



## Organization for Security and Co-operation in Europe

### The Secretariat

#### Brokering in the OSCE

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Statement delivered at the Second Biennial Meeting of States to Consider 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, New York, 11 – 15 July 2005

The OSCE document on Small Arms and Light Weapons, adopted in 2000 – before the adoption of the UN Programme of Action – identifies "the regulation of the activities of international brokers in small arms" as "a critical element in a comprehensive approach to combating illicit trafficking in all its aspects". In this respect, the Document then highlights measures such as licensing of brokering activities, registration of arms brokers and the disclosure of information on import and export licence authorizations and the names of the brokers involved in transactions.

Following the adoption by consensus of this politically binding document, the accent has moved on implementation, which has in turn led us to explore this issue in much greater detail. A first step has been a comprehensive exchange of information among participating States on existing regulatory frameworks. Awareness to this issue has also been raised through specific seminars at the sub-regional level.

With a view to supporting participating States in developing higher common standards of practice in this and the other key areas covered by the Document, a Best Practices Guide was drafted in 2003, specifically devoted to addressing the issue of National Control of Brokering Activities. While not a consensus document and not a binding guideline, this guide – which can be downloaded from the OSCE website – is setting out a number of model practices to assist countries developing or updating their own legislative framework.

The guide highlights the fact that the comprehensive approach of the OSCE to the SALW problem implies that national controls on brokering should not exist independently from the control mechanisms established by States in other related areas, such as those of marking, manufacturing, and export of SALW. It is therefore important that controls on brokering be made consistent with those that exist in other areas, specifically export controls.

Control on brokering and export control should, with regard to their practical effects, form a coherent system that allows for comprehensive controls on the one hand, but avoids an unnecessary duplication of administrative burdens, on the other hand. Both instruments therefore should not overlap but rather complement one another. To this end, the rules on brokering should be concise and focused on cases that are not yet controlled in another way. This suggests that the rules on brokering should preferably be integrated in the framework of export control regulations.

The OSCE guide on brokering summarizes the key points of the international exchange of information in the area of brokering. The guide presents an inclusive concept, which encompasses all important issues related to licensing requirements, procedures, and criteria, as well as to enforcement, criminalization and international co-operation. Furthermore, it lists the necessary elements for national legislation, emphasizes common guidelines for control policy and sets out effective administrative implementation and enforcement measures. Finally, the Handbook chapter on brokering sets out both “core elements”, which are essential for effective and adequate regulations and “optional elements” that might be considered by States for possible inclusion in national legislation.

The next step was the adoption of an OSCE Decision on “OSCE principles on the control of brokering in small arms and light weapons” in November 2004 aimed at creating a framework to combat illegal brokering activities within the OSCE region.

This decision, which is politically binding for all 55 participating States, introduced a set of principles to be implemented by the participating States. First of all, it recognized the need to strengthen the regulation of the activities of international brokers in small arms in order to maintain the comprehensive approach to combating illicit trafficking of small arms in all its aspects. The main objective of the decision was to control arms brokering in order to avoid

circumvention of sanctions adopted by the Security Council of the UN and the decisions taken by the OSCE, and to minimize the risk of diversion of SALW into illegal markets, inter alia, into the hands of terrorists and other criminal groups, and to reinforce the export control of SALW. For this purpose, the decision posed several provisions to participating States, which should ensure that their existing or future legislation on arms brokering is in conformity with the provisions set out in the decision.

The decision introduces a definition applicable to all the OSCE participating States, stating that brokering activities are activities of persons and entities

- negotiating or arranging transactions that may involve the transfer of items referred to in the OSCE SALW document from any other country to another country or
- who buy, sell or arrange the transfer of such items that are in their ownership from any other country to another country.

Furthermore, the decision establishes rules with regard to the licensing and registration, stating that for brokering activities a license shall be obtained from the State where these activities take place, and the brokers may also require obtaining authorization to act as brokers. Moreover, the decision emphasizes the importance of the establishment of adequate sanctions in order to ensure that controls on arms brokering are effectively enforced, and encourages states to consider a system for exchange of information on brokering activities among themselves.

This OSCE decision is still rather fresh and there has not been a thorough discussion on the next steps required with this regard. Definitely, some sort of exchange of information is probably needed in order to determine how the OSCE participating States have taken into account the principles they adopted and how these principles are reflected in their national legislations, and to guide us in our future activities of assistance to individual States in this field.

These efforts of the OSCE participating States can be considered as a contribution to the UN activities aimed at addressing the problem of control on brokering on the global scale.