International Action Network on Small Arms

IPIS

Synergies of Brokering and Service Provider Regulation in the International, Regional and Sub-Regional Instruments on the Regulation of SALW and/or Firearms

Series on Synergies

This is the fifth IANSA-IPIS factsheet in a series that identifies key synergies on important thematic topics found in international and regional instruments that address control measures on small arms and light weapons (SALW).

The list of international and regional instruments that have been selected for the analysis of synergies is shown in the Appendix at the end of this factsheet. These are legal and policy instruments that incorporate obligations or commitments on the control of SALW specific enough for States to be held accountable, thus excluding mere policy declarations (see the Appendix of instruments below).

The aim of this series of IANSA-IPIS factsheets is to reproduce exactly what has been agreed by States in the field of SALW control. Each factsheet addresses one SALW control topic showing synergies but also particularities in the texts. The purpose is to provide IANSA civil society network members with an accessible way to identify complementary measures in international and regional SALW control instruments and enable them to make proposals to national authorities and parliamentarians to address legislative and regulatory gaps in their country.

I. Introduction "Brokering and Service Provider Regulation"

From the 14 instruments studied, ten include provisions on SALW/firearms brokering. Only the following instruments do not refer to brokering in any way: the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the International Tracing Instrument, the CIFTA Convention and the EU Firearms Regulation. Although the EU Firearms Regulations mentions brokering, it explicitly clarifies that it does not regulate brokers, this being dealt with by the EU Firearms Directive instead (see para. (10) of the Preamble of the EU Firearms Regulation).

Those instruments that do include brokering provisions focus on the need to establish and maintain (legislative and administrative) systems for the regulation and control of brokering activities.

II. Definition of Brokering

Six instruments include a definition of "brokering" and/or "broker": the SADC Protocol, ECOWAS Convention, Nairobi Protocol, EU Common Position 2003/468/CFSP of 23 June 2003 (implementing the general EU rules on arms export control to address the problem of control of arms brokering), EU Firearms Directive and Kinshasa Convention.

The SADC Protocol defines "brokering" as "acting for a commission, advantage or cause, whether pecuniary or otherwise; or b) to facilitate the transfer, documentation or payment in respect of any transaction relating to the buying or selling of firearms, ammunition or other related materials; and thereby acting as intermediary between any manufacturer or supplier of, or dealer in, firearms, ammunition and other related materials and buyer or recipient thereof" [Article 1(2)].

The ECOWAS Convention defines "brokering" as: "Work carried out as an intermediary between any manufacturer, supplier or distributor of small arms and light weapons and any buyer or user; this includes the provision of financial support and the transportation of small arms and light weapons" [Article 1(8)].

The Nairobi Protocol provides the following definitions (see Article 1):

- "'broker' is a person who acts:
  (a) for a commission, advantage or cause, whether pecuniary or otherwise;
  (b) to facilitate the transfer, documentation and/or payment in respect of any transaction relating to the buying or selling of small arms and light weapons; or
  (c) as an intermediary between any manufacturer, or supplier of, or dealer in small arms and light weapons and any buyer or recipient thereof.
- 'brokering' means acting:
  (a) for a commission, advantage or cause, whether pecuniary or otherwise;
  (b) to facilitate the transfer, documentation and/or payment in respect of any transaction relating to the buying or selling of small arms and light weapons; or
  (c) thereby acting as intermediary between any manufacturer, or supplier of, or dealer in small arms and light weapons and any buyer or recipient thereof."

Article 2 of EU Common Position 2003/468/CFSP specifies:

- "brokering activities are activities of persons and entities:
  - negotiating or arranging transactions that may involve the transfer of items on the EU Common List of military equipment from a third country to any other third country; or
  - who buy, sell or arrange the transfer of such items that are in their ownership from a third country to any other third country.

  This paragraph shall not preclude a Member State from defining brokering activities in its national legislation to include cases where such items are exported from its own territory or from the territory of another Member State."

The EU Firearms Directive applies the following definition of "broker":

- "any natural or legal person, other than a dealer, whose trade or business consists wholly or partly of either of the following:
  (a) the negotiation or arrangement of transactions for the purchase, sale or supply of firearms, essential components or ammunition;
  (b) arranging the transfer of firearms, essential components or ammunition within a Member State, from one Member State to another Member State, from a Member State to a third country or from a third country to a Member State" [Article 1(1)(10)].

The relevant definitions in the Kinshasa Convention read:

- "Broker: any person or entity acting as an intermediary that brings together relevant parties and arranges or facilitates a potential transaction of small arms and light weapons in return for some form of benefit, whether financial or otherwise" [Article 2(k)];
- "Brokering activities: can take place in the broker's country of nationality, residence or registration; they can also take place in another country. The small arms and light weapons do not necessarily pass through the territory of the country where the brokering activity takes place, nor does the broker necessarily take ownership of them" [Article 2(l)];
- "Activities closely associated with brokering: activities that do not necessarily, in themselves, constitute brokering may be undertaken by brokers as part of the process of putting a deal

together to gain a benefit. These may include, for example, acting as dealers or agents in small arms and light weapons, providing for technical assistance, training, transport, freight forwarding, storage, finance, insurance, maintenance, security and other services" [Article 2(m)].

III. Regulatory and control systems

All of the ten instruments with brokering provisions refer to the need to provide for regulatory or control systems regarding brokering. Although the Global Framework on Ammunition avoids reference to general systems for brokering regulation or control, it mentions specific elements of such regulation/control: the registration of brokers and considering the role of brokers when assessing ammunition transfer licence applications [see below a) and c)].

States participating in the UNPoA undertook to "develop adequate national legislation or administrative procedures regulating the activities of those who engage in small arms and light weapons brokering" (Section II.14.; see also Outcome document of the fourth United Nations Conference to Review Progress Made in 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 (A/CONF.192/2024/RC/3, 5 July 2024), para. 102).

Article 15(1) of the UN Firearms Protocol provides: "With a view to preventing and combating illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, States Parties that have not yet done so shall consider establishing a system for regulating the activities of those who engage in brokering."

State Parties of the ATT "shall establish and maintain a national control system, including a national control list, in order to implement the provisions of this Treaty" [Article 5(2)]. Article 10 of the ATT requires State Parties to "take measures, pursuant to its national laws, to regulate brokering taking place under its jurisdiction for conventional arms covered under Article 2(1)."

Under the SADC Protocol, State Parties undertook "to incorporate [...] in their national laws as a matter of priority: [...] provisions that regulate firearm brokering in the territories of State Parties" [Article 5(m)]. Almost identical terms are found in Article 3(c)(xii) of the Nairobi Protocol. In addition, Article 11 of the Nairobi Protocol states that "State Parties, that have not yet done so, shall establish a national system for regulating dealers and brokers of small arms and light weapons."

The EU, through Council Common Position 2003/468/CFSP, requires its Member States to control arms brokering. EU Member States are obligated to "take all the necessary measures to control brokering activities taking place within their territory. Member States are also encouraged to consider controlling brokering activities outside of their territory carried out by brokers of their nationality resident or established in their territory" [Article 2(1)]. Pursuant to Article 2(2), "Member States will also establish a clear legal framework for lawful brokering activities." Article 4(4) of the EU Firearms Directive stipulates: "Each Member State shall establish a system for the regulation of the activities of dealers and brokers."

Furthermore, the ECOWAS Convention [Article 20] and the Kinshasa Convention [Article 13] establish the need for regulatory/control systems for brokering.

Three sub-regional instruments explicitly extend (some of) the regulation/control requirements to other service providers:

- ECOWAS Convention, Article 20(1): "Member States shall register all citizens and all companies incorporated in their territory that are brokering small arms and light weapons, including financial agents and transportation agents on armament and shall make such registration a requirement for their licit operation."
- Nairobi Protocol, Article 11: "State Parties […] shall establish a national system for regulating dealers and brokers of small arms and light weapons. Such a system of control shall include: (i) regulating all manufacturers, dealers, traders, financiers and transporters of small arms and light weapons through licensing".
- Kinshasa Convention, Article 13(7): "The States Parties shall require that all brokers, including financial and shipping agents duly registered with the competent national authorities, shall obtain a license in their country of origin or in their country of residence for each individual transaction in which they are involved […]." In addition, Article 13(4) requires that: "Without prejudice to the provisions of paragraph 1 of this article, financial and shipping agents of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly, which are established and operating within or outside the territory of each State Party shall also be subject to registration."

a) Registration and licencing/authorisation

In the context of the general requirement to control and regulate brokering, nine instruments specifically refer to the *registration of brokers* and/or the *licencing/authorisation* of brokering transactions/activities as elements of such systems (excluding the SADC Protocol): the UNPoA [Section II.14.; Outcome document of the fourth United Nations Conference to Review Progress Made in 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 (A/CONF.192/2024/RC/3, 5 July 2024), para. 102], UN Firearms Protocol [Article 15, (a) and (b)], ATT [Article 10], Global Framework on Ammunition [Objective 8(b)(iii)e.], ECOWAS Convention [Article 20(1) and (2)], Nairobi Protocol [Article 11(ii) and (iii)], EU Common Position [through EU Common Position 2003/468/CFSP, Articles 3(1) and 4(1)], EU Firearms Directive [Article 4(4)(a) and (b)], and the Kinshasa Convention [Article 13(1), (2) and (7)].

Registration

As regards registration, three instruments require the registration of brokers "operating within their territory" (UN Firearms Protocol, Nairobi Protocol, EU Firearms Directive). Member States of the ECOWAS Convention are required to register brokers "incorporated in their territory" [Article 20(1)]. The Kinshasa Convention specifies that "States Parties shall register private individuals and companies established or operating in their respective national territories as brokers" and that "brokers are required to register in their country of origin and in their country of residence" [Article 13(1) and (2)]. Registration is also required under the Kinshasa Convention for financial and shipping agents of small arms and light weapons, their ammunition and all parts and components [Article 13(7)]. The Global Framework on Ammunition contains the objective to "[m]aintain registers and databases of transfers, manufacturers, brokers, vessels and aircraft, as well as end users, shippers and freight forwarders that have a history of diversion or poor security measures" [Objective 8(b)(iii)e.]. The other instruments only refer to the registration requirement in a general way (UNPoA, ATT, EU Common Position).

EU Member States, under Article 4(1) of EU Common Position 2003/468/CFSP, "may also require brokers to obtain a written authorisation to act as brokers" apart from their registration.

Licencing/authorisation

As regards the required licencing/authorisation of individual brokering activities or transactions, the ECOWAS Convention, Nairobi Protocol and Kinshasa Convention specify that the licence/authorisation needs to be obtained in the country where the broker is registered, no matter where the arrangements/transactions take place:

- Article 20(2) of the ECOWAS Convention: "Member States shall ensure that all registered small arms and light weapons brokering agents obtain an explicit authorization for each individual transaction in which they are involved irrespective of where the arrangements take place."
- Article 11(iii) of the Nairobi Protocol: "… all registered brokers seek and obtain authorisation for each individual transaction taking place".
- Article 13(7) of the Kinshasa Convention: "The States Parties shall require that all brokers […] shall obtain a license in their country of origin or in their country of residence for each individual transaction in which they are involved, regardless of where the arrangements concerning the transaction are to be made."

Article 4(4)(b) of the EU Firearms Directive appears to require a licence/authorisation only for brokering activities taking place within the EU Member State where the broker is registered: "… the licensing or authorisation of the activities of dealers and brokers within the territory of that Member State [i.e. the Member State where the broker is operating and is thus registered, cf. (a) of the same Article]".

Under the EU Common Position, a licence/authorisation needs to be obtained both in the place where the brokering activity takes place and where the broker is resident/established: "For brokering activities, a licence or written authorisation should be obtained from the competent authorities of the Member State where these activities take place, and, where required by national legislation, where the broker is resident or established" (Article 3(1) of EU Common Position 2003/468/CFSP).

The UNPoA, UN Firearms Protocol and ATT each commit States to establish national authorisation/licencing procedures or measures to regulate brokering activities but leave open the issue of whether a brokering licence/authorisation must be obtained in the broker's country of operation as well as the broker's home country if that is different.

b) Assessment of brokering licence applications

Within the framework of licencing/authorisation of brokering activities, two instruments – the ATT and the EU Common Position 2008/944/CFSP – deal with the assessment of brokering licence applications, including the cases in which authorisation must be denied, i.e. prohibited brokering activities.

Under the ATT, the prohibition of certain transfers in Article 6 applies to brokering since Article 2 specifies that "transfer" includes brokering. Consequently, ATT States Parties "shall not authorize any" brokering activities, if one of the three paragraphs of Article 6 applies (see the IANSA factsheet on *Synergies of Prohibited Activities in the International, Regional and Sub-Regional Instruments on the Regulation of Small Arms and Light Weapons (SALW) and/or Firearms*).

Under the EU Common Position, the export criteria of Article 2 are also applied for the assessment of brokering licences: "The export licence applications as mentioned in paragraph 1 shall include […] applications for brokering licences" [Article 1(2)].

c) Taking brokering into account when assessing transfer licence applications

Two other instruments – the Global Framework on Ammunition and the ECOWAS Convention – refer to the need to take brokers or brokering activities into account when assessing *transfer* licence applications, but, unlike the ATT, those two instruments do not clearly define "transfers" as encompassing "brokering".

As regards the pre-transfer assessment to "minimize and mitigate the risks of diversion when authorizing conventional ammunition transfers", the Global Framework on Ammunition includes the objective to "[c]onsider all relevant parties involved in the transfer, which may include freight forwarders, brokers, consignees and other intermediaries" (Objective 8(b)(iii)c.).

Under the ECOWAS Convention, "[b]rokering activities may be assessed under Article 1 and 6 of the present Convention" [Article 20(5)]. This means that brokering may be taken into account in the assessment of whether a transfer shall not be authorised (Article 6) or whether it can be exempted from the general prohibition of SALW transfers (Articles 4 to 6 of the ECOWAS Convention).

d) Penalties/sanctions

Another element of brokering regulation and control is the application of penalties or sanctions for illicit brokering. Four instruments expressly include this element: the UNPoA, ECOWAS Convention, EU Common Position 2003/468/CFSP and Kinshasa Convention. In addition, the UN Firearms Protocol can be interpreted as requiring the establishment of unlicenced or unauthorised brokering as a criminal offence.

Under the UNPoA, participating States undertook to develop legislation that includes "the appropriate penalties for all illicit brokering activities performed within the State's jurisdiction and control" (Section II.14.; see also Outcome document of the fourth United Nations Conference to Review Progress Made in 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 (A/CONF.192/2024/RC/3, 5 July 2024), para. 102).

ECOWAS Member States "shall adopt such legislative and other measures to punish and establish as a criminal offence the illicit brokering of small arms and light weapons." (Article 20(4) of the ECOWAS Convention).

Under Article 6 of EU Common Position 2003/468/CFSP, EU Member States are required to "establish adequate sanctions, including criminal sanctions, in order to ensure that controls on arms brokering are effectively enforced."

States Parties to the Kinshasa Convention "shall adopt legislative and regulatory measures to punish and establish as a criminal offence the illicit brokering of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly" [Article 13(8)].

The UN Firearms Protocol requires that under Article 5 (criminalization) each State Party must adopt measures as may be necessary to establish "organizing, directing, aiding, abetting, facilitating or counselling" as criminal offences when committed intentionally to carry out illicit trafficking in firearms, their parts and components and ammunition. Article 3(e) defines illicit trafficking to include, inter alia, the "sale, delivery, movement or transfer" of such items from one territory to another "if any one of the States

concerned does not authorize it." Therefore, the criminal acts may include brokering when it is unlicenced or unauthorised.

e) Disclosure

A final element of brokering regulation or control is the disclosure of certain documents. This is included in three instruments: the UN Firearms Protocol, ECOWAS Convention and Nairobi Protocol.

In their respective systems "for regulating the activities of those who engage in brokering", States Parties to the UN Firearms Protocol are encouraged to require "disclosure on import and export licences or authorizations, or accompanying documents, of the names and locations of brokers involved in the transaction" [Article 15(1)(c)].

Under the ECOWAS Convention, States "shall require that all small arms and light weapons brokering license applications for authorisation provide full disclosure of relevant import and export licences or authorisations and associated relevant documents, the names and locations of all brokering and shipping agents involved in the transaction and the transit routes and points of the small arms and light weapons shipments" [Article 20(3)].

The systems of brokering control of the States Parties to the Nairobi Protocol shall "ensur[e] that all brokering transactions provide full disclosure on import and export licenses or authorisation and accompanying documents of the names and locations of all brokers involved in the transaction" [Article 11(iv)].

IV. Information sharing

Five instruments include provisions relating to the exchange of information on brokers and brokering activities: the UNPoA, UN Firearms Protocol, ATT, ECOWAS Convention and EU Common Position 2003/468/CFSP.

Under the UNPoA, participating States resolved to "share information with other States, in accordance with national legal frameworks, as appropriate, [inter alia] on [...] brokering [...] related to the illicit trade in small arms and light weapons" (Outcome document of the third United Nations Conference to Review Progress Made in 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 (A/CONF.192/2018/RC/3), 6 July 2018, II. 20.).

States Parties to the UN Firearms Protocol "that have established a system of authorization regarding brokering as set forth in paragraph 1 of this article are encouraged to include information on brokers and brokering in their exchanges of information under article 12 of this Protocol" [Article 15(2)].

The ATT encourages its States Parties "to share relevant information with one another on effective measures to address diversion" and this "information may include information on [...] illicit brokers" [Article 11(5)].

ECOWAS Member States "shall exchange the following data on a regular basis: [...] authorised dealers and brokers" (Article 19(2)(b) of the ECOWAS Convention).

Pursuant to Article 5 of EU Common Position 2003/468/CFSP:

- "1. Member States will establish a system for exchange of information on brokering activities among themselves as well as with third States, as appropriate. A specific arrangement for such exchange of information will be established. This arrangement will take particular account of the case where several Member States are involved in the control of the same brokering transaction(s).
- 2. Information will be exchanged, inter alia, in the following areas:
    - legislation,
    - registered brokers (if applicable),
    - records of brokers,
    - denials of registering applications (if applicable) and licensing applications."

V. Maintaining registers, databases and record keeping

Four of the studied instruments refer to the maintenance of registers, databases or records regarding brokering: the UN Firearms Protocol, Global Framework on Ammunition, EU Common Position 2003/468/CFSP and EU Firearms Directive.

The UN Firearms Protocol encourages "States Parties that have established a system of authorization regarding brokering as set forth in paragraph 1 of this article [...] to retain records regarding brokers and brokering in accordance with article 7 of this Protocol" [Article 15(2)].

The Global Framework on Ammunition includes the objective to "[m]aintain registers and databases of [inter alia] [...] brokers ..." (Objective 8(b)(iii e.).

Under Article 3(2) of EU Common Position 2003/468/CFSP, "Member States should keep records for a minimum of 10 years of all persons and entities which have obtained a [brokering] licence under the terms of paragraph 1."

The EU Firearms Directive includes a detailed provision on maintaining registers (Article 4(5), subparagraphs 5-7):

- "Throughout their period of activity, dealers and brokers shall be required to maintain a register in which each firearm and each essential component subject to this Directive that is received or disposed of by them is recorded, together with particulars enabling the firearm or essential component concerned to be identified and traced, in particular the type, make, model, calibre and serial number thereof and the names and addresses of the suppliers and of the persons acquiring it.
- Upon the cessation of their activities, dealers and brokers shall deliver that register to the national authorities responsible for the data-filing systems provided for in the first subparagraph.
- Member States shall ensure that dealers and brokers established in their territory report transactions involving firearms or essential components without undue delay to the national competent authorities, that dealers and brokers have an electronic connection to those authorities for such reporting purposes and that the data-filing systems are updated immediately upon receipt of information concerning such transactions."

VI. Conclusion

The instruments studied display synergies regarding general requirements to establish and maintain a national system to regulate or control brokering activities. The synergies include the call for such systems to require the registration of brokers and for brokering activities to be subject to national licencing/authorisation requirements. When it comes to the more detailed design of these systems and requirements, there are some variations in the instruments. By identifying these synergies and variations, this factsheet can help enable civil society advocates and policymakers to strengthen national frameworks and measures for the more effective control SALW brokering and related activities, closing gaps that facilitate the diversion and illicit trafficking of SALW.

Selected International Treaties and UN General Assembly Instruments:

- UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (UNBPUF) (adopted in 1990)
- UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (UNPoA), including the Outcome documents of the United Nations Conferences to Review Progress Made in the Implementation of the UNPoA (adopted in 2001)
- International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons (ITI) (adopted in 2005)
- UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (UN Firearms Protocol) (adopted in 2001; entered into force in 2005)
- Arms Trade Treaty (ATT) (adopted in 2013; entered into force in 2014)
- Global Framework for Through-life Conventional Ammunition Management (Global Framework on Ammunition) (adopted in 2023)

***Selected Regional and Sub-Regional Instruments*:**

- Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (CIFTA Convention) (adopted in 1997; entered into force in 1998)
- Protocol on the Control of Firearms, Ammunition and Other Materials in the Southern-African Development Community (SADC) Region (SADC Protocol) (adopted in 2001; entered into force in 2004)
- ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials (ECOWAS Convention) (adopted in 2006; entered into force in 2009)
- The Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and Horn of Africa (Nairobi Protocol) (adopted in 2004; entered into force in 2005)
- Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment (EU Common Position) (adopted in 2008)
- Regulation (EU) 2025/41 of the European Parliament and of the Council of 19 December 2024 on import, export and transit measures for firearms, essential components and ammunition,

implementing Article 10 of the United Nations Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against Transnational Organised Crime (UN Firearms Protocol) (recast) (EU Firearms Regulation) (adopted in 2024)

- Directive (EU) 2021/555 of the European Parliament and of the Council of 24 March 2021 on control of the acquisition and possession of weapons (EU Firearms Directive) (adopted in 2021)
- Central African Convention for the Control of Small Arms and Light Weapons, their Ammunition and all Parts and Components that can be used for their Manufacture, Repair and Assembly (Kinshasa Convention) (adopted in 2010; entered into force in 2017)

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