

# Appendix 9A. Documents agreed at the Wassenaar Arrangement on Export Controls Plenary

## ELEMENTS FOR EXPORT CONTROLS OF MAN-PORTABLE AIR DEFENSE SYSTEMS (MANPADS)

*Bratislava, 1 December 2000*

Recognizing the threats posed by unauthorized proliferation and use of Man-Portable Air Defense Systems, especially to civil aviation, peace-keeping, crisis management and anti-terrorist operations, Participating States affirm that they apply strict national controls on the export of MANPADS.

### 1. Definitions and scope

1.1 MANPADS are herein defined as surface-to-air missile systems designed to be carried by an individual or by individuals, including complete systems, components, spare parts, models, training systems, and simulators. They include, but are not limited to, all man-portable variants of the Blowpipe, Hamlet, Javelin, Keiko, Mistral, RBS-70, RBS-70 Mk-2, Redeye, SA-7, SA-14, SA-16, SA-18, Starburst, Starstreak, Stinger, and Vanguard.

1.2 National export controls apply to the international transfer or retransfer of MANPADS, for any purpose, by any means, including licensed export, sale, grant, loan, lease, co-production or licensing arrangement for production (hereafter 'export'). The scope of export regulation and associated controls includes research, design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, servicing, modification, upgrade, modernization, operation, use, replacement or refurbishment, demilitarization, and destruction of MANPADS; technical data, software, technical assistance, demonstration, and training associated with these functions; and secure transportation, storage, and use.

1.3 Any activity related to MANPADS within the territory of the producing country is subject to national laws and regulations.

### 2. Export control evaluation criteria

2.1 Decisions to permit MANPADS exports will be made by competent authorities

of the exporting government, only to foreign governments or to agents authorized by the government.

2.2 MANPADS exports will be evaluated in light of Wassenaar Arrangement Initial Elements and Wassenaar document 'Elements for Objective Analysis and Advice Concerning Potentially Destabilizing Accumulations of Conventional Weapons' and any subsequent amendments thereto.

2.3 Decisions to authorize MANPADS exports will take into account:

Potential for diversion or misuse in the recipient country;

The recipient government's ability and willingness to protect against unauthorized re-transfers, loss, theft and diversion; and

The adequacy and effectiveness of the physical security arrangements of the recipient government for the protection of military property, facilities, holdings, and inventories.

1.1 Prior to authorizing MANPADS exports, the exporting government will assure itself of the recipient government's guarantees:

not to re-export MANPADS except with the prior consent of the exporting government;

to afford requisite security to classified material and information in accordance with applicable bilateral agreements, to prevent unauthorized access or compromise;

to inform promptly the exporting government of any instance of compromise, unauthorized use, loss, or theft of any MANPADS material.

1.2 In addition, the exporting government will satisfy itself of the recipient government's willingness and ability to implement effective measures for secure storage, handling, transportation, and use of MANPADS material, to prevent unauthorized access and use. The recipient government's national procedure designed to attain the requisite security include, but are not limited to, the following set of practices, or others that will achieve comparable levels of protection and accountability:

Written verification of receipt of MANPADS shipments.

Inventory by serial number initial shipments of all transferred firing mechanisms and missiles, if physically possible; and maintain written records of inventories.

Physical inventory of all MANPADS subject to the transfer, at least once a month; account by serial number for MANPADS components expended or damaged during peacetime.

Store MANPADS in a manner that ensures their physical security, but at a minimum store missiles and firing mechanisms in separate locations.

Transport MANPADS in accordance with standards and practices for safeguarding munitions in transit, and at a minimum, transport missiles and firing mechanisms in separate containers.

Bring together and assemble the principal components—typically the gripstock and the missile in a launch tube—only in the event of hostilities or imminent hostilities; for firing as part of regularly scheduled training or for lot testing, for which only those rounds intended to be fired will be withdrawn from storage and assembled; when systems are deployed as part of the point defenses of high priority installations or sites; and in any other circumstances which might be agreed between the receiving and transferring governments.

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*Source:* Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, ‘Public statement: the Sixth Plenary of the Wassenaar Arrangement’, URL <[http://www.wassenaar.org/docs/press\\_5.html](http://www.wassenaar.org/docs/press_5.html)>.

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## **BEST PRACTICES FOR DISPOSAL OF SURPLUS/DEMILITARISED MILITARY EQUIPMENT**

*Bratislava, 1 December 2000*

The following list of ‘best practices’ for disposal of surplus military equipment (items that may or may not have been demilitarised) is drawn from the responses provided by Participating States on this subject. These practices are those actually followed or aspired to by Wassenaar Arrangement Participating States and are illustrative of effective export control over surplus/demilitarised military equipment.

1. Items of surplus military equipment (including small arms and light weapons), i.e., items designed for military use but no longer needed, remain subject to the same export controls as new equipment.

2. Safeguards are in place to prevent illicit resale and export of items of surplus military equipment that have been sold or otherwise transferred domestically.

3. Physical security measures and inventory controls are sufficient to prevent theft/diversion of items in storage.

4. Demilitarised equipment capable of being re-militarised is also subject to stringent export controls, in almost all cases identical to those controls applied to new military equipment.

5. The ‘Best Practices for Effective Enforcement’, including preventive enforcement, investigation, effective penalties, and international cooperation, are applied to ensure effective control of surplus/demilitarised military equipment.

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## **EXTREME VIGILANCE: SUB-SET OF TIER 2 (VSL) ITEMS, ‘BEST PRACTICES’**

*Bratislava, 1 December 2000*

### *Introduction*

The Initial Elements (IE) called on Participating States to discuss and compare national practices concerning their commitment to exercise extreme vigilance for items included in the sub-set of Tier 2 (Very Sensitive List) by applying to those exports national conditions and criteria (IE V.5).

There follows a non-binding list of ‘best practices’ with respect to export controls on VSL items.

‘Best practices’ does not necessarily imply ‘common practices’. Therefore, not all of the practices are presently followed by all Participating States. The list does represent, however, an amalgam of the export control practices followed with respect to VSL items by WA Participating States, consistent with national legislation and international law.

### *Extreme vigilance for sub-set of Tier 2 (VSL) items, ‘Best practices’*

1. Licences are granted on a case-by-case basis. Documentation required for the licence includes information concerning:

a. Identification/description (type, quantity, value, weight)/specifications of item/performance characteristics;

b. Applicant;

c. Purchaser; and

d. End-user (if different from purchaser) and end-use.

2. Consultations occur among relevant government agencies within the exporting country with respect to licence applications to export VSL items. During these consultations, the appropriateness of the quantity and technological level of the item to the stated end-use, and the bona fides of the end-user are among the criteria considered.

3. In order to determine, *inter alia*, the risk of diversion or unauthorized use, additional information on end-users may be gathered, as necessary, using appropriate means ranging from documentation to visitation (with the consent of the recipient country) prior to the licensing decision.

4. As a condition of any licence to export a VSL item, the following may be required:

a. Import Certification or end-user statement;

b. Assurance of no re-export without authorisation; and

c. Delivery Verification or other acknowledgement of delivery from the receiving Government.

5. As necessary, post-shipment verification may be carried out through appropriate means by the exporter, supplier or officials of the exporting country.

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## BEST PRACTICES FOR EFFECTIVE ENFORCEMENT

*Bratislava, 1 December 2000*

The following list of 'best practices' for effective export control enforcement were adopted by the Wassenaar Plenary as a non-binding amalgam of the enforcement practices followed by different Wassenaar Arrangement Participating States which are illustrative of an effective enforcement programme.

### *Preventive enforcement*

1. Use threat assessment techniques and procedures for evaluating parties involved in a

proposed export transaction, paying particular attention to those considered to be suspicious, unreliable, or presenting a high risk of diversion.

2. Maintain a list of problem end-users to identify license applications deserving closer scrutiny.

3. Confirm the stated end-user and end-use of items to be exported prior to issuing an export license. As appropriate, this can be accomplished by several means, ranging from documentation to on-premise checks of the end-user and end-use.

4. Obtain assurances regarding the end-use and non re-export of licensed items, as appropriate.

5. Examine goods and the documentation required to be presented at point of export, using risk assessment techniques to aid selection. Detain suspect shipments and seize unauthorised or illegal exports, which may include those that are passing in-transit.

6. As necessary, confirm that exported goods have reached their intended destinations using appropriate means, ranging from documentation to on-site verification.

7. Conduct industry awareness programs to improve exporters' understandings of the objectives and coverage of export controls, including controls on software and technology.

8. Seek voluntary compliance by industry. As appropriate, encourage development by industry of internal compliance programs.

9. Keep industry and the general public apprised of penalties for failure to comply, using, as appropriate, cases of successful prosecution as examples.

### *Investigations*

10. Designate law enforcement responsibilities for detection, prevention, and punishment of violations of export control laws.

11. Provide adequate resources and training for enforcement officers.

12. Ensure that national laws and regulations have statutes of limitations sufficiently long to permit the detection and prosecution of export control violations.

13. Consistent with national laws, policies and regulations and on a mutually-agreed basis, including international agreements for legal and customs assistance, and mutually respecting national sovereignty, governments may cooperate in the investigation and prosecution of violations of export controls cases, by:

- a. Furnishing relevant documents and items relating to violations;
- b. Facilitating the availability of witnesses; and
- c. Providing for the extradition of violators, consistent with treaty obligations.

*Effective penalties*

14. Establish effective penalties (including, as appropriate, criminal sanctions, civil fines, publicity and restriction or denial of export privileges) sufficient to punish and deter violations of export controls.

*International cooperation/information exchanges*

15. Consistent with national laws, policies and regulations and on a mutually-agreed basis, including international agreements for legal and customs assistance, governments may, as appropriate, share information bilaterally on persons and companies considered to present a high risk of diversion. Examples of information to share include:

- a. Information obtained in the course of pre-license and post-shipment verifications; and
- b. Information about export control prosecutions, convictions, and restrictions or denials of export privileges.

16. Consistent with national laws, policies and regulations, governments may, as appropriate, share information in the context of multilateral export control arrangements. Examples of information to share include:

- a. General information on risks associated with destinations of concern;
- b. Information on license denials;
- c. Information on networks, agents, brokers and end-users of concern.

17. Senior enforcement officials may maintain, as appropriate, formal and informal information exchanges with their counterparts in member country governments.

18. Licensing and enforcement officials should respect the confidentiality of information received and should ensure that access to it is restricted to those officials who have been duly authorised.

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