedures governing brokering of SALW. Several States list state agencies or inter-agency commissions responsible for assessing licence applications and approving/denying them. Such commissions include, among others, representatives of Ministries of Foreign Affairs, Ministries of Defence, Ministries of Internal Affairs and Ministries of Economy. One State informs that a brokering licence is different from an export licence as it does not include customs information. Another State informs that brokers dealing with weapons belonging to categories I-IV of the UN Register of Conventional Arms Transfers should obtain a licence for manufacture, trade and intermediation, and it is planned that the same type of licence will be requested for brokering in SALW. One pS notes that the decision of the President replaces the licence requirement in that country. Of the 39 States that report to have laws, regulations and/or administrative procedures governing brokering of SALW, two pS report that there no requirement for a licence to engage in SALW brokering activities.

Figure 3: Licence requirements



Questionnaire for an information exchange with regard to OSCE principles on the control of brokering in SALW

Question 17: What are the criteria for granting a licence, permit or other authorization?

Thirty three States provide information on the criteria for granting a licence, permit or other authorization for brokering activities in SALW. Since brokering in most States constitutes part of the export control regime, States apply the same criteria that are used for assessing export licences. One State makes a clear reference indicating that applications for licences for SALW brokering activities are treated the same way as export licences. Nineteen States refer to various EU documents, including the EU Council Common Position (2008) defining common rules governing the control of exports of military technology and equipment. Three States make an explicit reference to OSCE documents guiding transfers of weapons.¹¹ Three States make a reference to other international agreements and documents (UN, Wassenaar Arrangement). In their responses 8 States inform of the following criteria applied when assessing the licence applications: foreign and security policy aspects, analysis of the situation in the recipient country, the risk of diversion as well as the characteristics of the weapons, its intended use and military significance. One State reports that licences are granted only to manufacturers of war weapons whereas another specifies that licences are granted only to state brokers, state corporations dealing with design, manufacture, export of high technology goods as well as organizations that are engaged in the development and manufacture of military goods in accordance with the licence for foreign trade. Finally, one State reports not to have any specific criteria for granting a licence but rather relies on an overall assessment.

¹¹ The following documents constitute the OSCE normative base establishing criteria for assessment of applications for licence, permits and other authorizations:

- OSCE Principles Governing Conventional Arms Transfers (1993);
- OSCE Document on Small Arms and Light Weapons (2000);
- FSC Decision 3/11 on treating destruction as the preferred method for disposal of conventional ammunition.

At least 11 States provide details of the documentation that has to be submitted when applying for a licence, permit or other authorization. Some States also indicate the requirements that the natural persons and legal entities have to meet in order to be eligible for a licence for brokering activities. Among limitations reported by States the following can be noted: foreign share of the legal entity, minimum age, criminal record of the company, its management or the natural person, financial records of the company, company's expertise in the area and others.

Questionnaire for an information exchange with regard to OSCE principles on the control of brokering in SALW

Question 14: Does your country require a licence, permit or other authorization for each brokering transaction?

Question 15: Are such applications for a licence, permit or other authorization considered for approval on a case-by-case basis?¹²

Thirty eight States provide information with regard to the requirement for a licence, permit or other authorization for each brokering transaction. Thirty five States (one which 34 inform to have laws, regulations and/or administrative procedures governing brokering of SALW) report of the requirement to hold a licence for each brokering transaction. (Figure 4).¹³ One of them reports that anyone on the territory of that country who wishes to broker war material for a recipient abroad, without operating his own production plant for the manufacture of war material, requires an individual license. However, whoever manufactures war material in his/her own production facilities in this country may broker or trade abroad without a specific license only if the initial license for the brokerage of the trade has been granted. Three States report that there is no such requirement. Of the three, one State reports that legislative changes to introduce individual and general licences are on the way. Another State reports that multiple brokering transactions can be carried out under one general brokering licence. One other State informs that this country does not license brokering activities, but requires a permit for most exports of SALW.

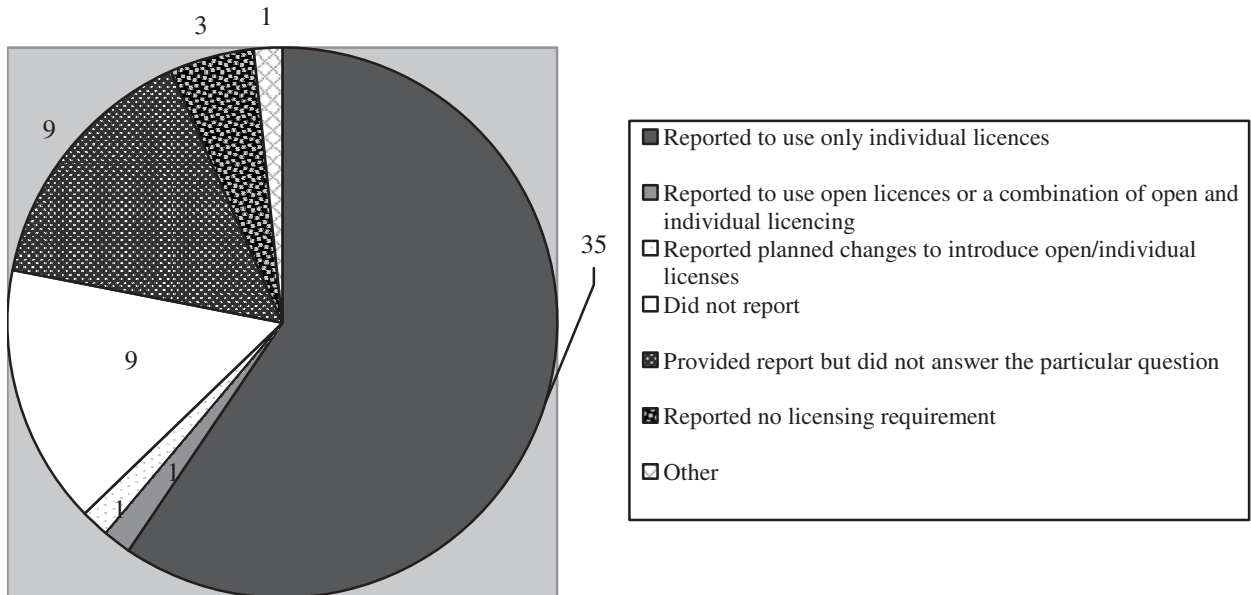
Thirty eight pS provide information with regard to the question on whether applications for a licence, permit or other authorization considered for approval on a case-by-case basis. Thirty four States answer affirmatively to the question. One State specifies that case-by-case applications are valid for licences that require application and not for general licences. Three States (which inform to have laws, regulations and/or administrative procedures governing

¹² The BPG on Brokering recommends that licences be issued on a case-by-case basis, whereby one brokering activity would be authorized for one arms transfer to one consignee. However, the BPG notes that in certain circumstances it may be possible to depart from this principle (such as cases where auxiliary licences for brokering activities are granted in conjunction with export licences, when a country issues global licences for several brokering activities relating to several specific consignees and corresponding specific lists of goods, or when a country uses "white lists" for countries for which licensing requirements could be waived or relaxed). It is noted that "the introduction of general licences, by contrast, is not recommended, given the importance of case-by-case assessments and screening of persons involved to verify their reliability" (BPG, p. 42).

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brokering of SALW) reply negatively to the question of which one reports of current legislative changes on the way. Finally, one State reports that it does not license brokering activities, but most permits for SALW exports are considered for approval on a case-by-case basis.

Figure 4: Licensing — open and individual licences



Questionnaire for an information exchange with regard to OSCE principles on the control of brokering in SALW

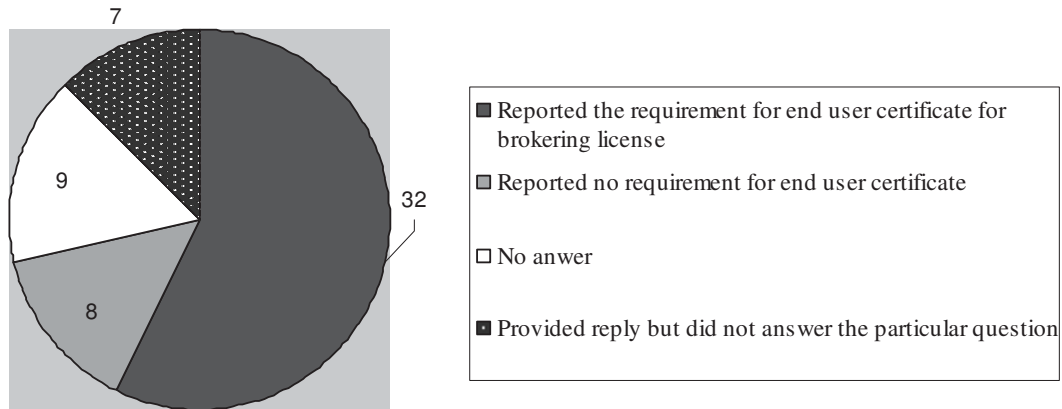
Question 13: Does your country have requirements for end-use documents that must be met before each brokering activity is authorized?¹⁴
 Question 13a: If so, describe.

Forty States provide information with regard to the requirement for end-use documents that must be met before each brokering activity is authorized. Thirty two States report that such requirements are in place, among which 26 pS provide detail on the end-use documents as well as other documents that have to be submitted when applying for a SALW brokering licence or authorization. Particularly, many States mention the following as essential elements: statement on non-transfer, End User Certificate (EUC) or import certificate and delivery documents. At least 4 States require that the original is submitted. Many States also report the requirement for an official translation and/or legalization of the end-use documents. One State informs that the end-use document should not be older than 6 months during the time of application for a licence of authorization. Finally, one State reports that the requirement for end-use documents exists only for individual licences. With respect to general licences this State reports that broker must have the supporting documents before the licensable activity takes place. Subsequent audits should confirm this. Eight pS (which inform to have laws, regulations and/or administrative procedures governing brokering of

¹⁴ The BPG recommends that “licences for brokering activities be refused without an authentic document indicating the end-use of the goods. Where the activity consists solely of an indication that an opportunity for a transaction exists, a copy from the exporter could also be sufficient”. (BPG, p. 44.)

SALW) report the absence of such requirements. One of them reports that it does not license brokering activities, but the end-use documentation is required prior to authorizing and export on SALW.

Figure 5: End User Certificates



Questionnaire for an information exchange with regard to OSCE principles on the control of brokering in SALW

Question 18: Is *ex post facto* licensing possible?
Question 18a: If yes, under which conditions?

Thirty five States provide information with regard to the possibility for *ex post facto* licensing. Thirty four pS report that *ex post facto* licensing is not permitted. One State reports that *ex post facto* licensing is possible if the weapons were transferred temporarily for the purposes of hunting, competitions, military exercises and repair.

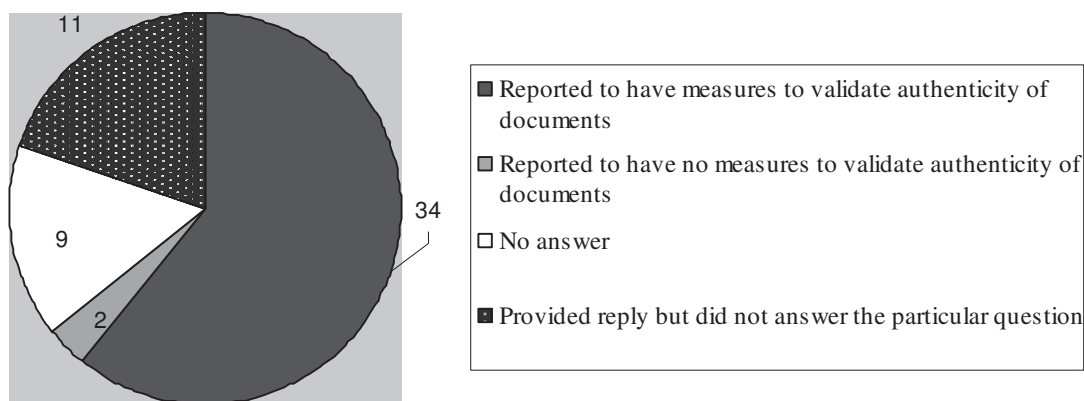
Questionnaire for an information exchange with regard to OSCE principles on the control of brokering in SALW

Question 19 Does your country have measures to validate the authenticity of documentation submitted by the broker?
Question 19a: If so, describe those measures.

Thirty six States provide information with regard to measures to validate the authenticity of documentation submitted by the broker. Thirty four States report that they have such measures in place. At least 17 pS report to use diplomatic channels (information exchange with relevant countries, embassies) to validate the information provided in the documentation. Nine States report to involve help of other State agencies, including Ministry of Defence, State Revenue Service as well as Ministry of Interior and security agencies for forensic expertise. Four States report that all the documents of foreign origin have to be legalized. One State reports about periodic end use checks performed world-wide. It further reports that an unfavourable report can result in denial or revocation of export licences, debarment or criminal or civil penalties. Finally, this State informs of the full annual onsite inventories that are performed for Man Portable Air Defence Systems. Another State also reports that on-site checks of end use are performed, and the activities of brokers are audited on the basis of their biannual reports. Another State notes that state database “e-licensing”

enables access to data on registration. Two States report that they have no measures to validate the authenticity of documentation submitted by the broker.

Figure 6: Measures to validate authenticity of documents



Questionnaire for an information exchange with regard to OSCE principles on the control of brokering in SALW

Question 20: Does your country keep records of all licences or written authorizations issued?
Question 20a: If yes, how long are the records kept for?

Thirty eight States answer the question on whether the records of all issued licences or written authorizations are kept.¹⁵ Thirty six States give an affirmative answer to the question. One State answers “no” to the question. One State reports that it keeps records of authorizations issues for exports of SALW. With regard to the period of time during which the records of kept, at least 14 States keep the information for 10 years. According to FSC Decision 8/04, the minimum requirement for state authorities to keep records of brokering activities is 10 years. Sixteen pS report that these data is stored indefinitely. Particularly, one State notes that the documents are kept for 10 years in a written form and stored indefinitely in an electronic form. Finally, 10 pS report “other” period of time during which the records are kept. It ranges from 5 years to 75 years. Here, one State reports that all permits for trading in weapons, ammunition and components are permanently kept by the Ministry of Interior while permits for transfers are kept for 5 years, and permits for transport for 2 years.

Questionnaire for an information exchange with regard to OSCE principles on the control of brokering in SALW

Question 21: Does your country require brokers to report regularly on their activities?¹⁶
Question 21a: If so, describe.

¹⁵ In the BPG it is noted that “in the interests of proper administration and international exchange of information it is also highly recommended that records of all licences issued, of licence holders and other the results of government screening for reliability be kept by the competent licensing authority” (BPG, p. 43).

¹⁶ In the BPG the obligation on brokers to report regularly on controlled activities in which they have been engaged in during a specific period of time is listed as an optional element to be considered (BPG, p. 43).

Of the 39 States that reported to have laws, regulations and/or administrative procedures governing brokering of SALW, 38 States provide information with regard to the requirement for brokers to regularly report on their activities. Thirty five pS report that brokers are required to report regularly on their activities. At least 5 pS report that annual reports should be submitted. The same number of States report that biannual reports are required. Five States inform that reports should be submitted every three months. Three States inform that brokers need to report 15 days after the completion of services. Two other State report an identical requirement, however with the deadline of 7 to 8 days after completing the service. One State reports of the requirement for brokers to submit a quarterly report on activities and an annual report that also serves as the basis for reauthorization of brokers. One State informs that the conditions for reporting are laid down in the brokering licence. Several States provide information about the recipient of the report. The recipient varies from Ministry of Foreign Affairs to Ministry of Defence and Ministry of Interior. Finally, three States provide a reference to the relevant law, legislative act or administrative procedures.

Eleven States report that there is no requirement for brokers to regularly report on their activities. One State reports that legislative changes are underway that may include a reporting requirement in the future. Another State reports that there is no general obligation to report by law, however the reporting can be a condition for issuing a licence.

4. Types of transactions

The OSCE Principles on the Control of Brokering in SALW commits pS to “take all the necessary measures to control brokering activities taking place within their territory.” *Section II, paragraph 1, FSC Dec 8/04*

Furthermore, the Principles also encourage pS “to consider controlling the brokering activities outside of their territory carried out by brokers of their nationality resident or brokers who are established in their territory.”¹⁷ *Section II, paragraph 2, FSC Dec 8/04*

Questionnaire for an information exchange with regard to OSCE principles on the control of brokering in SALW

Question 9: Does your country require a licence for SALW brokering activities on the territory of your country regardless of the nationality of the brokers?

Question 10: Does your country control brokering activities outside your territory carried out by brokers of your country’s nationality?

Question 11: Does your country control brokering activities outside your territory carried out by non-citizen residents who are established in your country’s territory?

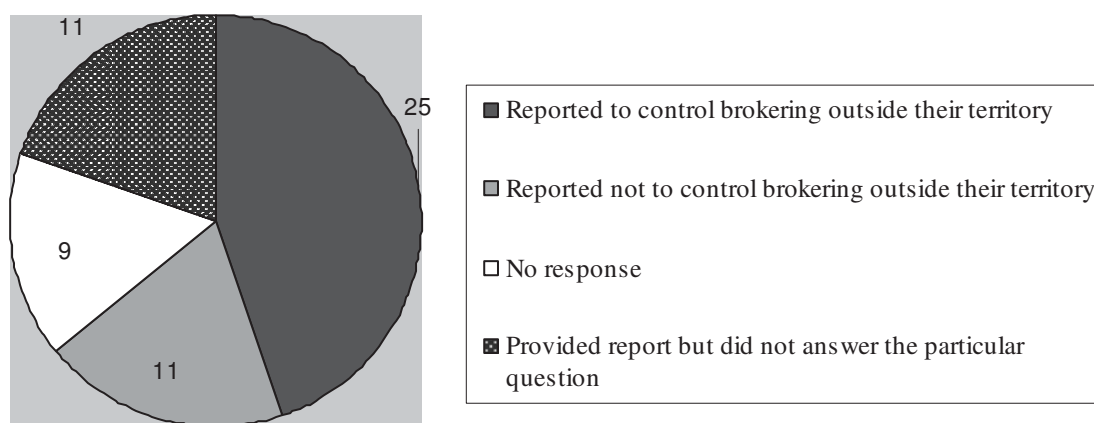
Of the 39 States that report to have laws, regulations and/or administrative procedures governing brokering of SALW, 37 pS inform that licence is required for brokering activities on the territory of the respective country regardless of the nationality of the broker. One of the 39 States reports the absence of the requirement. One other pS reports that it is “considering the matter”. Among the 37 States that provide a positive response, one pS reports that the licence requirement applies to a defined sub-let of SALW. Many pS also report that the licensing requirement applies both to natural persons (both citizens and permanent residents) and legal entities registered in the country in order to conduct brokering activities on the country’s territory. One pS that reports the absence of laws, regulations

¹⁷ Understood to refer to “nationals”, “residents” and “brokers established in their territory”.

and/or administrative procedures to control brokering of SALW, informs of the general licensing requirement to engage in brokering activities on the territory of that country.

Thirty eight States provide in their reports information on control of brokering activities outside their territory carried out by brokers of that country's nationality. Twenty five States report to enforce such controls (13 States in 2008 information exchange), among which one State notes that extraterritorial controls apply if the citizen of that country also has a domicile in that country, and another State reports that the law applies in cases where action of state organs, legal and physical persons of that country outside its territory facilitates the proliferation of conventional weapons. Eleven States report the absence of such controls. One of them notes the plans to introduce in 2012 the controls over nationals of that country that operate outside the territory of that State. Another State comments that only one state-owned company is permitted to trade in military goods. In addition, one State reports that the national criminal system provides for the jurisdiction of that country's nationals beyond the national boundaries. Finally, one other State informs that it is currently considering the matter.

Figure 7: Measures taken to control brokering activities outside the territory of a participating State



Nineteen pS report to control brokering activities outside their territory carried out by non-citizen residents who are established on that country's territory. Many States that answer affirmatively to the question, also provide comments on the scope of the controlled activities on the territory of those States or outline details of the licensing procedure. These comments may imply that the question was misunderstood. Therefore, the statistics on this particular question must be treated with a particular caution. Eighteen States report that such controls are not applied in those countries.

Questionnaire for an information exchange with regard to OSCE principles on the control of brokering in SALW

Question 16: Are there exceptions to hold a licence or authorization for a brokering transaction?

Question 16a: Details

Of the 39 States that reported to have laws, regulations and/or administrative procedures governing brokering of SALW, 38 pS provide information on the exceptions to hold a licence

or authorization for a brokering transaction. Twenty six States report no exceptions to the requirement to hold a licence or authorization for a brokering transaction. Two of them, however, report that a brokering licence is not required under special conditions which are specified below.

Eleven pS report that such exceptions exist. Particularly, 4 States report the exemption from the requirement to hold brokering licences if the brokers are government institutions and/or agencies, including Ministries of Defence and armed forces. In one case, such transactions are still subject to the authorization by the President. At least four States report that no licences are required for brokering activities if the transfers of SALW would be affected within or to certain group of countries, such as the EU or NATO. Three pS report the exemption to hold a brokering licence for SALW that will be transferred for an authorized UN or other international humanitarian mission or a peace-keeping operation. In two cases, exemption to hold a brokering licence is possible if the weapons are temporarily transferred to another country for the purpose of a repair, overhaul, modification, testing or a military exercise and are subject to be returned to the original country. Finally, exemption to the requirement for a brokering licence is reported by two States if SALW are for use in an emergency situation and for manufacturers that hold a permit to manufacture military equipment of that type.

5. Registration systems

According to the OSCE Principles on the Control of Brokering in SALW, the participating States “may also require brokers to obtain a written authorization to act as brokers, as well as establish a register of arms brokers. Registration or authorization to act as a broker would not replace the requirement to obtain the necessary licence or written authorization for each transaction.” *Section IV, paragraph 1, FSC Dec 8/04*

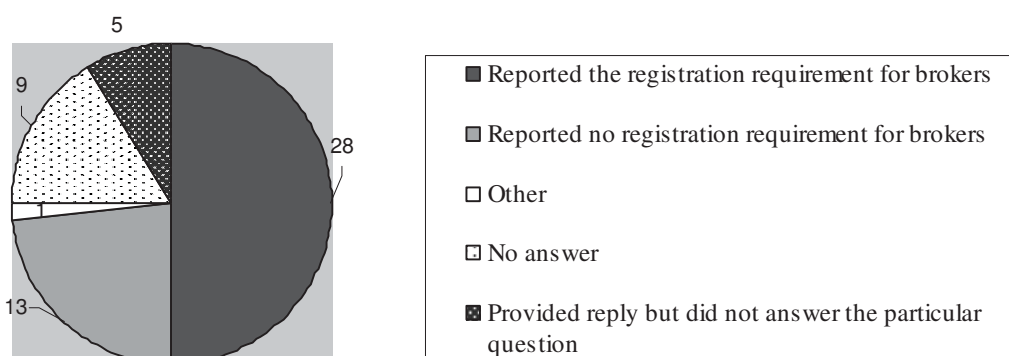
Questionnaire for an information exchange with regard to OSCE principles on the control of brokering in SALW

Question 5: Does your country require brokers to register before they can apply for brokering licences.

Forty one States, including all 39 States that reported to have laws, regulations and/or administrative procedures governing brokering of SALW provide information with regard to the requirement for brokers to register before they can apply for brokering licences. Twenty eight States report that such a requirement exists. At least three States note that only legal entities can be registered as a broker. Several States inform that both natural persons and legal entities can be registered as brokers. One State notes in particular, that only the citizens of that country or the citizens of the EU as well as companies established in that country or in the EU can be registered as brokers. Finally, one State informs that since it does not have laws that regulating brokering activities specifically in SALW, the registration is done for the purposes of brokering in general rather than for brokering in arms.

Thirteen pS report that there is no requirement for brokers to register before they can apply for brokering licences. One State informs that the decision on the creation of a broker is issued by the President. Finally, one State reports that the law on the registration is not yet operational.

Figure 8: Registration of brokers



In line with the OSCE Principles on the Control of Brokering in SALW, “[w]hen assessing any applications for written authorizations to act as brokers, or for registration, the participating States could take account, *inter alia*, of any records of past involvement in illicit activities by the applicant.” *Section IV, paragraph 2, FSC Dec 8/04*

Questionnaire for an information exchange with regard to OSCE principles on the control of brokering in SALW

Question 7: Does your country make a background check on past involvement in illicit activities before registering a broker or issuing brokering licences?

All the 39 States that reported to have laws, regulations and/or administrative procedures governing brokering of SALW provide information with regard to the background check performed on past involvement in illicit activities before registering a broker or issuing a brokering licence. Thirty four States inform that such checks are performed. Particularly, 8 States provide information about the agencies responsible for conducting the checks. One State notes that diplomatic channels for checking the involvement in illicit activities are used. Another State informs that in addition to a background check, a certificate is required confirming the absence of a criminal record. Another State reports that background checks are performed only in respect of assessment of export licences applications.

Four States report that no background checks are performed. Finally, one State informs that the decision of the President of that country is required, and that the decision replaces the licence requirement.

Questionnaire for an information exchange with regard to OSCE principles on the control of brokering in SALW

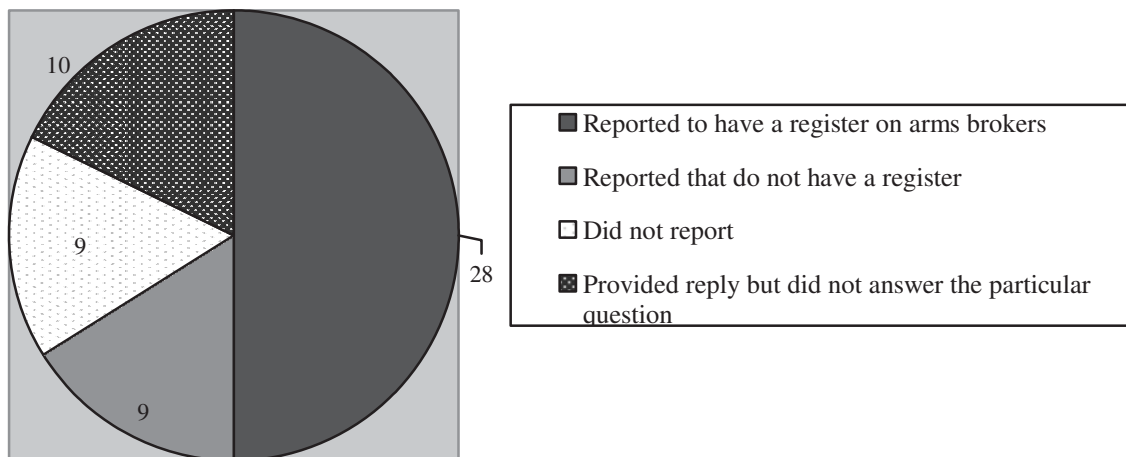
Question 8: Does your country keep a register of SALW brokers/traders?

Thirty seven States provide information with regard to the register of brokers/traders maintained in pS. Twenty eight pS inform that such registers are maintained. At least seven of them indicate the State agency or an inter-agency body responsible for registering brokers. These may include Ministry of Foreign Affairs, Ministry of Interior and Ministry of Economy. Three pS inform that such registers are public. Some States also provide

information on the number of registered brokers. Finally, one State notes that the register will be introduced once the relevant law is operational.

Nine States report that registers are not maintained. Particularly, one State notes that no regular register is maintained. However, all issued licences are entered into a diary. Another State notes that the registry is not maintained explicitly, however the national firearms information system contain information on business licenses, authorizations, registration certificates, prohibition orders and other information collected under the national legislation.

Figure 9: National register of arms brokers



6. Sanctions and enforcement

Questionnaire for an information exchange with regard to OSCE principles on the control of brokering in SALW

Question 12: What is the policy on deciding which State's jurisdiction is appropriate for each brokering transaction?

Twenty six States provide information with regard to the question on the applicable jurisdiction for each brokering transaction. Generally, there are no uniform replies, and States provide various information about their national export control system. No detailed information is provided by States on how the case where double jurisdiction would apply would be handled. Most replies imply that the activities of a broker on the territory of a State would be regulated by that State.

Three States report that the matter of the applicability of the State's jurisdiction is considered on an individual basis. When answering the question four other States refer to the national export criteria. Two States inform that this State's national licensing requirements do not remove the requirement of the exporter to obtain the permission of other authorities of appropriate countries to remove or receive goods from or to that territory. At least 8 States provide information about:

- subjects of control based on the national definition of brokering, including the brokering activities of natural persons and legal entities;

- scope of control relating to controlling activities of the broker taking place on the territory of the country and the activities of the citizens and the permanent residents of the country acting abroad;
- national arms export licensing process.

In accordance with the OSCE Principles on the Control of Brokering in SALW, the participating States “...will endeavour to establish adequate sanctions, including criminal sanctions, in order to ensure that controls on arms brokering are effectively enforced.”
Section VI, FSC Dec 8/04

Questionnaire for an information exchange with regard to OSCE principles on the control of brokering in SALW

Question 22: Is it a criminal offence to engage in a SALW brokering transaction without a licence or authorization in your country?

Question 26: What penalties or sanctions does your country impose for illegal brokering activities?

Thirty eight States provide information with regard to sanctions for illicit brokering activities in SALW. Thirty five States answer affirmatively to the question on whether it is a criminal offence to engage in a SALW brokering transaction without a licence or authorization in their country. Three States report that illicit brokering does not constitute a criminal offence. One of them particularly reports that procedures are in progress for amending the Criminal Code. One other State reports that while there are no sanctions for arms brokering, the activities can be punished under the smuggling law.

Generally, sanctions are noted to include fines, administrative sanctions, nullification or revocation of licences, property sanctions and imprisonment. Of these, fines (29 references) and imprisonment (31 references) are the most common sanctions mentioned. Many reports that discuss sanctions on illegal brokering activities also specify the types of sanctions possible: replies vary from general references to the possibility of using different types of sanctions for different kinds of violations, to detailed lists of the types of sanctions that can be placed on illicit brokers. Many reports also distinguish between minor and major offences, with negligence being the most usual type of minor offence.

The severity of sanctions also varies from one participating State to another: fines range from 134 euros to 10,000,000 million euros. When imprisonment is mentioned, the most common jail sentences vary from 1-5 years (18 cases) up to 20 years (7 cases). The latter periods of imprisonment are foreseen for cases with “grave consequences”. Such cases may include repeat offence as well as related human fatalities and/or large property damage.

Questionnaire for an information exchange with regard to OSCE principles on the control of brokering in SALW

Question 23: Does your country share with other States information on such matters as the disbarment of brokers and revocation of registration?

Thirty two States provide information with regard to sharing of information on such matters as the disbarment of brokers and revocation of registration. Sixteen pS report that such information is shared. Particularly, two States note that they provide information on

registered brokers. One State reports that information on denied brokers is shared on a voluntary basis. One State informs that it may exchange information on all types of licences, including invalid and expired licences. One other State reports that information on registered brokers is shared on mandatory basis, while information on the denied brokers is shared on voluntary basis. Finally, one State notes that the information on disbarment of brokers and revocation of registration can be confidentially shared on a case-by-case basis.

Sixteen States respond that such information is not exchanged. Particularly, one State notes that it has not yet received any application. Another State notes, that even though it does not operate a registration system for brokers, according to the EU arrangements, it allows “for the sharing of denial notifications for brokering licences that have been refused.” Finally, one State reports that it does not share information with other countries on revoked licenses.

Questionnaire for an information exchange with regard to OSCE principles on the control of brokering in SALW

Question 30: During the reporting period, was action taken against groups or individuals engaged in illegal brokering (e.g., prosecution)?

Question 30a: Please give details.

Twenty eight States provide information with regard to action taken against groups or individuals engaged in illegal brokering. Twenty five States report that no action was taken against such groups or individuals. Three pS report that action was taken. Particularly, one State provides details of three cases of illegal brokering activities. It reports the successful prosecution of three criminal cases against individuals guilty of trafficking and illegal brokering activities.

7. International assistance and co-operation

Questionnaire for an information exchange with regard to OSCE principles on the control of brokering in SALW

Question 27: If the answer to question 1 is “no”, does your country wish to request assistance in developing laws, regulations and/or administrative procedures to regulate brokering in SALW?

Question 28: What kind of assistance do you require?

Question 29: Has your country developed a project proposal for assistance?

Question 29a: Does your country require training on controlling brokering activities in SALW?

Twenty four States provide information with regard to assistance requested in developing laws, regulations and/or administrative procedures to regulate brokering in SALW. Twenty one of them report that no assistance is required. Two State requests assistance in developing laws, regulations and/or administrative procedures to regulate brokering in SALW. In addition, one State informs that it is currently in the process of interagency consultations on the issue of requesting assistance in the drafting of legislation on brokering of military weapons and ammunition. Of the eight States that report to have no laws, regulations and/or administrative procedures governing brokering of SALW, none requests assistance.

Two States indicate the type of requested assistance. One request relates to the harmonization of legislation with the EU standards and the implementation of best practices. The other request deals with discussing experiences in the application of brokering legislation. Of the two States that indicate the type of requested assistance, one State reports that it has already developed a project proposal for assistance.

With regard to training on controlling brokering activities in SALW, 24 States provide information on whether such training is requested. Particularly, eight States request training on controlling brokering activities in SALW. Sixteen States answer “no” to the question.

8. Publishing

Questionnaire for an information exchange with regard to OSCE principles on the control of brokering in SALW

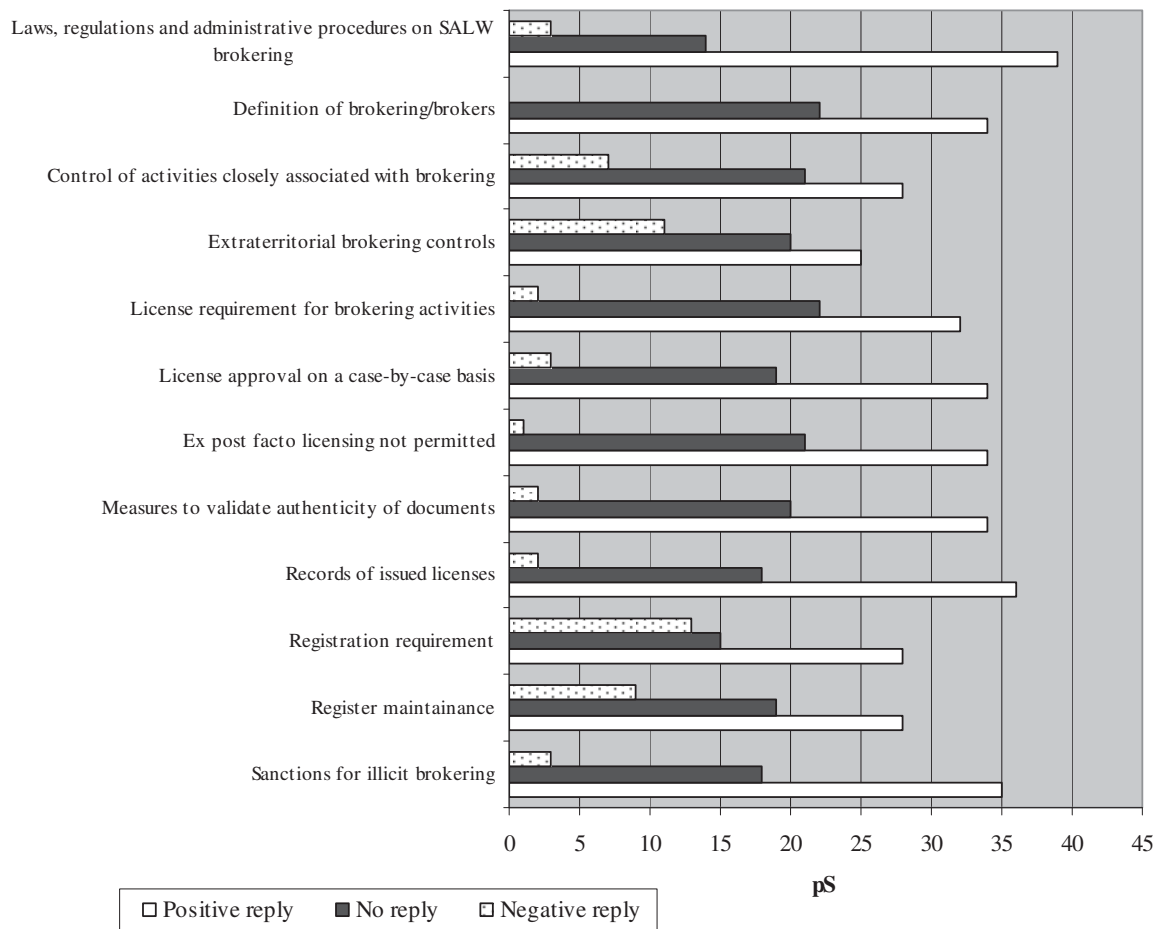
Question 31: Is your country content for these replies to be published on the OSCE website?

With regard to the question on whether the content of the replies could be published on the OSCE website, 24 States replied. Twenty States agreed to publish their replies on the OSCE website. Four States answered “no” to the question.

9. Conclusions

As noted in the beginning of the Summary Report, the number of replies included in the statistics of this Report is 47 (out of 56 OSCE pS). The summary graph below (Figure 10) presents the number of affirmative replies provided to some of the main questions of the one-off questionnaire on brokering controls against negative replies and cases where no information was provided:

Figure 10: Coverage of some main points in the one-off questionnaire on brokering



In the graph, “positive reply” refers to cases where a State reported that it has taken action on the point in question and considers the issue covered under national regulations/laws. “No reply” covers cases where a country replied to the questionnaire but did not report on the particular question. Finally, “negative and cases when no information has been received from a state.

Brokering controls are usually reported to be covered within the wider framework of export, import and transit controls, and many pS refer to existing international standards and commitments. However, in most cases where legislation is addressed, the exact content and specificity of the relevant laws remain unclear.

Furthermore, in the absence of a generally followed definition of “brokering” or “brokering activities” in the national legislation, it is difficult to gauge the applicability of such legislation to brokering activities, which are different from direct export/import operations.

National definitions of brokers and brokering activities vary widely among participating States and do not always follow the definition provided in FSC Decision No. 8/04 on SALW Brokering Controls. Thirty nine pS note that certain aspects of brokering controls are included in the existing legislation, and three pS report that they do not currently have laws covering SALW brokering.

Twenty five pS (as compared to 13 pS in 2008) report that they have some type of **extraterritorial jurisdiction** over brokering activities. **Modifications to legislation** and regulations concerning brokering since 2009 are reported by six participating States.

Licensing procedures and required documentation also vary among pS, and while some pS report that they make all brokering licence decisions case-by-case, others note that they use either a system of mere open licences or a combination of open and individual licensing. Thirty two pS note that a brokering licence is required in order for a natural or legal entity to conduct brokering activities. Also thirty two States require an End User Certificate in order to authorize brokering activities for a transaction. Twenty eight pS report the **registration** requirement in order to apply for brokering licences. Also twenty eight pS report that **registers** are maintained in their countries. Most States that cover brokering registers in their replies seem to comply with the FSC Decision No. 8/04 and keep the records for a minimum of 10 years. Some also report about requirements for brokers to maintain records about their activities, and 35 pS inform of the requirement for brokers to **periodically report** to the relevant State authorities.

In many cases, the reported regulations appear to follow the definition of the OSCE Document on SALW and cover only military-style weapons or war materiel; potentially leaving civilian firearms (hunting rifles, pistols etc.) unregulated or covered under separate instruments. Also, the brokering activities of the state organs and state enterprises are often exempt from the registration and licensing requirements. 35 pS specifically cover aspects of **sanctioning illegal** arms brokering. Most commonly these sanctions include fines, imprisonment, or both, but the severity of the sanction varies considerably.

Only three States report that **action was taken** in the reported period against groups or individuals engaged in illegal brokering. In addition, two States request assistance in developing laws, regulations and/or administrative procedures to regulate SALW brokering, and 8 States request training on the enforcement of the brokering controls.



**Organization for Security and Co-operation in Europe
Forum for Security Co-operation**

FSC.DEC/17/10
24 November 2010

Original: ENGLISH

629th Plenary Meeting
FSC Journal No. 635, Agenda item 6

**DECISION No. 17/10
AN INFORMATION EXCHANGE WITH REGARD TO
OSCE PRINCIPLES ON THE CONTROL OF BROKERING IN
SMALL ARMS AND LIGHT WEAPONS**

The Forum for Security Co-operation (FSC),

Reaffirming its commitment to the full implementation of the OSCE Document on Small Arms and Light Weapons (SALW) (FSC.DOC/1/00, 24 November 2000), and with particular regard to its section III, part D,

Recalling FSC Decision No. 8/04, OSCE Principles on the Control of Brokering in SALW, which was adopted in recognition of the need to strengthen section III, part D, of the OSCE Document on SALW,

Recalling also Ministerial Council Decision No. 15/09, which tasked the FSC with taking steps to review the implementation of Ministerial Council Decision No. 11/08 with regard to the establishment or reinforcement of a legal framework for lawful brokering activities within the national jurisdiction of participating States, by the end of 2010,

Recalling further FSC Decision No. 2/10, the OSCE Plan of Action on SALW, which referred to a progress report by the CPC as a possible measure to review the implementation of FSC Decision No. 8/04, and also decided that, as a transparency measure, the FSC should consider making public one-off information exchanges,

Taking due consideration of the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in SALW in All its Aspects (A/CONF.192/15, 20 July 2001), in which States affirm their commitment to developing adequate national legislation or administrative procedures to regulate SALW brokering activities, and to undertaking further steps to enhance international co-operation in preventing, combating and eradicating illicit brokering in SALW,

Taking into account the work done by the group of governmental experts established in 2005 pursuant to UN General Assembly resolution 60/81 to consider further steps to

enhance international co-operation in preventing, combating and eradicating illicit brokering in SALW (Report of the Group of Governmental Experts, United Nations General Assembly document A/62/163),

Recognizing the importance of transparency measures in the area of SALW brokering controls as an indication of effective implementation of existing commitments, and as a tool for identifying strengths and further needs for assistance,

Decides:

1. To request participating States to exchange information on their present regulations concerning brokering activities with regard to SALW, as a one-off exchange, by 30 June 2011, based on the attached questionnaire;
2. To task the Conflict Prevention Centre (CPC) with providing a summary report of the replies. The report will be limited to the provision of statistical data related to implementation and will not compare national policies or assess implementation. The report should be made available to the participating States not later than 1 September 2011. This task will be completed within the existing CPC budget;
3. To make the summary report public and to task the Secretariat with publishing it on the OSCE public website no later than 1 September 2011.

FSC.DEC/17/10
24 November 2010
Annex

QUESTIONNAIRE

| Question | Sources | Question | YES | NO |
|----------|-----------------------------|---|-----|----|
| 1 | PoA II.14 | Does your country have laws, regulations and/or administrative procedures governing brokering in SALW? | | |
| 2 | | List laws and/or administrative procedures regulating SALW brokering in your country. [type text] | | |
| 3 | GGE Report, paragraph 63(i) | Are those laws and procedures part of the national export control system? | | |
| | | Comments [type text] | | |
| 4 | FSC.DEC/8/04 | Does your country have a definition of brokering activities by persons and entities? | | |
| 4a | | If yes, please provide. [type text] | | |
| 5 | | Does your country require brokers to register before they can apply for brokering licences? | | |
| | | Comments [type text] | | |
| 6 | | Does your country require a licence to engage in brokering activities? | | |
| | | Comments [type text] | | |
| 7 | | Does your country make a background check on past involvement in illicit activities before registering a broker or issuing brokering licences? | | |
| | Comments [type text] | | | |
| 8 | PoA II.14 | Does your country keep a register of SALW brokers/traders? | | |
| | | Comments [type text] | | |
| 9 | FSC.DEC/8/04 | Does your country require a licence for SALW brokering activities on the territory of your country regardless of the nationality of the brokers? | | |
| | | Comments [type text] | | |
| 10 | | Does your country control brokering activities outside your territory carried out by brokers of your country's nationality? | | |
| | | Comments [type text] | | |
| 11 | | Does your country control brokering activities outside your territory carried out by non-citizen residents who are established in your country's territory? | | |
| | Comments [type text] | | | |
| 12 | BPG, Brokering, V (1) | What is the policy on deciding which State's jurisdiction is appropriate for each brokering transaction? [type text] | | |
| 13 | BPG, Brokering, V (5(i)) | Does your country have requirements for end-use documentation that must be met before each brokering activity is authorized? | | |
| 13(a) | | If so, describe. [type text] | | |
| 14 | PoA II.14 | Does your country require a licence, permit or other authorization for each brokering transaction? | | |
| 15 | GGE Report paragraph 44 | Are such applications for a licence, permit or other authorization considered for approval on a case-by-case basis? | | |
| | | Comments [type text] | | |
| 16 | | Are there exceptions to the requirement to hold a licence or authorization for a brokering transaction? | | |
| 16a | | Details (e.g. if the transaction is on behalf of the police or armed forces or other government officials) [type text] | | |
| 17 | | What are the criteria for granting a licence, permit or other authorization? [type text] | | |

| Question | Sources | Question | YES | NO |
|----------|---------------------------------|---|-----|----|
| 18 | BPG, Brokering, V (3) | Is <i>ex post facto</i> licensing possible? | | |
| 18(a) | | If yes, under which conditions? [type text] | | |
| 19 | | Does your country have measures to validate the authenticity of documentation submitted by the broker? | | |
| 19(a) | | If so, describe those measures. | | |
| 20 | FSC.DEC/8/04 | Does your country keep records of all licences or written authorizations issued? | | |
| 20(a) | | If yes, how long are the records kept for? | | |
| | | (a) 10 years | | |
| | | (b) Indefinitely | | |
| | (c) Other | | | |
| 21 | BPG, Brokering, V (4(ii)) | Does your country require brokers to report regularly on their activities? | | |
| 21(a) | | If so, describe. [type text] | | |
| 22 | PoA II.3 | Is it a criminal offence to engage in a SALW brokering transaction without a licence or authorization in your country? | | |
| | | Comments [type text] | | |
| 23 | | Does your country share with other States information on such matters as the disbarment of brokers and revocation of registration? | | |
| | | Comments [type text] | | |
| 24 | | Does your country regulate activities that are closely associated with the brokering of SALW? | | |
| 24(a) | | If so, which of the following activities are regulated (check relevant boxes)? | | |
| | | (a) Acting as dealers or agents in SALW | | |
| | | (b) Providing for technical assistance | | |
| | | (c) Training | | |
| | | (d) Transport | | |
| | | (e) Freight forwarding | | |
| | | (f) Storage | | |
| | | (g) Finance | | |
| | | (h) Insurance | | |
| | | (i) Maintenance | | |
| | (j) Security | | | |
| | | (k) Other services | | |
| | | Comments [type text] | | |
| 25 | | Are these activities regulated by legislation on brokering or any other legislation? | | |
| 26 | PoA II.14 | What penalties or sanctions does your country impose for illegal brokering activities? | | |
| 27 | PoA II.14 | If the answer to question 1 is “no”, does your country wish to request assistance in developing laws, regulations and/or administrative procedures to regulate brokering in SALW? | | |
| 28 | | What kind of assistance do you require? | | |
| 29 | | Has your country developed a project proposal for assistance? | | |
| 29(a) | | Does your country require training on controlling brokering activities in SALW? | | |
| 30 | PoA II.6 | During the reporting period, was action taken against groups or individuals engaged in illegal brokering (e.g., prosecution)? | | |
| 30(a) | | Please give details. | | |
| 31 | | Is your country content for these replies to be published on the OSCE website? | | |

Annex II



**Organization for Security and Co-operation in Europe
Forum for Security Co-operation**

FSC.DEC/8/04
24 November 2004

Original: ENGLISH

437th Plenary Meeting

FSC Journal No. 443, Agenda item 7

**DECISION No. 8/04
OSCE PRINCIPLES ON THE CONTROL OF BROKERING IN
SMALL ARMS AND LIGHT WEAPONS**

PREAMBLE

The participating States of the Organization for Security and Co-operation in Europe,

1. Building upon the OSCE Document on Small Arms and Light Weapons (SALW) (24 November 2000) in general and recognizing the need to strengthen in particular section III, part D thereof,
2. Recalling the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects (December 2001), which commits States to develop adequate national legislation or administrative procedures to regulate small arms and light weapons brokering activities, and to undertake further steps to enhance international co-operation in preventing, combating and eradicating illicit brokering in small arms and light weapons,
3. Willing to build upon the relevant provisions of the Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (May 2001), the Chair's Report of the Oslo conference on international co-operation in preventing, combating and eradicating illicit brokering in SALW (April 2003), the EU Common Position on the Control of Arms Brokering (June 2003), the recommendations of the OSCE Best Practice Guide on National Control of Brokering Activities (December 2003), and the Wassenaar Arrangement Elements for Effective Legislation on Arms Brokering (December 2003),
4. Acknowledging that the regulations for the control of brokering should be consistent with and complemented by other control mechanisms of SALW, in particular those related to export controls, as means of effective and comprehensive arms control,

5. Having continued and deepened their discussions on arms trafficking and brokering activities and having reached agreement on a set of provisions fostering the control of such activities through national legislation, as set out below,
6. Considering that at present some participating States already have in place or are in the process of revising or introducing national legislation on the subject,
7. Have decided to adopt and implement the principles set out in the following sections:

SECTION I: OBJECTIVES

1. The objectives of these principles are to control arms brokering in order to avoid circumvention of sanctions adopted by the Security Council of the United Nations, decisions taken by the OSCE, including the criteria set forth in section III A of the OSCE Document on Small Arms and Light Weapons (24 November 2000); other agreements on small arms and light weapons, or other arms control and disarmament agreements, to minimize the risk of diversion of SALW into illegal markets, *inter alia*, into the hands of terrorists and other criminal groups, and to reinforce the export control of SALW.
2. In order to achieve these objectives, the participating States will endeavour to ensure that their existing or future national legislation on arms brokering is in conformity with the provisions set out below.

SECTION II: GENERAL PRINCIPLES

1. The participating State will take all the necessary measures to control brokering activities taking place within their territory.
2. The participating States are encouraged to consider controlling the brokering activities outside of their territory carried out by brokers of their nationality resident or brokers who are established in their territory.
3. The participating States will establish a clear legal framework for lawful brokering activities.
4. For the purposes of paragraph 1, brokering activities are activities of persons and entities:
 - Negotiating or arranging transactions that may involve the transfer of items referred to in the OSCE Document on Small Arms and Light Weapons, and in particular its preamble, paragraph 3, from any other country to another country;or
 - Who buy, sell or arrange the transfer of such items that are in their ownership from any other country to another country.

This paragraph shall not preclude a participating State from regulating brokering activities to the maximum extent of their national law or defining brokering activities in its national legislation to include cases where SALW are exported from its own territory or from exempting from its own licensing obligations brokering activities related to the transfer of such items to or from another participating State.

SECTION III: LICENSING/RECORD-KEEPING

1. For brokering activities, a licence or written authorization shall be obtained from the competent authorities of the participating State where these activities take place, and, where required by national legislation, where the broker is resident or established. The participating States will assess applications for a licence or written authorization for specific brokering transactions according to the provisions of section III of the OSCE Document on Small Arms and Light Weapons (2000).
2. The participating States should keep records for a minimum of 10 years of all licences or written authorizations issued under the terms of section III, paragraph 1.

SECTION IV: REGISTRATION AND AUTHORIZATION

1. The participating States may also require brokers to obtain a written authorization to act as brokers, as well as establish a register of arms brokers. Registration or authorization to act as a broker would not replace the requirement to obtain the necessary licence or written authorization for each transaction.
2. When assessing any applications for written authorizations to act as brokers, or for registration, the participating States could take account, *inter alia*, of any records of past involvement in illicit activities by the applicant.

SECTION V: EXCHANGE OF INFORMATION

1. The participating States will consider establishing, in accordance with national legislation, a system for exchange of information on brokering activities among themselves, as appropriate.
2. Information that may be considered could include, *inter alia*, the following areas:
 - Legislation;
 - Registered brokers and records of brokers (if applicable);
 - Denials of registering applications and licensing applications (as appropriate).

SECTION VI: ENFORCEMENT

Each participating State will endeavour to establish adequate sanctions, including criminal sanctions, in order to ensure that controls on arms brokering are effectively enforced.

SECTION VII: FINAL PROVISION

1. The participating States agree that these principles will be included, as appropriate, in a review of the implementation of the OSCE Document on Small Arms and Light Weapons, as provided for in its section VI, paragraphs 2 and 3.
2. These principles shall take effect on the date of their adoption by the Forum for Security Co-operation.