

# Reforming Bulgaria's Arms Trade: An Update

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# Reforming Bulgaria's Arms Trade: An Update

## **Reforming Bulgaria's Arms Trade**

In the next few weeks, the Bulgarian parliament is due to enact important changes to the country's arms trade law. The legislation would amend the Law on the Control of Foreign Trade Activity in Arms and Dual-Use Goods and Technologies, which was adopted in 1995.

The anticipated changes are motivated in large part by Bulgaria's desire to reassure international partners that it is doing all that it can to rein in the arms trade. The legal reforms now awaiting passage represent an effort to put to rest Bulgaria's reputation as a no-questions-asked arms supplier, a reputation well-deserved during the Cold War and through the end of the 1990s.

In the past two years the country has made some progress in bringing its arms trade under greater control. The legal reforms intended to institutionalize and expand the progress to date are incomplete in some respects, but are an important step in the right direction. In addition, government action in the face of recent cases of suspected illicit arms trading is welcome. These responses, however, have been insufficient for the Bulgarian government to fully establish its credibility in ending impunity for illicit arms traders. At the same time that Bulgaria works to put in place a strong legal framework, its government also needs to demonstrate a sustained commitment to the strict implementation of controls and a greater emphasis on prosecution of violators. Only with action on all three fronts can the government ensure that the arms trade is brought fully under control.

## **Pressure for Legal Reform**

Passage of arms trade reforms is long overdue. Legislative proposals to tighten arms trade controls have been under discussion in Bulgaria for more than three years. A previous government first proposed legislative changes in December 1998, but these were never adopted. The proposal currently under consideration was introduced to parliament in February 2002 by the government that came to power in mid-2001.

That the adoption of arms trade reforms now seems imminent after similar changes lagged for years is a reflection of the importance of reform to Bulgaria's international aspirations. The government knows it must shake its reputation as an irresponsible arms supplier. Failure to do so could fatally undermine the country's prospects of entry into the North Atlantic Treaty

Organization (NATO) and the European Union (E.U.).<sup>1</sup> NATO is anticipated to announce invitations to new members at a summit to be held in November 2002.

The importance of NATO and E.U. leverage could not be more clear. When introducing the proposed legal changes to parliament on February 4, 2002, the Bulgarian prime minister explained his government's motivation:

The refinement of the Bulgarian system of export control is of key importance to the negotiations of our country for EU membership, particularly in connection with Chapter 27 "General Foreign and Security Policy," as well as to the fulfillment of the Membership Action Plan (MAP) in NATO. The necessity for the planned changes to take effect in the Bulgarian legislation is explicitly pointed out in the annual regular reports from the European Commission on the progress made by the Republic of Bulgaria as regards the EU membership criteria, as well as in NATO's annual reports on the progress achieved by Bulgaria in fulfilling the MAP. In the implementation of this legislative initiative of the executive power, a key problem in the NATO and EU accession process shall be solved.

Although key legal reforms have thus far lagged in Bulgaria, some positive changes have nevertheless been put into place. Bulgaria has moved to tighten controls partly in response to revelations that in the late 1990s the country was a source of arms flows to an embargoed rebel group responsible for gross human rights abuses in Angola. This had long been suspected, but in a 2000 report U.N. investigators reported that the bulk of the arms illicitly supplied to the Angolan rebels at least as of 1997 had originated in Bulgaria. The U.N. documented thirty-eight arms flights to the rebels from the airport at Burgas from 1997-1998. Bulgarian authorities had long asserted that they had never authorized exports to an embargoed party and that Bulgaria bore no responsibility for where its weapons wound up after they left its territory. In this case, however, the seriousness of the allegations and the threat they posed to Bulgaria's international standing helped contribute to a shift in official thinking and to crystallize political will to better control arms exports. Adopting a more constructive approach, Bulgaria set out to identify the weaknesses that illicit arms traffickers had been able to so readily exploit, and to work to correct them. The case also helped prompt international technical assistance to assist the Bulgarian government in its efforts.

### **Improvements to Date**

Beginning under the previous government, Bulgaria began to tighten the implementation of national regulatory controls and took other steps to rein in the arms trade. Further work is needed to detect and prevent illegal transactions, as discussed below, but the improvements

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<sup>1</sup> Those who have worked to promote positive change in Bulgaria have long sought to use the leverage afforded by Bulgaria's NATO and E.U. aspirations. For example, in 1999 Human Rights Watch issued a report strongly condemning Bulgaria's anything-goes arms trade practices, and it has repeatedly called on NATO and E.U. member states to take steps to encourage needed reforms in Bulgaria and other candidate countries. (See, for example, Human Rights Watch, *Bulgaria: Money Talks—Arms Dealing with Human Rights Abusers*, April 1999; Human Rights Watch, Open Letter to E.U. Foreign Ministers on Security Concerns Raised by Arms Transfers from Candidate Countries, October 19, 2001; and Human Rights Watch, Open Letter to NATO Foreign Ministers on Promoting Responsible Arms Trade Practices, all available at [www.hrw.org/arms](http://www.hrw.org/arms)).

registered thus far indicate that the political will to improve controls has improved, as compared to the past, and that the country's regulatory capacity is on the rise.

### ***Stricter Implementation of Controls***

Bulgarian officials announced in early 2001 before the U.N. and in other fora that the government had initiated serious efforts to evaluate more closely applications for arms export licenses, coordinate the inter-agency review better, and more carefully consider the risk that the weapons might be diverted to unauthorized destinations. They indicated that they were paying particular attention to arms deals to countries in Africa and Asia near embargoed countries or otherwise found to be high-risk.

As a part of this effort, the Bulgarian government started taking more seriously the need to authenticate the documents provided by arms traders and brokers, particularly the so-called end-user certificate or EUC that declares the ultimate purchaser of the weapons. EUCs are notoriously easy to forge, or to obtain from corrupt officials who provide false cover for arms clients that are under embargo. Unscrupulous arms brokers often taken advantage of weaknesses in end-user controls in exporting countries by submitting false or misleading information. (This had been the case with the arms shipments to Angolan rebels, for example.)

At least in some cases, Bulgaria also began to require proof of delivery after the weapons were cleared for export, to check that they were delivered to the proper destination and not diverted en route. Seeking to close a major loophole, the government undertook to establish administrative procedures to register arms brokers. (The current proposal on brokering is described below.)

Internationally declared arms embargoes also received greater attention, and in this case formal action was taken to institutionalize the change. In April 2001 the then-government enacted a decree implementing a number of U.N. and E.U. embargoes and other multilateral restrictions, thereby incorporating into law restrictions on arms sales to twenty countries. With this step the measures gained the national legal status needed to allow for prosecution in case of violations. In 2001, the government adopted legislation providing that all U.N. arms embargoes and other binding decisions of the U.N. Security Council be automatically implemented into national law, and this legislation is now force in Bulgaria.

### ***Destruction of Surplus Weapons***

More recently, Bulgaria has begun to destroy some of its vast stockpile of surplus weapons, those no longer needed by the military as it reduces the size of its force and seeks to modernize its equipment in preparation for possible NATO membership. Many of the customers for cheap, Soviet-standard weapons are often located in areas of violent conflict in poorer parts of the world, including Africa. Angola, Ethiopia, Eritrea, and the Republic of Congo (Congo-Brazzaville) have been among the clients for Bulgaria's surplus arms since 1999.

The new weapons destruction program, implemented as of early 2002 with U.S. financing, has thus far destroyed more than 77,000 small arms and approximately 500 tons of ammunition.

These have been the oldest weapons, those with the lowest value and lowest export potential (some of the arms date to World War II), but it is hoped that destruction of some export-quality weapons will begin under a new contract. No funding has been made available thus far that would also provide for the destruction of heavy conventional arms, as called for by Human Rights Watch in interventions to the countries of the E.U. and NATO. Bulgaria's remaining nuclear-capable missiles are to be destroyed with U.S. assistance provided under a program to combat the proliferation of weapons of mass destruction.

### ***Improved Law Enforcement Capacity***

Bulgaria also has registered some improvements in the area of law enforcement. The government, for example, has taken up offers, extended by international partners, for training programs and upgraded equipment to enhance border and customs controls, as well as to improve coordination among agencies involved in licensing and monitoring arms exports. The Bulgarian authorities have detected some suspicious deals, halting an arms delivery in 2001 and revoking licenses of companies suspected of engaging in illegal activities. These cases, none of which has led to criminal prosecutions, are highlighted below.

### **Legal Reforms: Provisions Awaiting Enactment**

The proposals before parliament address a number of topics, ranging from a strengthened commitment to uphold international obligations to the introduction of controls on arms brokers. In several respects the changes correspond to recommendations made by outside observers, including Human Rights Watch in a 1999 report, and which were rejected at the time by the Bulgarian government. The inclusion of such measures helps demonstrate the extent to which the debate on reform has advanced in the past two years.

The analysis that follows is based on draft legislative text updated as of March 2002, the Act on the Amendment of the Foreign Trade in Arms and Dual-use Goods and Technologies. It is Human Rights Watch's understanding that since that time no significant changes have been agreed in parliamentary debate and that this version is therefore substantively up-to-date as of June 2002. The legislation ultimately passed by the Bulgarian parliament, however, may differ in some respects.

### ***International Obligations and Commitments***

The legislation gives greater emphasis and weight to Bulgaria's international obligations and commitments. Most of the relevant provisions are not explicitly incorporated and made legally binding, as called for by Human Rights Watch. Nevertheless, their inclusion in the law represents a greater recognition of the importance of international standards and provides a tool to those who would press for better compliance with agreed norms.

The legislation encourages that restrictions be put in place where the U.N. Security Council has imposed an arms embargo or where restrictions arise from Bulgaria's international commitments. With respect to U.N. embargoes, this provision enables the Bulgarian government

to enact decrees to elaborate more precisely the manner in which the measures are to be implemented, thereby supplementing existing law on the implementation of U.N. sanctions.

The international commitments that may be the basis for further restrictions under the legislation are those that ensue from the following: international conventions; the country's membership in international organizations (including export-control regimes); its accession to E.U. acts, joint acts, or common positions; or its accession to decisions of international organizations and export controls regimes of which Bulgaria is not a full member.

Bulgarian officials familiar with the proposal told Human Rights Watch that this provision, while worded in general terms, is meant to include the E.U. Code of Conduct on Arms Exports, which Bulgaria pledged to follow in 1998, as well as the November 2000 Organization for Security and Cooperation in Europe (OSCE) agreement on small arms and light weapons.<sup>2</sup> Those measures, and the minimum export criteria elaborated therein, are not made binding under this provision. Instead, the legislation provides the basis for the government to enact a decree barring or limiting arms transfers to particular destinations on the basis of those measures, should it choose to do so.

A further change in the same vein asserts the right of the government to introduce unilateral bans on arms transfers to “a country on the territory of which military action is taking place, or that is involved in a military conflict.” According to officials, this provision will permit the Bulgarian government to respond to international events as they arise, and take action if it feels that is required, rather than await a U.N. Security Council resolution imposing a new embargo.

The inclusion of this provision appears to signal a greater consensus within the Bulgarian government that the country should be more proactive in blocking arms transfers that could fuel violent conflict. It offers the hope that Bulgaria will implement this and other agreed criteria more fully than it has in the past. The key will be actual practice.

A welcome change is the inclusion of a new requirement for the government to prepare, make public, and periodically update a list of recipients subject to arms export restrictions.

### ***Brokering Controls***

A key provision of the legislation establishes legal controls on arms brokers, who under existing Bulgarian law are not subject to any regulation. Once enacted, the new controls will apply to arms deals carried out in Bulgaria, as well as transactions carried out by Bulgarian brokers outside the country.

The inclusion of a provision giving the law extraterritorial reach demonstrates the development of international “best practice” in this field. While some countries have adopted

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<sup>2</sup> Under the E.U. Code, governments agree to certain basic standards, including to not supply arms to human rights abusers, areas of violent conflict, or clients who might divert or re-export them to unauthorized destinations. The OSCE measures similarly commit governments to reject exports of small arms and light weapons (or licenses to produce them) where these weapons risked being misused to violate human rights or international humanitarian law (the laws of war), among other circumstances.

brokering provisions, many have thus far neglected to take up the issue or have done so though half-measures only. The previous Bulgarian government declined to include an extraterritoriality provision in its brokering proposals when this was suggested by Human Rights Watch in 1999.

The legislation now before Bulgaria's parliament defines arms brokering ("intermediary activity") as involvement in trade activities and includes "all such activities involving preparation and implementation of a foreign trade transaction, including forwarding and transportation services, [and] funding, when the person performing such activities is not the actual exporter, importer or re-exporter, [and] where these activities are related in some way with the territory of the Republic of Bulgaria or with use of means of telecommunications for communication and/or postal services of the Republic of Bulgaria."

Brokers registering under the new regime will be subject to the licensing procedures that parallel those currently in place for arms trading companies. In the first stage an interdepartmental commission established by the Council of Ministers (Bulgaria's cabinet) is to review applications and grant brokering licenses. In the second stage, licensed brokers will be required to apply for permits for individual arms deals, to be issued by a second body, an interministerial committee based at the economy ministry.

Under vetting procedures outlined in the legislation, persons found to be unreliable or not financially sound will be refused a brokering license. Checks may also be performed on documents submitted with requests for individual permits. The legislation, however, does not establish what documents must accompany a broker's application for a license or permit. Instead, these are to be set out in the implementing regulations, which remain to be drafted after adoption of the legislation.

In a change that is to be applied to arms traders as well as brokers, the legislation calls for the permanent revocation of licenses if the arms supplied are found to have been re-exported to an unauthorized destination. The license is to be revoked regardless of whether the trader or broker knowingly engaged in deceit. This provision thus makes the trading and brokering agents ultimately responsible for ensuring that the weapons do not go astray.

The legislation envisions that foreign arms brokers will be able to take part in Bulgaria's weapons trade. The version of the amendments introduced by the government did not elaborate how their activities would be controlled, but Human Rights Watch understands that the legislation has since been modified to make foreign arms brokers subject to the same licensing requirements as Bulgarian brokers.

Under the brokering provision, Bulgarian-registered transport companies must be licensed as arms brokers and must seek permission to undertake arms transportation outside Bulgaria. The conditions for foreign transporters to carry arms, however, are not clearly established in the legislation. It stipulates only that transportation of arms through Bulgarian territory requires a permit, to be issued by the interministerial committee. This discrepancy may have been addressed, as above, with a revision to the legislation proposed by the government.

### ***End-user Controls***

The expected changes to Bulgarian arms trade controls help to clarify and strengthen requirements for the proof of the ultimate destination of weapons exports, in large measure incorporating into law improvements that already have been put in place in practice. For example, it clarifies that all export license applications must be accompanied by an EUC or equivalent document, and that the buyer must guarantee that it will not re-export or otherwise divert the weapons without authorization from Bulgarian authorities. The legislation also formalizes procedures to evaluate the authenticity of the documents provided and to allow for post-shipment physical inspections to ensure that the weapons have been delivered to the correct destination.

### ***Penalties***

Administrative fines under the 1995 law were very low, and the legislation submitted by the government would raise these to 500 to 50,000 levs (approximately \$250 to \$25,000) for non-criminal offenses. Property sanctions of up to double the value of the transaction remain in place. Criminal penalties are addressed in the penal code, and the legislation offers no indication that these are to be changed.

### ***Administrative Structure***

The legislation envisions maintaining the two-tiered licensing structure described above. The interdepartmental commission that issues trading licenses will be given responsibility for licensing brokers. The second-tier body, the interministerial committee that issues permits for individual deals, is to be given new responsibility over non-proliferation of weapons of mass destruction, including with respect to compliance with an international convention banning chemical weapons, and renamed accordingly. Moreover, each of the members of this committee, which is comprised of representatives from various ministries, will be empowered to veto a licensing decision provided adequate justification is offered. Under a further change, the commission is to submit an annual report on the implementation of the revised legislation to the Council of Ministers.

An element of the previous government's proposal was to create an independent arms control body to oversee the arms trade, which Human Rights Watch supports. The change was not included in the proposal currently before parliament, but it has been raised in parliamentary debate. It remains unclear whether there is sufficient parliamentary support to amend the proposal to create such a body.

### ***Other Changes***

**Dual-Use Controls:** The legislation includes a number of measures to tighten controls on so-called dual-use goods, items such as explosives, chemicals, and technologies that have legitimate civilian applications but can also be used for a military purpose (including, most notably, to build weapons of mass destruction). The new legislation, for example, requires that the government



adopt a list of dual-use items that will be subject to licensing and transport controls matching those applicable on conventional weapons, including with respect to brokering activities.

**Foreign Ownership:** The amendments lift a provision of the 1995 law that required that arms companies be at least 50 percent Bulgarian-owned. Government officials noted that the move to permit greater foreign investment in the sector is in keeping with a recommendation included in a 2001 report on the Bulgarian defense industry by the U.S. Atlantic Council, which sought to encourage the transformation of the industry toward markets in NATO countries.

**Extension of Licenses:** In a move designed to permit arms companies to sign long-term contracts, the government intends to allow trading and brokering licenses to be issued for an initial period of one year, and to be renewed for three-year periods thereafter. The permits for individual deals would be issued for an initial period of six months and would be eligible for a one-time extension of a further six-months. Both licenses and permits would be subject to revocation on decision of the relevant authorizing bodies.

### **Needed Reforms Not Included in the Legislation**

#### ***Transparency and Oversight***

The legislation offers little in terms of increased transparency. The requirement that most information about arms transactions be considered a commercial and state secret remains in place. In addition, there are no plans to publish the list of authorized arms trading companies or brokers. While a number of other countries publish an annual report describing (to different levels of specificity) their exports of weapons, to date Bulgaria has not done so.

A modest provision related to transparency calls for the publication of the list of recipients subject to export restrictions. The list issued in April 2001, which government officials say satisfies this pending requirement, lists only recipients subject to regional or international sanctions about which information is publicly available. The list does not include a number of countries subject to restrictions under voluntary multilateral measures, such as the Wassenaar Arrangement on Export Controls on Conventional Arms and Dual-use Goods and Technologies.

Moreover, the legislation does not provide an adequate mechanism for increased parliamentary oversight. The two bodies overseeing the arms trade report to the cabinet alone. Human Rights Watch understands that under an amendment introduced during parliamentary debate the Council of Ministers is to share with parliament the annual report on implementation of the arms trade legislation mandated under the legislation but need not make it public.

#### ***Surplus***

The amendments due to be passed by parliament do not establish rules to specifically address the trade in surplus weapons (currently covered under the provisions governing the foreign trade in arms), although some amendments tailored to the surplus weapons problem are warranted. For example, existing law does not adequately reflect Bulgaria's commitments under the OSCE small arms agreement. The agreement states: "The participating States agree that the

preferred method for the disposal of small arms is destruction...Any small arms identified as surplus to national requirements should, by preference, be destroyed. However, if their disposal is to be effected by export...such export will only take place in accordance with the export criteria set out [in this document].”<sup>3</sup>

Bulgarian practice, contrary to this agreement, has been to export surplus weapons where possible. A defense ministry official confirmed to Human Rights Watch that unless and until foreign funding becomes available to the government to meet the costs of destroying decommissioned weapons, the weapons will continue to be available for export. In October 2001, for example, the defense ministry announced its intention to sell off nearly 200 surplus tanks and other heavy weapons to finance procurement of NATO standard equipment.

### ***Conflicts of Interest***

Bulgarian law does not bar officials with responsibility for overseeing arms licensing decisions from simultaneously serving on the boards of arms companies. The legislation awaiting passage does not address the issue in any way. Human Rights Watch had recommended that formal action be taken after finding evidence of conflicts of interest in 1999. The then government said it would eliminate the practice, but at no point did it enact rules to prevent the problem from being repeated.

To the contrary, the problem has apparently resurfaced. Until recently Bulgaria’s foreign minister served on the board of a major arms manufacturing company. This came to public attention because the company’s arms trading license was revoked in the wake of allegations of illegal arms transfers (see below).

### **Recent Cases Show Better Implementation, Need for Stronger Enforcement**

Since beginning to more strictly monitor arms transfers, Bulgarian authorities have had some success detecting suspected illegal transactions and have responded more forcefully to allegations of illicit activity. These steps are to be commended and are an indication that controls are better implemented than they were in the past. Enforcement actions to date, however, fall short of what is needed. The government has yet to clearly demonstrate a strong commitment to carry out thorough investigations in all cases and to pursue criminal prosecutions where warranted. As of 1999, Bulgaria had not had any criminal prosecutions for illicit arms exports. Three years later, the same remains true.

In April 2001 authorities detained a Ukrainian plane loaded with Czech weapons after becoming suspicious that the cargo might be headed to Eritrea, which was then under U.N. embargo. Following an investigation in which the Czech government asserted that the deal was perfectly legal, the plane and cargo were eventually released for delivery to Georgia, the declared destination. Little information was released about the basis for the decision to release the plane, however, and important questions remain about reported discrepancies in the cargo and the declarations of the crew.

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<sup>3</sup> OSCE Document on Small Arms and Light Weapons, adopted November 24, 2000, available at <http://www.osce.org/docs/english/fsc/2000/decisions/fscw231.htm> (Last accessed June 28, 2002.)

In a further example, in early 2002 Bulgarian authorities sought to block a plane registered in Equatorial Guinea from operating in Bulgaria on the basis of suspicions that the plane was linked to the arms-trafficking network of an air cargo operator repeatedly implicated in U.N. reports on embargo violations, including with respect to arms shipments from Bulgaria. Bulgarian authorities reportedly were investigating whether the plane may previously have operated under a fraudulent Bulgarian registration. Again, this is a positive sign. However, it remains unclear if the investigation into the operations of air cargo companies continues, and where such investigations might lead.

With respect to alleged illegal arms exports by Bulgarian companies, the government has acted by revoking licenses but has not initiated criminal procedures to date. One such case arose in May 2002, when a major arms company was alleged to have been involved in illegal weapons deals with the government of Sudan, which is subject to an E.U. embargo that Bulgaria has pledged to follow, and that became law under the April 2001 decree incorporating such restrictions into law. A criminal investigation is underway.

## **Conclusion**

The expected adoption of legislative changes governing Bulgaria's arms trade marks a major step forward in the ongoing process of reforming the trade. Full reform lies requires Bulgaria to act on three fronts: to establish a strong legal framework, to implement controls strictly, and to enforce them rigorously. The legislation that awaits passage in parliament, while falling short in some areas, reflects important progress in others. Most significant is a provision that for the first time establishes controls on arms brokers. Key challenges lie ahead to ensure vigorous attention to the implementation and enforcement of the law. The proof of reform lies in the extent to which strict policies are in place and are matched by equally strict practices. The Bulgarian government, its citizens, and the country's international partners must all remain vigilant to ensure that Bulgaria stays on the path to reform and redoubles its efforts to end illicit and irresponsible arms trading once and for all.