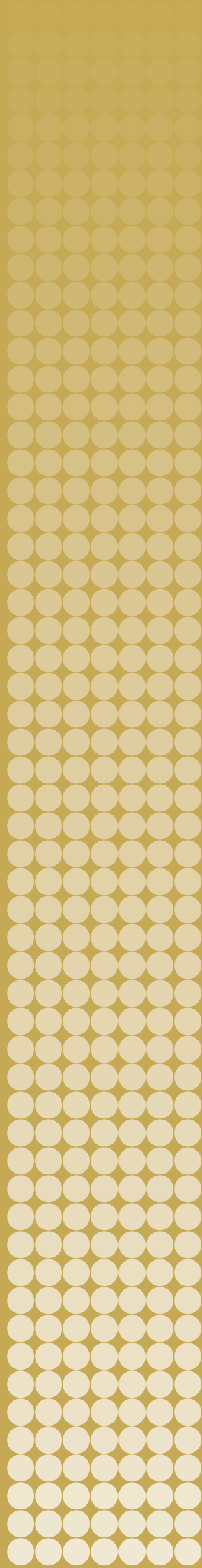


FUNDING ARMS TRANSFERS THROUGH THE EUROPEAN PEACE FACILITY

Preventing Risks of Diversion and Misuse

GIOVANNA MALETTA AND LAURIANE HÉAU



**STOCKHOLM INTERNATIONAL
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Summary

Since it was established in March 2021, the European Peace Facility (EPF) has become the main source of funding for European Union (EU) external actions in the field of crisis management and conflict prevention with defence and military implications. These actions include initiatives such as EU military missions and operations, support to military peace operations led by other actors and assistance to strengthen third states' military capacities. In addition, through the EPF, EU security assistance can also include the supply of lethal military equipment and, thus, weapons. This means that the EU, for the first time, can use joint funds to finance arms transfers to partners potentially anywhere in the world.

Non-governmental organizations and some members of the European Parliament have criticized the EPF on the grounds that it circumvents EU treaties that prohibit the use of the EU's budget for military expenditures, further militarizes the EU's approach to crises and conflicts, and lacks sufficient controls, oversight and transparency measures. The prospect that the EPF could be used to finance the supply of lethal military equipment to countries that are fragile and affected by political instability and armed conflict has also sparked concerns by the same actors on the grounds that the transfer of this type of equipment could exacerbate armed violence and ultimately harm civilians. Arms transfers in these contexts do bear higher risks that the weapons provided may be misused or diverted to unauthorized end-users. Considering the circumstances in which the EPF is already or will likely be funding the provision of military equipment, including weapons, these risks are particularly tangible. The experience in this regard of some countries in sub-Saharan Africa—some of which are already recipients of EU-funded security assistance—is illustrative of the challenges that the implementation of future or current EPF assistance measures in this and other regions will face and, thus, provides some useful lessons.

The EU and its member states have instruments and expertise at their disposal, which they should use to minimize the potential negative consequences generated by using the EPF for addressing partners' security needs. These include preventing overlaps in establishing relevant controls, including post-shipment controls, and coordinating EPF actions with assistance in the field of arms transfer and small arms and light weapons controls. These actors should also address concerns about the EPF regarding the level of oversight and transparency surrounding the instrument.

This paper aims to contribute to ongoing discussions about how the EPF should be implemented. It describes why the EPF was established, what is currently known about the deployment and functioning of its 'equip' component, and the fund's potential limitations. Using the experience of partner countries in sub-Saharan Africa as the main example, it discusses the main risks of arms diversion and misuse and what types of control and monitoring measures are available or should be put in place in the context of EPF assistance measures' implementation in order to mitigate them.

Recommendations

In light of all this, the paper recommends that the EU and its member states consider:

Giving the European Parliament a role in the implementation of the EPF.

Ensuring transparency on what equipment is funded by the EPF.

Using the full range of post-shipment controls and ensuring coordination between the EU and EU member states on how these are implemented.

Mapping and using the tools and expertise that the EU has at its disposal to conduct risk assessments and post-shipment controls.

Building links between EPF assistance measures and arms transfer and SALW control-related assistance activities.

Retaining and developing good practices.

Abbreviations

APF	African Peace Facility
AMISOM	African Union Mission to Somalia
ATT	2013 Arms Trade Treaty
AU	African Union
CAR	Central African Republic
CFSP	Common Foreign and Security Policy
COARM	European Union Council Working Party on Conventional Arms Exports
CSDP	Common Security and Defence Policy
EEAS	European External Action Service
EPF	European Peace Facility
EU	European Union
EUTM	European Union Military Training Mission
G5	Group of Five
IHL	International humanitarian law
IHRL	International human rights law
IMF	Integrated Methodological Framework
MINUSMA	United Nations Multidimensional Integrated Stabilization Mission in Mali
MNJTF	Multinational Joint Task Force
PSSM	Physical security and stockpile management
SALW	Small arms and light weapons
UNAMID	African Union–United Nations Hybrid Operations in Darfur
UNIDIR	United Nations Institute for Disarmament Research
UNPOA	United Nations Programme of Action on small arms and light weapons

1. Introduction

In March 2021 the Council of the European Union (EU) officially established the European Peace Facility (EPF).¹ The EPF is a fund that the EU and its member states can use to support external actions with defence and military implications. The EU has framed the EPF as one of the measures to fulfil the goals outlined in the 2016 EU Global Strategy, including strengthening its security and defence and developing an integrated approach to conflict and crises.² The EPF is also mentioned several times within the Strategic Compass, which aims to develop an actionable framework for strengthening the EU's security and defence policy by 2030 and a common EU strategic culture.³

The EPF aims to contribute to EU strategic goals by allocating funding in support of Common Foreign and Security Policy (CFSP) actions that are military and security oriented.⁴ The costs attached to these actions are not eligible to be covered by the EU's regular budget. Therefore, the facility, which initially had a financial ceiling of approximately €5 billion (in 2018 prices) for the period between 2021 and 2027, runs as an off-budget mechanism financed through EU member states' separate yearly contributions.⁵ CFSP actions that the EPF can fund include military missions and operations conducted as part of the EU Common Security and Defence Policy (CSDP).⁶ In addition, the EPF can support assistance measures that include both actions to (a) strengthen the military and defence capacities of third states bilaterally or through regional and international organizations; and (b) support military peace support operations.⁷ Notably, these assistance measures can fund the supply of 'military equipment, or platforms, designed to deliver lethal force', or in other words, they include weapons, something which has never previously been coordinated at the EU level.

In February 2022, in response to the Russian invasion of Ukraine, the EU decided to use the EPF to 'contribute to strengthening the capabilities and resilience' of the Ukrainian armed forces. Specifically, this decision provided for the allocation of €450 million to fund the supply of weapons to Ukraine.⁸ Since then, the EU has further increased this amount and, at the time of writing, the allocated EPF resources to provide Ukraine with lethal military equipment reached a total of €1.84 billion.⁹ This marks the first time that the EPF has been used to fund the provision of lethal military equipment. However, the discussions that accompanied the establishment of

¹ Council of the European Union, 'Council reaches a political agreement on the European Peace Facility', Press release, 18 Dec. 2020; and Council of the European Union, 'Council Decision (CFSP) 2021/509 of 22 Mar. 2021 establishing a European Peace Facility, and repealing Decision (CFSP) 2015/528', *Official Journal of the European Union*, L102, 24 Mar. 2021.

² *Shared Vision, Common Action: A Stronger Europe. A Global Strategy for the European Union's Foreign and Security Policy* (European Union Global Strategy: June 2016). See also Council of the European Union (note 1), preamble.

³ European External Action Service, 'A Strategic Compass for Security and Defence: For a European Union that protects its citizens, values and interests and contributes to international peace and security', 24 Mar. 2022, p. 25.

⁴ European Commission, 'What we do: European Peace Facility', accessed on 25 Feb. 2022.

⁵ See Article 41 of the consolidated version of the Treaty on European Union, *Official Journal of the European Union*, C326, 26 Oct. 2012; and Immenkamp, B., 'European Peace Facility: Investing in international stability and security', Briefing, European Parliamentary Research Service, Oct. 2021, p. 3.

⁶ The EU Common Security and Defence Policy (CSDP) is an integral part of the EU Common Foreign and Security Policy (CFSP). The CSDP defines 'the EU's framework in the field of defence and crisis management' and constitutes the basis for the 'EU political and military structures, allowing for military and civilian missions and operations abroad'. See: European Parliament, 'Common Security and Defence Policy', *Fact Sheets on the European Union*, accessed on 19 May 2022.

⁷ Council of the European Union (note 1), article 1.

⁸ Council of the European Union, 'EU adopts new set of measures to respond to Russia's military aggression against Ukraine', Press release, 28 Feb. 2022.

⁹ Council of the European Union, 'Council Decision (CFSP) 2022/809 of 23 May 2022 amending Decision (CFSP) 2022/338 on an assistance measure under the European Peace Facility for the supply to the Ukrainian armed forces of military equipment, and platforms, designed to deliver lethal force', *Official Journal of the European Union*, L145, 24 May 2022; and Council of the European Union, 'Timeline: European Peace Facility', accessed on 25 May 2022.

the EPF indicated that a key focus for the assistance measures supported by the EPF would be arms transfers to partners in sub-Saharan Africa, where the EU has already provided various types of non-lethal security assistance through different funding mechanisms.¹⁰ Non-governmental organizations (NGOs) and some members of the European Parliament have criticized the EPF on the grounds that it circumvents EU treaties prohibiting the use of the EU's budget for military expenditures, further militarizes the EU's approach to crises and conflicts, and lacks sufficient controls, oversight and transparency measures.¹¹ The prospect that the EPF could be used to finance the supply of lethal military equipment to countries that are fragile and affected by political instability and armed conflict has also sparked concerns by the same actors on the grounds that the transfer of this type of equipment could exacerbate armed violence and ultimately harm civilians.

Given the crises and security issues that the EPF is meant to address, ensuring that the provision of lethal military equipment does not lead to diversion and misuse will be a clear challenge. Some tools attached to the EPF that are at the disposal of the EU could allow this mechanism to meet the security needs of its partners while at the same time mitigate the aforementioned risks. However, ensuring that these mechanisms work effectively will require the coordination of certain EU institutions and member states.

Against this backdrop, this paper aims to contribute to ongoing discussions about how the fund should be implemented. Chapter 2 begins by elaborating on why the EPF was established, what is currently known about the deployment and functioning of its 'equip' component, and the fund's potential limitations. In chapter 3, the focus is on the risks of diversion and misuse that arms transfers in volatile security contexts can present, with partner countries in sub-Saharan Africa used as the main example. The experience of sub-Saharan Africa in this regard provides useful lessons that can be learned for future EPF assistance measures in this and other regions. Although the use of the EPF to fund arms transfers to Ukraine is referenced throughout the paper as an example of how this mechanism has been used in practice, military assistance to Ukraine remains outside of the scope of this paper. Chapter 4 outlines what types of control and monitoring measures the EPF envisages and explains how these could be supported by pre-existing post-shipment controls and assistance that is already available in the field of arms transfers and small arms and light weapons (SALW) controls in preventing and addressing diversion-related risks. Lastly, chapter 5 concludes with policy recommendations.

¹⁰ See e.g. "We need arms": Europe's risky move to project its influence in conflict zones', *Financial Times*, 23 Mar. 2021; and Nielsen, N., 'Borrell: Africa "needs guns" for stability', *EUobserver*, 28 Feb. 2020.

¹¹ 'European 'Peace' Facility: Causing harm or bringing peace?', Joint civil society statement, Nov. 2020; 'European Peace Facility: Quote from Hannah Neumann MEP', Greens/EFA in the European Parliament, 22 Mar. 2021; Rankin, J., "Totally dysfunctional": Sophie in 't Veld on the EU's relationship with democracy', *The Guardian*, 27 Apr. 2022; Guiryanan, O. et al., 'European security assistance: The search for stability in the Sahel', *Saferworld*, Sep. 2021; and European Parliament, 'Minority opinion on the Recommendation to the High Representative and to the Council on the Proposal of the High Representative of the Union for Foreign Affairs and Security Policy, with the support of the Commission, to the Council for a Council Decision establishing a European Peace Facility (2018/2237(INI))', 7 Mar. 2019.

2. The European Peace Facility: Rationale, function and limitations

The EPF incorporates and replaces the Athena mechanism and the African Peace Facility (APF) which, since 2004, were used to fund EU CSDP military missions and operations and provide financial support to African peace support operations, including those with a military component.¹² Today, the EPF has the advantage of offering a single and streamlined source of funding to support these types of EU action. Importantly, the EU emphasizes that the EPF is also able to fill some of the gaps that existed in these two previous tools.¹³

Main changes introduced by the European Peace Facility

Since 2004 and until the EPF was established in 2021, the APF and the Athena mechanism played an important role in funding actions in support of external partners in the area of peace and security, but these were limited in scope and coverage.¹⁴ The APF could only support military operations conducted or authorized by the African Union (AU), and the bulk of APF expenditure (about 93 per cent in 2004–19) was indeed used for this purpose—for example, to support the AU Mission to Somalia (AMISOM), the Multinational Joint Task Force (MNJTF) against Boko Haram, and the Group of Five (G5) Sahel Joint Force, among others.¹⁵ More specifically, the APF funded the cost of transporting troops, soldiers' living expenses, and the development of capabilities, but it could not cover expenditure for arms and ammunition.¹⁶ The Athena mechanism, was used to finance the common operational costs of CSDP military missions and operations (which include EU military training missions, EUTMs) related to transport, infrastructure and accommodation, among others, while participating EU member states would cover expenses relating to national personnel and materiel.¹⁷ As a result, EUTMs were not directly able to provide lethal military equipment to the forces that they were training, and often needed to rely on member states or partner countries to fill this gap and enable the training.¹⁸

Gaps in scope and geographic coverage meant that EU security assistance, either through the APF or CSDP military missions and operations, was often deemed inadequate for meeting the security needs of partners on the ground. For instance, several sources have pointed out that the fact that EUTMs did not provide lethal

¹² Council of the European Union, 'Athena: Financing security and defence military operations', accessed on 25 Feb. 2022; and European Commission, 'Africa–EU cooperation', International Partnerships, accessed on 25 Feb. 2022. Athena and the APF were also set up as off budget. The Athena mechanism was a separate financial arrangement set up by the Council of the European Union to administer the financing of the common costs of the CSDP military missions and operations by EU member states. The African Peace Facility was a 'financing scheme' funded through the European Development Fund, an EU financial instrument funded directly by EU member states, running outside of the EU Regular Budget. See Immenkamp (note 5), p. 4, 6.

¹³ Council of the European Union, 'Proposal of the High Representative of the Union for Foreign Affairs and Security Policy for a Council Decision establishing a European Peace Facility', 9736/18, 13 June, 2018, pp. 2–4.

¹⁴ See e.g. Furness, M. and Bergmann, J., 'A European peace facility could make a pragmatic contribution to peacebuilding around the world', Briefing Paper, No. 6/2018, German Development Institute, June 2018; and Santopinto, F. and Maréchal, J., 'EU military assistance under the new European Peace Facility', Research Paper, Konrad Adenauer Stiftung, 16 Feb. 2021.

¹⁵ European Commission, *African Peace Facility: Annual Report 2019* (Publications Office of the European Union: Luxembourg, 2020), p. 10.

¹⁶ European Commission (note 15), p. 6.

¹⁷ Council of the European Union (note 12).

¹⁸ Hagström Frisell, E. and Sjökvist, E., 'To train and equip partner nations: Implications of the European Peace Facility', Swedish Defence Research Agency, FOI: International Military Missions, Feb. 2021, pp. 2–3.

Box 1. The equipment covered by the European Peace Facility

The council decision establishing the European Peace Facility (EPF) provides that assistance measures funded by this mechanism can also allow for ‘the supply of military equipment, or platforms, designed to deliver lethal force’.^a This expression is not clearly defined in the document. In other instances the council decision refers to the possibility of ‘assistance measures involving the export or transfer of items’ on the European Union (EU) Common Military list.^b The EU Common Military List is based on the Wassenaar Arrangement’s Munitions List and encompasses 22 categories of military items ‘specially designed’ or ‘modified’ for military use. These include conventional weapons systems such as small arms and light weapons, rockets and missiles, tanks and other military armed vehicles, aircrafts, among others.^c

^a See paras. 21–22 and Art. 5(3), 26(7), 57(3), 59(5) of Council of the European Union, ‘Council Decision (CFSP) 2021/509 of 22 Mar. 2021 establishing a European Peace Facility, and repealing Decision (CFSP) 2015/528’, *Official Journal of the European Union*, L102, 24 Mar. 2021.

^b See para. 14 and Art. 9(5), 56(3) of Council of the European Union, ‘Council Decision (CFSP) 2021/509 of 22 Mar. 2021 establishing a European Peace Facility, and repealing Decision (CFSP) 2015/528’, *Official Journal of the European Union*, L102, 24 Mar. 2021.

^c Council of the European Union, ‘Common Military List of the European Union’, 6441/22, 22 Feb. 2022.

military equipment risked weakening the effectiveness of training provided to partners in Central African Republic (CAR), Mali and Somalia.¹⁹

In contrast, the EPF’s global scope and reach means that the EU can support third states in strengthening their capacities relating to defence and military matters or the military aspects of peace operations potentially anywhere in the world, not just in Africa, as was the case with the APF. In this context, the EPF can be used to finance the provision of lethal military equipment to the armed forces of a third state, a military operation led by a group of third states, or to military forces trained in EUTMs (see box 1).

Members of the EU Military Staff and the EU Military Planning and Conduct Capability, as well as the High Representative of the Union for Foreign Affairs and Security Policy (EU High Representative), Josep Borrell, have openly justified the introduction of this component as a way to enhance the EU’s role as a security provider and to fill in gaps in the provision of relevant assistance.²⁰

Functioning of the European Peace Facility

Since the EPF became operational in July 2021, it has been used to cover the common costs of an EUTM in Mozambique and to support the AU.²¹ This assistance to the AU is a general assistance programme initially planned until the end of 2021 and currently until 2024. Further, EU member states have agreed to use the EPF to provide non-lethal support to the armed forces of several states, including in sub-Saharan Africa (e.g. those engaged by the EUTMs in Mali and Mozambique) and also in the Western Balkans and Eastern Europe (e.g. Bosnia and Herzegovina and Ukraine) (see appendix A).²² However, it was only in February 2022 that, as mentioned, the EPF was used for the first time to fund the supply of lethal military equipment in the context of the

¹⁹ See e.g. Hagström Frisell and Sjökvist (note 18); Immenkamp (note 5); and Santopinto and Maréchal (note 14); Williams, P. D. and Ali, H. Y., ‘The European Union Training Mission in Somalia: An assessment’, SIPRI Background Paper, Dec. 2020; Hickendorff, A. and Acko, I., ‘The European Union Training Mission in the Central African Republic: An assessment’, SIPRI Background Paper, Feb. 2021, pp. 12–13; and Boudais, V. and Maïga, S., ‘The European Union Training Mission in Mali: An assessment’, SIPRI Background Paper, Apr. 2022.

²⁰ Immenkamp (note 5); and Herszenhorn, D. M., Barigazzi, J. and Marks, S., ‘To be top gun on foreign affairs, Borrell says EU must buy weapons’, Politico, 28 Feb. 2020.

²¹ Council of the European Union, ‘Council Decision (CFSP) 2021/1210 of 22 July 2021 on an assistance measure taking the form of a general programme for support to the African Union under the European Peace Facility in 2021’, *Official Journal of the European Union*, L263, 23 July 2021; Council of the European Union, ‘European Peace Facility: €600 million for support to the African Union’, 21 Apr. 2022; and Council of the European Union, ‘EU Military Training Mission in Mozambique set to start its operations’, Press release, 15 Oct. 2021.

²² Council of the European Union, ‘European Peace Facility: Council adopts assistance measures for Georgia, the Republic of Moldova, Ukraine and the Republic of Mali’, 2 Dec. 2021; and Council of the European Union, ‘European Peace Facility: Council adopts additional support for Mozambique’, 21 Apr. 2022.

war in Ukraine.²³ Examining how the EPF has been used so far therefore provides a few additional details on how this mechanism works, including processes leading to the supply of lethal military equipment as well as potential weaknesses in its management and oversight.

Establishing an assistance measure under the European Peace Facility

The use of the EPF to fund assistance measures must be unanimously approved by EU member states through EU council decisions. The process leading to approval can be activated by a request for assistance submitted by the potential beneficiary of the action.²⁴ The initial proposal for assistance is outlined in a concept note which includes a preliminary risk and impact analysis conducted by the European External Action Service (EEAS). For instance, the concept note in February 2022 that preceded the adoption of an assistance measure to supply lethal military equipment to the Ukrainian armed forces mentions, among others, the risks of the weapons ending up in the wrong hands or being used in violation of international humanitarian law (IHL).²⁵ These risk and impact analyses should also include recommendations on how to mitigate the risks and safeguard the provision of the proposed assistance measure as well as list conditions and commitments to be agreed between the beneficiary and the EU.²⁶

The concept note serves as the basis for the council decision that formally establishes the assistance measure. The council decision defines the main elements of an EPF assistance measure (e.g. financial scope, beneficiary, implementing actors), elaborates on the aforementioned conditions that should be part of the arrangement between the EU and the beneficiary, and includes provisions on monitoring and evaluation.²⁷ The EU High Representative and the EEAS remain responsible for monitoring that the beneficiary of the assistance measure acts in compliance with the conditions and the requirements established by the relevant council decision. The infringement of the agreed conditions by the beneficiary can lead to the suspension or even termination of the assistance measure.

The use of the EPF must be approved unanimously by EU member states, but in the case of an assistance measure that involves the transfers of lethal military equipment, EU member states can constructively abstain and allocate corresponding contributions to another EPF assistance measure instead.²⁸ This is likely a way of accommodating EU member states that are hesitant to contribute to an assistance measure that foresees the funding of such equipment in light of their tradition of neutrality or other related constitutional constraints.²⁹ Austria, Ireland and Malta, for instance, are exempt from the EPF's assistance measure for the supply of weapons to Ukraine (although they are contributors to the 'non-lethal' package of assistance measures in support of Kyiv).³⁰

²³ Council of the European Union, 'EU adopts new set of measures to respond to Russia's military aggression against Ukraine', Press release, 28 Feb. 2022.

²⁴ See Council of the European Union (note 1), article 59.

²⁵ Council of the European Union, 'Concept note for an assistance measure under the European Peace Facility for the supply to the Ukrainian Armed Forces of military equipment, and platforms, designed to deliver lethal force', 6661/22, Brussels, 27 Feb. 2022, p. 3, 8.

²⁶ See Council of the European Union (note 1), article 57.

²⁷ See Council of the European Union (note 1), article 59, 62.

²⁸ 'Under Article 31 of the Treaty on European Union (TEU), the country that constructively abstains may qualify its abstention by making a formal declaration. In that case, it shall not be obliged to apply this decision, but shall accept that the decision commits the EU.' See European Union, 'Absention, constructive (positive abstention)', [n.d.].

²⁹ Santopinto and Maréchal (note 14), p. 17.

³⁰ See e.g. Murphy, D., 'Ireland to "constructively abstain" from EU arms package for Ukraine', *RTE*, 27 Feb. 2022; and Council of the European Union, 'Council Decision (CFSP) 2022/339 of 28 February 2022 on an assistance measure under the European Peace Facility to support the Ukrainian Armed Forces', *Official Journal of the European Union*, L61, 28 Feb. 2022.

In terms of how military equipment—including lethal equipment—is procured and provided, EPF assistance measures that fund the transfers of these items would normally entail the launch of a procurement procedure through the implementing actors. This procedure—through which the EPF finances the supply of the equipment—is led by the Foreign Policy Instrument of the European Commission, in its role as EPF Administrator for assistance measures and in accordance with EPF financial regulations. Implementing actors, or their contracted suppliers, will then have to apply for the required export licence to the relevant national authority to be able to deliver the equipment to the beneficiary. The EU member state from which the transfer of the equipment originates retains its full prerogative to authorize (or deny) the export.³¹ The pressing circumstances generated by the war in Ukraine and the need to respond promptly to its request for assistance did not allow for a procurement procedure, and it was agreed to recur to EU member states' armed forces stocks.³² As such, the council decision that established the EPF assistance measure to provide lethal military equipment to Ukraine identifies the ministries of 24 EU member states (mostly ministries of defence) as the implementing actors.³³ In this framework, the EPF will then be used to pay for the deliveries undertaken by these ministries. In order to coordinate supply and demand, the EU military staff has set up a clearing house mechanism which allows for the matching of Ukraine's request for equipment with what EU member states—and other like-minded states—can provide.³⁴ However, at the time of writing, the process of validating EU member states' request for reimbursement is still ongoing, and it therefore remains unclear to what extent and in which year they will receive compensation from the EPF.³⁵

The establishment and implementation of assistance measures under the EPF are steered by the Integrated Methodological Framework (IMF), a guidance document prepared by the council to assess the potential risks, benefits and impact of these actions and identify corresponding mitigation measures.³⁶ The document is not public, although some information is available on the EEAS website.³⁷ Many of the principles included in the IMF are directly relevant in case of an assistance measure for the provision of lethal military equipment. For instance, under the direction of the IMF, one of the key principles underpinning the assessment and implementation of EPF assistance measures is the beneficiaries' compliance with relevant arms transfer standards—including those established by the 2013 Arms Trade Treaty (ATT) and the 2008 EU Common Position on arms exports (EU Common Position). In addition, the IMF explicitly indicates 'post-delivery controls' as one of its key principles.

Potential limitations

Overlaps in establishing controls

The council decision establishing the EPF clarifies that any assistance measures 'involving the export or transfer' of items on the EU Common Military List shall

³¹ Representative of the European External Action Service, Communication with authors, 11 Mar. 2022.

³² Bilquin, B., 'Russia's war on Ukraine: The EU's financing of military assistance to Ukraine', European Parliamentary Research Service, 20 May 2022, p. 2.

³³ Council of the European Union, 'Council Decision (CFSP) 2022/338 of 28 February 2022 on an assistance measure under the European Peace Facility for the supply to the Ukrainian Armed Forces of military equipment, and platforms, designed to deliver lethal force', *Official Journal of the European Union*, L60, 28 Feb. 2022.

³⁴ Other non-EU and like-minded states currently include Australia, Canada, New Zealand, Norway, South Korea, the United Kingdom and the United States.

³⁵ Clapp, S., 'Russia's war on Ukraine: Bilateral delivery of weapons and military aid to Ukraine', European Parliamentary Research Service, 24 May 2022.

³⁶ European External Action Service, 'Questions and answers on the European Peace Facility's Integrated Methodological Framework', 22 Mar. 2021. See also Council of the European Union (note 1), article 9(3).

³⁷ European External Action Service (note 36).

be implemented in compliance with ‘the principles laid down’ in the EU Common Position ‘without prejudice to the procedure to be followed by Member States regarding such export or transfer’. Therefore, as mentioned, EU member states authorizing the transfer of military equipment, including that of a lethal nature, funded by an EPF assistance measure retain discretion over the arms transfer decision-making process.³⁸ This means that they remain responsible for carrying out their own risk assessment, and this process is independent from the preliminary analysis of the context, impact and risks conducted by the EEAS.³⁹ Given that the process leading to the adoption of an assistance measure is driven by EU member states through the council, it is likely that there would be one or several EU member states that would agree to grant the required licences to export the equipment funded under the EPF unless there is a substantial change in circumstances in the beneficiary country.⁴⁰ However, as individual EU member states are ultimately responsible for authorizing the export, they also retain the prerogative to attach their own conditions to the licence, including prohibiting re-exports without prior authorization or the right to carry out post-shipment controls. At the same time, the EU, as it funds the acquisition of material through the EPF, can agree its own conditions with the beneficiaries, in addition to and without prejudice to those that the exporting state would normally attach to its own authorizations.⁴¹

The fact that both the EU and its member states, as the exporting states, can attach their own conditions to the provision of the equipment, may create duplication and confusion in their implementation if there is no prior coordination. For instance, this could be the case if both the EU and an EU member state carry out post-delivery controls of the weapons transferred with funding from the EPF—especially if their scope and relevant enforcement procedures do not align or are not properly concerted.

Insufficient risk assessment

The context analysis, and risk and impact assessment conducted by the EEAS as well as the final conditions agreed on between the EU and the beneficiary are not made public. Only the concept note that preceded the adoption of the EPF assistance measure for the supply of weapons to Ukraine that was leaked to the public in March 2022 is currently available.⁴² The analysis in the concept note includes a list of main risks attached to the provision of military equipment but does not include lengthy elaborations on, for instance, references to specific sources or tools available to inform similar assessments. It is worth highlighting that the concept note only provides a preliminary analysis and its drafting occurred under the exceptional circumstances created by the war in Ukraine, which called for a swift response to the Ukrainian Government’s request for assistance. Producing such sensitive assessments, particularly for assistance measures funding the transfer of lethal military equipment, ideally should occur without such pressure. More generally, it remains to be seen how the EU will build the relevant capacities to produce robust risk assessments even under more favourable circumstances, as observers have raised doubts about whether the EU is a sufficiently experienced actor to conduct this type of analysis.⁴³ Further, the case of

³⁸ See Council of the European Union (note 1), article 56(3); and Council of the European Union, ‘Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment’, *Official Journal of the European Union*, L335, 8 Dec. 2008.

³⁹ Representative of the European External Action Service, Communication with authors, 11 Mar. 2022.

⁴⁰ Representative of the European External Action Service, Communication with authors, 11 Mar. 2022.

⁴¹ Representative of the European External Action Service, Communication with authors, 11 Mar. 2022.

⁴² Council of the European Union (note 25).

⁴³ International Crisis Group, ‘How to spend it: New EU funding for African peace and security’, Africa Report no. 297, 14 Jan. 2021, pp. 13–15; and Hamilton, T. ‘Articulating arms control law in the EU’s lethal military assistance to Ukraine’, *Just Security*, 30 Mar. 2022.

Ukraine, where EU member states are being directly reimbursed for the equipment provided instead of this materiel being acquired through a dedicated procurement procedure, risks creating a procedural precedent for future uses of the EPF.

Concerns relating to transparency and oversight

The way assistance measures under the EPF are agreed upon and the level of public information about the equipment provided have raised questions regarding transparency and oversight. Some details on activities undertaken as part of EPF assistance measures are available in the council decisions and the press releases that accompany their adoption and are shared in the beneficiary country through EU delegations' relevant channels. Transfers of items in the EU Common Military List that are funded by the EPF will also be reported in the EU's *Annual Report on Arms Exports* and reporting and parliamentary oversight will still apply at the national level.⁴⁴ However, given that the current format of the EU annual report does not yet allow the items provided as part of an EPF assistance measure to be discerned, it is expected that this will be adjusted to include an annex with information on relevant EPF activities as well as additional tables listing the beneficiaries, types and quantities of military equipment provided through the ongoing EPF assistance measures. At the time of writing, the next report is not yet available, and therefore it remains unclear how this will look precisely.

As mentioned, the council decisions adopted so far to establish EPF assistance measures include limited descriptions of the equipment funded. In the case of the EPF assistance measure envisaging the transfer of weapons to Ukraine, the relevant council decision does not include such a description. The urgent and rapidly evolving situation and needs in the beneficiary country did not likely allow for identifying these items at the time of the decision. However, even following the adoption of the council decision, no detailed information was provided on the volume and type of equipment to be delivered. This was argued to be motivated by a desire to avoid giving Russia a strategic advantage.⁴⁵ Information on the possible categories of items were eventually leaked to the public, and many EU member states decided to make the information on arms deliveries public.⁴⁶ Although the sensitivity around the Ukrainian case is straightforward, withholding information on the basis of strategic interest may establish a problematic precedent, even more so in the context of the intergovernmental decision-making process governing the EPF. In fact, as the EPF is an off-budget mechanism, decisions on how the fund is allocated are under the control of individual EU member states. This leaves little or no formal role for the European Parliament to affect relevant decision-making processes—despite its interest in doing so.⁴⁷

Ensuring compliance with arms transfer control standards

The main concern expressed in relation to the establishment of the EPF relates to the risk that military equipment will be diverted or misused in the beneficiary countries.⁴⁸

⁴⁴ Council of the European Union, 'Twenty-Third Annual Report according to Article 8(2) of Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment, ST/12189/2021/INIT', *Official Journal of the European Union* C515, Brussels, 21 Dec. 2021, Annex F.

⁴⁵ Representative of the European External Action Service, Communication with authors, 11 Mar. 2022.

⁴⁶ Council of the European Union (note 25); and Bilquin (note 32).

⁴⁷ European Parliament, 'European Parliament recommendation of 28 March 2019 to the Council and the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy concerning the Proposal of the High Representative of the Union for Foreign Affairs and Security Policy, with the support of the Commission, to the Council for a Council Decision establishing a European Peace Facility (2018/2237(INI))', 28 Mar. 2019.

⁴⁸ Maletta, G. and Berman, E. G., 'The transfer of weapons to fragile states through the European Peace Facility: Export control challenges', SIPRI WritePeace Blog, 10 Nov. 2021; Hauk, S. and Mutschler, M., 'Five ways to make the European Peace Facility a role model for arms export control', BICC, Policy brief, 6/2020, p. 2; and Isbister, R. and

As mentioned, arms transfers funded by the EPF must be carried out in compliance with the EU Common Position. Among other requirements, the Common Position requires EU member states to deny a licence for exports of military equipment that would ‘provoke or prolong armed conflicts’ or when there is a clear risk that the equipment may be used to commit serious violations of IHL or acts of internal repression. In addition, it requires member states to consider the risk that the equipment ‘may be diverted within the buyer country or re-exported under undesirable conditions’.⁴⁹ EU member states have similar obligations under the ATT. However, ensuring that any supplies of lethal military equipment are conducted in ways that comply with the provisions of the 2008 Common Position and the ATT will be a clear challenge. The next chapter elaborates in more detail on the types of risks that arms transfers funded by the EPF may entail, with a particular focus on diversion and misuse.

Slijper, F., ‘Weapons for peace? What to expect in 2021 from the EU’s new “peace facility”’, Blog, Saferworld, 11 Jan. 2021.

⁴⁹ Council of the European Union (note 38).

3. Risks of arms diversion and misuse in fragile contexts: A focus on sub-Saharan Africa

The EPF was created to support EU partners to strengthen their military and defence capacities with a view to helping them in overcoming situations of insecurity and fragility, including through the provision of lethal military equipment. However, in these contexts there is a higher risk that the equipment transferred—from SALW and ammunition to major conventional arms—is diverted to unauthorized end-users or is used in illegitimate ways. This chapter provides an overview of diversion and misuse risks in these circumstances. It uses sub-Saharan Africa as the main focus, as some of the countries in this region face many of the security challenges—e.g. the fight against terrorist and non-state armed groups within their own territories—that the EPF is meant to address. The cases of diversion and misuse, and thus the arms export control-related risks, that have been documented in this region, may offer some useful insights and lessons learned for the future implementation of these assistance measures. Some of these countries, either bilaterally or through relevant regional organizations, already received EU-funded non-lethal military assistance.⁵⁰ As mentioned, sub-Saharan Africa was also explicitly identified as a region likely to receive EPF lethal assistance. So far, the EPF has been used to fund the provision of equipment not designed to deliver lethal force in Mozambique—for example, ground mobility assets, technical tools and a field hospital—and Mali, as well as to launch a general assistance programme in support of the AU.⁵¹ This chapter will look specifically at states in sub-Saharan Africa where the EU has established military training missions—namely CAR, Mali, Mozambique and Somalia—and on African-led missions that received support through the APF in the past, such as those operating in the Lake Chad Basin region, the Sahel and Somalia.

Risks of diversion

Arms diversion, whereby materiel passes from a legal end-user to an unauthorized end-user, is a major issue in the international arms trade and results in increasing conflict and insecurity. SALW and ammunition are particularly likely to be diverted, as they are often easier to carry and conceal, but major arms can also be diverted. Drawing from known past cases in sub-Saharan Africa, the following sections present an overview of patterns of arms diversion in this region. They also look at the extent to which affected states have arms transfer and SALW control systems (also referred to as ‘weapons and ammunition management’, or WAM) in place that are sufficiently strong to mitigate some of these risks.⁵²

*Diversion patterns*⁵³

Mapping the patterns of arms diversion and their relative importance remains challenging due to the lack of available data, in part because of the reluctance of actors

⁵⁰ Expertise France, ‘European Union programme to support the G5 Sahel Joint Force’, 12 July 2021; and Guiryman et al. (note 11).

⁵¹ Council of the European Union, ‘EU Military Training Mission in Mozambique set to start its operations’ (note 21). The EU Council also adopted Council Decision (CFSP) 2021/2137 on 2 Dec. 2021 to fund the provision of equipment not designed to deliver lethal force to Mali under the EPF, however this council decision was suspended in May 2022 and the delivery of the equipment halted; see Council of the European Union, ‘Foreign Affairs Council (Defence)’, 17 May 2022.

⁵² For further information about the concept of WAM and UNIDIR’s work see Giezendanner, H. and Shiotani, H., ‘A reference methodology for national weapons and ammunition baseline assessments’, UNIDIR, 26 July 2021.

⁵³ The typology used in this chapter is adapted from Berman, E. G., ‘Diversion of lethal materiel in peace operations’, Background paper (unpublished), Sep. 2021.

to report losses. Yet the cases of arms diversion that do get documented are useful for assessing the risks that may be encountered in future weapons transfers. During the 1990s and beginning of the 2000s, many of these incidents happened during the transfer of the equipment from supplier to recipient, which can be when the arms are still in the country of origin, in transport, or in the country of delivery prior to receipt by the authorized end-user.⁵⁴ Most cases of diversion, however, now take place post shipment, either due to the actions of opposing forces or those of the national security forces and peacekeepers.

Attacks by opposing forces constitute the main type of post-shipment diversion. The attackers can target not only fixed sites but also mobile patrols, convoys or escort duties, often resulting in casualties as well as significant losses of equipment. For example, al-Shabab attacks on both the Somali National Army and AMISOM have caused the loss of significant amounts of small arms, light weapons and millions of rounds of ammunition.⁵⁵ Also, in the Lake Chad Basin region, the Safeguarding Security Sector Stockpiles (S4) Data Set has recorded more than 700 reported attacks against the MNJTF and supplemental security forces since 2015.⁵⁶ Many were carried out by Boko Haram and resulted in the loss of SALW and heavy weapons systems, including armoured vehicles. Uniformed personnel serving in the G5 Sahel Joint Force and armed forces participating alongside have also come under frequent attack, with some of their headquarters even being overrun; consequently, considerable lethal military equipment has been lost to jihadists in Burkina Faso, Mali and Niger.⁵⁷ Other actions from opposing forces include theft, which, unlike attacks, are not specifically targeted at formed military units. Theft likely accounts for a much smaller number of lethal equipment seized than the number of attacks, but it can nevertheless be very damaging in specific circumstances. For instance, in 2008 a container of 600 000 rounds of ammunition was seized en route from a commercial convoy destined for peacekeepers from the AU–UN Hybrid Operation in Darfur (UNAMID).⁵⁸

A number of diversion cases are caused primarily by security forces themselves, either intentionally or unintentionally. Intentional losses encompass re-transfers, which can be authorized by security forces to pursue certain strategic or operational goals. These re-transfers can be destined for another state or for non-state actors, but in all cases involve a change in the end-user that likely contravenes the end-user assurances provided to the supplier when the original transfer took place. AMISOM troop-contributing countries are reported to have transferred materiel to militias and government forces as part of official policies despite the United Nations arms embargo on non-state armed groups.⁵⁹ Other re-transfers occur for private financial gain. Reports of corrupt members of armed forces selling weapons illegally to armed groups have emerged in Mali, Niger, Nigeria and Somalia.⁶⁰ In addition, reports of

⁵⁴ Kirkham, E., 'Preventing and mitigating the risk of arms diversion in Africa', Saferworld Briefing Paper, Apr. 2022; and United Nations, Security Council, Report of the Secretary-General on the situation in Somalia, S/2022/101, 8 Feb. 2022, para. 89.

⁵⁵ United Nations Security Council, Report of the UN Panel of Experts on Somalia, S/2020/949, Sep. 2020; and Berman, E. G., *The Management of Lethal Materiel in Conflict Settings: Existing Challenges and Opportunities for the European Peace Facility* (International Peace Information Service (IPIS): Antwerp, Sep. 2021).

⁵⁶ Berman, E. G., 'Weapons losses fueling Africa's militant groups', Africa Center for Strategic Studies, 28 Mar. 2022. For the purposes of this paper, 'Boko Haram' refers to the group's two principal factions: The Islamic State West Africa Province (ISWAP), and Jama'atu Ahlis Sunna Lidda'awati w'al Jihad (JAS) – People Committed to the Propagation of the Prophet's Teachings and Jihad.

⁵⁷ Berman (note 53).

⁵⁸ Berman, E. G. and Racovita, M., *Under Attack and Above Scrutiny? Arms and Ammunition Diversion from Peacekeepers in Sudan and South Sudan, 2002–14* (Small Arms Survey: Geneva, July 2015).

⁵⁹ Berman, E. G., 'Beyond Blue Helmets: Promoting weapons and ammunition management in non-UN peace operations', Small Arms Survey, Mar. 2019.

⁶⁰ Mangan, F. and Nowak, M., 'The West Africa–Sahel connection: Mapping cross-border arms trafficking', Small Arms Survey, Briefing paper, Dec. 2019; Martinez, M. et al., 'Arms Trade Treaty issue brief 3: Diversion analysis

corruption have emerged among peace operations; for example, Uganda convicted some of its troops serving within AMISOM of having illicitly sold ammunition.⁶¹

In addition to intentional re-transfers, diversion in many cases takes place without security forces intending it. Forced abandonment is one of them; for instance, close to the MNJTF zone of operations, there was a reported incident involving a Nigerian patrol that abandoned its vehicles as they were running out of gas.⁶² While there was no imminent attack, the patrol made this decision presumably because it felt threatened by the possibility of action from Boko Haram. Another likely source of accidental diversion is linked to the negligence and poor management of stockpiles, both of weapons owned by national forces and contingents in peace operations as well as of recovered weapons. In instances where materiel could not be accounted for, no individual link could be made to corruption. This could point to poor WAM practices, including problems in record-keeping as a facilitator of diversion, such as illegal transfers, theft and attacks. For instance, armed groups have regularly targeted isolated, poorly controlled military barracks as a source of arms supply.⁶³ The next section will highlight the state of WAM in selected sub-Saharan African cases, looking both at states and peace operations, as the EPF could potentially support both.

Weak control systems on weapons and ammunition

International instruments such as the UN Programme of Action on SALW (UNPOA) and the ATT, as well as regional conventions and standards, outline the steps that states should take to build their national arms transfer control systems and ensure the control and oversight of weapons and ammunition—including SALW—over their entire life cycle. In recent years, attention has also turned to peace operations, through assessing how arms management practices can be improved in that area. In this context, the UN Office for Disarmament Affairs and the UN Department of Peacekeeping Operations have developed guidance in the field of WAM as part of disarmament, demobilization and reintegration (DDR) interventions.⁶⁴ WAM covers the key elements that states need to have in place to manage weapons and ammunition and prevent the diversion channels outlined earlier, such as poor management, but, to some extent, also attacks, theft and illegal transfers. A baseline analysis of WAM frameworks conducted by the UN Institute for Disarmament Research (UNIDIR) for the period 2016 to 2020 shows that gaps remained, even though some countries—including some where the EU has a military training mission or where the APF funded assistance—had established more- or less-developed arms transfers and SALW control systems and made progress in specific areas.⁶⁵

For instance, in the cases of CAR and Niger, national WAM frameworks were at the time not fully in line with regional and international obligations. CAR and Niger were

framework', UNIDIR, 31 Aug. 2021; and Florquin, N., Lipott, S. and Wairagu, F., *Weapons Compass: Mapping Illicit Small Arms Flows in Africa* (Small Arms Survey: Geneva, Jan. 2019).

⁶¹ Berman (note 53).

⁶² Berman, E. G., 'The management of lethal materiel in conflict settings: Existing challenges and opportunities for the European Peace Facility', International Peace Information Service (IPIS), Sep. 2021, p. 15.

⁶³ Koné, H., 'Where do Sahel terrorists get their heavy weapons?', Institute for Security Studies, ISS Today, 12 Feb. 2020.

⁶⁴ See for example de Tessieres, S., *Effective Weapons and Ammunition Management in a Changing Disarmament, Demobilization and Reintegration Context: A Handbook for United Nations DDR Practitioners* (UNODA: New York, Second Edition, Apr. 2021).

⁶⁵ This analysis is based on the following series of WAM Country Insights by UNIDIR: Giezendanner, H. et al., 'Weapons and ammunition management country insight: Burkina Faso', UNIDIR, 23 Nov. 2020; Leff, J., 'Weapons and ammunition management country insight: Somalia', UNIDIR, 18 Nov. 2020; de Tessieres, S. et al., 'Weapons and ammunition management country insight: Niger', UNIDIR, 13 Nov. 2020; Lewis, M. and Shiotani, H., 'Weapons and ammunition management country insight: Nigeria', UNIDIR, 11 Nov. 2020; and Giezendanner, H. and Shiotani, H., 'Weapons and ammunition management country insight: Central African Republic', UNIDIR, 5 Nov. 2020. UNIDIR is now in the process of conducting follow-up WAM assessments in a number of states: 'Weapons and ammunition management baseline assessments update', UNIDIR, Apr. 2022.

in the process of updating their legislation, but in the former case required further support, as indicated in their latest UNPOA report.⁶⁶ Transfer controls are another instrument where most states were progressing, but gaps remained in specific areas, such as import controls where scattered responsibilities and a lack of clear procedures prevented efficient control systems from being implemented. In Niger, the system was weak overall and lacked an oversight system for procurement, multiplying the risk of corruption. Regarding physical security and stockpile management (PSSM), while most states took measures, these were not always implemented, especially outside the capital, as was the case in CAR, and required further development (e.g. in Niger and Nigeria).

National frameworks appeared to be significantly lacking in areas such as marking, record-keeping and tracing; for example, CAR did not have any marking measure in place at the time of the assessment, and no measures were indicated in their 2022 report to the UNPOA.⁶⁷ In contrast, Niger had developed a strategy but had not yet implemented it. Burkina Faso's latest UNPOA report also indicated that marking procedures were not carried out in the case of transfers to civilians or to private security companies on its territory.⁶⁸ Also, when record-keeping practices were carried out, they appeared inadequate, with a lack of digitalized and centralized systems, in, for example, Burkina Faso and Nigeria. Linked to this, seized and recovered weapons were often not processed or traced, as there was little or no capacity to perform these activities (e.g. in CAR, Niger and until recently Burkina Faso), although Burkina Faso indicated in its 2020 UNPOA report that it has established tracing procedures for SALW following cooperation with INTERPOL.⁶⁹ The lack of relevant procedures resulted in states (CAR and Somalia) sometimes redistributing recovered weapons to the front lines without registering their integration into the armed forces first, preventing experts from collecting information on the sources of diversion.⁷⁰ Finally, there appeared to be a lack of measures to dispose of old weapons, either due to the absence of training and equipment (Burkina Faso, CAR, Niger and Somalia) or due to unclear procedures (Nigeria). Consequently, significant amounts of weapons were awaiting destruction, which heightens the risks of attacks, leaks and theft.

Improvements in WAM systems are also needed within peacekeeping operations. The lack of standardization in storage management and the temporary character of many operations means that some missions may lack adequate storage for weapons.⁷¹ As a result, while some have purpose-built armouries, others rely on keeping weapons in vehicles or with the troops. In addition, there are gaps around processing seized and recovered weapons in a systematic and transparent way. This is particularly problematic, as personnel from peace operations generally recover considerable amounts of weapons and ammunition as part of their work.⁷² In previous instances, AMISOM

⁶⁶ Programme of Action on small arms and light weapons (POA), Central African Republic, [National Report on the implementation of the Programme of Action on small arms and light weapons (POA) and the International Tracing Instrument], submitted in 2022 (in French); and Programme of Action on small arms and light weapons (POA), Niger, [National Report on the implementation of the Programme of Action on small arms and light weapons (POA) and the International Tracing Instrument], submitted in 2022 (in French).

⁶⁷ Programme of Action on small arms and light weapons (POA), Central African Republic (note 66).

⁶⁸ Burkina Faso, [National Report on the implementation of the Programme of Action on small arms and light weapons (POA) and the International Tracing Instrument], submitted in 2022 (in French).

⁶⁹ Burkina Faso, [National Report on the implementation of the Programme of Action on small arms and light weapons (POA) and the International Tracing Instrument], submitted in 2020 (in French).

⁷⁰ Giezendanner, H. and Shiotani, H., 'Weapons and ammunition management country insight: Central African Republic', UNIDIR, 5 Nov. 2020; and Leff, J., 'Tracing illicit weapon flows in conflict and security transitions: A case for managing recovered weapons in Somalia', UNIDIR, Oct. 2020.

⁷¹ Brahm, J., 'The loss of arms and ammunition in peace operations: Mapping and addressing the challenge', Global Peace Operations, 15 June 2018.

⁷² Anders, H., 'Monitoring illicit arms flows: The role of UN peacekeeping operations', Briefing Paper, Small Arms Survey, June 2018.

was for example known to have transferred seized weapons to the Transitional Federal Government of Somalia.⁷³ Nevertheless, the AU is developing a policy for what troops in AU-mandated missions should do with recovered arms and ammunition.⁷⁴ The UN and regional organizations set up WAM guidelines and legally-binding provisions which, if implemented effectively, could form the basis for the more systematized recording and processing of seized and recovered weapons by peacekeeping operations.⁷⁵ In December 2021, the UN Security Council adopted Resolution 2616 to give, on a case-by-case basis, a larger role to peace operations to support the relevant national authorities in monitoring arms embargoes.⁷⁶ If implemented effectively, this could enable and motivate peacekeepers to adopt and promote these standards in order to combat arms diversion.

Risks of misuse

Alongside risks of diversion to unauthorized end-users, there are risks that weapons transferred by exporting states are (mis)used by the recipient forces in actions that violate international human rights law (IHRL) or IHL.⁷⁷ These risks also exist in the context of provision of military equipment under the EPF.⁷⁸ The following section provides an overview of such potential risks, focusing on allegations that have been made against armed forces in sub-Saharan African states that received EU military assistance and training more or less directly through the APF or through the EUTMs. As mentioned, many of these actors already are or will likely be future recipients of EPF assistance measures.

Wide scope of IHRL and IHL violations

Many allegations of IHRL and IHL violations have emerged in connection with the conduct of counter-terrorism operations as well as in the context of ongoing armed conflicts in sub-Saharan Africa. While a number of allegations target non-state armed groups, states' security forces have also repeatedly been accused of such violations. From late 2019 to early 2021, Human Rights Watch, the UN and others reported more than 600 unlawful killings by the security forces of Burkina Faso, Mali and Niger.⁷⁹ Some of these allegations concerned forces involved in the G5 Sahel Joint Force. The UN Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), which monitors the situation in Mali, noted a sharp increase in human rights violations committed by state forces during the first half of 2021, and in March 2022 the Malian armed forces were accused of having summarily executed 300 civilians in Moura, with the support of Russian mercenaries, in what Human Rights Watch assessed as the worst atrocity since the beginning of the armed conflict.⁸⁰ In addition, reports

⁷³ Brahm, J., 'The loss of arms and ammunition in peace operations: Mapping and addressing the challenge', Global Peace Operations, 15 June 2018.

⁷⁴ Berman, E. G., Racovita, M. and Schroeder, M., 'Making a tough job more difficult: Loss of arms and ammunition in peace operations', Small Arms Survey Report, Oct. 2017.

⁷⁵ On regional conventions see Convention on Small Arms, Light Weapons, their ammunition and other associated material ('ECOWAS Convention'), opened for signature 14 June 2006, entered into force 29 Sep. 2009, Article 11; and United Nations, '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), opened for signature 19 Nov. 2010, entered into force 8 Mar. 2017, Article 22.

⁷⁶ United Nations, Security Council, Resolution 2616 (2021) Adopted by the Security Council at its 8942nd meeting, S/RES/2616, 22 Dec. 2021.

⁷⁷ On the definition of IHRL and IHL see <<https://www.un.org/en/about-us/udhr/foundation-of-international-human-rights-law>>; and <<https://www.icrc.org/en/war-and-law>>.

⁷⁸ European External Action Service (note 36).

⁷⁹ Human Rights Watch, 'Sahel: End abuses in counterterrorism operations', 13 Feb. 2021.

⁸⁰ Office of the High Commissioner for Human Rights (OHCHR), 'Mali: Rampant impunity for human rights violations poses grave risks for protection of civilians—Bachelet', 29 June 2021; and Human Rights Watch, 'Mali: Massacre by army, foreign soldiers', 5 Apr. 2022.

citing arbitrary arrests and torture by security forces have emerged from states in which the EU conducts military training missions, such as CAR and Mozambique.⁸¹ Somalian armed forces have also been accused of violations of IHRL and IHL, namely the killing, injuring and displacement of civilians, and a recent report by the UN secretary-general states that civilian casualties inflicted by Somali state security forces are increasing.⁸² Abuses and violence have also targeted the most vulnerable groups, such as ethnic minorities, women and children. Also, ethnic-based violence is taking place in the Sahel, where the majority of extrajudicial killings by the Malian and Burkinabe armed forces targets Fulani, who are often accused of supporting Islamist extremist groups.⁸³ Reports of sexual violence, including rape and sexual assault, also emerged, involving at least, from what is known, security forces from Burkina Faso, Mali and Somalia.⁸⁴ The armed forces of Nigeria and Somalia were also accused of illegally detaining several thousand children.⁸⁵ These reports thus suggest a wide range of violations against civilians, and it is likely that they do not represent the full picture of such misconduct, as not all victims come forward publicly.

Military personnel deployed as part of multilateral peace operations and other military operations have also been accused of such violations. For example, AMISOM has repeatedly been pointed out as having committed human rights abuses and violations of international humanitarian law, namely by engaging in indiscriminate attacks resulting in ‘killed, injured and displaced civilians’.⁸⁶ MINUSMA concluded that within the G5 Sahel Joint Force, members of the Malian detachment conducted 12 summary executions in Boulkessy in 2018.⁸⁷ Some were also implicated in ethnic-based abuse, discrimination and stigmatization against members of the Fulani community, while Chadian soldiers engaged in the G5 Sahel Joint Force were found to have committed rape in Niger.⁸⁸

Addressing IHRL and IHL violations

Some efforts have been made to address the IHRL and IHL violations outlined in the previous section. For example, when the G5 Sahel Joint Force was launched in 2017, a list of measures and mechanisms which made up the Compliance Framework was designed to prevent and mitigate IHRL and IHL violations by security forces.⁸⁹ Inquiries have also been launched, for instance, in Niger, following allegations

⁸¹ United Nations, General Assembly, Report of the Independent Expert on the situation of human rights in the Central African Republic, A/HRC/42/61, 9 Aug. 2019, para. 48; ‘World Report: Mozambique. Events of 2020’, Human Rights Watch, 2021; EEAS website, ‘European Union Training Mission in Mozambique’; and Hickendorff, A. and Acko, I., ‘The European Union Training Mission in the Central African Republic: An assessment’, SIPRI Background Paper, Feb. 2021.

⁸² ‘World Report: Somalia. Events of 2020’, Human Rights Watch, 2021; and United Nations, Security Council, Report of the Secretary-General on the situation in Somalia, S/2022/101, 8 Feb. 2022, para. 89.

⁸³ ‘World Report: Mali. Events of 2021’, Human Rights Watch, 2022; ‘World Report: Mali. Events of 2020’, Human Rights Watch, 2021; ‘World Report: Burkina Faso. Events of 2021’, Human Rights Watch, 2022; United Nations, Security Council, Report of the Secretary-General on the situation in Mali, S/2021/1117, 4 Jan. 2022, para. 52; and Raineri, L., *If Victims Become Perpetrators: Factors Contributing to Vulnerability and Resilience to Violent Extremism in the Central Sahel* (International Alert: London, 2018); and United Nations, Security Council, Report of the Panel of Experts on Somalia, S/2020/949, 28 Sep. 2020, para. 144.

⁸⁴ United Nations, Security Council, S/2021/1117, (note 83); Raineri (note 83); and United Nations, Security Council S/2020/949 (note 83).

⁸⁵ Human Rights Watch, ‘Nigeria: Army frees 25 child suspects after abuse reports’, 4 Oct. 2019; and Human Rights Watch (note 82).

⁸⁶ Skeppström, E., Hull Wikland, C. and Jonsson, M., ‘European Union Training Missions: Security sector reform or counter-insurgency by proxy?’ *European Security*, 24(2), 2015, pp. 353–36; and Human Rights Watch (note 82).

⁸⁷ ‘La MINUSMA conclut son enquête sur les incidents de Boulkessy du 19 mai 2018’ [MINUSMA concludes its investigation into the Boulkessy incidents of 19 May 2018], MINUSMA, 26 June 2018 (in French).

⁸⁸ Raineri (note 83); and ‘Des soldats tchadiens du G5 Sahel responsables de viols au Niger’ [‘Chadian G5 Sahel soldiers responsible for rapes in Niger’], *Le Monde Afrique*, 5 Apr. 2021 (in French).

⁸⁹ United Nations Human Rights Office of the High Commissioner, ‘Project supporting the G5 Sahel Joint Force with Implementation of the Human Rights and International Humanitarian Law Compliance Framework’, consulted on 6 June 2022.

related to the disappearance of more than 100 civilians in the Tillabéri region in 2020.⁹⁰ However, in many cases, impunity remains. Human Rights Watch signalled, for instance, that Mozambique did not take any publicly known steps to investigate abuses or punish responsible personnel, and similar reports have emerged for most of the states in the region.⁹¹ Another type of measure taken to prevent IHRL and IHL violations involves specific training on human rights issues, some of which were conducted as part of EUTMs and peacekeeping operations. In Mali, for instance, members of both the G5 Sahel Joint Force and the regular armed forces received some brief training on the human rights due diligence policy as well as on principles of IHRL and IHL by MINUSMA.⁹² Such efforts, however, remain limited in scope, and in many cases there is a lack of comprehensive action on the part of security forces on the ground.

Known cases of arms diversion and misuse in some sub-Saharan African countries illustrate the risks of providing security assistance, including lethal military equipment, to fragile states. The deterioration of the security situation in many of the countries affected, such as Mali, can further exacerbate these risks. Therefore, sub-Saharan African countries that have received military assistance through the APF and the EUTMs, or, more recently, have been indicated as beneficiaries of EPF assistance measures, may offer some useful lessons for the future implementation of this mechanism, including in other regions, where similar risks are also arguably present. The overview provided in this chapter highlights the need for the EU and its member states to conduct a rigorous risk assessment and monitoring before and after deciding to use the EPF to provide any military equipment—both lethal and non-lethal—to their partners. In sub-Saharan Africa, given the security situation in CAR, Mali and Somalia, some EU member states have reportedly not been willing to use the EPF to provide these countries with lethal military equipment.⁹³ Moreover, in May 2022, the EU announced the suspension of operational training under the EUTM in Mali and halted the provision of non-lethal military equipment which had previously been agreed as part of an EPF assistance measure.⁹⁴

In circumstances where the EU decides to use the EPF to provide military equipment, including that of a lethal nature, to meet its partners' legitimate security needs, assistance should be accompanied by proper safeguards and mitigation measures. The following chapters explore what these measures could include and provide recommendations to contribute to limiting the risks of diversion and misuse.

⁹⁰ 'Rapport de mission d'enquête, d'investigation, de vérification et d'établissement des faits relatifs aux allégations portant sur la disparition de 102 personnes dans le département d'Ayorou, région de Tillabéri', [Report of the mission of inquiry, investigation, verification and establishment of the facts relating to the allegations relating to the disappearance of 102 people in the department of Ayorou, region of Tillabéri], CNDH-Niger, May–June–July 2020 (in French).

⁹¹ Human Rights Watch, 'Mozambique: Events of 2020', World Report 2021, 2021.

⁹² United Nations, Security Council (note 83); and United Nations, Security Council, Report of the UN Secretary-General on the situation in Mali, S/2017/811, 28 Sep. 2017, para. 47.

⁹³ Van der Lijn, J. et al., 'EU Military Training Missions: A synthesis report', SIPRI Report, May 2022, p.12.

⁹⁴ Council of the EU, 'Foreign Affairs Council (Defence)', 17 May 2022.

4. Reducing export control-related risks of EPF assistance measures

Considering the risks of diversion and misuse associated with providing lethal military equipment in fragile contexts, both the EU and its member states should take all possible steps to ensure that risk assessment and mitigation are carried out thoroughly when they use the EPF to fund the supply of these items. The EU has at its disposal tools to address and, where possible, minimize the potential negative consequences generated by using the fund for supplying lethal military equipment. The following chapter highlights instruments that could be used to reduce some of the risks or fill some of the gaps highlighted in previous chapters, with a particular focus on using post-shipment control measures and leveraging assistance in the field of arms transfer and SALW controls.

Preventing diversion through post-shipment controls

Post-shipment controls are used to ensure that the military materiel that states export remains in the hands of the authorized end-user. Post-shipment controls cover a range of measures, many of which have been outlined by the EU to monitor the provision of equipment funded by the EPF and to mitigate associated risks. For instance, some of the council decisions adopted so far to establish EPF assistance measures include a request for delivery verification certificates (DVCs) to be issued by the importer upon delivery. These council decisions also request that recipient states report annually on the inventory of equipment received. In addition, some of these foresee the possibility for the EU to conduct ‘on-site controls’ or ‘on-site verifications’ as part of an assistance measure. ‘On-site verifications’ to be conducted by the EEAS ‘upon request’ are among the measures indicated in the concept note that preceded the decision to use the EPF to fund the provision of weapons to Ukraine in February 2022. Although no clear definition is provided and the terminology is inconsistent across relevant EU documents, these terms presumably refer to post-shipment on-site physical inspections. On-site physical inspections are usually carried out by the exporter up to several years after the transfer has taken place.⁹⁵ However, it remains to be seen whether post-shipment controls of equipment funded through the EPF will be exclusively implemented by the EEAS or in coordination with the exporting EU member states, which raises questions about possible overlap or even a clash of competences.

Addressing common challenges in applying post-shipment controls to EPF-funded military materiel

States that already conduct post-shipment on-site inspections, including EU member states, have identified a series of challenges while introducing, planning or conducting these controls.⁹⁶ These include the difficulty to secure the importer’s permission to conduct inspections, financial- and human resources-related constraints, gaps in technical expertise and the lack of a diplomatic presence in the recipient country.⁹⁷ Similar challenges are likely to be encountered by the EU, as it enters negotiations

⁹⁵ Varisco, A. E., Brockmann, K. and Robin, L., ‘Post-shipment control measures: European approaches to on-site inspections of exported military materiel’, SIPRI Background Paper, Dec. 2020, p. 2.

⁹⁶ For an overview of EU member states conducting on-site inspections see Bromley, M., Brockmann, K. and Varisco, E. A., ‘Post-shipment on-site inspections of military materiel: Challenges and responses’, SIPRI Policy Brief, Dec. 2021, p. 1; and Varisco, Brockmann and Robin (note 95).

⁹⁷ Varisco, Brockmann and Robin (note 95), p. 6; and Bromley, Brockmann and Varisco (note 96), pp. 7–8.

with EPF beneficiary countries on the conditions to be attached to the provision of assistance and military equipment. However, there are several elements that are either inherent to the way the EU functions and the way the EPF is designed that may be useful in addressing such challenges and consequently mitigating the risk of post-shipment diversion of material provided through the EPF.

The provision of lethal military equipment funded by the EPF is not framed as a commercial transaction but rather as providing support and assistance to countries that often face pressing and complex security challenges. As such, this type of relationship may create more favourable conditions to overcome the possible resistance of the recipient country to accept this type of control. In addition, the EU carries significant diplomatic weight and could therefore have more leverage than individual states when laying down certain conditions and ensuring that they are attached to the transfers.

As mentioned earlier in this paper, it is currently unclear how on-site inspections of materiel funded through the EPF will be carried out and whether these will be conducted independently by the EU or in cooperation with, or in addition to, those that the EU exporting state may decide to implement. In any case, coordination between the EU and the exporting country will be particularly important. In conducting these activities, the EU could rely on its extensive network of 140 EU diplomatic missions and offices abroad.⁹⁸ Further, the experience of some EU civilian, military and naval missions that carry out related activities, such as arms trafficking monitoring or the inspection of vessels, could also be useful for the implementation of monitoring and control measures under the EPF.⁹⁹

Although the EU can rely on resources available in delegations and missions, it does not necessarily possess the same level of expertise in post-shipment controls as some EU member states that have been carrying out such measures and developing technical capacities for several years. As SIPRI research has already pointed out, a pilot study on the baseline level of technical capacity at the EU level could help identify and fill potential gaps.¹⁰⁰ In the immediate future, additional expertise could be provided by seconded experts from EU member states who are already responsible for these controls or external partners already working with the EU. For example, Conflict Armament Research experts are specifically named as being available to provide EU member states with support for on-site inspections as part of the EU-funded iTrace project, and the EU could consider tasking them on demand with conducting on-site inspections of material funded by the EPF.¹⁰¹ Further, as one of the main providers of arms transfer and SALW control-related assistance in third countries, the EU already has a pool of experts that it could tap into, but this time it would be for its own capacity development. In any case, the EU would need to develop and agree on the approach and specific procedures for implementing possible post-shipment on-site inspections of equipment supplied with funding from the EPF. Finally, post-shipment on-site

⁹⁸ The possibility to give CSDP missions SALW control-related tasks is also foreseen in the 2018 EU SALW Strategy. See European Commission, 'EU Delegations', accessed on 2 Apr. 2022; and European External Action Service (EEAS), 'About the European External Action Service', accessed on 2 Apr. 2022.

⁹⁹ See e.g. the mandate of EUNAVFOR Somalia and EUNAVFOR MED IRINI: Council of the European Union, 'Council Decision (CFSP) 2020/2188 of 22 Dec. 2020 amending Joint Action 2008/851/CFSP on a European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast', *Official Journal of the European Union*, L 435, 23 Dec. 2020; Council of the European Union, 'Council Decision (CFSP) 2020/472 of 31 Mar. 2020 on a European Union military operation in the Mediterranean (EUNAVFOR MED IRINI)', *Official Journal of the European Union*, L 101, 1 Apr. 2020; and Council of the European Union, 'Council Decision (CFSP) 2021/542 of 26 Mar. 2021 amending Decision (CFSP) 2020/472 on the European Union military operation in the Mediterranean (EUNAVFOR MED IRINI)', OJ, L 108, 29 Mar. 2021.

¹⁰⁰ Varisco, Brockmann and Robin (note 95), p. 26.

¹⁰¹ 'Conflict armament research', accessed on 23 May 2022; and Council of the European Union, 'Council Decision (CFSP) 2019/2191 of 19 Dec. 2019 in support of a global reporting mechanism on illicit conventional arms and their ammunition to reduce the risk of their diversion and illicit transfer (iTrace IV)', *Official Journal of the European Union*, L 330, 20 Dec. 2019.

inspections of such material in a conflict or even war zone, like that of Ukraine, will likely require different procedures and will encounter different challenges compared to the similar controls currently being implemented by EU member states.

Coordination between EPF assistance measures and arms transfer- and SALW control-related assistance efforts

The EPF also foresees the possibility to complement arms transfers with support to beneficiaries in the management of weapons and ammunition.¹⁰² As illustrated by the case of sub-Saharan Africa, many of the partners in need of EU military assistance may not have sufficiently strong arms transfer control systems in place. As one of the leading donors to and providers of assistance in the field of arms transfer and SALW controls, the EU is in a privileged position to make the provision of support under the EPF conditional on the implementation of stronger safeguards and standards in weapons and ammunition management, while at the same time be able to provide beneficiaries with the tools to do so. In addition, the experience and knowledge built as an assistance provider could also prove useful in the assessment of an assistance measure that foresees funding the transfer of military materiel in the first place.

Supporting beneficiaries in building capacity

In sub-Saharan Africa, but potentially in other regions as well, the implementation of the EPF could build on relevant EU-funded assistance programmes as well as on partnerships established with key international and regional organizations.¹⁰³ For instance, countries in West Africa have been involved in the EU Conventional Arms Export Control Outreach Project, which aims to support states in improving their standards and practices regarding arms export controls.¹⁰⁴ Various countries in this and other regions have also received assistance to strengthen their arms transfer control systems as part of the EU ATT Outreach Project.¹⁰⁵ The EU has also provided relevant funding to strengthen different aspects of SALW controls by promoting and supporting the implementation of international instruments such as the UNPOA and the Firearms Protocol or the work of regional organizations such as the AU and its regional economic communities.¹⁰⁶ It has sponsored the improvement of PSSM standards in the Sahel region, in cooperation with UN Regional Center for Peace and Disarmament in Africa. Further, the EU funds the work of the UN Office on Drugs and Crime and INTERPOL to disrupt illicit firearms trafficking flows, including in West and Central Africa.¹⁰⁷ Finally, as mentioned, the EU is a longstanding supporter of the iTrace project implemented by Conflict Armament Research on monitoring and tracing the transfers of diverted weapons.

In addition to these assistance programmes, some EU member states such as Germany are also key donors and assistance providers in the field. For the EPF to function well, the experience and knowledge gained through the implementation of these

¹⁰² European External Action Service (note 36).

¹⁰³ See e.g. Maletta, G. and Robin, L., 'Supporting small arms and light weapons controls through development assistance: The case of sub-Saharan Africa', SIPRI Report, Feb. 2021. For an overview of EU-funded assistance activities since 2012 see also Mapping ATT-relevant cooperation and assistance activities database: <https://att-assistance.org/>.

¹⁰⁴ See e.g. Mapping ATT-relevant cooperation and assistance activities database, 'Kick-off workshop of the European Union Partner-2-Partner Export Control Programme on arms diversion in Western Africa', 10 Nov. 2016.

¹⁰⁵ These include Benin, Burkina Faso, Cameroon, Cote d'Ivoire, Senegal, Togo and Zambia. Ad hoc activities were also implemented in Mali and Nigeria. See Council of the European Union, 'Council Decision (CFSP) 2021/2309 of 22 December 2021 on Union outreach activities in support of the implementation of the Arms Trade Treaty', *Official Journal of the European Union*, L 461, 22 Dec. 2021, Appendix.

¹⁰⁶ See e.g. Maletta and Robin (note 103).

¹⁰⁷ Global Illicit Flows Programme of the European Union, 'iArms'; and Global Illicit Flows Programme of the European Union 'DISRUPT: Disrupting firearms trafficking flows', accessed on 3 Apr. 2022.

and other programmes could prove particularly useful for the EU. For instance, EPF beneficiaries that are also partners in ongoing EU-led capacity-building programmes could provide an entry point to promote post-shipment controls. In addition, the assistance that these countries receive could be tailored to reinforce the focus on diversion and misuse.¹⁰⁸ More generally, the possibility to strengthen WAM systems in countries receiving military equipment funded through the EPF offers the opportunity to broaden the focus of assistance. It cannot only encompass technical support to ensure the physical security of armories, storage and other relevant infrastructures but also serve to improve record-keeping practices and thus the traceability of weapons and the accountability for them.¹⁰⁹ However, relevant trainings, capacity building and outreach will prove ineffective unless widespread practices of corruption are addressed: combining these activities with ‘countertrafficking and anti-organized crime doctrine and anti-corruption measures’ is described as a way of tackling this problem.¹¹⁰

Linking arms transfer and SALW control-related assistance to the provision of equipment

The experience and knowledge gained by the EU as an assistance provider in the field of arms transfers and SALW controls could be helpful to address concerns about risks of diversion and misuse if stronger links are built between these activities and the processes of approving arms transfers under the EPF. This may entail ensuring that the beneficiaries of such transfers are those that already receive relevant assistance and have achieved progress in this area.

Progress reports on the implementation of the EU SALW Strategy, which used to be published on the EEAS website, detailed, among other data, information on the assistance provided by the EU in the field of SALW controls in different regions of the world, which could prove helpful to map relevant efforts and inform the assessment of their progress. Further, the Council of the EU’s decisions in support of the EU ATT Outreach Project task the EEAS and the Council Working Party on Conventional Arms Exports (COARM) with providing an impact assessment of the programme based on the development of the arms transfer control capacities of beneficiary countries, among other tasks. The assessments produced for the already implemented phases of the project could feed the process of assessing assistance measures under the EPF or identifying complementary assistance measures. Moreover, the EU also supports the Geneva International Center for Humanitarian Demining in assessing the feasibility of an internationally recognized system for the validation of arms and ammunition management according to open international standards.¹¹¹ This could contribute to developing ways of assessing the effectiveness of PSSM standards of the states that could receive assistance funded by the EPF or support relevant work in the field (e.g. UN processes promoting the strengthening of WAM standards).

The aforementioned measures and tools are heavily focused on what can be done to prevent post-shipment diversion to unauthorized end-users. These are more or less useful depending on the context and definitely more challenging to implement and yield results in a conflict or post-conflict situation. Conversely, preventing the risks that arms transfers may be used in connection with violations of human rights and IHL relies heavily on assessments made prior to the export. In this regard, in drawing on the analysis of the benefits, risks and impacts of a possible assistance measure involving

¹⁰⁸ Varisco, Brockmann and Robin (note 95), p. 26.

¹⁰⁹ Mike Lewis, Independent expert, Communication with authors, 17 Mar. 2022.

¹¹⁰ Mangan, F. and Nowak, M., *The West Africa–Sahel Connection: Mapping Cross-border Arms Trafficking*, Briefing Paper (Small Arms Survey: Geneva, Dec. 2019), p. 19.

¹¹¹ Council of the European Union, ‘Council Decision (CFSP) 2020/979 of 7 July 2020 in support of the development of an internationally recognised system for the validation of arms and ammunition management according to open international standards’, *Official Journal of the European Union*, L218, 7 July 2020.

arms transfers, the EU could rely on its own guidance to identify useful procedures and sources as well as information exchanges through COARM.¹¹² EU delegations and CSDP missions and operations as well as the Intelligence Directorate located within the EU Military Staff could also be tapped into to feed relevant assessments. These same resources, together with media reports and using diplomatic missions, among others, could also prove useful for monitoring the use of the equipment provided and thus be a source for other forms of post-shipment controls. Additional measures such as IHL and human rights trainings targeting security forces in partner countries are also relevant but are outside the scope of export control-related measures.

¹¹² Council of the European Union, 'User's Guide to Council Common Position 2008/944/CFSP (as amended by Council Decision (CFSP) 2019/1560) defining common rules governing the control of exports of military technology and equipment', 12189/19, 16 Sep. 2019.

5. Recommendations

The establishment of the EPF makes the EU able, for the first time, to use joint funds to finance the supply of lethal military equipment to partners potentially anywhere in the world. Yet, there are concerns about the EPF, not least regarding the level of oversight and transparency surrounding the instrument. Considering the particularly volatile contexts in which the EPF is or is likely to be funding the provision of weapons, the risk of these items being diverted or misused is tangible. To address all these concerns and mitigate relevant risks, the EU and its member states should therefore consider the following recommendations:

Giving the European Parliament a role in the implementation of the EPF. The European Parliament has played a key role in the development and oversight of arms export control standards at the EU level and remains actively engaged on issues related to the implementation of the EU Common Position.¹¹³ Given that the European Parliament lacks a formal oversight role in the management of the EPF, the council and the EU High Representative should therefore consider consulting and briefing this body over the implementation of this mechanism, which the parliament itself has also recommended.

Ensuring transparency on what equipment is funded by the EPF. Arms transfers funded by the EPF will be included in the *EU Annual Report on Arms Exports* and likely in EU member states' national reports as well. The current format of the EU annual report does not allow for distinguishing this information, which is why necessary adjustments are expected to be made to give more details on the activities implemented and equipment delivered as part of EPF assistance measures. Ideally, such adjustments should ensure that the EU report provides specific and disaggregated data on EPF-related transfers. Further, there could be greater transparency on the type and quantity of items provided at the time an assistance measure is established. In the case of Ukraine, these details—although ultimately leaked or otherwise provided by the supplier states—were withheld for strategic reasons, which may establish a problematic precedent in the future implementation of the EPF.

Using the full range of post-shipment controls and ensuring coordination between the EU and EU member states on how these are implemented. To avoid confusion or overlaps in the implementation of monitoring measures requested by the EU and, possibly, the EU member state(s) exporting the equipment funded through the EPF, these actors should coordinate and align while defining end-user assurances with the beneficiaries of the assistance measures. They should also work closely in the implementation of the full range of post-shipment controls where applicable, from on-site inspections to post-delivery monitoring through intelligence and media reports, with a view to avoid duplication and maximize available resources.

Mapping and using the tools and expertise that the EU has at its disposal to conduct risk assessments and post-shipment controls. While the EU has neither the extensive experience to conduct these activities, nor a dedicated agency to carry out such work, it nevertheless has at its disposal a series of tools and resources that it could use to

¹¹³ Bromley, M., 'The review of the EU Common Position on arms exports: Prospects for strengthened controls', EU Non-Proliferation Papers no. 7, SIPRI, Jan. 2012, pp. 5–6; and European Parliament, 'Arms export: Implementation of Common Position 2008/944/CFSP, European Parliament resolution of 17 September 2020 on Arms export: Implementation of Common Position 2008/944/CFSP (2020/2003(INI))', 17 Sep. 2020.

enhance its monitoring and control role in the context of the EPF or even beyond. Mapping and using instruments and expertise available in different bodies or partners would be a particularly important first step. These resources could also be made available to EU member states to use when supplying arms outside of the EPF context, where necessary.

Building links between EPF assistance measures and arms transfer and SALW control-related assistance activities. The EU is one of the leading donors in the field of arms transfers and SALW control-related assistance. Relevant resources, experience and partnerships could be used to attach the provision of equipment through the EPF towards the improvement of WAM standards in recipient countries. In turn, the same tools could be used to ensure that recipients of EPF-funded equipment have received arms transfers and SALW control-related assistance or achieved progress in this area. Although assessing the impact of this type of assistance is a particularly challenging endeavour, certain steps could be taken.¹¹⁴ The available assessments could feed the process of establishing assistance measures under the EPF. Further, the EEAS could resume the practice of producing annual progress reports on the implementation of the EU SALW Strategy.

Retaining and developing good practices. The implementation of the EPF could offer opportunities to advance relevant discussions and strengthen good practices in the field of arms transfer controls and information exchange. For instance, it could further develop the debate among EU member states on the role of post-shipment controls and on-site inspections specifically as a way to build cooperation and trust between suppliers and recipients. In the context of Ukraine, the clearing house mechanism established by EU military staff to coordinate the demands and needs of the Ukrainian armed forces with supplies from EU member states could also be a useful practice to retain. In future EPF assistance measures and beyond, a similar mechanism could be used by EU member states and its allies to coordinate military aid and ensure that, without any overlap, all relevant assistance efforts meet the actual needs of the recipients.

¹¹⁴ See e.g. Maletta, G. and Bauer, S., 'Taking stock of the Arms Trade Treaty: International assistance to support implementation', SIPRI Report, Aug. 2021.

Appendix A. List of EU council decisions establishing assistance measures under the European Peace Facility, as per 28 June 2022

EU council decision	Scope	Financial allocation (€ m.)
Council Decision (CFSP) 2021/1210 of 22 July 2021 on an assistance measure taking the form of a general programme for support to the African Union	Financing the military aspects of African-led peace support operations mandated or authorized by the AU Peace and Security Council	104
Council Decision (CFSP) 2021/1923 of 4 Nov. 2021 on an assistance measure to support capacity building for the armed forces of Bosnia and Herzegovina	Financing the following types of equipment: (a) Mobility: 34 (4x4) transportation vehicles; (b) Support: 34 (4x4) medical vehicles; (c) Technology: 150 metal detectors	10
Council Decision (CFSP) 2021/2032 of 19 Nov. 2021 on an assistance measure to support military units trained by the EU Training Mission in Mozambique	Equipment not designed to deliver lethal force: individual equipment for soldiers; collective equipment at company level; ground and amphibious mobility assets; technical devices; and a field hospital	40
Council Decision (CFSP) 2021/2137 of 2 Dec. 2021 on an assistance measure to support the armed forces of the Republic of Mali in conjunction with the EU Training Mission in Mali (suspended in May 2022) ^d	Financing support to the Non-Commissioned Officers' (NCO) Academy in Banankoro; renovating training infrastructure in Sévaré-Mopti; and providing equipment not designed to deliver lethal force for three companies of the 23rd Regiment of the 2nd military region of Mali, according to the needs of the Unité légère de reconnaissance et d'intervention (ULRI)	24
Council Decision (CFSP) 2021/2134 of 2 Dec. 2021 on an assistance measure to support the Georgian Defence Forces	Equipment not designed to deliver lethal force, supplies and services to units of the Georgian Defence Forces: medical equipment for Role 2 medical treatment facilities; engineer equipment for engineer squads and platoons; and ground mobility assets of civilian type (pickup trucks)	12.75
Council Decision (CFSP) 2021/2135 of 2 Dec. 2021 on an assistance measure to support the Ukrainian Armed Forces (UAF)	Equipment not designed to deliver lethal force to strengthen the capacities of the UAF with respect to its military medical units (including field hospitals); engineering units (including demining); mobility and logistics units; and cyber defence units	31
Council Decision (CFSP) 2021/2136 of 2 Dec. 2021 on an assistance measure to support the Armed Forces of the Republic of Moldova	Equipment not designed to deliver lethal force and supplies to the units of the armed forces: medical equipment for the Military Medical Service and explosive ordnance disposal equipment for the Engineer Battalion	7
Council Decision (CFSP) 2022/338 of 28 Feb. 2022 on an assistance measure for the supply to the Ukrainian Armed Forces of military equipment and platforms designed to deliver lethal force	Military equipment and platforms designed to deliver lethal force	450
Council Decision (CFSP) 2022/339 of 28 Feb. 2022 on an assistance measure to support the Ukrainian Armed Forces	Equipment and supplies not designed to deliver lethal force, such as personal protective equipment, first aid kits, and fuel to the Ukrainian Armed Forces	50
Council Decision (CFSP) 2022/471 of 23 Mar. 2022 amending Decision (CFSP) 2022/338 on an assistance measure for the supply to the Ukrainian Armed Forces with military equipment and platforms designed to deliver lethal force	Military equipment and platforms designed to deliver lethal force	450

Council Decision (CFSP) 2022/472 of 23 Mar. 2022 amending Decision (CFSP) 2022/339 on an assistance measure to support the Ukrainian Armed Forces	Equipment and supplies not designed to deliver lethal force, such as personal protective equipment, first aid kits and fuel	50
Council Decision (CFSP) 2022/636 of 13 Apr. 2022 amending Decision (CFSP) 2022/338 on an assistance measure for the supply to the Ukrainian Armed Forces of military equipment and platforms designed to deliver lethal force	Military equipment and platforms designed to deliver lethal force	450
Council Decision (CFSP) 2022/637 of 13 Apr. 2022 amending Decision (CFSP) 2022/339 on an assistance measure to support the Ukrainian Armed Forces	Equipment and supplies not designed to deliver lethal force, such as personal protective equipment, first aid kits and fuel	50
Council Decision (CFSP) 2022/668 of 21 Apr. 2022 amending Decision (CFSP) 2021/2032 on an assistance measure to support military units trained by the EU Training Mission in Mozambique	Equipment not designed to deliver lethal force: individual equipment for soldiers; collective equipment at company level; ground and amphibious mobility assets; technical devices; and a field hospital.	45
Council Decision (CFSP) 2022/667 of 21 Apr. 2022 on an assistance measure taking the form of a general programme for support to the African Union for the period 2022–2024	Financing the military aspects of African-led peace support operations mandated or authorized by the AU Peace and Security Council	600
Council Decision (CFSP) 2022/809 of 23 May 2022 amending Decision (CFSP) 2022/338 on an assistance measure for the supply to the Ukrainian Armed Forces of military equipment and platforms designed to deliver lethal force	Military equipment and platforms designed to deliver lethal force	490
Council Decision (CFSP) 2022/810 of 23 May 2022 amending Decision (CFSP) 2022/339 on an assistance measure to support the Ukrainian Armed Forces	Equipment and supplies not designed to deliver lethal force, such as personal protective equipment, first aid kits and fuel	10
Council Decision (CFSP) 2022/906 of 9 June 2022 on an assistance measure to strengthen the capacities of the Balkan Medical Task Force	Financing the provision of: mobility assets (medical and terrain vehicles); role 2 hospitals; laboratory equipment and supplies; IT and communication equipment	6

^a For more information about the suspension of the European Union Training Mission in Mali, see Council of the European Union, ‘Foreign Affairs Council (Defence)’, 17 May 2022.

Sources: Authors’ own compilation based on the *Official Journal of the European Union* and Council of the EU, ‘Timeline—European Peace Facility’, accessed on 28 June 2022.

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