Armament Industry European Research Group

RUSSIA'S WAR AGAINST UKRAINE:
A NEW IMPETUS FOR THE HARMONISATION OF EUROPEAN ARMS EXPORT POLICIES?

A trilateral perspective from France, Germany, and Sweden

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NOTE FROM THE AUTHORS

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Armament Industry European Research Group

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ABSTRACT

The Russian invasion of Ukraine in February 2022 confronted European arms export policies with a unique crisis. This policy paper compares the arms export policies and export control rules of Germany, France, and Sweden, and examines their objectives, how the war in Ukraine has affected their perception of arms exports, and how changes to their arms export policies could impact European harmonisation of export controls. The paper finds that the war in Ukraine had the most direct impact on arms export policies in Germany and Sweden, but not in France. Regarding the future EU harmonisation of export policies, while Germany appears to be the most interested in pursuing this effort, Sweden is reluctant to do so. France's approach to harmonisation at the bilateral-minilateral level could be a middle-ground. However, it would not necessarily solve longer-term issues such as the extensive use of the European Peace Facility for arms transfers or exports of EU-funded joint projects.

Keywords: Germany, France, Sweden, Defence Exports, Regulation, Defence Industry

INTRODUCTION

Russia's full-fledged invasion of Ukraine in February 2022 precipitated European countries into the throes of a resurgence of a major threat in Europe, which has not been seen since the Cold War. Even if Ukraine is not a member of NATO, Putin's Russian regime is not that of the USSR during the Cold War, and the European strategic landscape has radically changed since the 1990s, the shared feeling is that Europeans, despite certain nuances of appreciation, cannot let Russia get away unpunished with its invasion of a country located in their immediate vicinity. The solidarity of European Union member states towards Ukraine was reflected in the decision to use the European Peace Facility (EPF), an off-budget mechanism that partially refunds EU member states' deliveries of lethal and non-lethal equipment to Ukraine to counter the Russian invasion. Arms have thus been transferred to a non-EU, non-NATO country in wartime, a situation the export control systems of most European Union member states were confronted for the first time, at least at this level of intensity.

This 'stress test' situation for export control systems leads to an important question: Will the war in Ukraine lead European countries to change their export policies and export control rules? If so, what are the implications of such transformations for the harmonisation of arms export policies at the EU level? To answer this question, this policy paper compares three countries with different export policies and export control rules: Germany, France, and Sweden. These three countries are representative of different export control policy models within the European Union. From a theoretical standpoint, they are representative of 'industrial' (France) and 'restrictive' (Germany, Sweden) categories of arms exporters.[1] From an export control process standpoint, each country also represents a different model of interaction between the government parliament and civil society when it comes to decisions on arms exports.[2] Furthermore, they are among the six leading arms exporting EU member states. Each of them could thus play a key role if discussions to harmonise export policies at the European level were to intensify, although any future compromise would involve all 27 member states.

For each case study, the paper sought to answer three sets of issues:

> (1) What are the objectives of these countries' export policies and principles governing their export control rules?

[1] Krause, K. (1992). *Arms and the State. Patterns of Military Production and Trade*. Cambridge: Cambridge University Press.
[2] Béraud-Sudreau, L., Faure, S.B.H., Sladeczek, M. (2015). Réguler le commerce des armes par le Parlement et l'opinion publique. Comparaison du contrôle des exportations d'armement en Allemagne, France, Royaume-Uni et Suède. *Politique Européenne*, 48(2), 82-121.

(2) How has the war in Ukraine changed the perception of export policy in these countries?

(3) How could an evolving arms export policy impact these countries' support for the European harmonisation of export controls?

The policy paper concludes with a comparative discussion of the three case studies and examines the implications of the harmonisation of arms export policies at the EU level.

FRANCE

French arms export policy objectives and principles of export control rules

In France, it is necessary to distinguish between the arms export policy and the export control process. The annual report to Parliament, which has existed since 2000, describes these two dimensions. The latest report, published in September 2022, covers data on arms exports for 2021 and reiterates France's involvement in all regimes and regulations regarding arms exports. [3] Indeed, when it comes to export controls, France is a founding member and active participant in the four international control regimes designed to prevent the uncontrolled spread of sensitive weapons and technologies.[4] France has also signed and ratified the Arms Trade Treaty (ATT), enforced the EU's Common Position 2008/944/CSFP 'defining common rules governing control of exports of military technology and equipment', and applied the EU and United Nations embargoes. Therefore, France follows all the international guidelines regulating arms exports. The same applies to Germany and Sweden, which are also parties to international and European treaties and regimes. However, no other political rules exist in the form of legally binding guidelines governing France's arms exports. This, however, differs from the German and Swedish cases, as will be seen below.

Two points can be highlighted from the French interministerial export control process, which mobilises many people in several ministries. First, the various departments of the Ministry of Defence and intelligence services play a key role in the decisions to deliver arms export licences. They assess the operational capacity of the equipment sold, risk of technological proliferation, and appropriateness of the capability requirements expressed by the buyer.

[3] France Ministry of Armed Forces (2022). *Rapport au Parlement sur les exportations d'armement de la France 2022*, Retrieved July 4, 2023, from https://www.defense.gouv.fr/sites/default/files/ministere-armees/Rapport%20au%20Parlement%202022%20sur%20les%20exportations%20d%E2%80%99armement%20de%20la%20France%20%2809%202022%29.pdf.

[4] The Nuclear Suppliers Group; the Australia Group, the Missile Technology Control Regime and the Proliferation Security Initiative.

Therefore, at this level, control goes beyond compliance with international rules governing arms exports. Second, although there are no additional legally binding guidelines for export controls, the various departments involved in this inter-ministerial process follow classified guidelines that specify the degree of exportability of each piece of military equipment depending on the importing country.

Parallel to this rigorous export control process, arms exports are also conceived as a pillar of France's defence policy and form an integral part of its overall response to security issues. Therefore, the French arms export policy is not limited to the export control policy linked to export restrictions resulting from international agreements regulating arms trade. This dimension is also underlined in the report to Parliament, which states that the French arms export policy: (a) 'responds to the legitimate defence needs of our partners by developing cooperation that is essential to our own security'; (b) 'gives our industry the resources it needs to supply the armed forces with equipment and capabilities that are consistent with France's strategic ambitions and its army model, in line with a similar ambition at the European level'.[5]

This provides what could be deemed a 'double positive justification' for France's export policy. The first justification relates to security, in which the primary purpose of arms exports is to defend allies. It applies first to European allies, in which case arms sales are considered to contribute to strategic partnerships. Croatia, Greece, and Belgium are examples of this. These partnerships are not limited to Europe. The report to the Parliament on arms exports in 2022 also refers to the United Arab Emirates, with which France signed a defence agreement in 1995, countries in the Indo-Pacific region (India, Malaysia, Indonesia, and Singapore), and countries in the Middle East within the framework of the fight against terrorism. In each case, the aim of these exports is seen as a way to enhance the security of partner countries. The second justification is the connexion made between arms exports and the need to preserve France's strategic autonomy and the development of European defence. Since the 1950s, France has developed its defence technological and industrial base (DTIB) to guarantee its strategic autonomy. In strategic documents, French strategic autonomy is now seen as a part of a European perspective.[6] With this premise, the report to Parliament on arms exports 2022 concludes that 'such an industry cannot, however, be sustained by national orders alone:

[5] France Ministry of Armed Forces (2022). *Rapport au Parlement sur les exportations d'armement de la France 2022* (see note 1).

[6] French Ministry of Armed Forces (2017). *Revue stratégique de Défense et de Sécurité nationale*. Retrieved July 4, 2023, from https://medias.vie-publique.fr/data_storage_s3/rapport/pdf/174000744.pdf;
France Official Journal (2018). *LOI n° 2018-607 du 13 juillet 2018 relative à la programmation militaire pour les années 2019 à 2025 et portant diverses dispositions intéressant la défense*. Retrieved July 4, 2023, from https://www.legifrance.gouv.fr/download/file/js5RHeR4JqgSfiKAl7nT4YstvrbVw7vibSIX3L_C8eE=/JOE_TEXTE; France Senate (2023). *Programmation militaire pour les années 2024 à 2030*. Retrieved July 4, 2023, from https://www.senat.fr/leg/tas22-148.html.

exports play a crucial role in the sustainability of the DTIB'.[7] This observation is not new; it has been consistently repeated in French defence white papers since 1994.

Russia's invasion of Ukraine and changed perceptions of export policies in France

Russia's full-fledged invasion of Ukraine did not change the French arms export policy. Given the support for Ukraine by three members of the UN Security Council, it was obvious from early on that this war would not lead to the adoption of a UN arms embargo. Such a decision would have had the most direct impact on France and other European states' export control processes.

Following the guidelines of French foreign policy, support for Ukraine was a case of implementation of the first 'positive arms export policy' justification mentioned above. The delivery of military equipment to Ukraine was necessary to reinforce the security of the receiving country, and Ukraine became a 'strategic partnership country' de facto in the French arms export policy. There was only one limit to France's actions in the early stages of Russia's invasion: France was not fully transparent about arms export to Ukraine. This lack of transparency can be explained in two ways.

First, at the beginning of the war, blurred information on arms transfer was seen as necessary to maintain a dialog between French President Emmanuel Macron and Vladimir Poutine, a dialog which objective was to stop Russian aggression against Ukraine. Second, France did not want to provide precise information to the Russian army on the military capabilities delivered to Ukraine. However, by 2023, France had become more transparent and started to give more details on the armament delivered to Ukraine, because some allies such as Poland accused France of not supporting Ukraine sufficiently.[8]

The French political debate does not focus on the export of arms to Ukraine in itself but on the fact that such deliveries could extend the war and delay the possibility of reaching a peace agreement. Such a debate emerged only at the beginning of 2023 when French President Emmanuel Macron announced the delivery of armoured fighting vehicles *AMX-10RC* to Ukraine. At this time, only the Communist Party clearly expressed its opposition to arms sales to Ukraine. Other parties such as La France Insoumise (LFI, far left), Les Républicains (LR, conservative), or the Rassemblement National (RN, far right) only called for the necessity to

[7] France Ministry of Armed Forces (2022). *Rapport au Parlement sur les exportations d'armement de la France 2022* (see note 1).

[8] Grady, J. (2023, April 14). France, Germany not Doing Enough to Support Ukraine, Says Poland's PM, *USNI News*. https://news.usni.org/2023/04/14/france-germany-not-doing-enough-to-support-ukraine-says-polands-pm; Barigazzi, J. (2023, April 19). France and Poland spar as EU plan to buy Ukraine ammo idles in legal limbo, *Politico*. https://www.politico.eu/article/france-poland-eu-plan-buy-ukraine-ammunition-war/.

organise a debate on arms export to Ukraine.[9] Overall, the debate in France focuses on the question of the future European security architecture, the place of Ukraine in this European security architecture, and the future of the relationship with Russia, rather than on the arms export itself which is considered as a tool of French foreign policy, but not the French foreign policy itself.

How could an evolving arms export policy impact French support for European harmonisation of export controls?

Traditionally, France has considered arms export policy as a sovereign matter. Russia's war against Ukraine reinforced the impression in France that this sovereignty principle should remain in the future. The necessity to maintain a sovereign control was reinforced due to the constraint on arms exports decided or considered by countries such as Switzerland and Israel.[10] France also followed with attention Germany's initial reluctance to authorise the delivery of *Leopard-2* main battle tanks to Ukraine.

Whether or not it was linked to the Ukraine war and Germany's initial hesitancies, the report annexed to the new military planning law 2024-2030 stated that 'exports of weapons systems, essential for foreign policy objective, will remain a sovereign prerogative of France.'[11] However, this apparent 'closed door' to a Europeanisation of arms export controls in an official text hides a more pragmatic view. France promotes the development of European defence, of a European strategic autonomy, and supports all the European Commission initiatives to incentivise European armament cooperation and European joint acquisition. Therefore, France knows that reaching these objectives requires solutions agreed upon by all European partners to export the future armament conceived within a European framework, whether it is bilateral, minilateral, multilateral, or even a European Union framework. Considering this objective, it is important to emphasise that France made a positive assessment of the agreement signed with Germany in 2019 on the control of arms exports and extended to Spain in 2021.[12] All stakeholders – in the Ministry of Armed Forces, in the Ministry of Europe and

[9] Carriat, J., Lamothe, J., & Cassini, S. (2023, January 31). Livraisons d'armes à l'Ukraine : plusieurs partis de l'opposition réclament un débat. *Le Monde*. https://www.lemonde.fr/politique/article/2023/01/30/livraisons-d-armes-a-l-ukraine-plusieurs-partis-de-l-opposition-reclament-un-debat_6159890_823448.html.

[10] AFP (March 8, 2023). Swiss president opposes arms exports to Ukraine, citing neutrality. *Euractiv*. https://www.euractiv.com/section/global-europe/news/swiss-president-opposes-arms-exports-to-ukraine-citing-neutrality/; ToI Staff (March 16, 2023). In first, Israel said to authorize sale of defensive military equipment to Ukraine. *Times of Israel*. https://www.timesofisrael.com /in-first-israel-said-to-authorize-sale-of-defensive-military-equipment-to-ukraine.

[11] France National Assembly (2023). Rapport annexé, Programmation militaire pour les années 2024 à 2030 et diverses dispositions intéressant la défense. Retrieved July 4, 2023, from https://www.assemblee-nationale.fr/dyn/16/dossiers/programmation_militaire_2024_2030.

[12] France Official Journal (2019). *Décret n° 2019-1168 du 13 novembre 2019 portant publication de l'accord sous forme d'échange de lettres entre le Gouvernement de la République française et le Gouvernement de la République fédérale*

Foreign Affairs, and in the arms industry – consider that even if this agreement is not completely perfect, it solves many disagreements regarding arms exports. Moreover, it must be noted that during the last Franco-Dutch summit the two countries announced that they "are working together on a possible future Dutch accession to the trilateral (France, Germany and Spain) treaty on export control in the military domain."[13]

Thus, France favours an intergovernmental solution based on a deepened dialog between the national administrations in charge of the control of arms exports to promote a common assessment of arms export destinations and to make common decisions to deliver arms export licences. Thus, France pushed more for a bottom-up and pragmatic methodology than for a top-down one to increase European cooperation on armaments. Therefore, the debate on the harmonisation of European arms export policy is, in fact, considered more relevant than explained in the official communication on this matter. This approach predates Russia's invasion of Ukraine and has not been affected by it.

GERMANY

German arms export policy objectives and principles of export control rules

The German arms export policy has been an enigma for ages. There has always been a striking disconnect between seemingly strict legal regulations for exports and a fuzzy practice of exporting defence industrial goods – Germany being the world's 5th largest arms supplier in the last decade.[14]

As described elsewhere,[15] in these strict legal regulations, the export control system distinguishes between two categories of defence-related products: 'war weapons' (*Kriegswaffen*) or 'other military equipment' (*sonstige Rüstungsgüter*).[16] The inter-ministerial process involved in granting export control licences differs depending on whether the

d'Allemagne relatif au contrôle des exportations en matière de défense (ensemble une annexe), signées à Paris le 23 octobre 2019 (1), Retrieved July 4, 2023, from https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000039373201.

[13] Netherlands Government (2023). Joint declaration – Government Consultations Netherlands - France, Retrieved July 4, 2023, from https://www.government.nl/documents/diplomatic-statements/2023/04/12/joint-declaration---government-consultations-netherlands---france-12-april-2023.

[14] Stockholm International Peace Research Institute (SIPRI), Arms Transfers Database, Top list TIV tables, Retrieved July 4, 2023, from https://armstrade.sipri.org/armstrade/html/export_toplist.php.

[15] Béraud-Sudreau, L. (2019). Building Franco-German Consensus on Arms Exports, *Survival*, *61(4)*, 79-98. https://doi.org/10.1080/00396338.2019.1637124; IISS (2022). France and Germany. In IISS Strategic Dossier, *Arms Sales and Regional Stability: An Assessment* (pp.112-137). https://www.iiss.org/publications/strategic-dossiers/strategic-dossier-arms-sales-and-regional-stability.

[16] Germany Ministry for Economic Affairs and Climate Action (n.d.). FAQs on exports of military equipment. Retrieved July 4, 2023, from https://www.bmwk.de/Redaktion/EN/FAQ/Export-controls-on-military/faq-export-control-for-military-equipment.html.

equipment under consideration falls under 'war weapons' or 'other military equipment'. The process for 'war weapons' is more restrictive, and for particularly sensitive or complex cases, the Federal Security Council (*Bundessicherheitsrat*, BSR), at the ministerial and Chancellor levels, is asked to decide the matter.

Germany's political criteria are publicly available in the form of the Political Principles Adopted by the Government of the Federal Republic of Germany for the Export of War Weapons and Other Military Equipment.[17] Importantly, the Political Principles apply differently to EU and NATO members, and to 'NATO-equivalent countries' (Australia, New Zealand, Japan and Switzerland), on the one hand, and 'third countries' on the other. The former enjoys a presumption of approval of the licence, whereas the latter faces a presumption of denial. Accordingly, for arms exports to third countries, a licence must be justified by 'particular German foreign policy or security-policy interests'.[18] In particular, for 'third countries', the Political Principles state that the licence will not be approved if the recipient state is involved in an armed conflict or where there is a threat of conflict; and where the export of weapons may trigger, maintain or exacerbate the outbreak of an armed conflict. As a matter of principle, deliveries to countries that are involved in external armed conflict or where there is a risk of such conflict breaking out are ruled out, unless recipient countries use their right of self-defence as foreseen in Art. 51 of the UN Charter.[19]

Russia's invasion of Ukraine thus tested the limits of the export control system, and the situation was all the more unique that, in general, there was a lack of public and open political support for arms exports. This is based on a particular German worldview and a reading of one's own history. Germany, after the two world wars, would not place its international influence on military might or the export of deadly weapons. Thus, German weapons should never be used again in war. Instead, working towards peace can best or even be done only by non-military means. This has meant that traditionally parties like the Green or the SPD have campaigned in favour of or more restrictive export control regulations. When in coalition with the CDU, these parties introduced political objectives in coalition agreements. This was the

[17] Germany Federal Government (2020). Strategy Paper of the Federal Government on Strengthening the Security and Defence Industry. Retrieved July 4, 2023, from https://www.bmwk.de/Redaktion/DE/Downloads/S-T/strategiepapier-staerkung-sicherits-und-verteidigungsindustrie-en.pdf?__blob=publicationFile&v=4, p.7.

[18] Germany Ministry of Foreign Affairs (2019). Nationale Exportkontrolle. Retrieved July 4, 2023, from https://www.auswaertiges-amt.de/de/aussenpolitik/aussenwirtschaft/exportkonrolle-national/213172.

[19] Germany Ministry for Economic Affairs and Climate Action (n.d.). Politische Grundsätze der Bundesregierung für den Export von Kriegswaffen und sonstigen Rüstungsgütern. Retrieved July 4, 2023, from https://www.bmwk.de/Redaktion/DE/Downloads/P-R/politische-grundsaetze-fuer-den-export-von-kriegswaffen-und-sonstigen-ruestungsguetern.pdf?__blob=publicationFile&v=4, p.7.

case in 2013,[20] 2018[21] and 2021.[22] The latter committed to introducing a new arms export-control law.

Russia's invasion of Ukraine and changed perceptions of export policies in Germany

Russia's invasion of Ukraine has created two new impulses. First, Germany's arms exports to Ukraine show there are cases in which arms exports can be both beneficial and morally justified. Second, it is fair to assume that the war will change some of Germany's assumptions about the business case for exports, as many see a positive outlook for the DTIB at home and abroad.

The Russian war on Ukraine has generated a unique 'stress test' to the above-mentioned largely uncontested shared societal and political truth. While Germany had already provided weapons to an active war zone, when it armed the Iraqi Peshmerga in 2014 in their fight against Daech, providing weapons to an inter-state conflict was unthinkable before 2022. However, the case of Ukraine suggests that under specific circumstances, Germany's alleged historical lessons do not hold. Here, German weapons rescue innocent lives, as in the case of deliveries of air defence systems, such as the *Patriot* or *IRIS-T* systems. In addition, delivering these weapons is fully in line with international law and the current national export rules which allow for exports to third countries under Art. 51 UN Charter conditions. Indeed, in the case of Ukraine, weapons exports help uphold what Germany values so high: international law and rule-based international order. Military force turned out to be the key instrument to protect this order under the extreme conditions of war and to shape European security in Germany's interest.

Moreover, Switzerland's and Brazil's refusal to provide anti-tank ammunition for anti-aircraft tanks while Ukraine was running out of these essential goods has driven home two lessons. The first is that export controls can seriously restrict a country's room to manoeuvre in a crisis, and second, that differences among allies in export controls are not to be taken lightly. The war in Ukraine will likely also have implications for how Berlin sees the role arms exports play in European armament cooperation.

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[20] Konrad-Adenauer-Stiftung e.V. (2014). Shaping Germany's Future: Coalition Treaty Between CDU/CSU and SPD, 18th legislative period. Retrieved July 4, 2023, from https://www.kas.de/c/document_library/get_file?uuid=d58641a0-02ab-935a-c295-1148b45cc426&groupId=252038 , pp. 7, 9.

[21] Christlich Demokratische Union Deutschlands (2018). Ein neur Aufbruch für Europa, eine neue Dynamik für Deutschland, eine neuer Zusammenhalt für unser Land, Koalitionsvertrag zwischen CDU, CSU und SPD, 19 Legislaturperiode. Retrieved July 4, 2023, from https://archiv.cdu.de/system/tdf/media/dokumente/koalitionsvertrag_2018.pdf?file=1, p. 149.

[22] Germany Federal Government (2021). Mehr Fortschritt Wagen. Bündnis für Freiheit, Gerechtigkeit, und Nachhaltigkeit', Koalitionsvertrag zwischen SPD, Bündnis 90/Die Grünen und FDP, Retrieved July 4, 2023, from https://www.bundesregierung.de/resource/blob/974430/1990812/1f422c60505b6a88f8f3b3b5b8720bd4/2021-12-10-koav2021-data.pdf?download=1, p.146.

How could an evolving arms export policy impact German support for European harmonisation of export controls?

The current coalition government has agreed to issue a national defence exports law, replacing the current framework. The ambition of the law dating back to a Green party's agenda is to limit the scope of discretion the government has in decision-making on defence exports to third-countries by introducing stricter criteria for decision-making.

In October 2022, the Federal Ministry for Economic Affairs and Climate Action (BMWK) published its vision of the main pillars, a so-called "cornerstone paper" for a future national law on regulating national arms exports. An unprecedented broad and open dialogue among various stakeholders from industry, NGOs, and experts preceded the publication.[23]

The ministry's proposal represents an evolution rather than a revolution in German arms export policy. It leaves the basic decision-making logic intact: the government decides on a case-by-case basis and has room for discretion between restricting exports based on a lack of shared values or allowing exports in the case of shared interests with third countries. However, remarkable changes were observed. In principle, the draft seeks to speed up and facilitate arms exports to allies in NATO, the EU, or countries that Germany treats as NATO-like allies. With regard to other countries, the draft paper suggests that more elaborate standards on human rights and democracy should guide the government's decision, unless more important national interests are at stake. Finally, the draft makes important exceptions for European armament cooperation. According to this draft, Berlin would seek to extend membership of the Franco-German-Spanish agreement on arms export controls. Yet, the paper suggests that project partners should use majority voting to decide over critical export decisions.[24] The newly released national security strategy picks up the same key points when discussing the future of German arms export controls.[25] The policy document seems to aim towards a 'balancing act' between restrictiveness and a more strategic approach to arms exports.[26]

[23] Information on the process and publication of all hearings is available here: Germany Ministry for Economic Affairs and Climant Action (2022). Erarbeitung eines Rüstungsexportkontrollgesetzes. Retrieved July 4, 2023, from https://www.bmwk.de/Redaktion/DE/Artikel/Service/Gesetzesvorhaben/erarbeitung-eines-rustungsexportkontrollgesetzes.html.

[24] Mutschler, M. & Wisotzki, S. (December 14, 2022). Why the Future German Arms Export Control Act Goes in the Right Direction—But Not Far Enough. PRIF Blog. Retrieved July 4, 2023, from https://blog.prif.org/2022/12/14/why-the-future-german-arms-export-control-act-goes-in-the-right-direction-but-not-far-enough/.

[25] Germany Federal Government (2023). National Security Strategy. Retrieved July 4, 2023, from https://www.nationalesicherheitsstrategie.de/National-Security-Strategy-EN.pdf.

[26] Giegerich, B. (June 30, 2023). Germany's National Security Strategy previews change in arms-export policy. IISS Military Balance Blog. Retrived July 4, 2023 from https://www.iiss.org/online-analysis/military-balance/2023/06/germanys-national-security-strategy-previews-change-in-arms-export-policy/.

All stakeholders praised some parts of the draft and voiced their criticism of others. For many NGOs, the future export law would be a toothless tiger, as long as civil society groups and victims cannot take potentially unlawful export policies to court. They also worry that European arms cooperation will be used to circumvent stricter German arms export policy.[27] By contrast, industry fears that the decision-making mechanism based on a majority vote in European projects would provide an incentive to reduce the German input into European cooperation.[28]

In the draft paper, Berlin reiterates the goal of harmonising European member states' export policies without much indication of how it would like to shape such an outcome in Brussels. Here too, activists and experts have put forth an idea that is very much in line with the "old" German worldview. In Europe, Germany could be a norm entrepreneur on export controls; Therefore, Germany should put out a strong export law. Other countries will follow the example and issue similar regulations. EU countries would join a German effort to reduce the scope of exports and make this limited scope more legally binding. Thus far, evidence speaks rather against the suggested causal dynamic. There is no indication that EU governments would agree on the limitations of their power, and that the EU Parliament has no authority in this policy field.

In a situation, in which European countries pay lip service to the goal of increasing European cooperation but end up spending much of the increased defence budgets nationally, a purely national German law could backfire. Governments would possibly use such a German self-restraint to improve the position of their industries in the international market. There are examples of defence cooperative products free of German components to ensure that they can be exported. There is an ongoing debate to make "German free" a positive brand for defence goods. This would imply that German industries loose market shares. But it would also mean that German regulations and caveats on defence goods would no longer be exported. Germany would lose influence on the practice of defence cooperation and thus the ability to integrate its concerns into the design of weapons and of appropriate recipients.

[27] Aufschrei Waffenhandel (2022), Stellungnahme zu den Eckpunkten und Erwartungen an die weitere Erarbeitung des Gesetzentwurfs. Retrieved July 4, 2023, from https://www.bmwk.de/Redaktion/DE/Downloads/Stellungnahmen/Stellungnahmen-REKG-Eckpunkteentwurf/aktion-aufschrei-stoppt-den-waffenhandel.pdf?__blob=publicationFile&v=1;
Gemeinsame Konferenz Kirche und Entwicklung (2022). GKKE Fachgruppe Rüstungsexporte kritisiert Eckpunkte zum Rüstungsexportkontrollgesetz. Retrieved July 4, 2023, from https://www.bmwk.de/Redaktion/DE/Downloads/Stellungnahmen/Stellungnahmen-REKG-Eckpunkteentwurf/gkke.pdf?__blob=publicationFile&v=1

[28] Bundesverband der Deutschen Industrie e.V., Bundesverband der Deutschen Luft- und Raumfahrtindustrie e.V., Bundesverband der Deutschen Sicherheits- und Verteidigungsindustrie e.V. (2022). Eckpunkte Rüstungsexportkontrollgesetz. Retrieved July 4, 2023, from https://www.bmwk.de/Redaktion/DE/Downloads/Stellungnahmen/Stellungnahmen-REKG-Eckpunkteentwurf/bdi_bdsv_bdli.pdf?__blob=publicationFile&v=1

The government seems to share some of these concerns, as the draft paper suggests that different rules should be applied to joint European projects. Still, a purely national regulation without a clear German diplomatic push to change practices on a European level, would be rather risky from Berlin's perspective.

Timelines now foresee that the government will not issue the draft before the end of 2023 and parliamentary consultations starting in 2024. The postponement can be an opportunity to re-evaluate the starting point and assumptions, as the war in Ukraine has shaken up some of the basic beliefs and taboos regarding the subject. However, Ukraine is still treated as a singular case, and therefore, a systematic reorientation of Germany's policies towards the arms industry and European arms cooperation is still wanting.

SWEDEN

Swedish arms export policy objectives and principles of export control rules

Contrary to France and Germany, Sweden's export control process does not rely on an inter-ministerial process but is handled by an independent governmental agency, the *Inspektionen för strategiska produkter* (ISP). For sensitive export cases, it can refer to a Parliamentary Committee, the *Exportkontrollrådet*. Only for the most sensitive and complex decisions, ISP can seek the advice of government. Formally, the decision rests with ISP. Similar to Germany, there is a public version of the political guidance that the ISP follows for export control decisions: the 'Swedish guidelines on military equipment exports and other cooperation with foreign partners' (or 'guidelines' for short) can be found in the government bill prepared for the 1992 Military Equipment Act (1922:1300).[29] The guidelines are not in themselves a legal text but a political document.[30] The guidelines provide a public set of criteria for understanding Sweden's arms export policy. The latest legislative amendment (Bill 2017/18:23) notably modified the guidelines to include a democracy criteria.[31]

[29] Sweden Ministry of Foreign Affairs (2015). Krigsmaterielexportöversynskommittéen (KEX), Slutbetänkande "Skärpt exportkontroll av krigsmateriel – Del 1" (SOU 2015:72). Retrieved July 4, 2023, from https://www.regeringen.se/contentassets/5f48df2fa0f64233acc5380217833f87/1_sou_2015_72_del-1_webb_ej-bilaga-4.pdf, p.51; Sweden Government (1992). Regeringens Proposition 1991/92:174 med förslag till lag om krigsmateriel. Retrieved July 4, 2023, from http://data.riksdagen.se/fil/CC395BAF-75B3-4F1B-90D2-B203AA24878D; Sweden Parliament (1992), Lag (1992:1300) om krigsmateriel, Svensk författningssamling 1992:1300. Retrieved July 4, 2023, from https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-%2019921300-om-krigsmateriel_sfs-1992-1300.

[30] Sweden Government (2003). Slutbetänkande av KRigsmaterielUTredningen (UD 2003:03) (SOU 2005:9). Retrieved July 4, 2023, from https://data.riksdagen.se/fil/3046A7BA-0B70-48E2-A0A6-19342DFAD1D5, p.133.

[31] Swedish Ministry of Foreign Affairs (2017). Skärpt exportkontroll av krigsmateriel Prop. 2017/18:23. Retrieved July 4, 2023, from https://www.regeringen.se/rattsliga-dokument/proposition/2017/10/prop.-20171823/

When it comes to exports and armed conflict, the guidelines stipulate 'absolute' or 'unconditional' obstacles, that, if they arise, absolutely prevent the authorisation to export. Such unconditional obstacles are the violations of Sweden's international agreements, a UN Security Council decision, or 'the rules of international law on exports from neutral states during war (absolute obstacles)'. In such instances, a licence 'must not be granted.'[32] Another paragraph in the guidelines more specifically states that licences should not be granted if the recipient 'is involved in an armed conflict with another state, regardless of whether or not a state of war has been declared'.[33] The guidelines are thus central in the definition of the Swedish arms export policy, and also responded to the overall neutral Swedish foreign policy.

Sweden did not cease exports of military equipment to the United States during the war in Iraq or to the UAE despite their involvement in Yemen. This shows that foreign and defence policy motives can override other considerations. [34] Therefore, the war in Ukraine did not entail an overturn of the guidelines, which were flexible enough to be interpreted to allow transfers to Ukraine, despite the ministerial statement preceding the invasion indicating the contrary.[35] However, it was the first time since the 1939 'Winter War' when Sweden assisted Finland, that Swedish weapons were exported in a strategic way, to directly impact the course of an ongoing armed conflict.[36]

Russia's invasion of Ukraine and changed perceptions of export policies in Sweden

Some smaller coalition parties on both the left and right sides of the political spectrum have long argued in favour of stricter arms exports. These include the Green Party, the Left Party, but also the Christian Democrats and the Liberal Party.[37]

[32] Swedish Government (2016) Regeringens skrivelse 2015/16:114 Strategisk exportkontroll 2015 – krigsmateriel och produkter med dubbla användningsområden. Retrieved July 4, 2023, from https://www.regeringen.se/rattsliga-dokument/skrivelse/2016/03/skr.-201516114, p.98.

[33] Sweden Government (2021). Government Communication 2020/21:114 Strategic Export Controls in 2020 – Military Equipment and Dual-Use Items. Retrieved July 4, 2023, from https://www.regeringen.se/contentassets/94cf4ea4df01432a8bc50861385f360c/strategisk-exportkontroll-skr-202021114---engelsk-version/, p.105.

[34] Åkerström, L. (2023), *Den Svenska Vapenexporten*, Stockholm: Leopard Förlag. See notably pp. 143-147.

[35] Wallberg, P. (April 27, 2023). Linde försvarar uttalande om vapen till Ukraina. *Aftonbladet*. Retrieved July 4, 2023, from https://www.aftonbladet.se/nyheter/a/nQOlGo/linde-forsvarar-uttalande-om-vapen-till-ukraina?mc_cid=5b87a5cf42&mc_eid=6a13c28749.

[36] Sweden Government (2023). Regeringens skrivelse, Strategisk exportkontroll 2022 – krigsmateriel och produkter med dubbla användningsområden. Retrieved July 4, 2023, from https://www.regeringen.se/contentassets/0a1bf3ba74844c96b896a6e712c39e97/strategisk-exportkontroll-2022--krigsmateriel-och-produkter-med-dubbla-anvandningsomraden-skr.-202223114.

[37] Bromley, M. (2020). Sweden's Arms Export Controls: Balancing Support and Restraint', in L. Lustgarten (Ed.), *Law and the Arms Trade Weapons, Blood and Rules*, Hart Publishing. https://www.bloomsburycollections.com/book/law-and-the-arms-trade-weapons-blood-and-rules/ch8-sweden-s-arms-export-controls-balancing-support-and-restraint, p.220.

Although the Left Party initially opposed weapons exports to Ukraine, it reconsidered its position by March 2022.[38] On the other side of the spectrum, representatives from the Christian Democrats also called for increased military support in Ukraine.[39] In the previous legislature, all parties in the Riksdag approved continued arms deliveries to Ukraine.[40] The new government led by the Moderate party approved what it has called a 'record-breaking' aid package to Ukraine on the 16th of November, which shows continuity despite the change of ruling coalition in the Riksdag.[41] Thus, there is an overall political consensus in support of military assistance for Ukraine, including in the form of weapons transfers. As discussions evolve regarding the transfer of combat aircraft to Ukraine, after Poland and Slovakia's decisions to supply *Mig-29*, and *F-16* international coalition, it remains to be seen whether Sweden will agree to the transfer of *Gripen* combat aircraft.[42]

However, for Sweden, the implications of the war in Ukraine for its arms exports relate more directly to its NATO membership application and end of Sweden's historical neutrality. This was already evident in the evolution of the ISP's communication in September 2022, when it came to exporting military equipment to Turkey. Although exports of military equipment to Turkey had been suspended since October 2019, ISP reviewed its assessment of export licences to Turkey considering Sweden's application for NATO membership.[43] This also followed the government's own policies, after a statement by the Foreign Minister in June 2022, indicating that 'NATO membership can also change the conditions for munitions exports within our national regulatory framework'.[44]

How could an evolving arms export policy impact Swedish support for European harmonisation of export controls?

Swedish arms export guidelines are perceived to be flexible enough to accommodate exports to countries in conflict when there are overriding foreign and security policy interests. While

[38] Larsson, L., & Nilsson, O (March 1, 2022). V svänger angående vapenstöd till Ukraina. *Svenska Dagbladet*. Retrieved July 4, 2023, from https://www.svd.se/a/Jxgbdj/nytt-v-mote-efter-nej-till-ukrainavapen.
[39] Sweden Parliament (2022). Ökning av stödet till Ukraina Motion 2022/23:1806 av Magnus Jacobsson (KD). Retrieved July 4, 2023, from https://www.riksdagen.se/sv/dokument-lagar/dokument/motion/okning-av-stodet-till-ukraina_HA021806.
[40] Jones, E., & Rosén, H. (March 29, 2022). Kriget i Ukraina skakar Vänsterpartiet inifrån. *Dagens Nyheter*. Retrieved July 4, 2023, from https://www.dn.se/sverige/kriget-i-ukraina-skakar-vansterpartiet-inifran/; Jones, E., (March 16, 2022). Uppgörelse: Nära tre miljarder extra till försvaret i år. *Dagens Nyheter*. Retrieved July 4, 2023, from https://www.dn.se/sverige/uppgorelse-nara-tre-miljarder-extra-till-forsvaret-i-ar/.
[41] Sweden Parliament (2022). Regeringen skickar rekordstort stödpaket till Ukraina. Retrieved July 4, 2023, from https://www.regeringen.se/artiklar/2022/11/regeringen-skickar-rekordstort-stodpaket-till-ukraina/.
[42] *The Economist* (April 23, 2023). Ukraine's top guns need new jets to win the war. Retrieved July 4, 2023, from https://www.economist.com/europe/2023/04/23/ukraines-top-guns-need-new-jets-to-win-the-war.
[43] Inspektionen för Strategiska Produkter (September 30, 2022). Tillstånd för följdleveranser av krigsmateriel till Turkiet. Retrieved July 4, 2023, from https://isp.se/nyheter/tillstand-for-foljdleveranser-av-krigsmateriel-till-turkiet/.
[44] Sweden Government (June 10, 2022). Utrikesdeklarationen juni 2022. Retrieved July 4, 2023, from https://www.regeringen.se/tal/2022/06/utrikesdeklarationen-2022/.

the guidelines have been interpreted to export to Turkey – as well as Albania, Montenegro, and North Macedonia- in light of the NATO membership application, they were designed and written at times of Swedish neutrality. It remains to be seen whether they will need revision in the event of NATO membership. However, these evolutions are not likely to have an impact on Sweden's position towards more harmonisation of arms export policies at the European level. Even though Sweden is a member of the Letter of Intent (LoI) club which includes discussions on arms exports and participates in COARM as all other EU member states, Swedish stakeholders do not look favourably on further harmonisation through EU institutions or on the Aachen Treaty-*de minimis* agreements. The reluctance stems from the fact that these avenues for harmonisation could lead Sweden to loosen what is considered a more restrictive approach to arms exports than other EU member states. There may be a divergence of approach within the Swedish establishment in this regard: while companies tend to ask for a EU 'level-playing field' in terms of export controls, both the authorities but also advocacy organisations emphasise the importance of maintaining a national competency on arms export policy decision-making.

CONCLUSION: PERSPECTIVES OF AGREEMENTS ON EUROPEAN HARMONISATION

Overall, Russia's full-fledged invasion of Ukraine had the most direct impact on political debates surrounding arms exports in Germany and Sweden. Both countries had previously sent weapons to war zones or countries at war. However, Russia's aggression against Ukraine is a unique 'stress test' for these countries' arms export policies, with a more direct use of weapons transfers for strategic purposes. France had already adopted such an approach in the past, as such the change was not as dramatic for its arms export policy.

However, the foreseeable changes in German and Swedish arms export systems are not directly linked to the war in Ukraine, although it has influenced the discussions. In Germany, there was a political agreement pre-dating February 2022 between political parties to revise the export control rules. For Sweden, although a revision is far from certain, given the previous experience for revisions under a lengthy parliamentary committee discussion,[45] if it does take

[45] The 'KEX' investigative committee, which worked on introducing a democracy criteria in the export control guidelines was established in June 2012 and handed its report in June 2015 (See Sweden Government [2015]. Skärpt exportkontroll av krigsmateriel [SOU 2015:72]. Retrieved July 4, 2023, from https://www.regeringen.se/rattsliga-dokument/statens-offentliga-utredningar/2015/06/sou-201572/.

place it would be most likely due to the NATO membership application. France again did not see the need to change.

Regarding the implications for future EU harmonisation, awareness in each country will be discussed. These three countries seem to come at this issue from very different positions and with vary different interests. Germany appears to be the most interested and engaged in the idea of some degree of harmonisation at the EU level. France is officially not in favour, but seeks harmonisation at the bilateral/minilateral level as a necessity to promote European armament cooperation in the future, which is a challenge for the main future systems. However, the French approach circumvents Brussels. Sweden does not appear in favour of either an EU-level common effort; however, it remains to be seen whether Stockholm could be interested in this Europeanisation outside of the EU that Paris is seeking (and in which Berlin has already bought into through the Aachen Treaty).

Further harmonisation of export controls short of the EU-isation is thus one of the possible trajectories of this policy field. Such trajectory would need to be a compromise among all 27 member states. Although this approach may generate more flexibility, recreating a form of 'Letter of Intent' group,[46] it will nonetheless fall short of capturing questions that EU member states may be confronted with in the future with the extensive use of the European Peace Facility (EPF) or the development of the European Defence Fund (EDF) projects. One could consider that EDF projects will not be ready for export before 2030-2035. Therefore, it could be so that, if European national arms export policies were gradually harmonised through the Aachen Treaty/de-minimis process in the next decade, then it would facilitate the harmonisation of export controls at the EU level further down the road. Nonetheless, it is uncertain whether the lack of EU harmonisation of export controls today impedes the development of more ambitious joint armament projects or whether the emergence of more joint armament projects is the condition that will push member states to harmonise export controls at the EU level. If it is the former, then member states should be able to face this challenge to avoid hampering more ambitious armament cooperation. These questions may still seem far ahead, but this dialogue should start today, given the topic's sensitivity and likely lengthy negotiations that it will require. Those negotiations will not only involve all member states but also the European Parliament. The latter will have a say on the future of both, the EDF and the nascent European Defence Investment Programme (EDIP) regulation. Currently European Parliament's explains a strong preference for an EU-wide harmonisation of arms exports. The art 225 of the TFEU which declares that "The European Parliament may, acting

[46] UK Government (2015). Letter of Intent: restructuring the European defence industry. Retrieved July 5, 2023, from https://www.gov.uk/guidance/letter-of-intent-restructuring-the-european-defence-industry#related-information.

by a majority of its component Members, request the Commission to submit any appropriate proposal on matters on which it considers that a Union act is required for the purpose of implementing the Treaties" also gives the possibility to European Parliament to launch initiative. Taking in account that the president of the EC, Ursula von der Leyen, has undertaken to respond systematically to Parliament resolutions proposing a legislative initiative[47] the European Parliament may play a greater role in the future, and even if it not the most likely scenario, the issue of how the harmonisation of export controls is to be organised will become even more acute.

[47] The Working Methods of the Von der Leyen Commission: Striving for more at home and in the world, 4 December 2019, https://ec.europa.eu/commission/presscorner/detail/en/ip_19_6657

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The Armament Industry European Research Group (Ares Group) is a high-level network of security and defence specialists across Europe. Its aim is to provide a forum to the European armament community, bringing together top defence industrial policy specialists, to encourage fresh strategic thinking in the field, develop innovative policy proposals and conduct studies for public and private actors.