

## 5. RECOMMENDATIONS

Bulgaria has made significant progress in enacting modern legislation for the control of the trade in ADUGT and the establishment of mechanisms for its implementation. Yet the enforcement of export controls remains difficult and the lack of transparency is a key problem. Furthermore, legislative and regulatory loopholes exist for unscrupulous arms dealers to exploit. The aim of this section is to highlight problematic areas within the control system and to recommend measures to tackle them.

### 5.1. TO THE BULGARIAN GOVERNMENT

The implementation of the LCFTADGT has revealed a number of problems. There are two possible ways to address them. One way is by improving the implementation of the current export control system, particularly the organization and work of the Interdepartmental Commission. Alternatively, these issues could be addressed by creating an autonomous export control agency.

#### *Improving the work of the Interdepartmental Commission*

##### *Eliminating conflicts of interest*

- Eliminate the dual role of the Minister of Economy, who simultaneously chairs the Interdepartmental Council and the Interdepartmental Commission. In practice this means that the same person signs the trade licenses and the individual transaction permits. This change would alter structurally the probability of conflicts of interest.
- Include legal provisions to preclude Commission or Council members from being on the boards of Defense Industry companies. Currently, the Minister of Economy is the principal of the two largest state-owned arms trade companies, Teraton and Kintex, which could lead to conflicts of interest. The MoD and MoI also control arms trading companies.
- Include provisions to preclude members of the Commission or any of their relatives from having interests in or working for defense companies. In the past such allegations have been made against the Secretary of the Interdepartmental Commission.

##### *Alleviating corruption pressures*

- Introduce an annual rotation of the Interdepartmental Commission Secretary. This measure would increase the level of control over the discretionary powers given to the Commission's Secretary.

*Improving current export control mechanisms*

- Increase the representation of law enforcement bodies within the Interdepartmental Commission. It is recommended that the Director of the National Security Service and the Secretary General of the MoI (supervisor of all MoI agencies), become members of the Commission.
- Reinforce the extent to which export license applications are judged against the impact the proposed export would have on the sustainable development of the recipient country. The system needs to take fuller account of both the fiscal implications of the transfer and the mutually enforcing relationship between security and development in the recipient country.
- Re-instate the system for state certification control over arms and explosives produced and establish a National Centre for SALW Tracking.

*Creating a National Arms Trade Controls Agency*

Alternatively, the problems with the Interdepartmental Commission could be solved more comprehensively with the establishment of an autonomous body. The *National Agency for Controlling the Trade in Arms and Dual-use Goods and Technologies* would:

- Employ its own expert staff.
- Report to the Prime Minister or the Deputy Prime Minister.
- Conduct all necessary background checks and research, including on-the-spot inspections before issuing licenses and permits.
- Control the transactions at their various stages, and be responsible for contacting the authorities in end-user countries.
- Co-ordinate the work of all other institutions in matters related to arms and dual-use goods controls.
- Maintain a database of all transactions, and detailed information on all manufacturers, brokers, authorized transport companies, end-users and arms produced.
- Prepare materials and train law-enforcement agents or civil servants.
- Establish a network of permanent on-site representatives in the biggest manufacturers to ensure adherence to the law.
- Keep track of, and exert control over, significant domestic transfers of arms and dual-use goods and technologies.

### ***Strengthening controls on domestic trade in arms and dual-use goods and technologies***

Many of the problems related to arms exports start with domestic transactions. Priority should be given to a comprehensive approach that will combine control of foreign trade in arms with control of the domestic trade.

- Strengthen controls on domestic trade in dual-use goods and technologies (DUGT). The current Penal Code criminalizes and punishes only illegal exports or imports of DUGT, i.e. only foreign trade.<sup>172</sup> If an illegal DUGT transaction takes place domestically (on Bulgarian territory), the LCFTADGT provides only for administrative sanctions.<sup>173</sup> Thus, Article 337<sup>174</sup> and Article 339<sup>175</sup> of the Penal Code could be amended by adding a provision to penalize any illegal trade, production, transfer, possession or acquisition of DUGT taking place in Bulgaria. This would lead to more effective controls on the foreign trade in such goods.
- Introduce a control mechanism that enables authorities to be informed when manufacturers sell their arms to another company. Permits should be required for the transportation of ADUGT within Bulgaria.
- Launch a government program for the collection of illicitly held arms or an amnesty law. In 2002, MP Nonka Matova proposed an amnesty law for illegally owned firearms. Her initiative, though, was not successful. The MoI should renew and support such initiatives.
- Establish a database of individuals with criminal records and strengthen controls over the SALW and ammunition acquired by these individuals or persons related to them.
- Set up a computerized arms sales registration system together with a unified real-time information system for tracing and pinpointing the location of weapons.

### ***Strengthening controls on brokers***

- Evaluate brokering applicants according to strict and transparent criteria, no matter where they are registered. Very often brokering companies are related to and registered in NATO member-states. In a number of cases companies have US or UK registration, including those with a history of shady activities. Therefore, in addition to implementing an effective screening system, it is necessary to strengthen international co-operation so that Bulgaria is more systematically supplied with information by those countries where brokers are registered or have permanent residence. Such co-operation would enable the government to determine that licensees are solvent and free from liabilities, with a track record for adhering to the principles of Bulgaria's current arms exports policy.

<sup>172</sup> Penal Code, Art 233, amended.

<sup>173</sup> LCFTADGT, SG 75/2002.

<sup>174</sup> Penal Code, Art 337. This article penalizes the production, transfer, and trade of explosives, arms, and ammunition.

<sup>175</sup> *Ibid*, Art 339. This article penalizes the illegal acquisition and ownership of explosives, arms, and ammunition.

- Criminalize the violation or evasion of the LCFTADGT by brokers. Provisions should be added to Penal Code Articles 237 and 337 to penalize the illegal brokering of arms or of dual-use goods and technologies.

### ***Increasing transparency and government accountability***

- Publish annual reports on arms transfers containing details of the type, quantity, value, destination and end-use of the goods which have been both licensed for export and exported. Such a report should be produced by the Commission or the Council of Ministers.<sup>176</sup>
- Increase transparency and accountability of business transactions related to the MoD.
- Encourage the Bulgarian MIC to overcome the current culture of secrecy in order to draw on progressive skills and management techniques from the wider world.
- Provide public statistics on Bulgaria's arms exports, imports, income and expenditure and arrange a separate section on arms transfers in Bulgaria's balance of trade statistics.
- Ensure appropriate publicity for the annual report on the implementation of the LCFTADGT. This document is submitted by the Council of Ministers to Parliament.
- Create an Arms Control Sub-Committee at the National Parliament. Such a sub-commission could be part of the Standing Committee on Foreign Policy, Security and Defense. The sub-committee would exert Parliamentary control on issues of foreign trade of arms and dual-use goods and technologies.
- Invite civil society organizations for public hearings in Parliament on non-proliferation issues. This is one way to encourage the involvement of civil society organizations in arms non-proliferation issues. There are a number of experts, from academia, NGOs, think-tanks, and the media who could provide valuable input and critical views on the monitoring of the arms trade or improving arms controls.

### ***Improving the operational capacity to implement and enforce controls***

- Consider an increase in the administrative and financial resources needed for applying the highest standards in arms export controls and employing suitably skilled and experienced personnel.
- Use revenue from license and permit fees<sup>177</sup> in a more targeted way. Currently, license and permit fee revenues constitute part of the MoD general budget.<sup>178</sup>

<sup>176</sup>This point was among the conclusions of a roundtable, co-hosted by the Atlantic Club of Bulgaria and Saferworld in collaboration with the Bulgarian MFA and the UK Foreign & Commonwealth Office, entitled, 'Implementing Arms Export Controls and Combating Small Arms Proliferation in Bulgaria', Sofia, 14 May 2003.

<sup>177</sup>The license fee costs 6,000 Bulgarian leva and the permit fee 3,000 Bulgarian leva.

<sup>178</sup>Defense and Armed Forces Act, last amended on 19 April 2002, SG 40/2002, Art 15a, § 4.

These funds could be used to improve the export control system through a number of activities. For example: training of practitioners; publication of manuals for customs officers or annual reports on the implementation of arms export controls; maintenance of an export control web-page; translation of EU legislation (such as the EU Dual-Use Goods and Technologies List) or the lists of export control regimes (such as the Wassenaar Arrangement, Australian Group, Nuclear Suppliers Group, Missile Technologies Control Regime); verification inspections on the implementation of the Convention on Chemical Weapons;<sup>179</sup> and information and training workshops on export controls for defense company officials.

- Conduct training to deepen company and employee responsibility for export control. This would relieve some pressure from the state, by ensuring that controls are implemented by the company prior to state involvement. Closer partnership and regular dialogue with companies should become standard practice.
- Establish mechanisms to enhance information exchange and consultation with EU and other partner countries to make pre- and post-delivery end-user verification more reliable. This is necessary because Bulgaria does not have sufficient information or capacity to make reliable assessments on its own for all end-users, particularly in difficult cases involving forged or misleading end-user certificates, or where it is necessary to monitor the use of arms after export.
- In order to strengthen operational capacity to implement and enforce arms controls, stricter surveillance and controls at border posts, sea- and airports should be introduced. In particular, there is a need to create special units as part of the customs service, which would control external commercial activities with ADUGT. The customs officers in turn should be placed under scrutiny and bear full responsibility for the inflow and outflow of such goods through Bulgarian borders.<sup>180</sup> They should also work within management structures offering appropriate rewards for good performance.

### *Disposing of surpluses and improving stockpile security*

- Launch a national program for the destruction of surplus weapons and install modern production technologies for disposal of ammunition and weapons systems as well, as the destruction of surplus stockpiles of the MoD and the Mol.
- If surpluses cannot be destroyed, create an internet register and annual report on the sale of surplus armaments, including SALW. In addition to providing access to the information for legitimate potential buyers, this would facilitate a transparent analysis of Bulgaria's adherence to the highest international standards on safe disposal of surplus materiel.
- Improve the system of safeguarding SALW and ammunition stock at the MoD and the Mol. Ensure the employees of any private firms used have the requisite

<sup>179</sup>Since December 2002, the Commission has been the body implementing Bulgaria's commitments under the Convention on Chemical Weapons.

<sup>180</sup>Conclusions, 'Implementing Arms Export Controls and Combating Small Arms Proliferation in Bulgaria', Roundtable co-hosted by the Atlantic Club of Bulgaria and Saferworld in collaboration with the Bulgarian MFA and the UK Foreign & Commonwealth Office, Sofia, 14 May 2003.

experience and training, and are subject to appropriate safeguards, to control both procedure and the risk of corruption.

## **Overcoming economic challenges**

### *Reorganizing and restructuring the defense industry*

- Complete the privatization of the defense industry. To improve the functioning of Bulgaria's MIC, and the regulatory function of the state in controlling domestic and foreign arms trading, it is crucial for the state to withdraw from ownership of companies in the defense industry. This should be done in a very transparent manner. The withdrawal of the state would remove the current conflict of interest by relieving the government from the political burden of not being able to pay off salaries on time. With this done, the government would be able to exert control over arms exports more objectively.
- Upon completion of the privatization of the large state companies (e.g. Kintex AD), private actors will dominate Bulgaria's arms trade. In order to outline the acceptable limits of the privatization process, the risks of violation of official control regimes by private entities should be carefully assessed.

### *Encouraging international co-operation*

- Take active steps to achieve participation in transnational co-operation in defense production within the EU as well as with other developed countries or international companies. This is perhaps the direction of development that provides the brightest prospects for the Bulgarian defense industry. A single-handed breakthrough on already saturated and apportioned European and world markets is extremely difficult even for very large companies. Integration with well-positioned Euro-Atlantic companies is therefore a valuable alternative given the existence of well qualified and experienced staff, and the capacity for fairly high quality production at relatively low cost. This process should be regulated in order to preserve the state's interests.
- Prioritize procurement contracts that include offset agreements involving Bulgarian SALW producers. Although offset arrangements have been a priority for the current government, particular attention should be paid to producers such as Arsenal and VMZ-Sopot. Their financial situation is very difficult and offset agreements could be used to steer their production capabilities gradually towards sophisticated defense products other than SALW. Such offset could take the form of mixed ventures, joint production schemes, technology and know-how transfer, or conversion to production of modern armament systems and equipment. Additionally, staff could be retrained for production and overhaul activities linked to the destruction of existing surplus weapons in the country.

### *Assisting in the process of conversion to civilian output or product transformation*

- Create incentives for the shift from SALW mass production towards civilian output, with the aim of reducing the dependence on exports of SALW. Such programs should target regional centers with traditions in SALW production.

- Develop alternative employment programs for workers laid off by large SALW producing companies, such as Arsenal or VMZ-Sopot. Grant low-interest loans to specialists and workers made redundant with the purpose of setting up civilian production by small and medium companies.
- Set up government-supported programs for production restructuring and reorientation from SALW to modern arms systems and equipment. This would reduce dependence on exporting these goods, and increase the possibility of partnership with foreign governments and companies.

#### *Investing in research and development*

- Increase research and development (R&D) spending, particularly in non-SALW areas. The government, through the MoD and other relevant institutions, should clarify its position on scientific integration at the European and Euro-Atlantic security level in consideration of the present scientific potential and research capabilities, as well as the strategic development directions of Bulgarian defense production.<sup>181</sup>
- Pool together R&D resources. A certain centralization of research activity management is necessary to compensate for sparse resources and shrinking of defense production and consumption. The MoD could be the co-ordination centre for these processes and thus provide the link between Bulgarian Armed Forces reform and the defense industry's research activities. The financing of more efficient research could be secured through earmarking funds for the MoD research budget. Such funds would be distributed among researchers based on bids and contest procedures.

#### *Improving education and domestic dialogue on export controls*

- Educate state institutions and the defense industry about the global community's efforts to counter illicit arms proliferation. This could be done through interagency meetings or trainings. Such an effort would help the government rebalance research, production and commercial interests related to SALW. Focus on the implementation of Bulgaria's international commitments to combat the proliferation of SALW, and prevent the transfer of such weapons to regions characterized by violent conflicts and instability or where military spending can impinge upon the state's capacity to attain development.
- Encourage greater dialogue with the defense industry to promote understanding of and compliance with the new arms control norms.

## **5.2. TO THE DEFENSE INDUSTRY**

- Raise the profile of the industry in the public domain by fostering a reputation for legality, transparency and ethical practice. This will be a vital step towards securing public trust and an international reputation for integrity.

<sup>181</sup> A general position for R&D strategy has been outlined in the MoD's 'Plan for Modernization of Bulgaria's Armed Forces 2002–2005', Sofia, May 2002.

- Make industry practice compatible with international standards in the fields of human rights, international law and environmental protection:
  - Insert proper language in mission statements.
  - Develop internal control mechanisms.
  - Accept ethics codes.
  - Conduct in-house training for employees.
- Reveal information on the arms trade that does not jeopardize the financial situation of a company.

### 5.3. TO THE INTERNATIONAL COMMUNITY

- Establish systematic information exchange with Bulgarian authorities by promoting dialogue and information exchanges related to export and transit controls. Consider provision of funding for this purpose. This is a key way for states to tackle together problems which they cannot face on their own.
- Focus particularly on co-operation between Bulgarian authorities and relevant counterparts in such countries as: the UK, the US, Cyprus and Israel to help verify the status of brokers applying for arms transaction licenses in Bulgaria.
- Assist the government of Bulgaria in disposing of surplus arms. Some initiatives have already been undertaken, but more needs to be done. Bulgaria clearly cannot afford to pay for any large-scale destruction of surplus arms. Currently, the government's plan for modernization of the Armed Forces calls for the "sale of excess movables" and "disposal of obsolete movables that cannot be subject to trading".<sup>182</sup> If the international community would like to prevent further sales of surplus SALW it should propose or offer support for destroying surpluses.
- Support NGO initiatives for increasing transparency and civil society control over the arms trade.

### 5.4. TO CIVIL SOCIETY

- Raise public awareness of SALW proliferation and its implications, both for domestic gun crime and countries and regions abroad which are exposed to conflict and where human rights are under threat.
- Since the Bulgarian government remains reluctant to increase the level of public transparency on the arms trade, more consistent campaigning work is needed on the part of the civil society sector to bring political pressure to bear on decision-makers to increase transparency and civil society control over the arms trade.

<sup>182</sup> MoD, Armament Policy Directorate, 'Armed Forces Modernization Plan, 2002-2015' Section 7.2.1, <[http://www.md.government.bg/plan\\_mod/\\_en\\_/plan\\_mod\\_2002\\_2015.html#s7](http://www.md.government.bg/plan_mod/_en_/plan_mod_2002_2015.html#s7)>, (accessed 26 September 2003).