

National Report by Portugal

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 excessive accumulation of small arms and light weapons and their uncontrolled spread in many regions of the world is a contributory factor to conflict, displacement of people, crime and terrorism, thereby undermining peace, reconciliation, safety, security, stability and sustainable development.

Portugal strongly supports the full implementation of the Programme of Action aimed at preventing, combating and eradicating the illicit trade in small arms and light weapons. Portugal is also fully committed to the implementation of the International Instrument to Enable States to Identify and Trace in a Timely and Reliable Manner Illicit Small Arms and Light Weapons.

Below are activities undertaken by Portugal in 2009 to foster the implementation of these instruments.

A- National implementation efforts during 2009

Co-operation, co-ordination and exchange of information between administrative and law enforcement agencies.

Efforts to foster co-operation, co-ordination and exchange of information between administrative and law enforcement agencies in combating against the accumulation and spread of small arms and light weapon, as well as on the prevention of illicit trafficking have proceeded. The establishment in 2005 of a coordination group composed by representatives from the Ministry of Foreign Affairs, the Ministry of Defence, the Ministry of Interior, the Intelligence Services and the Ministry of Finance contributed to better articulate the work of all the entities involved.

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Legislation and Administrative procedures

In 2006, a new legal framework entered into force covering the production, repair, import, export, transfer, stockpiling, circulation, trade, licensing, acquisition and possession of small arms and light weapons, their components and the respective ammunition.

Law 5/2006, with the adaptations made by Law 17/2009, establishes a comprehensive regime which applies to all categories of small arms and light weapons, excluding only those for military use and for armed and security forces.

The Ministry of Interior is the entity responsible for the general supervision of these laws.

Law 49/2009 adopted on 5 August 2009, regulates brokering activities and all imports, exports, transit and transshipment of military weapons. All brokers must be registered with the Ministry of Defence.

Control of the Production

According to Law 5/2006, individual licenses for manufacture and repair of firearms and ammunition may be granted on a case-by-case evaluation. The permit can only be granted if the applicant satisfies a number of conditions established in the Law. Additionally, before issuing the license, the police department must approve the storage facilities for the equipment. Regulation 933/2006 establishes the conditions for stockpiling and the security procedures that producers and dealers must comply with.

The commercial manufacture of military weapons listed in article 3(2) of Law 5/2006, is not authorised.

According to Article 51 (2) of the same Law, the dealer has to keep, for a period of 10 years, a register of all the acts involving the manufacture and repair of firearms. Each register includes the type of weapon, the number, model and calibre. Besides keeping an updated register, the dealer is also obliged to send this information to the Ministry of the Interior.

Export Controls

All items on the European Common Military List and the Wassenaar Munitions List are subject to export controls, including small arms and light weapons.

The import and export of small arms and light weapons is subject to a permit issued by the Licensing Authority at the Ministry of Defence or at the Ministry of Interior, depending whether the weapons are for military or civilian use. Transit is governed by the same rules of import and export, thus requiring a permit from the licensing authority.

All applications are considered on a case-by-case evaluation, based on an overall assessment. Each application is also evaluated by the Ministry of Foreign Affairs, in the light of foreign policy interests, including observation of the criteria enshrined in the EU Council Common Position 2008/944/CFSP, namely:

- Respect for the international commitments of Member States, in particular the sanctions decreed by the UN Security Council or the European Union, agreements on non-proliferation and other subjects, as well as other international obligations;
- Respect for human rights in the country of final destination as well as respect by that country of international humanitarian law;
- Internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts;
- Preservation of regional peace, security and stability;
- National security of the Member States and of territories whose external relations are the responsibility of a Member State, as well as that of friendly and allied countries;
- Behaviour of the buyer country with regard to the international community, as regards in particular its attitude to terrorism, the nature of its alliances and respect for international law;
- Existence of a risk that the equipment will be diverted within the buyer country or re-exported under undesirable conditions;
- Compatibility of the arms exports with the technical and economic capacity of the recipient country, taking into account the desirability that states should achieve their legitimate needs of security and defence with the least diversion for armaments of human and economic resources.

The European Union Common Position, adopted on 8 December 2008, replaced the EU Code of Conduct on Arms Exports and is now legally binding for all EU member States.

The criteria of the Common Position are taken into account as a minimum standard for the assessment of licence applications. Export licences are not granted in contravention of UN, EU or OSCE embargoes. For small arms and light weapons, the Wassenaar Arrangement guidelines adopted in 2002 are applied.

The necessary documentation for obtaining an export licence depends, inter alia, on the exporter and the recipient, the importing country, the amount of weapons, the intended use and quantity. The documentation required includes an import licence or an International Import Certificate from the competent authorities in the importing country. For military equipment, an end-user certificate with a non-re-export clause is also required.

Regulation of brokering activities

Legislation that fully implements the European Union Council Common Position 2003/468/CFSP of 23 June 2003 on the control of arms brokering was approved on 5 August 2009 (Law 49/2009).

All brokers must register with the Minister of Defence. If authorization is not granted they will not be allowed to conduct any brokering activities.

A licence for a specific brokering transaction should be obtained from the Portuguese Ministry of Defence, whether the broker acts in Portugal or abroad. Records should be kept for a minimum of 15 years of all persons and entities which have obtained such a licence.

Stockpile Management

Armed and security forces are the only authorized end-users for military weapons and their stocks are kept under strict controls. The weapons are stored in special facilities with observance of proper security measures. The management of stocks of small arms is extensively addressed in Regulation 933/2006 which establishes various security procedures.

Regarding weapons for civilian use, the management of stocks is controlled through a central system, managed by the police.

Criminalisation of illicit activities

Illegal manufacture, acquisition, possession, transportation, stockpiling and trade (including brokering) of SALW are criminalised in Law 5/2006 (articles 86 and 87). The sanctions may vary from fines to imprisonment up to 10 years.

A campaign for the voluntary delivery of illicit weapons was successfully conducted in 2006. A total of 6,500 illegal weapons were handed over to the police without charge of violation of the 5/2006 Law.

During 2009, a total number of 3,932 weapons were apprehended; 1,103 were destroyed.

Implementation of the International Instrument on Marking and Tracing

Marking

National practices on marking are fully consistent with the best practices established in international instruments, namely the UN Firearms Protocol, the Wassenaar Best Practice Guidelines for Exports of Small Arms and Light Weapons, the OSCE Best Practice Guide on Marking, Record Keeping and Traceability of Small Arms and Light Weapons and the Instrument to Enable States to Identify and Trace in a Timely and Reliable Manner Illicit Small Arms and Light Weapons.

In relation to arms for military use, the Ministry of Defence requests that imported and exported arms are marked with the name of the manufacturer, the country of manufacture and the serial number. Marking of additional information such as the year of manufacture, the weapon type/model and the calibre is also encouraged.

Regarding small arms for civilian use, article 53 of Law 5/2006 imposes that each of them be marked with name of manufacturer, model, year of manufacture and serial number. The firearms produced in Portugal should have a distinct mark issued by an official entity, recognized by the Ministry of the Interior.

In the case of repair of firearms that can result in the elimination of the serial number, firearms should be previously examined and marked.

In arms found without appropriate marking, due corrections are made by national authorities.

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Record-Keeping

The Ministry of Defence keeps an updated register of transfers of weapons for military use, as well as of weapons possessed and stocked by armed and security forces.

The Ministry of the Interior is responsible for the register of small arms for civilian use, which contains information on arms produced, imported, exported and transferred. Each register includes information on the following elements: manufacturer, number, model, calibre and elements of the transaction (date, entities involved, licence).

Other facts, such as the theft, loss and apprehension of arms, are subject to register.

B- International and regional implementation efforts during 2006

Portugal actively participated in the work of international organizations and regional arrangements on SALW related issues.

At the 62nd UNGA Portugal co-sponsored the following adopted resolutions, which are relevant to small arms and light weapons:

- res. 62/13: Objective information on military matters, including transparency of military expenditures;
- res. 62/22: "Assistance to States for curbing the illicit traffic in small arms and light weapons and collecting them";
- res. 62/47: "The illicit trade in small arms and light weapons in all its aspects";

Portugal also voted in favour of resolution 62/44 entitled "Conventional arms control at the regional and subregional levels".

Portugal strongly supports the process towards a legally binding instrument on conventional weapons (including small arms and light weapons) and expressed this position in its response addressed to the Secretary General on views on the feasibility, scope and draft parameters of an Arms Trade Treaty in accordance with UNGA resolution 61/89.

Portugal supports international efforts to foster transparency in the field of arms exports and therefore we submit, on an annual basis, data to the UN Register on imports and exports of conventional weapons, including on small arms and light weapons.

In 2007, Portugal continued to actively implement the OSCE document on small arms and light weapons, adopted in November 2000. In that framework, Portugal presented national updates on aspects of SALW such as production, marking, export controls, brokering and destruction techniques.

In the field of export controls, Portugal is a member of the Wassenaar Arrangement and participated, through the Ministry of Defence and the Ministry of Foreign Affairs, in various meetings held by the group last year.

At the EU level, Portugal actively participates in the work of the CFSP Group on Conventional Arms Export Controls (COARM). In that framework we provide data to the EU Annual Report on Arms Exports, which includes figures broken down by military list category (i.e. number of licences granted, value of licences granted and value of actual exports).