

SUMMARY OF THE INFORMATION REPORT ON ARMS EXPORT CONTROL

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ON BEHALF OF THE NATIONAL ASSEMBLY COMMITTEE ON FOREIGN AFFAIRS

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“Enhancing parliamentary oversight of arms export: A Contribution to European Defence”

The report provides an in-depth analysis of the issue of arms exports in France. While a judgment is expected on the quality of the control and the prospects with regard to the role of Parliament, this report goes farther and sets out a comprehensive – French, European and international – vision of public policy challenges. To achieve this, the report relies upon the work carried out over 18 months, on auditions of more than 180 stakeholders, in addition to many informal meetings and travels in four countries.

To determine the scope of the report, your rapporteurs have taken a broad approach to the sectors under control, based on the risks of human rights violations. These controlled sectors include war-related material, the sale of which is prohibited except where authorised by licence, but also of dual-use goods for civilian applications but which may give rise to the proliferation of hazardous materials, also subject to licence requirements but which are designed to be authorised.

France has a unique approach in this area. There is a significant economic stake in relation to the major Defence Technological and Industrial Base (DTIB), but arms export is also considered a foreign policy instrument as regards to its two basic components: maintaining a French and European strategic autonomy in national defence equipment; and our contribution to international security, which enables our strategic partners but also other client states to secure their defence.

In this context, the aim of export control is indeed to ensure that we comply with our international commitments, for the “France” brand is intertwined with the humanistic values for which our country is recognised around the world. That is why France is committed to taking concrete actions to combat weapon proliferation and regulate arms trade. However, export control includes other – equally fundamental – aspects, related to the safety of our armed forces and our technological superiority.

The review of control processes illustrates the robust nature of our State’s organisation. Indeed, this robustness is reflected in the interministerial examination of files, risk assessments, and rigour in decision-making, and our system fares well in comparison to that of our foreign partners. Having said that, control is also an aspect of competitiveness in an environment of heightened competition. In this respect, a number of avenues are proposed to optimise the French system.

The current environment is likely to challenge the traditional French consensus on arms export. This is a result of several factors: the conflict in Yemen – a true humanitarian disaster – has led to mobilisation by non-governmental organisations (NGOs) and critical media

coverage on an unprecedented scale. The report sets out in detail the way in which media pressure is exerted as part of well-organised partnerships between NGOs and media outlets. A careful analysis of NGO positions – unbiased and based on facts – reveals that NGOs point fingers at France much more often than at its partners, without this being justified by France’s share in arms exports. Other factors contribute to weakening this French consensus, such as the growing debate on the use of dual-use goods, especially the communication interception and processing technologies, as well as the sharp increase in the judicialisation of export control.

Disputes are strongly escalating: the European Union (EU) Common Position of 2008 and the Arms Trade Treaty (ATT) of 2013 are now invoked in support of many administrative disputes to criticise the issuing of licences by the State. While in France, the risk of licence annulment seems weak in the short term, these appeals have already given rise to licence suspensions in the United Kingdom and annulments in Belgium. Criminal proceedings are also increasing, both in France and abroad, and may challenge corporate responsibility today and the responsibility of public authorities in the future. French case law seems to be rather protective, but contentious pressure may also impact the subsidiaries of French groups abroad. The awareness of public authorities appears to be limited to your rapporteurs. Yet, it may well be that one day, the government will be held to account before judges for the manner in which it has instructed the review of licence compliance with our international commitments. As for the attitude of the vast majority of industrial players, it reflects a denial of responsibility: they feel exonerated from any liability for exporting under a licence. However, a detailed review of the processes by which a criminal court judge ascribes liability to an industrialist reveals that this is not the case. It is to be hoped that this report will mark an opportunity to raise awareness amongst these players.

In light of this growing debate, export control is faced with several challenges. First, the control of dual-use goods finds itself in a race: the Wassenaar Arrangement, which organises this control, sets out the list of goods controlled by international agreements; updating this list is a process that depends upon the vagaries of negotiation. The current pace of innovation – in particular in the area of technologies that could undermine civil liberties – implies that a supplementary national list be drawn up and updated very regularly and be completed by targeting client entities. Furthermore, a number of facts support deeper controls of dual-use goods in the context of checks against certain aspects of control carried out by the *CIEEMG* (Interministerial Commission for the Study of Military Equipment Export) and enhancing the role of the French Defence Procurement Agency (DGA).

Finally, the controversies surrounding arms sold by France pertain to the contexts in which they are used, which develop long after the licence has been issued. The mechanisms that can be used to monitor and enforce arm use over time rely more upon influence (maintenance, partnerships, etc.) than upon effective monitoring instruments. Your rapporteurs believe that there is potential for improvement in order to strengthen accountability of client states, provided that the ground rules are clearly defined prior to entering into a contract, or in the context of other cooperation aspects of our strategic partnerships. In this respect, the “*contrat de partenariat gouvernemental*” (*CPG* – Government partnership contract) which applies to the Army may serve as a source of inspiration in certain limited cases.

The report’s analysis places a key focus on the French view of greater European integration in the area of defence and armament. The European armaments strategy and its export dimension are fundamental aspects to ensuring our long-lasting sovereignty. Your rapporteurs advocate for a proactive approach to achieve the difficult rebalancing of our exports to Europe, which implies successful implementation of the newly developed cooperation

instruments such as the European Defence Fund (EDF) and the Permanent Structured Cooperation (PESCO). The critical mass of the European arms market, supply and demand alike, is such that it makes it possible to contemplate a real strategic autonomy, lacking at the national level.

However, today, controls by Member States prevent the exports of jointly manufactured equipment and represent strong irritants, likely to be reinforced by Brexit. Your rapporteurs therefore strongly support standards convergence and control-related practices but refute the notion, present in Europe, of a communitisation of licence issuing. This would mean that our sovereignty choices depend upon the positions of Member States who are marginally involved and are therefore unlikely to be willing to take shared risks. In this respect, the primary challenge consists chiefly in the need to strike a balance with Germany, our partner for large aircraft and future tank programmes. A recent report concluded that the Debré-Schmidt agreements will be replaced, and we will need to ensure that this is indeed the case. Your rapporteurs believe that it would be timely to expand this approach at the level of the States which have signed the Letter of Intent (LOI). At parliamentary level, exchanges could be structured within the Franco-German Parliamentary Assembly (*APFA*) and, if successful, they could be proposed to the Parliaments of States to the LOI.

The constraints borne by our export policy on account of the American “ITAR” and “EAR” extraterritorial regulations require a European response. This can be achieved in relation to supply strategies both at the French and European level.

In order to facilitate European convergence in armament and defence, interparliamentary cooperation is essential. The national parliaments of our major European partners exert real sway but provide, today, little support in this area. For interparliamentary cooperation to work, France must improve the information it provides on its arms export policy and increase the monitoring powers of its parliament. Today, parliament has little involvement. The need to protect secrecy – essential in this area – partly accounts for this. But beyond that, debates on the annual report on arms exports do not represent a monitoring instrument. The other reports on this topic, prepared by our own government or by other exporting states, reveal real avenues for improvement.

Granting oversight powers to Parliament implies that these come with clear objectives. We must first ensure that such oversight is effective and that we comply with our international commitments. We must also hold an informed debate vis-à-vis public opinion, one which can enhance the limited dialogue between NGOs and government. Finally, Parliament has a practical role to play in European Defence, which has been a priority of all French government majorities. The parliaments of our partners play an effective role in national armament policy and export control. There may exist a feeling of distrust towards France, particularly due to its status as a military power and the fear that a French leadership could arise as a result. The absence of a French parliamentary interlocutor reinforces this distrust. This is a weakness for our country.

If we want to create a sense of ownership, it is essential that we give parliamentarians an effective role while complying with the constraints related to this sector and, especially, respect for secrecy, but by also allowing ourselves to start reflecting on the definition of the scope of classified information. *A priori* control, exercised in Sweden and the United States, is not an option for our country, due to the division of powers and the role devolved to the Executive by the Constitution.

In contrast, implementing *a posteriori* control seems possible, using the lessons learned from the strong limitations of the German model, from the British experience (whose situation is closer to ours) and from the French experience in an area equally constrained by secrecy: the Parliamentary Delegation for Intelligence (*DPR*).

Yours rapporteurs therefore propose to create a Parliamentary Delegation for Arms Export Control. Such delegation would be granted a right to information – the soundness of which will be closely linked to the legal basis chosen – and a right to issue recommendations, and confidential ones when they pertain to a specific situation. Moreover, the delegation could, on an ad hoc basis, deliver opinions on applications under consideration. Beyond its control function, the purpose of the delegation would also be to enhance public debate by publishing an annual report, by contributing to the debates within the relevant committees of the National Assembly on the government’s annual report, and also by facilitating a debate “beyond the walls”.

Integrating this mission within the *DPR* is an option but it requires an in-depth reform of the *DPR* so that two separate controls can be exercised on the legal framework and the interlocutors. Your rapporteurs believe this added complexity is hardly warranted, unless it avoids having to create a new parliamentary delegation.

Your rapporteurs call for the swift creation of a working committee, bicameral if possible. This committee would make it possible to launch a joint work plan between the National Assembly and the Senate in order to set up an initial monitoring of exports with a view to enhancing debates on the Government’s report in 2021, as well as to prepare the institutional arrangement that will be put into place.

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