
ATT-BAP REPORTING GUIDANCE NOTES

MODULE 8 – DIVERSION

The Arms Trade Treaty-Baseline Assessment project has developed a series of nine ATT-BAP Guidance Notes to assist States in the completion of their national ATT-BAP Survey and in the preparation of their initial report on measures to implement the Arms Trade Treaty, as required under Article 13 (1). Each of the ATT-BAP Guidance Notes focuses upon a particular topic and ATT commitment. Each Note:

- Identifies the relevant Treaty articles for each topic
- Introduces the ATT-BAP Survey questions and a sample of responses provided by States
- Provides information on potential sources of information for addressing the ATT-BAP Survey questions, highlighting similar questions or relevant responses contained in national reports on transfer control systems for other international instruments

DIVERSION: RELEVANT ATT ARTICLES

Article 11

1. Each State Party involved in the transfer of conventional arms covered under Article 2 (1) shall take measures to prevent their diversion.
2. The exporting State Party shall seek to prevent the diversion of the transfer of conventional arms covered under Article 2 (1) through its national control system, established in accordance with Article 5 (2), by assessing the risk of diversion of the export and considering the establishment of mitigation measures such as confidence-building measures or jointly developed and agreed programmes by the exporting and importing States. Other prevention measures may include, where appropriate: examining parties involved in the export, requiring additional documentation, certificates, assurances, not authorizing the export or other appropriate measures.
3. Importing, transit, trans-shipment and exporting States Parties shall cooperate and exchange information, pursuant to their national laws, where appropriate and feasible, in order to mitigate the risk of diversion of the transfer of conventional arms covered under Article 2 (1).
4. If a State Party detects a diversion of transferred conventional arms covered under Article 2 (1), the State Party shall take appropriate measures, pursuant to its national laws and in accordance with international law, to address such diversion. Such measures may include alerting potentially affected States Parties, examining diverted shipments of such conventional arms covered under Article 2 (1), and taking follow-up measures through investigation and law enforcement.

5. In order to better comprehend and prevent the diversion of transferred conventional arms covered under Article 2 (1), States Parties are encouraged to share relevant information with one another on effective measures to address diversion. Such information may include information on illicit activities including corruption, international trafficking routes, illicit brokers, sources of illicit supply, methods of concealment, common points of dispatch, or destinations used by organized groups engaged in diversion.

6. States Parties are encouraged to report to other States Parties, through the Secretariat, on measures taken in addressing the diversion of transferred conventional arms covered under Article 2 (1).

ATT-BAP SURVEY QUESTIONS

The ATT-BAP Survey contains several questions for States to explain how they fulfill their ATT commitments with regards to measures to prevent the diversion of conventional arms. The questions seek information on measures to prevent or mitigate the risk of the diversion of conventional arms, international cooperation and information sharing and responses to diversion, and relate to Article 11.

Examples of answers provided by States that completed ATT-BAP Surveys during 2013-2015 are included below to show the types of information that States have included in their Surveys and are indicative of the type of information governments are willing to share publicly on measures taken to implement the ATT. Completed Surveys are available for review via the 'Country Profiles' and 'Database' pages on the Arms Trade Treaty – Baseline Assessment Project Portal at: <http://www.armstrade.info/>

8. DIVERSION

	Yes	No	Details / Reference / Web link /Additional comments
Response taken from ATT-BAP Survey completed by Romania			
A) Does your State take preventative measures to mitigate the risk of diversion? [Article 11.2]	✓		
i) If yes, what preventative measures does your State take to mitigate the risk of diversion?			The exporter shall be under the obligation to ask the foreign partner to produce an ensuring document from the end user - international import certificate or an equivalent document, issued or certified by the competent authority in the importer's country, respectively the consignee, or the declaration of the ultimate consignee, as applicable, according to which the latter undertakes to comply with the destination and final use, as stated, and, as applicable, not to re-export, respectively not to re-transfer the imported goods without prior written approval by the Ministry of Foreign Affairs.

	Yes	No	Details / Reference / Web link /Additional comments
Response taken from ATT-BAP Survey completed by Switzerland			
B) Does your State cooperate and exchange information with States to mitigate the risk of diversion? [Article 11.3].	✓		Licenses shall not be granted for export trade and for contracts under Article 20 WMA if: "[...] in the country of destination there is a high risk that the exported weapons will be passed on to an undesirable end recipient (Art. 5 para. 2 WMO)". For a license to be granted for the export of finished products or for individual parts or assembly packages to a foreign government or an undertaking acting on behalf of a foreign government, a non-re-export declaration from the government of the country of destination is required. The requirement for a non-re-export declaration is waived if the case involves individual parts or assembly packages of negligible value. By issuing the non-re-export declaration, the country of destination undertakes not to export, sell, lend, or gift the war material authority or to transfer it in any other way to third parties abroad without the consent of the licensing authority. If there is an increased risk in the country of destination that the war material to be exported will be passed on to an undesirable end recipient, the licensing authority may stipulate that it has the right to verify compliance with the non-re-export declaration on site. In the case of export of substantial volume, a non-re-export declaration in the form of a diplomatic note from the country of destination is required. If there is evidence that the non-re-export declaration has been violated, the licensing authority may take precautionary measures. The Federal Department of Economic Affairs decides whether a license should be revoked (Art. 5a WMO).

	Yes	No	Details / Reference / Web link /Additional comments
Response taken from ATT-BAP Survey completed by Bulgaria			
C) Does your State take appropriate measures when it detects a diversion of transferred conventional arms?	✓		
i) If yes, what appropriate measures does your State take when it detects a diversion of transferred conventional arms?			Detailed investigation of a case; checks through different information sources (such as "watch-lists"); in cases when Bulgarian exporters are involved in a diversion, the Penal Code provisions are applicable

	Yes	No	Details / Reference / Web link /Additional comments
Response taken from ATT-BAP Survey completed by the United Kingdom			
D) Is your State willing to share information on effective measures to address diversion?	✓		
i) If yes, what information is your State willing to share?			In principle, yes, however in practice it will depend upon the source and sensitivity of the information concerned.

SOURCES FOR INFORMATION

The information required to answer the questions and sub-questions contained in Section 8 Diversion will be contained in primary and/or secondary legislation or a Presidential decree, as well as policy guidelines. States may be able to find and use relevant information contained within their reports on implementation of the UN Programme of Action (PoA) or their UNSCR 1540 implementation reports, specifically with regard to questions on legislation, policy guidelines and procedures.

RELEVANT QUESTION(S) FROM UN POA REPORTING TEMPLATE AND UNSCR 1540 IMPLEMENTATION REPORT MATRIX:

ATT-BAP SURVEY QUESTION	UN POA REPORTING TEMPLATE QUESTION	UNSCR 1540 IMPLEMENTATION REPORT MATRIX QUESTIONS
Question 8.A. - Does your State take preventative measures to mitigate the risk of diversion?	<p>Question 6.8 - Does your country have measures in place aimed at preventing the forgery and misuse of EUCs or other types of end-user documentation?</p> <p>Question 6.12 - When importing, does your country grant the right to the exporting State to conduct a physical check at the point of delivery?</p>	<p>OP 3 (c) and (d) and OP6 and OP10. Controls of NW, CW and BW, including related materials. - Which of the following legislation, procedures, measures, agencies exist to control border crossings, export/import and other transfers of NW, CW, BW and Related Materials? Can violators be penalized?:</p> <p>(17) End-user controls (22) Re-export controls</p>

