

Translated from Spanish

The Permanent Mission of Spain to the United Nations presents its compliments to the Department for Disarmament Affairs and has the honour to transmit a hard copy and another on diskette of Spain's report on the implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects.

The Permanent Mission of Spain takes this opportunity to convey to the United Nations Department for Disarmament Affairs the renewed assurances of its highest consideration.

New York, 5 January 2004

Department for Disarmament Affairs
(Small Arms and Light Weapons)
Secretariat
United Nations
New York

SPAIN

Report on the implementation of the
Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small
Arms and Light Weapons in All Its Aspects

December 2003

Introduction

Spain believes that the excessive and destabilizing accumulation and proliferation of small arms and light weapons (SALW) poses a threat to national, regional and international peace and security, and to the social and economic development of many countries.

In keeping with this conviction, Spain attaches great importance to international cooperation to combat and eradicate the illicit trade in such arms and weapons. Spain has supported all United Nations initiatives in this field, such as the recommendations of the Panel of Governmental Experts on Small Arms, the major General Assembly resolutions and the reports of the Secretary-General.

Spain also welcomed the adoption of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects by the United Nations Conference in 2001 and believes that States' implementation of the Programme of Action at the national level will bolster international efforts to eradicate the illicit trade in small arms and light weapons. The provisions of Section II of the Programme of Action, which Spain has already adopted at the national level, are, on the whole, much less stringent than the regulations it currently applies (for example, with regard to export controls over defence articles).

Within the framework of the Organization for Security and Cooperation in Europe (OSCE), Spain contributed actively to the negotiations in the Forum for Security Cooperation (FSC) that culminated in the adoption of the OSCE Document on Small Arms and Light Weapons in October 2000. The landmark OSCE Document represents major progress in international control of small arms and light weapons because, for the first time, they are subject to notification; Spain attaches great importance to the implementation of this Document. In this connection, Spain has been participating from the outset in the OSCE annual exchanges of information on small arms and light weapons.

As a member of the European Union, Spain participates in yet a third international forum on the control of small arms and light weapons and has adopted all European Union agreements in this area.

Spain has also drawn up an inventory of defence articles and issued annex I to the Trade Regulations of the Interministerial Regulatory Board of Foreign Trade in Defence and Dual-Use Articles (JIMDDU), which includes the Military List under the Wassenaar Arrangement and the Annex of the Missile Technology Control Regime (RCTM).

MARKING. CONTROL OF MANUFACTURE. ANTIQUE WEAPONS. DESTRUCTION OF FIREARMS. ARMS DEALERS

1. National marking system

Spanish regulations governing the marking of firearms are contained in articles 28, 29 and 30 of the Regulations on Arms, adopted by Royal Decree No. 137/1993 of 29 January (Official Journal of Spain No. 55), and the Ministerial Order of 30 January 1994.

There is now acute awareness in various European Union forums of the need to establish uniform criteria on the marking of firearms for States members with a view to signing the Protocol against the Illicit Manufacture and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, which was debated in New York from 9 to 20 July 2001.

(a) Manufacture

The principal parts of firearms leaving the factory shall bear a mark consisting of a numeric code representing the following information:

- Manufacturer's name;
- No. of the type of weapon;
- Serial number of each weapon manufactured, beginning each year with the number 1; and
- The last two digits of the year of manufacture.

These arms shall also bear the stamp of the Eibar official bench test (BOPE).

(b) Imports

Firearms which are imported and bear a bench-test stamp recognized by Spain will not have to be stamped by BOPE.

If incoming weapons are not stamped, the customs authorities will submit them to BOPE; if BOPE does not stamp them, they will be returned by the customs authorities to their place of origin and their import will be prohibited.

2. Procedures for controlling the manufacture of firearms

The State's competence with regard to arms, in accordance with the mandate contained in the Spanish Constitution on the regime of manufacture, trade, possession and use of weapons and explosives (article 149.1.26) is exercised by the Ministry of the Interior through the General Directorate of the Civil Guard (DGGC).

The Civil Guard thus has exclusive competence with respect to weapons, in accordance with Act No. 2/1986 of 13 March on Security Forces and Corps, which is implemented by the Arms and Explosives Intervention Service.

The Civil Guard's exhaustive firearms controls cover:

- (a) The entire manufacturing process, from beginning to end;
- (b) Weapons shipped from the factory to authorized dealers for the Security Forces and Corps or for export;
- (c) Entry and exit of arms to and from both States members of the European Union (authorization of the General Directorate of the Civil Guard) and all other countries (import and export license); and
- (d) Transit of arms through Spanish territory.

For more effective control in all of the above areas, the Civil Guard uses a number of tools, inter alia, a computerized database which provides information and helps both the Government and citizens to:

- Track a weapon from the time it leaves the factory until it becomes legalized by an individual and the various phases of this process (including depots, ownership permits and certificates of non-use);
- Control weapons and documentation on their entry into and exit from national territory (transfer, prior authorization, transire excise bonds for customs, etc.).

Activities relating to the manufacture and sale of firearms are regarded as a special sector requiring a permit, in accordance with Organic Act No. 1/1992 of 21 February on the protection of civil security and Act No. 18/1992 of 1 July, establishing certain norms relating to foreign investment in Spain.

Foreign investment in Spanish companies which carry out the above-described activities shall conform to the requirements and conditions set out in Royal Decree No. 664/1999 of 23 April on Foreign Investment, which establishes a regime of liberalization with regard to foreign investment in Spain as a general norm, although its article 11 calls for the “suspension of the general regime on foreign investment in Spain in activities directly related to national defence”, which includes “those involving the manufacture or sale of arms, ammunition, explosives and matériel”; furthermore, authorization from the Council of Ministers is required (article 10).

Nonetheless, in accordance with the provisions of article 11, section 1, paragraph 2, “In the case of companies listed on the Stock Exchange which carry out these activities, authorization shall be required only for purchases by non-residents exceeding 5 per cent of the Spanish company’s capital stock, or those which are under 5 per cent but entitle the investor to participate, directly or indirectly, on its board of directors, in accordance with the provisions of Royal Decree No. 377/1991 of 15 March on announcements of substantial investments in listed companies and repurchases by those companies of their own shares”. This Royal Decree therefore draws distinctions based on types of companies and percentage of investment.

3. Antique weapons and collection

The regulations in Spain governing the purchase, possession and use of antique weapons and collections are set out in article 107 of the Regulations on Arms, which establish different regimes for:

- (1) Weapons conserved in museums for cultural, artistic or historic purposes, recognized as such by the Ministry of the Interior.
- (2) Weapons owned by authorized collectors, whether individuals or legal entities, which have been entered in the Register kept by the Arms and Explosives Intervention Services.
- (3) Individuals with special authorization, valid for five years. (This regime allows their use exclusively in places properly set up and authorized for contests, practice sessions and competitions.)

- (4) Exemptions from the above requirements: the possession in one's own home of an artistic, historic or muzzle-load weapon, documented by an ownership permit (a medical fitness report is required), is regarded as authorized.

As for what is considered an antique weapon, the Schengen Arrangement defines them as weapons manufactured before 1870.

4. Techniques and procedures for destroying small arms and light weapons

Chapter IX of the Regulations on Arms (arms that have been surrendered and seized) sets out, in its articles 165 to 170, the procedure for dealing with arms turned in for various reasons (such as expiry of license, violations, owner's inability to continue using them, surrender to customs).

The procedure includes destruction of the weapons surrendered, provided that they do not have the required marking, number or bench-test stamp, they are banned weapons or have been auctioned twice and their lots were not sold.

They shall be destroyed in such a way that none of their parts can be used. Destruction shall take place in the Civil Guard Command Headquarters and a record shall be kept of the weapons destroyed, indicating, where applicable, a mark, calibre and number. A copy of this record shall be submitted to the Central Registry of Permits and Licenses.

5. Requirements for arms dealers

The Regulations on Arms, as well as Council Directive No. 91/1477/EEC of the European Union, in its article 1, paragraph 2,¹ define "dealer" as "any natural or legal person whose profession or business consists wholly or partly in the manufacture, trade, exchange, hiring out, repair or conversion of firearms".

To operate as a dealer in any of the above-mentioned areas, prior authorization will have to be obtained, based on a check of the applicant's personal and professional integrity, a determination that the applicant has not previously been convicted of fraud, and fulfilment of the other requirements specified for each type of operation covered by these Regulations. In the case of legal entities, company managers will have to meet these requirements.

As set out in these Regulations, dealers must keep records of all firearms received and sold with information identifying each weapon, in particular, the type, make, model, calibre and serial number, as well as the name and address of the supplier and purchaser. The Civil Guard Arms and Explosives Intervention Services shall periodically monitor dealers' compliance with this obligation. Dealers shall keep these records for five years, even once their operations have been completed, and then submit them to the Civil Guard Arms Intervention Service.

NATIONAL LEGISLATION AND POLICIES ON EXPORT CONTROLS

1. National legislation

Spanish legislation regulating foreign trade in defence articles includes:

¹ *Translator's note:* This provision is contained in article 1, paragraph 2, of Council Directive 91/477/EEC, not paragraph 10 as the Spanish says.

- Royal Decree No. 491/1998 of 27 March adopting the Regulations on Foreign Trade in Defence and Dual-Use Articles;
- Ministerial Order of 30 June 1998 governing procedures and processes for foreign trade in defence and dual-use equipment;
- Organic Act No. 3/1992 of 30 April characterizing instances of smuggling in connection with the export of defence or dual-use articles;
- Organic Act No. 10/1995 of 23 November of the Penal Code and amendment to articles 566 and 567 of January 2000; and
- Organic Act No. 12/1995 of 12 December on the Suppression of Smuggling.

2. National export policy

The Code of Conduct on Arms Exports adopted by the Council of the European Union in June 1998 is one of the criteria applied by Spain to authorize or deny exports of defence articles. The Code introduces much stricter criteria than those contained in the Programme of Action. In other aspects as well, such as marking, registry and monitoring of these weapons, Spanish and European norms are much more comprehensive and ambitious than the provisions of the Programme of Action.

Another set of provisions in the Programme of Action imposes an obligation on States to incorporate certain norms in their legal order. Thus, for example, the Programme of Action requires that illicit trade in arms be criminalized. This norm already exists in the Spanish legal order, particularly in Act No. 2/1995 on the Suppression of Smuggling amending and updating Act No. 3/1992; hence, implementation of the Programme of Action has not required any action by the Government.

To export small arms and light weapons, with the exception of sports or hunting weapons, to a sensitive area, an End-User Certificate is required, certifying in addition to the general requirements for other arms exports, that the end-user is a government entity or agency.

3. Procedures, documentation, control and brokering

Paragraph 2 (of Section II of the Programme of Action). To put in place, where they do not exist, adequate laws, regulations and administrative procedures to exercise effective control over exports, imports and transit or retransfer of such weapons, in order to prevent illicit trafficking in small arms or light weapons, or their diversion to unauthorized recipients.

Beyond the above-mentioned legislation, certain regulated arms and firearms (for example, pistols and revolvers, rifles for surveillance and protection, rifled weapons, sawed-off shotguns and other smooth-bore weapons or those which have a rifled bore to case the shot and carbines) are subject to dual control, as the Regulations on Arms, adopted by Royal Decree No. 137/1993, are also applicable to them.

This Decree establishes the need for administrative authorization for both imports and exports of such arms, which falls within the province of the Ministry of the Economy (Secretary-General of Foreign Trade), subject to approval by the

Permanent Interministerial Commission on Arms and Explosives (CIPAE) for imports, or the Interministerial Regulatory Board on Foreign Trade in Defence and Dual-Use Articles (JIMDDU) for exports. Entry and exit are monitored jointly by the Customs Service and the Arms and Explosives General Intervention Service (Ministry of the Interior).

The transfer of small arms (pistols and revolvers) to States members of the European Union requires an authorization issued by the Ministry of the Interior (General Directorate of the Civil Guard), together with the permission or prior consent of the State member to which the arms are being shipped, authorizing the transfer on the condition that the requirements are fulfilled.

Paragraph 3. To adopt and implement, in the States that have not already done so, the necessary legislative or other measures to establish as criminal offences under their domestic law the illegal [...] trade of small arms and light weapons within their areas of jurisdiction in order to ensure that those engaged in such activities can be prosecuted under appropriate national penal codes.

Act No. 3/1992, characterizing instances of smuggling related to the export of defence or dual-use articles, and Organic Law No. 12/1995 on the Suppression of Smuggling criminalize the export of defence articles without authorization or with an authorization obtained by false or incomplete representations as to their nature or end-use, or by any other illegal means. The crime of smuggling is punishable by a short-term prison sentence and a fine ranging from twice to four times the value of the goods, merchandise or effects.

Similarly, Organic Law No. 10/1995 of 23 November of the Penal Code also characterizes as a crime the possession, trafficking and stockpiling of arms and ammunition, including illicit conduct in connection with the manufacture, trade and possession of small arms and light weapons.

Paragraph 4. To establish, or designate as appropriate, national coordination agencies or bodies and institutional infrastructure responsible for policy guidance, research and monitoring of efforts to prevent, combat and eradicate the illicit trade in small arms and light weapons in all its aspects. This should include aspects of the illicit [...] brokering and trade [...] of small arms and light weapons.

Royal Decree No. 491/1998, adopting the Regulations on Foreign Trade in Defence and Dual-Use Articles, implemented by the Ministerial Order of 30 June 1998 regulating procedures and processes for foreign trade in defence and dual-use articles, states, in its article 11, that the Office of the Secretary-General for Foreign Trade is responsible for handling requests made under these Regulations, with the exception of those concerning free zones and warehouses, as well as conformity of such articles, products or technologies to the customs regimes on warehouses, direct or indirect changes in the list of items subject to the regime, temporary imports, conversions and temporary transfers to other States members of the European Union in these zones, which would come under the Department of Customs and Special Taxes of the State Tax Administration Agency.

In its article 8, this Royal Decree also establishes the composition of the Interministerial Regulatory Board for Foreign Trade in Defence and Dual-Use Articles, accountable to the Ministry of the Economy, which is charged with rendering administrative authorizations mandatory and binding.

Paragraph 6. To identify, where applicable, groups and individuals engaged in the illegal [...] trade [...] and transfer of [...] illicit small arms and light weapons, and take action under appropriate national law against such groups and individuals.

Royal Decree No. 491/1998, in its article 7, establishes entry in the Special Register of Exporters of Defence and Dual-Use Articles in the General Directorate of Foreign Trade as a prerequisite for granting authorization to export. Thus, no activity is considered legal unless it is entered in this Register.

Similarly, in their work to combat organized crime, the Investigation Units of the Security Forces and Corps are making a considerable effort to target groups, at both the national and international levels, responsible for illicit conduct involving small arms and light weapons in connection with other types of crime characterized as organized crime”.

Paragraph 9. To ensure that comprehensive and accurate records are kept for as long as possible on the [...] transfer of small arms and light weapons under their jurisdiction. These records should be organized and maintained in such a way as to ensure that accurate information can be promptly retrieved and collated by competent national authorities.

Royal Decree No. 491/1998, in its article 5, states that authorized operations shall be subject to inspection by the General Directorate of Foreign Trade and the Department of Customs and Special Taxes, and that all documents related to such operations which the State administration does not already have must be made available to these entities for a period of five years from the date that the authorization expires.

Furthermore, in accordance with the provisions of paragraph 6, the above-mentioned Royal Decree, in its article 7, provides that inclusion in the Special Register of Exports of Defence and Dual-Use Articles of the General Directorate of Foreign Trade shall be a prerequisite for granting any authorization to export the products referred to in article 2 of these Regulations. Thus, to be legal, all activities must be entered in this Register. Export or import requests must be accompanied by the appropriate international certificates, which shall remain in the files of the Spanish administration.

Paragraph 11. To assess applications for export authorizations according to strict national regulations and procedures that cover all small arms and light weapons and are consistent with the existing responsibilities of States under relevant international law, taking into account in particular the risk of diversion of these weapons into the illegal trade. Likewise, to establish or maintain an effective national system of export and import licensing or authorization, as well as measures on international transit, for the transfer of all small arms and light weapons, with a view to combating the illicit trade in small arms and light weapons.

Under Royal Decree No. 491/1998, the Directorate, in its reports on export operations, should take into account shipment and exit from exempt areas, the criteria set out in Organic Act No. 3/1992 and the European Union Directives, particularly the Council Directives adopted in Luxembourg in June 1991 and in Lisbon in June 1992, and, in reporting on import operations and introduction and entry into exempt areas, the situation of the country of origin or the country from

which the articles are being shipped, in accordance with the international commitments undertaken by Spain, the general interest of national defence and State foreign policy.

According to the criteria set out in Organic Act No. 3/1992, the existence of reasonable evidence that the defence or dual-use articles can be used in actions that would disrupt regional or international peace, stability or security, or that their export could undermine international commitments undertaken by Spain, the general interest of national defence and State foreign policy, must be taken into account in granting, denying or revoking such authorization.

Paragraph 12. To put in place and implement adequate laws, regulations and administrative procedures to ensure the effective control over the export and transit of small arms and light weapons, including the use of authenticated end-user certificates and effective legal and enforcement measures.

Act No. 3/1992 setting out possible instances of smuggling in connection with exports of defence or dual-use articles, Organic Act No. 12/95 on the Suppression of Smuggling, Royal Decree No. 491/98 adopting the Regulations on Foreign Trade in Defence and Dual-Use Articles and the Ministerial Order of 30 June 1998 regulating procedures and processes for foreign trade in defence and dual-use articles, prescribe effective controls over arms exports.

The above-mentioned Ministerial Order, in its twelfth clause on control documents applicable to the export or shipment of defence articles, states that requests to export or ship defence articles must be accompanied by an End-User Declaration or an equivalent document issued by the competent authorities of the importing country (except in the case of weapons of war). The minimum requirement is that this Declaration must include the importing party's commitment to import the defence articles into the destination country and not to re-export them without prior written authorization from the Spanish authorities or an End-User Certificate issued by the competent authorities of the importing country for exports of defence articles included in the List of Weapons of War. The minimum requirement is that this Certificate should contain a commitment to import the product into the destination country and not to re-export it without the prior written authorization of the Spanish authorities.

Documentation could also be required to confirm that the defence articles have been imported into the territory of the destination country. Such documentation should consist of a Delivery Verification Certificate or an equivalent customs document stating that they have been shipped to the user.

Paragraph 13. To make every effort, in accordance with national laws and practices, without prejudice to the right of States to re-export small arms and light weapons that they have previously imported, to notify the original exporting State in accordance with their bilateral agreements before the re-transfer of those weapons.

In Royal Decree No. 491/1998 and Ministerial Order of 30 June 1998, the re-export of weapons is included under export procedures.

Paragraph 14. To develop adequate national legislation or administrative procedures regulating the activities of those who engage in small arms and light weapons brokering. Such legislation or procedures should include measures

such as registration of brokers, licensing or authorization of brokering transactions as well as the appropriate penalties for all illicit brokering activities performed within the State's jurisdiction and control.

The control of brokering is addressed within the framework of the European Union, in Common Position No. 2003/468/PESC of the Council of 23 June 2003 on the control of weapons brokering. Thus, the recent proposal to update Spanish legislation on the regulation of foreign trade in defence articles contemplates, in the final phase of the process, control of brokering activities, licensing for brokering operations, the registry of brokers and control documents for brokering operations. Later on, Organic Act No. 12/1994 will have to be amended to incorporate appropriate penalties.

Paragraph 15. To take appropriate measures, including all legal or administrative means, against any activity that violates a United Nations Security Council arms embargo in accordance with the Charter of the United Nations.

Royal Decree No. 491/1998 and Ministerial Order of 30 June 1998 already contemplate this measure, as indicated in the reply to paragraph 11.

INTERNATIONAL COOPERATION

1. European Union

Spain, as a State member of the European Union, has been deeply involved in the initiatives carried out by the Union since 2001 with a view to complying with the obligations set forth in the Programme of Action to Prevent, Combat and Eradicate Illicit Trade in Small Arms and Light Weapons in All Its Aspects.

These initiatives, discussed in detail during the First Biennial Meeting by the current Presidency of the European Union, are being carried out at three levels: the strengthening of domestic legislation with a view to remedying existing lacunae; active contribution to initiatives of major regional forums (OSCE, Wassenaar Arrangement) aimed at promoting international cooperation and elaborating common rules; and providing technical and financial assistance to countries affected by the widespread stockpiling of such weapons.

2. Organization for Security and Cooperation in Europe (OSCE)

Spain has been participating since the topic of small arms and light weapons was included in the OSCE agenda in 1996. Spain welcomed with satisfaction the commitment undertaken by States members in 1999 at the OSCE Summit in Istanbul to recognize the need for urgent joint action to address the problem of small arms and light weapons. Spain participated actively in the FCS negotiations culminating in the adoption of the OSCE Document on Small Arms and Light Weapons in October 2000.

Within the framework of the OSCE Document, Spain exchanges information with the other OSCE members on its legislation and practices with regard to small arms and light weapons, and on its imports and exports. In this context, it has participated in an annual exchange of information since 2001. Spain also supported and continues to support some OSCE regional activities on small arms and light weapons.

2. Wassenaar Arrangement (AW)

Spain is a member and active participant in the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies. Spain supports the efforts to include small arms and light weapons as a new category in the exchange of information under the Wassenaar Arrangement.

3. North Atlantic Treaty Organization (NATO)

Spain participates actively in the ad hoc working group on small arms and light weapons in the NATO Euro-Atlantic Partnership Council (EAPC) and other NATO/Partnership for Peace (PfP) activities relating to small arms and light weapons.

4. Forum of Parliamentarians

Since its inception in Madrid in October 2002, Spain has chaired the Permanent Forum of Parliamentarians on Small Arms and Light Weapons. The main objectives of the Forum are to improve legislation and control mechanisms with respect to firearms, ammunition, explosives and other related articles; harmonize and ratify the relevant laws; promote exchange among parliaments, commissions and subcommissions on the topic of firearms; and strengthen the role of national parliaments in all matters relating to the stabilization and consolidation of democracy and peace and development processes in Latin America and the Caribbean.

Sweden and Spain are members of the Forum set up by the Parliaments of the Central American States. Other parliamentary institutions, for example, the Inter-Parliamentary Union, regional parliaments, the European Parliament and the Latin American Parliament (PARLATINO), as well as the subregional parliamentary organs, the Central American Parliament (PARLACEN) and the Forum of Presidents of the Legislative Branch of Central America (FOPREL), also participate or have been invited to participate in and belong to the Permanent Forum of Parliamentarians on Small Arms and Light Weapons.

The Declaration establishing the Permanent Forum of Parliamentarians on Small Arms and Light Weapons was signed by the Parliaments of Spain and Sweden and the Parliaments of the Central American Region at the Madrid meeting. A decisive step was taken in the elaboration of guidelines on small arms and light weapons for the Central American Parliaments as they modernize legislation on their control. A decision was taken to gradually begin expanding the Forum from Central America to all of Latin America and the Caribbean, and from the representatives of Sweden and Spain to other countries of the European Union. Lastly, aspects of cooperation and follow-up to the United Nations Programme of Action were discussed.

NATIONAL COORDINATION AGENCY AND CONTACT POINT

The national coordination agency responsible for policy and follow-up of efforts to prevent, combat and eradicate the illicit trade in small arms and light weapons is:

Ministerio de Asuntos Exteriores (MAE) (Ministry of Foreign Affairs)

Dirección General de Seguridad Desarme y Asuntos Internacionales de Terrorismo (General Directorate of Security, Disarmament and International Terrorism Affairs)

Madrid (Spain)

The national contact point is:

Deputy Director-General of International Disarmament Affairs

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