

To de vaste commissie voor Buitenlandse Handel en Ontwikkelingssamenwerking
van de Tweede Kamer der Staten-Generaal

Subject: Position Paper – Selected Questions on Arms Export Policies

Date: 29-10-2026

Position Paper T.M.C. Asser Instituut: Arms Export Policies

Machiko Kanetake, León Castellanos-Jankiewicz, and Silvia Bortolato

Key insights

- The Netherlands' accession to the Agreement on Defence Export Controls (Verdrag van Aken) can weaken the Netherlands' position in upholding international law (international human rights law and international humanitarian law) as part of arms export decisions.
- Transparency is crucial for meaningful parliamentary oversight in arms transfers.
- A targeted analysis is required to assess the relative strictness of arms export licensing decisions among EU Member States.
- After delivery, the most effective form of control over wrongful end-use is to suspend spare parts transfers, maintenance and software updates; accession to the Agreement on Defence Export Controls can weaken this lever for Dutch components as well.

Responses to some of the questions from de vaste commissie voor Buitenlandse Handel en Ontwikkelingssamenwerking

1. How do Dutch assessment criteria compare to practices in other EU Member States, and does this result in an uneven playing field?

- EU Member States are obliged to apply the EU's Council Common Position on Arms Exports and the Arms Trade Treaty (ATT). While Member States may apply additional assessment criteria, the Common Position serves as the basis for the assessment criteria for EU Member States. The regulatory frameworks for arms exports in ten EU countries and the UK are explained in this [report](#) (2023).
- It is methodologically difficult to draw general conclusions about the relative strictness of the interpretation of assessment criteria among EU Member States. This is partly due to the limited information available regarding export decision-making, as shown in the recent [comparative study](#) (2025) of access to information on arms trade with regard to eleven countries (Belgium, France, the Netherlands, Germany, Spain, the UK, Austria, Switzerland, Italy, Romania, and Sweden).
- States' annual national reports describe the legal, institutional, and administrative framework for arms transfers and their relationship to foreign policy priorities. However, these reports do not always explain in depth the rationale for granting or denying a specific authorisation.

2. What insights exist regarding the differences and similarities in how these criteria are applied across various European countries?

- As noted above, it is methodologically difficult to draw general conclusions about differences and similarities in the interpretation of the Common Position.
- What is possible is a targeted comparison of export data and national licensing decisions. If a list on specific restrictions imposed by the Netherlands should be available, export data from the other countries' reports can be analysed. However, this methodology has limitations as well: differences in reporting should be taken into account, as they could significantly hinder the targeted comparison. National reports do not always indicate the number and content of applications, suspensions, denials, and licences issued; thus, an analogous basis of data for all the countries is not available.

3. Is the current licensing system adequately structured to address dual-use issues related to emerging technologies (AI, cyber, drones)?

- Emerging technologies pose challenges to the current licensing system. In particular, under the EU's Dual-Use Export Control Regulation, items must generally be 'specially designed' to facilitate their misuse. Traditionally, the term 'specially designed' has been linked to the technical characteristics of items. In the context of cyber technologies and AI, however, it is becoming less and less realistic for exporters and relevant authorities to rely on technical features in identifying whether items facilitate undesirable purposes.

4. What are realistic opportunities for improving the monitoring of end-use and onward transfer following the granting of a license?

- End-user verification after delivery:
 - Most export control systems concentrate their scrutiny before the licence is granted. Once the goods are delivered, they rely largely on the end-user's written assurances. Post-shipment on-site verification is more stringent and means officials check, after delivery, that the goods are in the possession of the declared end-user and are used as declared. The revised EU Common Position and its User's Guide encourage it.
 - A realistic step for the Netherlands would be to make acceptance of on-site inspections a standard licence condition for high-risk destinations and categories.
- Non re-export agreements:
 - End-user certificates with a prohibition on re-export, or a requirement of prior consent for re-export, are an established instrument. Their value depends on whether they are followed up and whether breaches carry consequences, such as denial of future licences to the same end-user.
 - This point is directly relevant to the Agreement on Defence Export Controls (see the responses to Q.5 below). Under the de minimis rule, no end-user or non-re-export certificate is required for transfers between the parties (Annex 2(5)). Dutch components integrated into a system exported by another party would therefore leave the Netherlands without this instrument. Parliament may wish to ask how the government intends to keep visibility over Dutch components once they fall under the de minimis regime.

- Traceability technology:
 - Marking and record-keeping are well established for small arms and light weapons, notably under the UN International Tracing Instrument. They are far less developed for components and subsystems, which are often integrated, re-labelled or maintained by third parties. Unique identifiers, secure digital registers and better data-sharing between licensing authorities could make it easier to reconstruct supply chains when diversion is suspected.
- Remote disabling and ending of software updates:
 - Modern weapon systems depend on continuous software updates, spare parts, maintenance and training throughout their life cycle. This dependency gives supplier states leverage after delivery. Suspending updates, spare parts or support in the event of unlawful use or diversion can be an effective and proportionate response. It also fits the ATT's logic of encouraging the re-assessment of authorisations when new information emerges (Article 7(7)). This interpretation of the ATT's Article 7(7) was endorsed by the Supreme Court of the Netherlands.

5. What impact does accession to the Agreement on Defence Export Controls (Verdrag van Aken) have on the Netherlands' independent policy-making scope?

- The Agreement does not harmonise assessment criteria; it allows each party to control its exports under its own national laws and policies, alongside the EU Common Position and the ATT. What changes is who is assessing compliance and on what grounds others may object.
- For the Netherlands, one of the consequential parts is the 'de minimis' rule for components (Article 3 and Annexes 2 and 3). This is because Dutch industry supplies sensors, electronics and subsystems that are built into platforms produced elsewhere. More specifically:
 - Where a party's parts or components make up no more than 20% of the value of a final system exported outside the parties' territory, that party must issue the necessary licences 'without delay'. In effect, this undercuts the obligation of the parts-exporting state to conduct its own assessment of the final destination under the EU Common Position or the ATT. (Note that Article 7 ATT which extends the risk assessment to parts and components.)
 - The only exception to issuing the licenses 'without delay' is 'exceptional situations in which that transfer, export or re-export compromises its direct interests or its national security'.
 - The state from whose territory the final system is exported then has sole responsibility for assessing compliance with all parties' shared international and EU commitments. In other words, the risk assessment conducted by the state that transfers the weapon to the end user is done on behalf of all states which have contributed parts of components.
 - No end-user or non-re-export certificate is required between the parties. This represents challenges for traceability.
 - Spare parts, maintenance, training and repairs follow the same simplified regime, and are excluded from the 20% calculation.
 - Weapons, ammunition, bombs and missiles (including their fuzes, warheads, seekers and propulsion), tank chassis and turrets, engines for military aircraft and complete combat aircraft airframes are excluded from the rule.
- In principle, the Netherlands would have no say over the end destination unless its direct interests or national security were at stake. The treaty mentions no grounds for objection beyond 'direct

interests' and national security. Human rights and international humanitarian law risks are not mentioned as grounds. Whether 'direct interests' could be read broadly enough to cover international human rights law and international humanitarian law is untested.

- Human rights and humanitarian law obligations continue to apply independently. The Agreement cannot plausibly be read as *lex specialis*, displacing them: its preamble expressly recalls the ATT and the Common Position, and Article 26(1) ATT permits other agreements only insofar as they are consistent with it. The real risk is practical rather than doctrinal: the Netherlands would retain its ATT and Common Position obligations while restricting the means to enforce them for components.

6. To what extent is it feasible to implement and monitor arms export criteria—specifically the human rights criterion? What does practice show, and what are the key considerations?

- The monitoring of the implementation of arms export criteria, especially the Common Position's criterion two, requires access to information regarding arms export licensing decisions.
- The Netherlands used to have a solid and relatively transparent system for regulating arms exports, with strengths including strict legislation, regular reporting, and active parliamentary oversight. However, in recent years, security considerations restricted the willingness to disclose information, as highlighted in the [comparative study](#) (2025) of access to information

About the Asser Institute

T.M.C. Asser Instituut ('Asser Institute' in English) is an internationally renowned research institute for international and European law. The Institute is a not-for-profit and independent foundation affiliated with the University of Amsterdam (UvA). Based in The Hague, the international city of peace and justice, the Asser Institute works at the interface between academic research and professional communities, by producing practice-oriented and impactful research, and offering education for professionals, including capacity-building activities.