

# Regulating weapons deals

## The case for European Controls on arms brokers

**In one area, there is too little regulation in the European Union. The EU regulates everything from beaches to bananas, but not arms brokers. This is despite the fact that Europe is home to many of the world's arms brokers responsible for arranging deliveries of weapons into countries in conflict and or into the hands of those who commit grave human rights abuses. European controls must keep up with the international nature of the arms business. The EU should agree a joint action obliging all countries to register arms brokers and put their activities under a licensing regime in order to curb this deadly trade.**



## Summary

In one area, there is too little regulation in the European Union. The EU regulates everything from beaches to bananas, but not arms brokers, despite the fact that Europe is second only to the United States as a centre for arms manufacturing and home to many of the world's arms dealers. With expansion to include many Central European nations, the EU will embrace new countries with arms surpluses left over from the Soviet era and a poor record of controlling arms exports.

Arms brokers are typically involved in arranging the deliveries of weapons to regimes and rebels factions who are unable to purchase directly due to arms embargoes or export controls in the manufacturing country. Thus brokering activities facilitate a disproportionate amount of the suffering caused by conflict or by human rights abusers. Taking their cut from the deals, arms brokers working in Europe can enjoy the profits of their trade in the comfort of some of the world's richest countries, largely free from government scrutiny.

Policy discussions in Brussels can seem very distant to European citizens, so imagine how much more so for a widow in the Democratic Republic of the Congo or an orphan in Colombia. However, when the weapons used against them can be traced back to the failure of European nations to control arms brokering, decisions in Brussels may suddenly seem extremely relevant to the plight of these victims.

Only half of EU countries, and a handful of associate countries, have brokering laws, and many of these are easily evaded by the highly- mobile arms brokering business. To encourage EU and associate nations without controls to introduce them, and to close the loopholes in existing legislation, the member states should agree a joint action setting a common European standard for controls on arms brokering and a deadline for the introduction of national controls. This standard should include registration, licensing and, where possible, powers to control brokers operating abroad.

## The Problem

The European Union regulates everything from beaches to bananas, but not arms brokers. A strange fact when you consider that Europe is second only to the United States as a centre for arms manufacturing and home to many of the world's arms dealers. In contrast to Europe, the US already has comprehensive brokering laws. The EU is soon to expand to include Central European states with a great, but now largely redundant, arms manufacturing capacity. As recent scandals have shown, the temptation of hard currency in exchange for no questions asked, resulting in deliveries to conflict or embargoed destinations, has made these countries prime targets for arms brokers.

In 1998, the EU introduced eight criteria, including human rights and development standards, for direct arms sales. Every member state is bound to judge all applications for military exports by these standards, known as the European Code of Conduct on Arms Exports. Unfortunately, the activities of arms brokers do not fall under this arrangement unless specified by national legislation.

Every day, container loads of weapons move around the globe as part of an international industry annually worth \$21.3bn.<sup>1</sup> Some of these shipments are bound for countries in conflict or to government or rebel armed forces with appalling human rights records. While in financial terms only a small part of the whole arms trade, weapons sent to these destinations cause disproportionate suffering when they fall into the hands of their end users.



Photo: Crispin Hughes

Peter Rashid, Sierra Leone:

"Guns are not made for animals in the bush. Rocket launchers are not made for animals in the bush. So if the world powers could spend this money on turning the desert into agricultural fields to provide food, I think it would be better! Let them provide this food and bring it to the poor countries for us to buy and for us to live, rather than making rocket launchers, AK47s, M16s etc etc, for what? You are making them to kill who? To kill me and you! So I am very adamantly opposed to that."

Typically, such deliveries are organised by the industry's middlemen, arms brokers, who specialise in knowing how to provide a government or a rebel force with the military hardware they desire. These end users are often unable to purchase directly, either because they need someone with the knowledge of the market they lack, or because of more serious obstacles, such as international arms embargoes or export controls in the supplier country. Taking their cut from the deals, arms brokers working in Europe can enjoy the profits of their trade in the comfort of some of the world's richest countries, largely free from government scrutiny.

By contrast, every day, around the world over 1300 men, women and children lose their lives in conflict, adding up to an annual total of half a million deaths, the majority of these in the poorest countries. Countless more livelihoods are ruined as a result of armed conflict through disability, displacement or lack of access to markets and health and education facilities. Policy discussions in Brussels can seem very distant to European citizens, so imagine how much more so for a widow in the Democratic Republic of the Congo or an orphan in Colombia. However, when the weapons used against them can be traced back to the failure of European nations to control arms brokering, decisions in Brussels may suddenly seem extremely relevant to the plight of these victims.

#### **Brokering to Africa**

'John Bredenkamp, who has a history of clandestine military procurement, has an investment in Aviation Consultancy Services Company (ACS). The panel has confirmed, independently of Mr. Bredenkamp, that this company represents British Aerospace, Dornier of France and Agusta of Italy in Africa.... In discussions with senior officials he has offered to mediate sales of British Aerospace equipment to the Democratic Republic of the Congo. Mr. Bredenkamp's representatives claimed that his companies observed European Sanctions on Zimbabwe, but British Aerospace spare parts for ZDF [Zimbabwean Defence Force] Hawk jets were supplied in early 2002 in breach of those sanctions.'

Extract from the *Final Report of the Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo*, UN document S/2002/1146, 16 October 2002, p. 12.

Note: Mr Bredenkamp is a Zimbabwean national based in the UK.

#### **Brokering: Spain to Africa**

*Madrid El Mundo* reported on 2/11/99 that the intelligence services of the police and the Civil Guard had detected an illegal arms trafficking ring led by members of the Russian mafia established in southern Tenerife, which uses the Canary Islands as a base to export weaponry from the former USSR to warring African countries including Angola and Sierra Leone. The weaponry included machine-guns, assault rifles, grenade launchers, grenades and ammunition.

(Source - *Madrid El Mundo*, 2/11/99)

## What's legal?

The EU has recognised the pressing need to control arms dealers for a number of years, and has called for an international brokering convention to be agreed, but as yet the Union has not collectively taken any concrete steps. However, around half of EU countries and a number of associate countries have introduced national laws. The UK is shortly to follow with new legislation (which is not expected to be fully extraterritorial); Belgium and France are updating their laws to extend their powers extraterritorially and, in the case of Belgium, to incorporate the EU Code of Conduct. But, as the table<sup>2</sup> below reveals, with a few exceptions, national controls are not comprehensive, leaving large loopholes.

Learning from these examples, essential elements to an effective control regime are:

- a national register of brokers, giving the authorities the power to remove a person or company from the list should they be judged no longer fit to deal in arms
- a licensing regime for individual deals, including those where the goods do not pass through the country, judged by the standards of the European Code of Conduct on Arms Exports
- (where legal systems allow) extraterritorial powers to prevent nationals evading controls by working off-shore

Country	a) Registration b) Licensing	Applies to brokering conducted on soil of country	Applies to brokering conducted on country's soil, but involving transfers that do not touch the soil	Applies to brokers who are citizens and operate abroad	Maximum penalty (prison and/or fines)
Belgium	a) No b) Yes	Yes	Yes	-	One month to five years prison sentence and fine 10 000 to million EUR
Bulgaria	a) Yes b) Yes	Yes	Yes	No	
Czech	a) Yes b) Yes	Yes	Yes	Partial	
Estonia	a) Yes b) Yes	Yes	Yes	Partial	
France	a) Yes b) Yes	Yes	No	No	
Finland	a) Yes b) Yes	Yes	Yes	Yes	
Germany	a) Yes b) Yes	Yes	Yes	No	10 years
Netherlands	a) Yes b) Yes	Yes	Yes	No	6 years 100,000 NLG
Norway	a) Yes b) Yes	Yes	Yes	No	5 yrs
Poland	a) Yes b) Yes	Yes	Yes	Yes	10 yrs 200,000PLN
Sweden	a) Yes b) Yes	Yes	Yes	Yes (if pay taxes in Sweden)	2 yrs

### **UK to DRC**

British citizen, Andrew Smith, resident in Wiltshire, was named by a UN report for organising bombing raids in DRC on behalf of President Joseph Kabila. He is also alleged to have brokered the sale of six attack helicopters to DRC government last April. He side-stepped EU arms embargos by operating through his company, Avient, registered in Zimbabwe. Smith denies brokering or selling arms and claims he had British High Commissioner approval for bombing raids. MP Norman Lamb is calling for an investigation.

Antony Barnett and Paul Harris, "How a perfect English gent in a rural idyll profits from a bloody African war," *The Observer*, 24 November 2002.

In many EU countries, only arms brokering in violation of a UN or other arms embargo is illegal. Even in these cases, catching embargo breakers is a difficult business as brokers are rarely direct in their dealings, employing a number of methods, such as false end-user certificates and flight plans, or using neighbouring countries as diversion points. Only a licensing regime for individual deals can be intelligent enough to spot the potential danger of fraud or diversion before the delivery is made, thus removing the grey area in which disreputable arms dealers flourish.

### **Germany, Belgium and Italy to Congo-Brazzaville**

" Documents found in the offices of the ousted government of Congo-Brazzaville showed that, between June and September 1997, a German arms broker and an arms trader allegedly of Belgian nationality supplied millions of dollars worth of military equipment to the beleaguered forces of President Lissouba. The German dealer negotiated orders totalling \$42.4 million, and received \$27.1 million. Both dealers operated from South Africa using several companies registered in various countries with French, Belgian and UK bank accounts. In addition, between January and July 1997, Italian traders supplied Congo-Brazzaville with 15 tons of cartridges apparently worth over \$5 million. This shipment was delivered at a time when the rivalry between political militias in the Congo was increasing and observers were warning of the outbreak of fighting and the probable slaughter of many more civilians."

Brian Wood and Johan Peleman, *The Arms Fixers*, PRIO Report 3/99, p. 45-46.

## Recommendations

The member states of the European Union to agree a joint action, setting a European standard for brokering controls to be introduced by each nation within two years. Associate countries should also be encouraged to implement this standard. The standard should include:

- a register of authorised brokers available for public consultation
- a license regime for individual deals judged by the criteria of the European Code of Conduct on Arms Exports
- extraterritorial controls on nationals or those legally established in the country concerned.

Enforcement of brokering laws is another challenge as successful prosecutions are rare, though this may soon change as there are a number of cases in court. To improve the chances of detection and prosecution, European countries must strive to increase international cooperation, including extradition from third countries for brokering offences, and target resources at catching the worst offenders.

## Notes

<sup>1</sup> IISS, *Military Balance 2002-2003*, 2002.

<sup>2</sup> Sources: Loretta Bondi and Elise Keppler, *Casting the Net, Implications of the U.S. Law on Arms Brokering*, Fund for Peace, Jan 2001, Appendix; James Coflin, *Small Arms Brokering: Impact, Options for Control and Regulation*, Canadian Dept of Foreign Affairs and International Trade, May 2000

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