

DIVERSION DIGEST

End-User Documentation

An analysis of information relating to the transfer of conventional weapons and ammunition.

IN THIS ISSUE

ANALYSIS OF A SAMPLE OF 75 END-USER
DOCUMENTS

DOCUMENTS ISSUED OVER A 20-YEAR PERIOD

15 ISSUING COUNTRIES

REVIEW OF END-USE AND RE-EXPORT
COMMITMENTS



3

INTRODUCTION

5

KEY FINDINGS

6

NOTES ON METHODOLOGY

8

TRANSFER PARTIES

11

DESCRIPTION OF GOODS

13

END-USE(R) COMMITMENTS

14

DOCUMENT IDENTIFIERS

16

**RE-EXPORT AND DELIVERY
VERIFICATION**

20

**CONCLUSION AND
RECOMMENDATIONS**

21

ENDNOTES

23

REFERENCES**ABOUT**

Conflict Armament Research (CAR) documents weapons, ammunition and related materiel at the point of use in conflict zones and traces their supply chains back to the point of origin.

Established in 2011, CAR generates unique evidence on weapon supplies into armed conflicts in order to inform and support effective weapon management and control. Through formal agreements with national governments, CAR has secured unparalleled access to conflict zones around the world. CAR field investigative teams have worked in more than 30 conflict-affected states, with ongoing operations focused on West Africa, Central and East Africa, the Middle East and North Africa, and Central and South East Asia.

CAR manages the iTrace® Global Weapon Reporting project. iTrace® is a European Union and German government-funded public database that provides policy makers with the precise, verified information required to understand weapon transfers in detail and, thereby, develop effective, evidence-based weapon management and control.

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INTRODUCTION

End-user documentation is an important tool that licensing authorities can use to prevent diversion. It provides an early opportunity to secure a commitment that the items being transferred are truly destined for the stated end user, will remain under that end user's control after export, and will not be diverted. A comprehensive and detailed end-user document should, therefore, provide an export licensing authority with information that would form the bedrock of its diversion risk assessment.

This Digest draws on UNIDIR's analysis of good practice guidelines and applies this framework to a sample of 75 end-user documents from CAR's archive.

End-user documents are also key diagnostic tools for investigations into the diversion of conventional weapons, ammunition, and related materiel (see Box 1). Through the course of its investigations, Conflict Armament Research (CAR) has developed a large archive of various types of official documentation. Each document provides critical insight into the entities involved in the transfer of weapons and ammunition and assists in identifying the mode through which weapons and ammunition are diverted to unauthorised users.



ABBREVIATIONS

CAR

Conflict Armament Research

DVC

Delivery Verification Certificate

EUC

End-User Certificate

EUS

End-User Statement

IIC

International Import Certificate

OSCE

Organization for Security and Co-operation in Europe

RECSA

Regional Centre on Small Arms in the Great Lakes Region, the Horn of Africa and Bordering States

UNIDIR

United Nations Institute for Disarmament Research

UNODA

United Nations Office for Disarmament Affairs



Box 1

KEY TERMS

Diversion

Any loss of weapons or ammunition from state control and their resulting acquisition by unauthorised users, including insurgent and terrorist forces and other non-state armed groups, or supply to state and non-state parties prohibited under law (CAR, 2018b, p. 6).

End-user documentation

End-user certificates (EUCs) and certified end-user statements (EUSs), as distinct from other transfer documents, such as international import certificates (IICs), which are neither signed nor stamped by the end user (Wood and Danssaert, 2011, p. 37; see Box 4).

An EUC is:

an official document, issued by a competent authority of the importing State, that identifies a government agency of the importing State as the ultimate recipient of an international transfer of small arms or light weapons (UNODA, 2018, cl. 6.2.1).

A certified EUS is:

a document issued by a private end-user that provides assurances regarding the end user and end-use of internationally transferred small arms or light weapons [and] that has been stamped and signed (or otherwise certified) by a competent authority of the importing state (UNODA, 2018, cl. 6.3.1).¹

CAR uses the term 'end-user document' throughout this Digest to refer to both EUCs and EUSs.

CAR has found that items are most often diverted after reaching the declared end user.

There is a lack of international consensus regarding the structure and scope of end-user documentation. Documents are not standardised across exporting or importing authorities, and differences in national systems and definitions pose a challenge to supply-chain control.

This issue of the CAR Diversion Digest analyses a sample of end-user documents in CAR's archive that relate to actual deliveries of conventional weapons and ammunition. It is important to note that any diversion of items covered

in these documents is not necessarily related to the end-user documents in this sample, or to any technical issues identified in this study. While diversion into conflict zones can occur following a violation of the terms of an end-user document, the first issue of CAR's Diversion Digest has shown that items are most often diverted after reaching the declared end user, typically due to weaknesses associated with the recipient's physical security and stockpile management, or through battlefield capture.²

KEY FINDINGS

CAR's analysis of a sample of 75 end-user documents has identified the following common issues:

LACK OF STANDARDISATION

The end-user documents in CAR's sample are based on different templates and formats. All of the documents have at least some common elements; for example, all provide a quantity and basic description of the goods to be transferred and identify the end user of the items. They vary in terms of their level of detail and clarity, however, generally because individual exporters require distinct types of information.

ABSENCE OF KEY INFORMATION

Many of the documents contain incomplete or otherwise inadequate information, or lack it altogether, thwarting a licensing authority's ability to perform due diligence prior to export. For example, four documents identify the end user simply as 'Government', which might encompass a range of possible military or security forces. Nearly half of the end-user documents in CAR's sample lack a reference number, and only two feature a clear date of expiry.

RED FLAGS

CAR's analysis identifies several poorly completed end-user documents—which would normally require follow-up by exporting authorities. On one such document, key details had been redacted (obscured from view) prior to its submission to an exporter; meanwhile, two other documents, which were issued five years apart, had the same 'unique' reference number.

INCONSISTENT RE-EXPORT CLAUSES

All bar one of the documents analysed by CAR contain a non-re-export clause; however, these clauses are expressed using 19 different formulations of transfer activities. This lack of clarity and consistency in terminology may inhibit the original exporter from implementing effective supply-chain controls.

LIMITED DELIVERY VERIFICATION AND POST-SHIPMENT CONTROLS

Only 11 of the 75 end-user documents analysed by CAR contain a commitment from the importing authorities to provide the exporter with proof of delivery. Good practice guidelines currently do not list delivery verification certificates among the essential elements of end-user documents. As states explore the potential of post-shipment verification to facilitate diversion mitigation and detection, they may decide to call for the inclusion of such clauses in the documentation.



NOTES ON METHODOLOGY

Five organisations and regimes—the European Union, the Organization for Security and Co-operation in Europe (OSCE), the Regional Centre on Small Arms in the Great Lakes Region, the Horn of Africa and Bordering States (RECSA), the United Nations, and the Wassenaar Arrangement—have developed guidelines on standards and elements to include in end-user documentation.³

The guidelines differ on what elements should be included, and on which should be essential as opposed to optional. In 2015 the UN Institute for Disarmament Research (UNIDIR) reviewed the five guidelines and identified ten elements that were commonly recommended as essential for inclusion (Holtom, 2015, pp. 45 and 50).⁴ These elements fall under four main categories (see Box 2).

This Digest draws on UNIDIR's analysis of good practice guidelines and applies this framework to a sample of 75 end-user documents from CAR's archive. In selecting the sample, CAR included documents that relate to the transfer of conventional weapons and ammunition, while excluding all non-end-user documentation (such as import or export licences, contracts, shipping documentation, and packing lists), as well as end-user documentation concerning dual-use items or components of improvised explosive devices. Some documents in the archive share the same format and only differ in the types of equipment requested;⁵ in those cases, only one representative document was selected for inclusion in the sample. This sample therefore does not cover the total extent of CAR's archive of transfer documentation, which comprises hundreds of documents.

Box 2

KEY ELEMENTS FOR END-USER DOCUMENTATION AS IDENTIFIED IN GOOD PRACTICE GUIDELINES

IDENTIFY THE TRANSFER PARTIES

1. Exporter details
At least name, address and business name.
2. End-user details
At least name and address.

DESCRIBE THE GOODS BEING EXPORTED

3. Description of the goods
Type, characteristics.
4. Quantity and/or value of the exported goods.

PROVIDE AN END-USE COMMITMENT

5. Description of the end use of the goods.
6. Country of final destination.
7. An undertaking that the goods being exported will not be used for purposes other than the declared use, and that the declared end user will be the ultimate recipient of the goods being exported.

UNIQUELY IDENTIFY THE DOCUMENT

8. Contract number or order reference.
9. Signature, name, and position of an end-user representative.
10. Date of issue of the document.

Source: Holtom (2015, pp. 45 and 50)

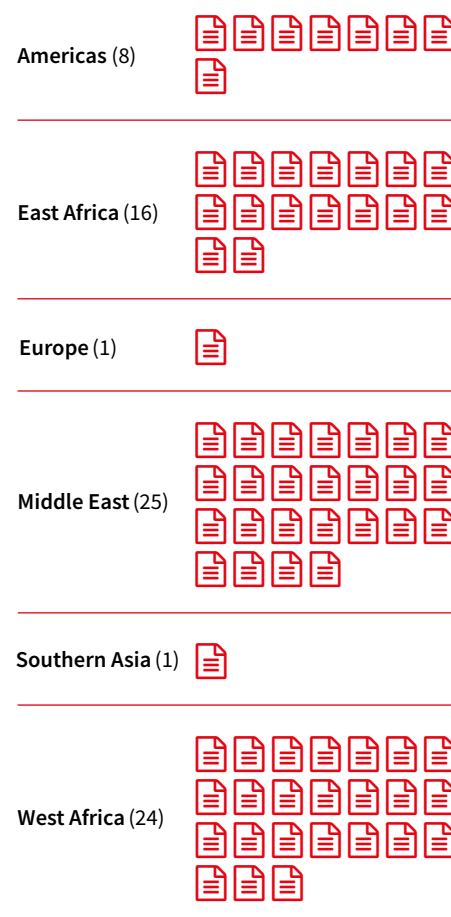
Fifteen importing states issued the selected end-user documents over a 20-year period, from 1998 to 2018 (see Figure 1); collectively, they pertain to 29 different transfer relationships. Nevertheless, the sample is not representative of all end-user documentation. While it covers six of the eight categories of conventional weapons addressed by the Arms Trade Treaty,⁶ it relates largely to state-to-state transfers of small arms and light weapons, as well as their ammunition. This is a reflection of the types of materiel most commonly documented by CAR investigators. Transfers of major conventional weapons, and documents issued by private commercial entities in particular, are under-represented in this sample. Still, this is the largest comparative analysis of recent practice relating to end-user documentation involved in actual deliveries of conventional weapons and ammunition.

FIGURE 2 A TEMPLATE FOR AN END-USER CERTIFICATE

✓ A section of a template for an end-user certificate for small arms and light weapons, developed by the OSCE and the Stockholm International Peace Research Institute.

Source: OSCE (2011, p. 1).

FIGURE 1 NUMBER OF END-USER DOCUMENTS IN THE SAMPLE, BY REGION OF ISSUE



For each of the elements identified in Box 2, this Digest examines 1) whether the information has been clearly requested in the document, and 2) how the issuing authority has presented the information. In addition, this Digest focuses on the issues of re-export clauses and delivery verification. Most good practice guidelines merely recommend these two elements for inclusion, yet they are critical to a supply-chain security approach to end-user documentation.

End User Certificate for Small Arms and Light Weapons

1 EUC UNIQUE IDENTIFIER

*EUC Unique ID: *Date of Issue: *This document is valid until: day / month / year

2 EXPORTER/CONSIGNER DETAILS

*Name: Phone:
 *Business Name: Fax:
 *Address: Email:
 Website URL:
 Contact Person:

3 IMPORTER/CONSIGNEE DETAILS

*Name: Phone:
 *Position: Fax:
 Address: Email:
 Website URL:
 Contact Person:
 *Original Signature:

4 OTHER PARTIES DETAILS

*Name: Phone:
 *Position: Fax:
 Address: Email:
 Website URL:
 Contact Person:
 *Original Signature:

*Name: Phone:
 *Position: Fax:
 Address: Email:
 Website URL:
 Contact Person:
 *Original Signature:



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TRANSFER PARTIES

EXPORTER DETAILS

Good practice guidelines recommend that end-user documents include basic identifiers of the exporter, specifically the name, address, and business name. This requirement is included in the template end-user document developed as part of the OSCE guidelines, for instance (see Figure 2, page 6). The exporter is 'the party who makes, or on whose behalf the export declaration is made, and who is the owner of the arms or has similar right of disposal over them at the time when the declaration is accepted' (Wood and Danssaert, 2011, p. 12).

Of the end-user documents reviewed by CAR, nearly half (35 of 75) clearly named an exporting company (see Figure 3). Another 17 documents were addressed to the exporting government but

either did not name a company at all, or instead named a broker as the applicant or supplier. An end user might contract such entities to carry out the transfer, but they are not the exporter of the goods—a fact that CAR was often able to confirm by checking against contract information. Not all end-user documents in CAR's sample make a clear distinction between the exporter and the broker. Good practice guidelines are divided on whether end-user documents must provide details about the intermediaries in a transfer, despite the fact that an exporter would require this information in order to make an effective risk assessment (that is, in order to identify whether transfer intermediaries are under sanction or have been flagged for their involvement in diversion cases).

FIGURE 3
DOES THE DOCUMENT IDENTIFY THE EXPORTER? (N=75)

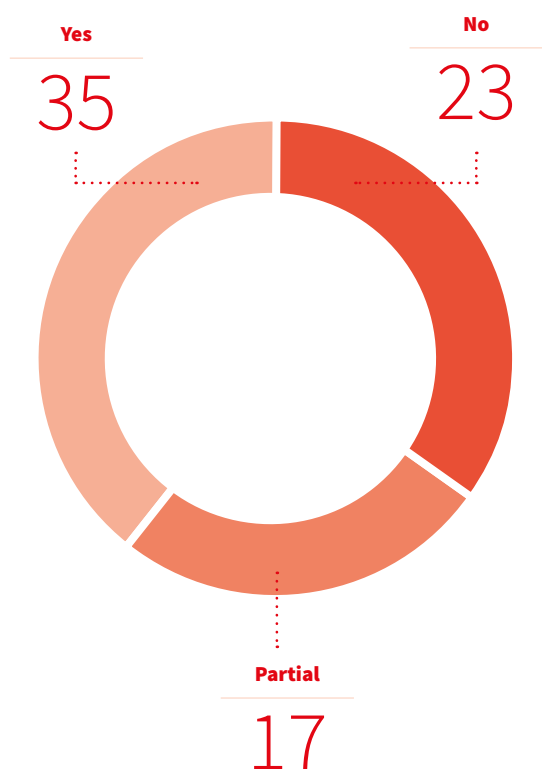
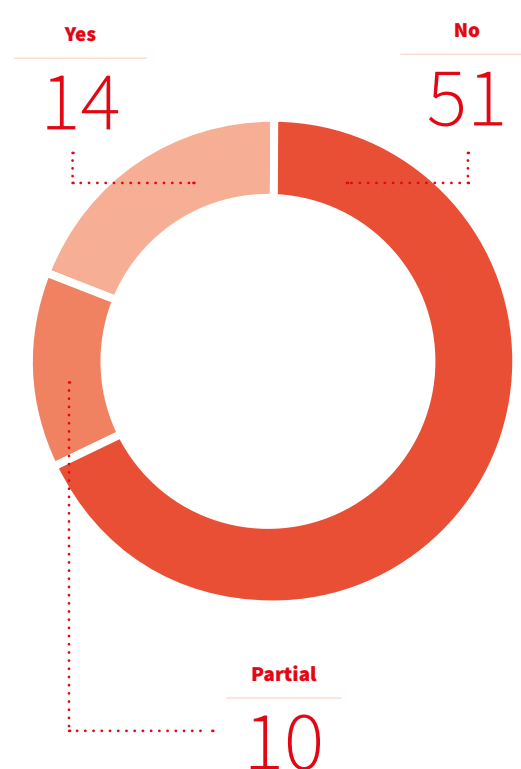


FIGURE 4
WAS THERE A FULL EXPORTER ADDRESS? (N=75)



Almost one-third of CAR's sample of end-user documents did not name the export authority or company at all. Five different importing countries addressed the recipients with the generic salutation, 'To Whom It May Concern'. It is possible that the exporter details were not known at the time these documents were issued. A failure to provide this information can allow would-be offenders to present the same document to multiple export licensing authorities.

Some end-user documents contain partial or obscured information relating to exporters and other transfer parties. In one case, for instance, details relating to a key intermediary in a transfer were redacted from an end-user document prior to its submission to an export licensing authority.⁷

Few of the end-user documents in CAR's sample specify the exporter's address or further identifying details (see Figure 4). Only 14 of the 75 documents list a full exporter address; ten include a partial address (that is, just the capital city and country). Missing, incomplete, and unclear contact details are likely to impede an exporting authority's due diligence efforts. Ideally, an end-user document should name an individual representative for all exporters and brokers it identifies. In this way, previously blacklisted individuals may find it more difficult to escape scrutiny through newly created shell companies.



END-USER DETAILS

One of the key requirements of end-user documentation is a clear identification of who will be in final control of an item that is to be transferred. A failure to supply this information should represent a clear red flag to an exporting authority. The end user:

may be a national government, national military forces, or other national authorities such as police, customs or paramilitary forces. Some types of equipment may also be exported to private entities such as companies that provide security services (WA, 2014, para. 3).

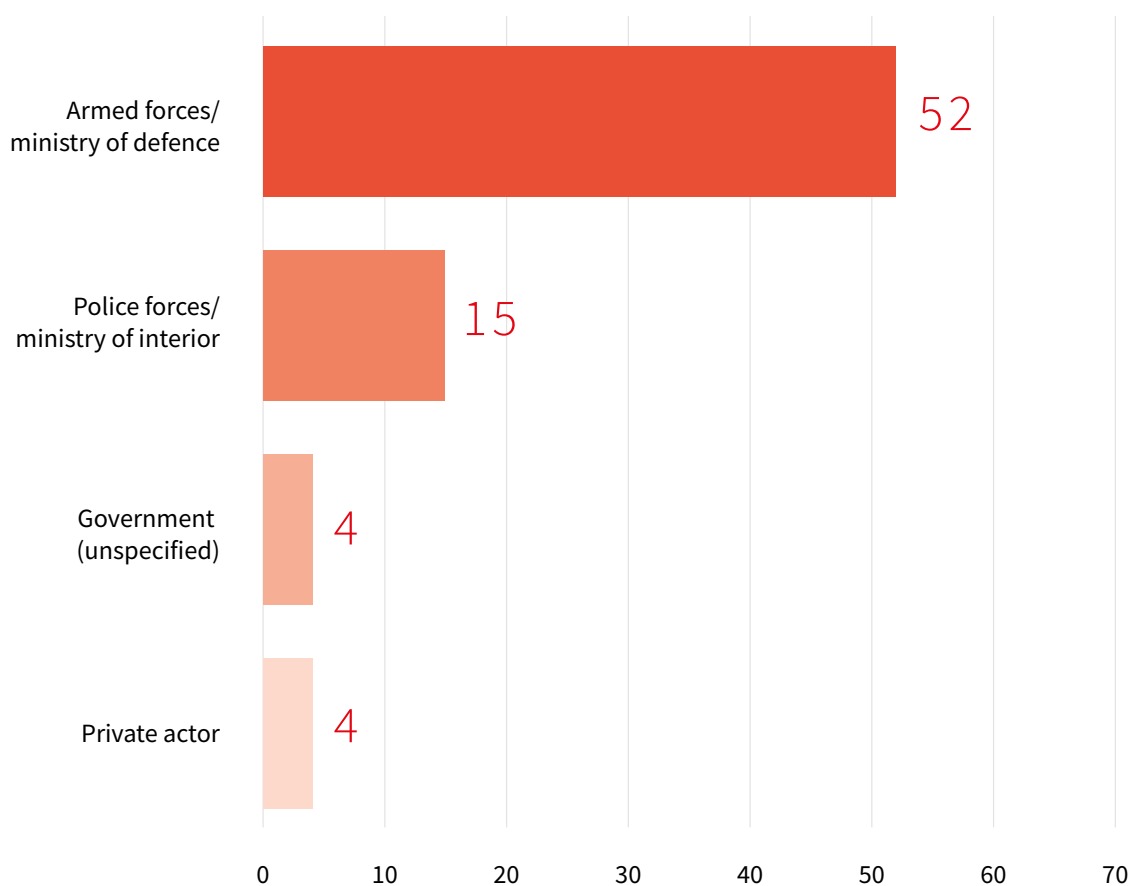
All of the documents analysed by CAR provide at least some indication of the identity of the end user of the materiel to be transferred. The majority specify that the end user is the national armed forces or a government ministry responsible for national defence or internal security (see Figure 5). Four documents identify the end user merely as

‘Government of [country]’. Licensing officers who review such documents would be well advised to request more details about the specific end user in order to assess diversion risks accurately. Since CAR’s mandate focuses on weapons that have been transferred into armed conflicts, the majority of the documents in this sample relate to military weapons that have been subject to state-to-state transfers. Accordingly, private-sector end users account for only a small proportion of the sample (four documents).

Only one-quarter of the documents (18 of 75) analysed by CAR provide a full end-user address. In many documents that identify a government actor as the end user, the corresponding address is provided only in the letterhead, not in the body of the document.⁸ In 30 of the 75 documents, government end users reference only a capital city and country, rather than providing a full address, while 27 documents (just over one-third of CAR’s sample) do not include any form of end-user address.

FIGURE 5

DOES THE DOCUMENT IDENTIFY THE TYPE OF END USER? (N=75)



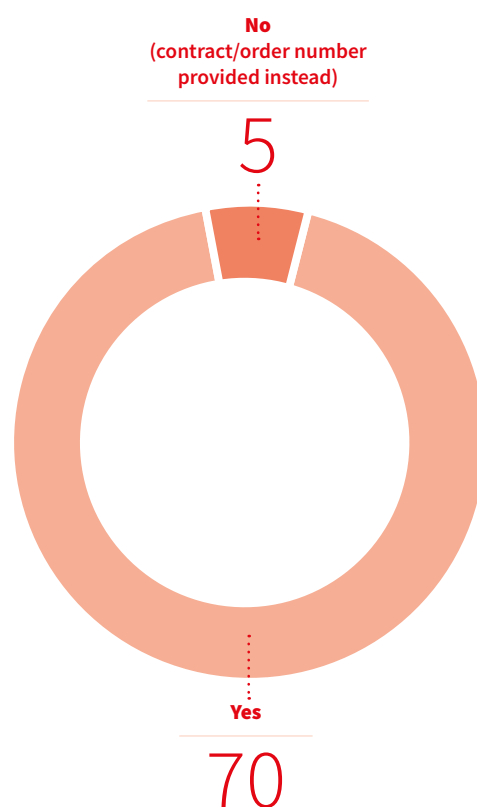
DESCRIPTION OF GOODS

TYPES AND CHARACTERISTICS OF THE GOODS

Good practice guidelines agree that end-user documents need to describe the goods being exported; they differ on what information should form part of such a description. The UN's Modular Small-arms-control Implementation Compendium (MOSAIC) module on national end-user controls advises licensing authorities to include weapon identifiers such as the make, model, calibre, type, and action (UNODA, 2018, cl. 6.2.5d).

Almost all of the end-user documents analysed by CAR provide a description of the weapons or ammunition being transferred (see Figure 6). Descriptions tend to be very broad and short on details. Documents typically name a generic type of weapon (such as PKM heavy machine gun or AK-47 with accessories), rarely specifying a particular model; they also state the calibre of ammunition (such as 82 mm mortar ammunition or 7.62 x 51 mm cartridges). Five end-user documents do not describe the items being transferred. Instead, they provide a reference to a specific contract or order number. Some guidelines, like those of the Wassenaar Arrangement, allow for this alternative (Council of the EU, 2015, ch. 1, s. 1.2; WA, 1999, para. 2.1). By exercising this option, an end user can complicate customs or export control authorities' efforts to check that the authorised types of materiel, and solely those types, are in fact being exported.

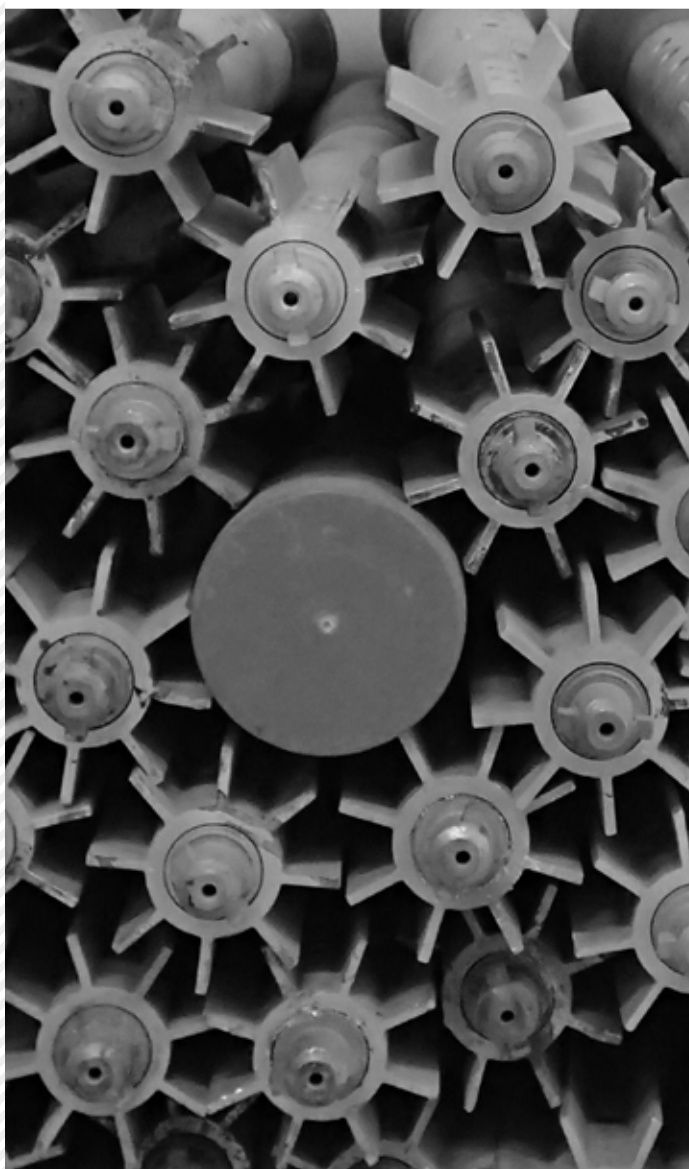
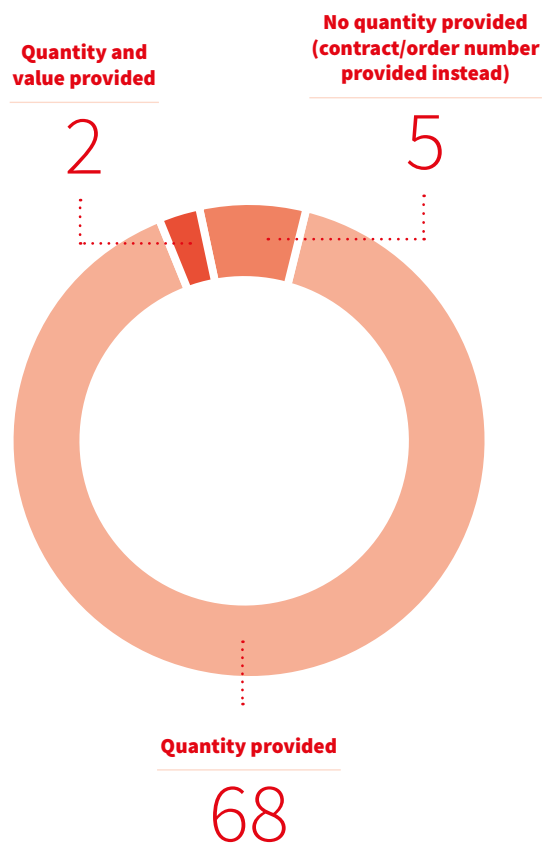
FIGURE 6
DOES THE DOCUMENT
PROVIDE A DESCRIPTION OF
THE ITEMS? (N=75)



QUANTITY AND/OR VALUE OF THE GOODS

Every end-user document that provides a description of the exported goods also states the quantity of items being requested. For all the documents that cite a contract number instead of providing a description and quantity, CAR viewed the referenced contracts, all of which contain full descriptions of the items, the quantity requested, and their value. In practice, this latter option is far less transparent, even if some guidelines deem it sufficient. Contracts rarely accompany an item during shipment and customs officials may thus be unable to substantiate that the quantity of items being transferred matches the total approved by the export authority.⁹ Only two documents in CAR's sample, both of which involve private end users, state the value of the items in addition to the quantity (see Figure 7).

FIGURE 7
DOES THE DOCUMENT STATE
THE QUANTITY OR VALUE OF
THE ITEMS? (N=75)



END-USE(R) COMMITMENTS

DESCRIPTION OF THE END USE AND END-USER UNDERTAKING

The central aims of an end-user document are to identify the entity that will use the transferred item, specify its ultimate use, and certify that the item will not be re-transferred without the knowledge and consent of the original exporter. These aims should help export control authorities to 1) assess the risk of diversion and misuse of an item, and 2) certify that the applicant for an export licence is indeed authorised to purchase the items on behalf of a legitimate end user. Stated end use is defined as:

the information provided in the end-use certificate on the intended use of the notified commodity (e.g., spare part for ..., incorporation in ..., use as ...). If it is a supply to a project, the name of the project would normally be indicated (Wood and Danssaert, 2011, p. 10).

End-user documents typically provide positive end-user assurances, such as ‘we certify that the goods are for the exclusive use of’, or negative assurances, in the form of non-re-export clauses, which specify prohibitions on future transfer activity (WA, 2014).

Only four documents in CAR’s sample provide a narrow statement of the end-use of the item. In two of these, private actors specify that the items are intended for sale.¹⁰ In the third case, a private actor states that the end-use is the disposal of the items. The fourth document, the only one that lists a government end user, indicates that the items are intended for training. The vast majority of documents in CAR’s sample (71 of 75 documents) were issued by the government of the importing country and identify the national military or internal security forces as the end user of the items. These documents usually indicate the end use in broad terms, such as, ‘for internal security’ or ‘for use by the Ministry of Defence’. In such cases, the affirmation of the final end user serves as an indication of the final end use.

COUNTRY OF FINAL DESTINATION

Export licensing authorities should be able to rely on end-user documents to identify the country in which the end user is located, as that country constitutes the final destination of the items to be transferred (Wood and Danssaert, 2011, p. 12). It is particularly important to clarify such information prior to export if the end user is the national armed forces with a military presence in multiple overseas jurisdictions. Few of the documents in CAR’s sample provide the end user’s location separately, perhaps because exporters do not commonly require this information if the end user is a government’s armed forces. Nearly three-quarters (54 of 75) of the end-user documents appear on official letterhead. In those cases, the country of final destination can be assumed based on the address in the letterhead or the description of

end use. More than one-quarter of CAR’s sample (21 of 75 documents), issued by four different countries, are based on official form templates; only one importing country used a template that contains a specific provision for the end user to specify the country of final destination.



DOCUMENT IDENTIFIERS

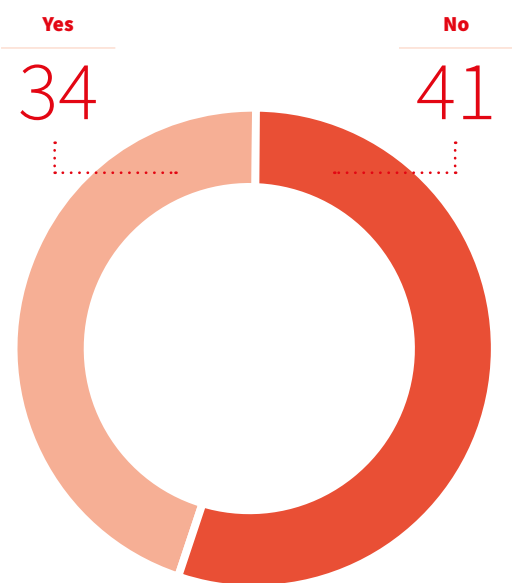
CONTRACT OR ORDER NUMBER

The role of end-user documentation in helping to prevent diversion is to provide an exporting authority with information that can be used to verify and authenticate a transfer prior to export. In order to be effective, the document itself should bear a contract or order number, or another unique identifier that distinguishes it as credible and specific to the export being considered. Without these details, the document is more vulnerable to being fraudulently copied and reused.¹¹ Of the sample of end-user documents analysed by CAR, fewer than half had a clear contract or order number (see Figure 8).

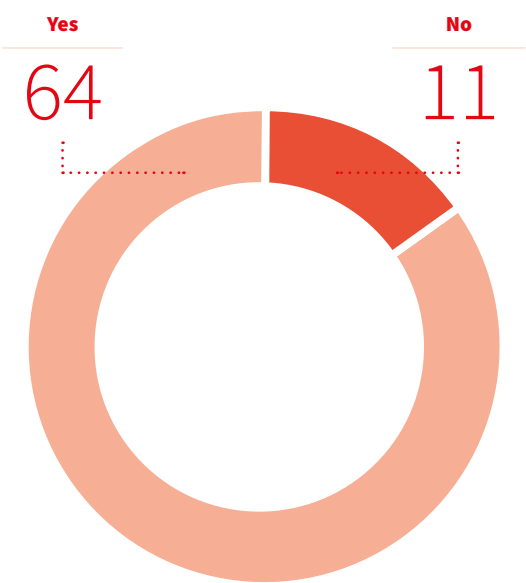
Some guidelines also recommend that each end-user document bear a unique reference number (UNODA, 2018, cl. 6.2.5a; WA, 1999, para. 7.3). Only half of the documents analysed by CAR (39 of 75) have such an identifier. Not all of those numbers are in fact ‘unique’. Two different

documents from the same importing country carry an identical reference number although they were issued to two different export authorities—one in 2009 and the other five years later, in 2014. CAR has also registered the repeated use of this identical reference number on further end-user documents from the same importing country, which are not part of the sample under review. While such repeated use is not necessarily an indicator of a deliberate intent to divert the ordered items, it is bad practice, which information sharing between exporting authorities would reveal as a red flag for export consideration if multiple countries received the same numbered document. Such conduct also highlights the importance of maintaining a central, searchable registry for end-user documentation, so that new documents can be checked against existing records.

■ FIGURE 8
**DOES THE DOCUMENT CONTAIN
A CONTRACT NUMBER? (N=75)**



■ FIGURE 9
**DOES THE DOCUMENT BEAR A
STAMP? (N=75)**



SIGNATURE, NAME, AND POSITION OF AN END-USER REPRESENTATIVE

All of the documents in CAR's sample are signed by a representative of the declared end user. As these documents mostly concern transfers to a government or its military, the end user is also the issuing authority in almost all cases. Several of the importing states appear to authorise multiple different government bodies to issue their own end-user documents. In two cases that involved a private-sector end user, a representative of the government signed the document, but the end user did not.

More than half of the documents assessed by CAR (40 of 75) are also signed by a second government representative. In these cases, the point of contact of the ministry of foreign affairs or of the national arms control agency provided an authenticating signature on behalf of the importing country.

Only one-quarter of the documents in this sample include contact details for the end-user or issuing authority (phone number, email address etc).

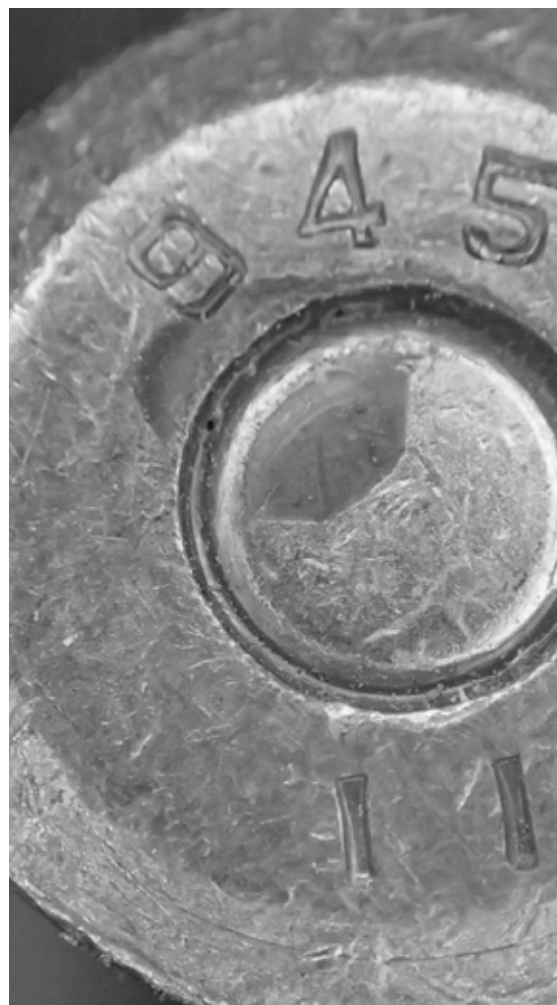
More than three-quarters of the documents (59 of 75) bear the signature, name, and title of the end-user representative. The remainder are signed, but they lack either the name or the title of the representative. Only one-quarter of the documents include contact details (such as a phone or fax number, or an email address) for the end user or issuing authority, typically as part of

the document letterhead. These contact details are important to include, since would-be offenders can easily falsify a signature or official stamp in isolation and use either to falsify an end-user document.

Even though a government end user prepared and issued nearly all of the documents in the sample, 11 (one-fifth of CAR's sample) do not feature an official stamp (see Figure 9).

DATE OF ISSUE

A full date of issue appears on almost all of the end-user documents (73 of 75) analysed by CAR. One document provides only a year of issue, rather than a precise date, while another features the date only in the document reference number. Although some guidelines suggest that a date of expiry be provided as well (WA, 1999, cl. 7.5; UNODA, 2018, cl. 6.2.5a), only two of the documents in CAR's sample—both with private-sector end users—specify such a date. The inclusion of terms of validity can help to prevent unscrupulous actors from presenting the same end-user document to different export authorities indefinitely.



RE-EXPORT AND DELIVERY VERIFICATION

All good practice guidelines recommend that end-user documentation include a clause that commits the end user not to re-export an item, at least not

without the authorisation of the original exporter.¹² Guidelines differ on whether such a clause should be an essential or optional element.

RE-EXPORT CLAUSES

A clear and comprehensive ‘re-export clause’ is an important safeguard against the diversion of an item from a declared end user to another entity through unauthorised re-export. The absence of a re-export clause ‘effectively offloads the exporting state’s responsibility to assess the risks of diversion prior to export—its due diligence—onto the recipient state’ (CAR, 2018b, p. 18; see Box 4).

Only one of the end-user documents in CAR’s sample does not contain a re-export clause. This document relates to a donation of small arms and light weapons. The wording used in another document, which does include a re-export clause, suggests that the re-export commitment is limited

to the potential reuse of the items as chemical, biological, or nuclear weapons.¹³ The phrasing may simply reflect a language barrier of the official completing the form, as the document was issued by a country where English is not the main language, but as the declared end user is a commercial entity that intended to resell the items, it would have been pertinent for the exporter to clarify the scope of re-export restrictions.

A typical re-export clause comprises three sections, which together outline the type of commitment made by the end user (see Figure 10). The language of each section of a re-export clause can range from permissive to restrictive.

■ FIGURE 10
THE THREE SECTIONS OF A TYPICAL RE-EXPORT CLAUSE





Section 1

Prohibited activities

The first section of a re-export clause specifies the activities that the end user agrees to prohibit. Box 3 lists the various examples of language used for this section in the 75 end-user documents under review. In total, there were 19 different formulations. Some of them demonstrate that a single issuing authority may use different wording on documents sent to the same export authority. Such inconsistencies pose challenges to licensing authorities, which seek to determine the precise restrictions that an end user commits to implement; they also underline the need for continued work on building a common understanding of key terms in end-user documentation.

Some documents in CAR's sample do not appear to cover all forms of export; instead, they pledge only not to 'export for sale'. This formulation is ambiguous, as it opens up the possibility that items could be re-exported as gifts, donations, or loans. In such cases, licensing authorities might question whether the recipient is intentionally leaving open the possibility of onward transfer through a non-financial transaction.

In one document, the end user provides a guarantee that the items—a shipment of small arms—will not be re-exported 'in the same format they were received'. As noted above, such wording may arise if English is not the first language of the individual who is completing the form. In such cases, the onus is on the export licensing authority to follow up and clarify the intent of the recipient, since this formulation arguably leaves open the possibility that the items might be transferred to a new user in a different form.

Box 3

DIFFERENT RE-EXPORT COMMITMENTS IDENTIFIED IN CAR'S SAMPLE OF END-USER DOCUMENTS¹⁴

Assign or export

Divert or export

Export for sale

Export or re-export

Re-export

Re-export or make available

Re-export or otherwise dispose

Re-export or transfer

Re-export, re-sell, or otherwise dispose

Re-export, re-sell, or transfer

Re-sell, transfer, or tranship

Re-sell or re-export

Sell or export

Sell or transfer

Sell, deliver, transfer

Sell, loan, re-export, transfer

Sell, loan, lease, re-export, transfer

Sell, transfer, re-export

Transfer by any means

Section 2

Scope of the clause

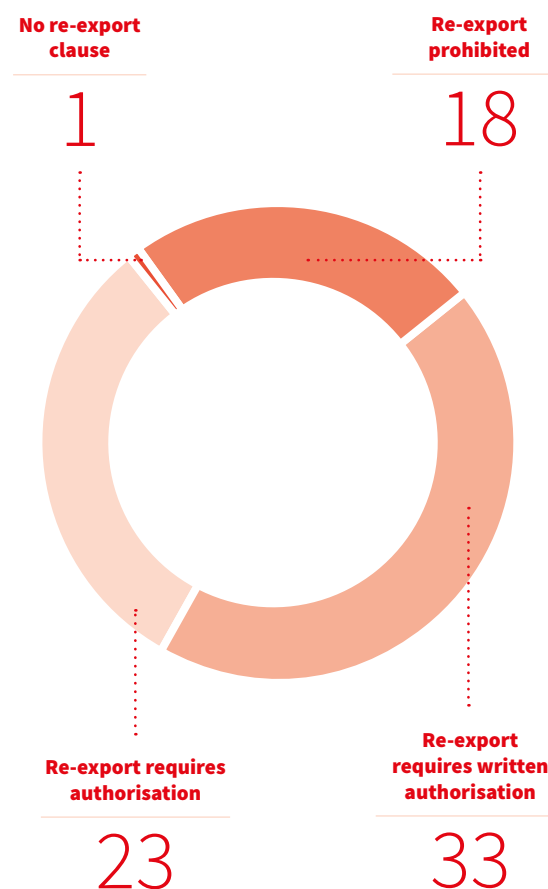
Importing states use the ‘scope’ section of the re-export clause to promise that they will not transfer items to any third country or foreign entity (40 documents, just over half of CAR’s sample), or to any third party that would include actors in the country of final destination (22 documents). The remaining 13 documents do not specify the scope of restrictions or were otherwise unclear.

Section 3

Permissions required

The third component of a re-export clause establishes the strength of the commitment undertaken by the end user in the first two sections and announces any exceptions. It typically takes one of five forms, of which the two strongest are 1) an absolute ban on re-export, and 2) a pledge not to re-transfer without the prior authorisation of the exporting state.¹⁵ The undertakings in re-export clauses analysed by CAR all fall under these two most restrictive categories. Most of the end-user documents in CAR’s sample specify that re-export requires written authorisation from the original exporter (see Figure 11). Documents submitted by three end users contain an additional restriction, which specifies that they will not re-export without written permission from both the exporting company and the export control authority.

FIGURE 11
DOES THE DOCUMENT FEATURE
A RE-EXPORT CLAUSE? (N=75)



Box 4

INTERNATIONAL IMPORT CERTIFICATES

In addition to the end-user documents analysed in this Digest, CAR’s archive includes a number of international import certificates (IICs). IICs are standardised certificates used and accepted by some states for transfers to commercial importers (Wood and Danssaert, 2011, pp. 37–38). The government of the importing country signs the IIC to confirm that it is aware of—and that it does not object to—a transfer. IICs and end-user documents comprise similar essential elements, but they differ in several ways. IICs provide the issuing authority with clear, standardised instructions regarding what information must be included. Critically, however, re-export clauses in IICs require commercial importers to seek authorisation only from the government of the importing state. The formulation in IICs is significantly weaker than in end-user documents, as it omits the exporting country from any decision about potential onward transfer.

POST-DELIVERY VERIFICATION

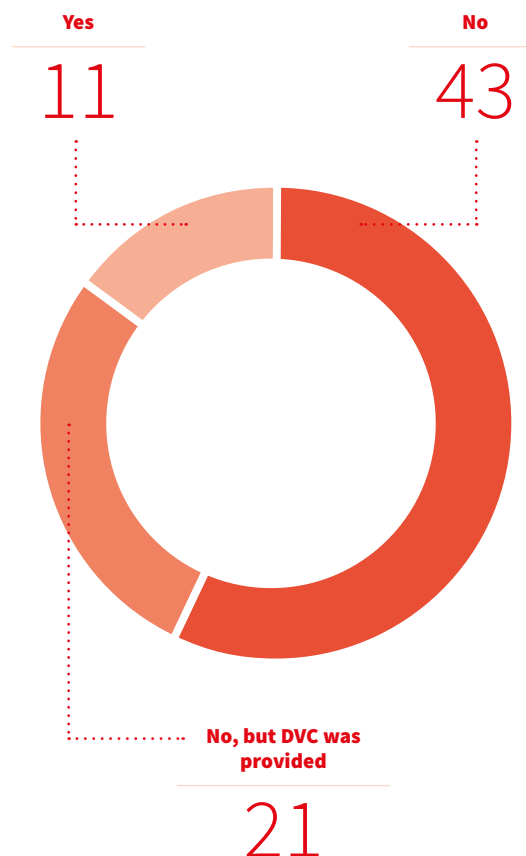
End-user documents can also include a commitment to provide the exporting authority with a delivery verification certificate (DVC) or other proof of receipt (UNODA, 2018, cl. 6.2.5). A DVC is defined as ‘a document, certified by customs or other competent authority of the importing State, confirming that internationally transferred small arms or light weapons have been received by the authorized end-user’ (UNODA, 2018, cl. 7.2.1).

As Figure 12 shows, only a small proportion of the end-user documents (11 of 75) reviewed by CAR include a DVC commitment.¹⁶ In a further 21 documents the end user did not commit to providing a DVC, but CAR has seen evidence that one was supplied. In the majority of the documents in CAR’s sample, importing states do not commit to providing a DVC. While not all exporters currently require such a commitment, a ‘DVC clause’ can serve as an important link through the supply chain—from licensing to delivery—as it provides the exporting authority with assurances that the items have reached the stated end user.

CAR’s archive of post-delivery documentation reveals a wide variety in state practice. In one instance, an exporting government accepted a DVC issued by an exporting company rather than by an importing authority, thereby essentially self-certifying its own delivery of weapons. The government of the country of final destination did not provide any certification to confirm receipt of the items.

End-use monitoring extends supply-chain controls further, beyond the point of delivery. However, none of the end-user documents in CAR’s sample include a provision that allows for on-site verification by a representative of the exporter.¹⁷ Given that states are increasingly exploring the potential benefits of post-shipment verification activities, a commitment to carry out this type of monitoring may eventually become a more common feature of end-user documents.

FIGURE 12
DOES THE DOCUMENT
INCLUDE A COMMITMENT TO
PROVIDE A DVC? (N=75)



CONCLUSION AND RECOMMENDATIONS

This Digest demonstrates that, while most end-user documents in CAR's sample include much of the minimum information suggested by international guidelines, they often provide it in a broad or partial manner. Key elements are often missing. Seemingly critical pieces of information, such as a unique reference number assigned to the document itself, are not provided on a widespread basis. Moreover, international guidelines on end-user documentation are not in agreement about which elements constitute 'essential' information—the type that exporting governments require to perform adequate due diligence. Such elements include the provision of the declared end user's complete contact details; an official stamp or other authenticating mark; and complete names and contact details of contracted brokers and intermediaries.

Pre-export diversion risk assessments would be significantly enhanced if end-user documentation were more firmly linked to end-use monitoring.

When it comes to preventing diversion, end-user documentation is not a panacea. First, as CAR has previously reported, weapon diversion in armed conflict often occurs after an item has reached an authorised recipient. Second, even if documentation conforms to the highest standards, taken in isolation, it may be insufficient to prevent diversion. End-user

documents are political tools, intended to build confidence between transfer parties; however, their effectiveness as accountability mechanisms is less clear.

To perform due diligence effectively, exporting states require a comprehensive system to assess the risks of diversion throughout the onward supply chain. End-user documents provide a primary means with which to verify and authenticate information provided by parties to the supply chain and are, therefore, a critical component of the due-diligence process. Pre-export diversion risk assessments would be significantly enhanced if end-user documentation were more firmly linked to end-use monitoring. While an

end-user document cannot guarantee the physical delivery of goods to a stated destination, it can help to provide a framework within which exporting and importing authorities can share risk-assessment information and enable stronger, cooperative controls and oversight of an item throughout the supply chain, including following shipment.

States that seek to enhance the effectiveness of end-user documentation have a range of options available. For instance, they can:

- » **implement robust authentication of end-user documentation** as part of a comprehensive diversion risk assessment, including by rejecting documents that provide incomplete information or lack required specificity;
- » **maintain a central, searchable registry of end-user documents**, against which possible ambiguities might be checked and based on which trace requests might be carried out, such as in cases of diversion or to share relevant information with other states concerned about possible diversion risks;
- » **consider strengthening and standardising end-user documentation language** that prohibits re-transfer;
- » **support end-use and diversion-monitoring activities** that provide a critical early warning service to licensing authorities;
- » **develop a clause for inclusion in end-user documents** that would allow for post-shipment verification, when agreed with importing authorities; and
- » **treat any past violation of commitments made in end-user documentation as a significant risk factor** in any future export considerations, and include language in end-user documents that specifies negative consequences when end-use monitoring detects the violation of transfer agreements.

ENDNOTES

- 1 — CAR's sample of end-user documents includes four that identify a private end user. While this might qualify them as EUSs based on the definition in the United Nations' Modular Small-arms-control Implementation Compendium (MOSAIC), all of the documents are titled 'end-user certificate'. The UN Office for Disarmament Affairs notes that a number of major exporting states require forms to be entitled 'end-user certificates' even if the end user is a private commercial actor (Wood and Danssaert, 2011, pp. 8–9).
- 2 — See CAR (2018a).
- 3 — See Council of the EU (2015), OSCE (2004), RECSA (2005), UNODA (2018), and Wassenaar Arrangement (1999).
- 4 — In addition to the ten 'essential' elements, the study also identifies a further ten elements that guidelines more commonly include as 'additional or optional'. As this study shows, these elements include critical information for exporting states to consider in their diversion risk assessments (Holtom, 2015, pp. 44–45).
- 5 — These documents were issued on the same day, by the same end user, and to the same exporter.
- 6 — The six categories of conventional weapons covered in this documentation sample are: battle tanks, armoured combat vehicles, large-calibre artillery systems, attack helicopters, missiles and missile launchers, and small arms and light weapons.
- 7 — The item being transferred in this case was subsequently diverted to armed actors in South Sudan. CAR has not obtained evidence that the intermediary involved was responsible for this item's diversion. See CAR (2018c, pp. 66–71 and 92–93).
- 8 — The four private end users in the sample provided an address in the body of the end-user document, although only two of them supplied complete addresses.
- 9 — In some cases, CAR's archive of documents includes a corresponding delivery verification certificate in which the totals delivered do not match the numbers requested in the end-user document. Such discrepancies may have a number of reasons and are not necessarily evidence of diversion.
- 10 — Wassenaar Arrangement guidelines state: 'In the case of an export to a firm which resells the goods on the local market, the firm will be regarded as the end-user' (WA, 1999, para. 1.4).
- 11 — For an example, see Bromley and Griffiths (2010).
- 12 — CAR has previously used the term 'non-re-transfer clause', which encompasses a broader range of movement of a controlled item. See CAR (2018b). In this Digest, CAR uses the term 're-export clause' to be consistent with good practice guidelines.
- 13 — The end-user document, which is on file with CAR, states: 'We further certify [...] that the goods will not be used for any purposes connected with chemical, biological or [sic] nuclear weapons, or missiles capable of delivering such weapons, that they will not be re-exported or otherwise re-sold or transferred if its known or suspected that they are intended or likely to be used for such purposes, and that the goods, or any replica of them, will not be used in any explosive activity or unsafe-guarded nuclear fuel cycle activity.'

Some guidelines state that end-user documents may stipulate that the goods being transferred shall not, for example, ‘be used in the development, production or use of chemical, biological or nuclear weapons or for missiles capable of delivering such weapons’ (Council of the EU, 2015, ch. 1, s. 1.2). Such restrictions may be provided separately, in addition to a re-export clause, as was done in nine of the documents in CAR’s sample.

- 14 — Some of the formulations in this table appear to draw on good practice guidelines. For example, in its End User Certificate for Small Arms and Light Weapons template (see Figure 2), the OSCE recommends that end-users pledge that items being transferred ‘will not be exported, sold, leased or transferred temporarily or permanently’ (OSCE, 2011). A version of this formulation appears in three end-user documents in CAR’s sample.
- 15 — For a full breakdown of all five types, see McDonald (2008, p. 162).
- 16 — For all bar two of these documents, CAR has a copy of the DVC or an equivalent document.
- 17 — Both the Wassenaar Arrangement and MOSAIC module 03.21 identify on-site verification as an optional element for inclusion in end-user documentation (UNODA, 2018, cl. 6.2.5j); WA, 1999, para. 4.2).

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