



GKKE

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“Arms Exports Report 2019”
by the Joint Conference Church and Development (GKKE)
GKKE’s Working Group on Arms Exports

0. Summary

Key demands of the Joint Conference Church and Development (GKKE)

1. The GKKE considers the revision of the Political Principles for the Export of War Weapons and Other Military Equipment to be inadequate and reiterates its call for a legally binding arms export control act. It calls for the Federal Government and the German parliament (Bundestag) to draft and to adopt such an Act.
2. The GKKE demands that the Political Principles must also apply without compromise to industrial joint armament projects with other EU-countries. Germany’s basic veto right for planned exports to third countries must be maintained and must not be undermined by bilateral de-minimis regulations. The same principles must apply to the cooperation at company level.
3. The GKKE reiterates its call for the obligation to state reasons for the export of weapons of war to third countries. Such a self-commitment should apply in particular if the Federal Government deviates from its principle and approves the export of small arms to third countries.
4. The GKKE urges the Federal Government to press for a strict and uniform application of the EU Common Position (along the criteria contained in it). This also includes the demands of the European Parliament for (recourse to) sanctions in the event of infringements and for the establishment of a European supervisory body.
5. The GKKE calls on to the Federal Government to work within the EU for a fundamental ban of arms exports to third countries and to only accept exceptions for countries that correspond to the criteria of the Common Position. These countries are to be specified in a White List in advance in a transparent procedure.
6. The GKKE urges the Federal Government again to prohibit without exception arms exports to countries that are part of the Saudi-Arabia-led war coalition (Egypt, Bahrain, Kuwait, Jordan, Saudi-Arabia, Senegal, Sudan and the United Arab Emirates). All already awarded licenses are to be revoked.
7. The GKKE demands that two regulatory gaps in German arms exports control be closed. These concern the export of technical support and the possibility of controlling investments by German arms companies in the build-up of foreign production capacities. These regulatory gaps have not been closed by the revision of the Political Principles.

0.1 Focus: The German Government's revised Political Principles on the Export of War Weapons and other Military Equipment

(0.01) With a slight delay, the Federal Government presented the announced 'tightening' of the existing Political Principles for the Export of War Weapons and Other Military Equipment in July 2019. After the last revision which took place in the year 2000, the most recent version indeed contains innovations which may contribute to making German arms exports policy more restrictive—this concerns, for example, export controls of small arms and light weapons. Yet, the revised Political Principles often contain formulations that allow exceptions from the rule, such as "in general" and "may". This fact could actually counteract the intention to tighten the Political Principles.

This is why the GKKE reiterates its call for an arms export control act without exceptions. Such an Act should bring together the different regulations of the German federal arms export controls and close regulatory gaps in a legally binding manner. The latter relate to technical assistance by German arms manufacturers in the build-up of foreign production sites as well as the investment in and transfer of know-how of German companies to weapons production sites abroad. The revised Political Principles have at least taken up this issue. In the future, it is to be examined whether the build-up of foreign arms production is in harmony with the German arms exports regulations. The Federal Government may also make a re-export reservation for military equipment produced with German technology, but it does not have to. Ultimately, only actual practice will tell whether the revised Political Principles can indeed be understood as a tightening of the regulations or not.

(0.02) At crucial points of the revised Political Principles, the Federal Government has set the course towards a future implementation practice that is likely to result in a less restrictive German arms exports policy. As a result, the principles aimed at facilitating European arms exports cooperation lead to a relativisation, and in parts even an elimination of German export guidelines. Above all, the option that the Federal Government may be able to negotiate on certain planned exports of its cooperation partners and thus also waive its veto appears highly questionable. With a view to planned cooperative export projects, such as the Future Combat Air System and the European Main Battle Tank, and in view of the fact that only very few neighbouring countries are critical of arms exports—France is particularly in favour of arms exports—the possible waiver of Germany's veto makes a remarkable impact. This is currently becoming clear in the Yemen conflict. While numerous EU Member States, amongst them Germany, renounce arms exports to Saudi-Arabia, France exports weapons and military equipment to a third country that is actively involved in a war. This contradiction to the German Political Principles on arms exports is enforced by a new de-minimis regulation of up to 20 per cent between Germany and France. According to this rule, the German licensing requirement does not apply when the value of German components from cooperative arms productions is below this threshold. The GKKE demands that the Political Principles continue to apply without compromise to industrial joint armament projects with other EU-countries. The GKKE urges the Federal Government to press for a strict and uniform application of the EU Common Position (along the criteria contained in it). The GKKE sees a need for sanctions in case of violations, as called for by the European Parliament on 14 November 2018.

(0.03) The revised Political Principles indeed foresee tighter arms export controls on small arms and light weapons. This, for example, holds true for the principle that the export of small arms to third countries should no longer be approved. However, the restriction by the word "in principle" partially revokes this tighter rule. The GKKE calls again for the Federal Government to provide reasons for each exception from the rule. Such a self-commitment could also have been included in the Political Principles. The Federal Government also failed to ban the export of ammunition to third countries. In revising the Political Principles, the Federal Government finally included new agreements, such as the international Arms Trade Treaty (ATT) or the Mine Ban Treaty (MBT). However, it remains vague what is meant by "support" of such treaties. The GKKE reiterates its demand that in licensing practice, the signature and ratification of such international agreements by any possible recipient countries must be taken into consideration.

0.2 German Arms exports in the international context

(0.04) In the period between 2014 and 2018, the volume of global arms transfers increased by 7.8 per cent compared to the period between 2009 and 2013. This continues the upward trend of the international arms trade since the early 2000s. The five major exporters are the United States, Russia, France, Germany and China. Between them, these five states are responsible for 75 per cent of global trade in major conventional weapons. With a share of 6.4 per cent,

Germany ranks fourth. Compared to the previous five years, German exports of major conventional weapons and their components increased by 13 per cent between 2014 and 2018.

0.3 German arms exports 2018

Individual and collective export licences

(0.05) In 2018, the Federal Government issued a total of 11,142 individual export licences for military equipment worth 4.82 billion euros. In 2017, 11,491 individual export licences had reached a volume of 6.24 billion euros. The licensing value thus fell by around 1.4 billion euros (some 23 per cent) in 2018. This is the third time in a row that licensing values for individual exports have fallen. However, the licensing values for the last three years (2016-2018) are still the top three of the past twenty-one years, i.e. since the Federal Government has publicly reported on export licenses. According to the Arms Exports Report for the first half of 2019, the value of individual export licences amounted to 5.33 billion euros. This is a significant increase compared to the total value (!) of 2018—a trend towards a more restrictive arms exports policy is, thus, not discernible.

In 2018, the Federal Government issued 13 collective export licences with a total value of 14.5 million euros.

Recipients of German arms deliveries

(0.06) In 2018, exports to third countries amounting to 2.55 billion euros were approved. This corresponds to approximately 53 per cent of the overall financial volume of individual export licences issued. With Algeria on first and Saudi-Arabia on fourth position, two problematic third countries are among the main recipients of arms exports approved in 2018. In light of the continuously high licensing values for the export of military equipment and weapons of war to third countries, the GKKE no longer considers it justifiable to speak of exceptional cases here. On the contrary, it notes that exports to third countries have now become the norm.

Overall, the figures on German arms exports do not give the impression of a restrictive licensing practice that adheres to the proclaimed standards, which would accord particular importance to the observance of human rights. Although the German Government always asserts the opposite, countries where state organs systematically violate human rights are still supplied with German arms. It is also noticeable that extensive arms transfers take place to regions in which violent conflicts and regional arms dynamics can currently be observed—especially to the Middle East.

The GKKE is particularly critical of the licensing of arms exports to those countries which are part of the Saudi-led war coalition' intervention in Yemen. Both in 2018 and in the first half of 2019, the German Government approved a large number of arms exports to these countries. The front-runner among third countries that received German arms exports in the first half of 2019 is Egypt. The GKKE again calls on the Federal Government again to implement what it has announced in the coalition agreement and to stop all arms exports to countries of the Yemen war coalition. This also applies to the delivery of spare parts, such as for patrol boats to Saudi-Arabia, that was approved by the Federal Government even though the moratorium for arms exports remains in place.

Exports of small arms and light weapons

(0.07) In 2018, the Federal Government approved the export of small arms and light weapons (SALW) worth 38.91 million euros—a decrease compared to the previous year (2017: 47.82 million euros). In 2018, export licences worth 403,703 euros were approved for third countries— less than in the previous year (2018: 15.1 million euros). This corresponds to a share of 1.04 per cent of the total exports approved.

0.4 Current debates and developments in German arms export policy

Handling arms cooperation

(0.08) European and international arms cooperation has also become increasingly important for German companies. However, this must not lead to a relaxation of the strict German arms exports regulations. But this is precisely what the supplementary agreement to the Aachen Treaty and the revision of the Political Principles are aiming at. It is true that Germany and France are to inform each other about the export of jointly developed and manufactured arms but may not prohibit the partner from doing so unless their own most immediate interests or those of their own national security are affected. Otherwise, de-minimis percentages jointly agreed upon beforehand will apply. Germany and France have agreed on a ceiling of 20 per cent. For Germany, this means that if the value of components supplied by Germany to France amounts to up to one-fifth of the value of the end product, Germany cannot raise any objections to the French partner's export plans. The GKKE considers such a high threshold to be irresponsible and interprets it as a major departure from existing restrictive German regulations governing the export of arms to third countries. An immediate threat

to the interests or national security of the country that supplies the components is likely to arise only in very rare exceptional cases. On the contrary, we are very much concerned that the 20 per cent threshold will regularly be undercut, possibly by also splitting individual orders accordingly. This is why the GKKE calls for an unlimited German right to also veto the export of arms that contain components supplied by Germany.

Post-shipment controls—Taking stock and suggestions for improvement

(0,08) The objective of post-shipment controls is to ensure that small arms and light weapons remain in the end-use third countries, as weapons of that category are particularly prone to ending up in illegal trade. The Federal Government started this measure as part of its 2015 Political Principles on the export of small arms. It took stock of the measure's effectiveness at an event this year at which the GKKE submitted suggestions for improvement. In the pilot phase, seven post-shipment controls were carried out, for instance, in Malaysia, Indonesia and Brazil. The GKKE welcomes the continuation of post-shipment controls, which are now also part of the revised Political Principles. According to the revised Political Principles, the export of small arms and light weapons from Germany to third countries is to be banned. In this respect, the new measure already appears outdated. One should, however, again note the restriction of that ban introduced by adding the phrase of 'in principle', which again leaves them open to further exports of small arms and light weapons to third countries. Undoubtedly, there is room for improvements. The GKKE calls for an extension of post-shipment controls to all countries, including Member States of the European Union, NATO and equivalent countries, as they, too, are not immune to the diversion and proliferation of SALW. Post-shipment controls would also be conceivable in the context of so-called Enable and Enhance measures and the provision of military equipment, such as follow-up inspections of arms transfers to the Peshmerga in northern Iraq. In principle, the risk of proliferation also extends to larger weapons systems. Here, too, the GKKE calls for an expansion of post-shipment controls and random checks on the whereabouts of German arms exports. Violations must be punished accordingly with a ban on arms exports to the recipient country as only such a threat of sanctions has a deterring effect. Post-shipment controls could also be extended to arms cooperation, brokering and technical assistance.

Verdicts in the criminal proceedings against Heckler & Koch and Sig Sauer

(0,09) The case of the G-36 exports to Mexico illuminates the deficits of written end-user declarations as part of German arms exports control. In 2006, the arms export license stipulated that no weapons were to be exported to four strife-torn Mexican states where human rights violations were part of everyday life. 2014 saw a massacre in the city of Iguala when police officers opened fire on three buses with students who were on their way to a protest rally. In February 2019, the Regional Court of Stuttgart finally sentenced the company Heckler & Koch as joint interested party to pay a fine of 3.6 million euros. In these historically significant and so far largest criminal proceedings on the illegal sale of small arms, two former employees were also sentenced while the three CEOs were acquitted of charges of multiple violations of the German War Weapons Control Act and the Foreign Trade and Payments Act for lack of evidence. The employees that were found guilty and Heckler & Koch have appealed to the Federal High Court in Karlsruhe.

Criminal proceedings against another German arms manufacturer—Sig Sauer—ended with a settlement before the Regional Court of Kiel. Here, the trial had been initiated on the basis of information provided by the "Aktion Aufschrei - Stoppt den Waffenhandel" (Campaign outcry—Stop German arms exports). According to this information, the Sig Sauer company had supplied small arms to the civil war-stricken country of Colombia via the United States without a German arms export license. The settlement included an admission of guilt as well as suspended sentences and fines of 1.26 million euros for the three defendants. Sig Sauer will have to pay back the full gross proceeds made from the 11 million euros sale. Sig Sauer has also appealed to the Federal High Court in Karlsruhe. The GKKE welcomes the strong signal given by German courts to the arms industry, and particularly the high fines for both arms manufacturers. The rulings of Stuttgart and Kiel differ with regard to the assessment of the end-use declarations, which the Kiel Regional Court considered to be a central part of the export license under the Foreign Trade and Payments Act. It, therefore, remains to be seen which of the two views of the courts will be supported by the responsible senates of the Federal High Court.

0.5 European arms exports policy

The new framework conditions for a European arms exports policy

(0,10) If one looks at the development of financial instruments at the European Union, one can only suspect that the EU and its member states are moving away from a restrictive arms exports policy. For one, these concerns arise from the notable regression with regard to the very weak or lacking exports restrictions on arms projects in the framework of the Permanent Structured Cooperation (PESCO) and in bilateral German–French cooperation. For another, an increase in arms exports is to be feared in view of the substantial increase in the allocation of funding in the context of the 'Enable

and Enhance' initiative' in the Multiannual Financial Framework (MFF), the Instrument contributing to Stability and Peace (IcSP) and the so-called European Peace Facility (EPF) that explicitly foresees the equipment and military build-up of third countries. Third, there is no indication that arms export controls are a priority for the EU Commission. Rather, it seems that arms cooperation is still committed to the imperative of increasing the global competitiveness of European military equipment, which in turn means increasing arms exports. The EU member states also view arms exports as a way of saving costs for national defence budgets. In view of EPF, the orientation of the European Defence Fund (EDF) and PESCO as well as the re-definition of peace and security in line with a military-based security policy, a significant increase in EU arms exports until 2027 appears likely.

This development is also supported by the regulations that apply to bilateral arms cooperation between Germany and France. The de-minimis quota of 20 per cent in particular suggests a completely new future policy.

The review of the EU Common Position and the stance of the European Parliament on arms exports

(0.11) In September 2019, the EU countries formally adopted the amendments to the European Council Common Position defining common rules governing control of exports of military technology and equipment. The changes in it remain limited in scope: It now takes account of new agreements, such as the international Arms Trade Treaty (ATT). There are also two slight improvements regarding transparency. The two changes that the GKKE considered absolutely necessary and that it published in its 2018 Arms Exports Report have not been included. The criteria should have been tightened; the definitions of central concepts of the Common Position continue to be inadequate. A "peer review" mechanism, too, which would have achieved a uniform interpretation of the criteria and which many at the institutional level considered necessary, was not introduced.

In November 2018, the European Parliament voted in favour of a whole string of measures for restricting arms exports policy but fell short of its potential to risk conflict with the Commission and the member states. All in all, therefore, all efforts within the European Union to significantly tighten and harmonize the Common Position as well as to suggest new institutional regulations for monitoring and sanctions have largely stagnated. This has resulted in a situation that can, indeed, be characterised as dramatic: In the course of increased arms cooperation, restrictive export regulations are being watered down; at the same time, European arms exports controls stagnate with regard to content and institutional regulations. The European Union is thus failing to live up to its claim to pursue a restrictive arms exports policy.

Institutional suggestions for a restrictive European arms exports policy

(0.12) The GKKE, therefore, considers clarification of content and new institutional regulations for a restrictive arms exports policy to be imperative. It is true that with the EU Common Position on the control of exports of military technology and equipment and the membership of all EU countries in the international Arms Trade Treaty (ATT), there are legally binding regulations for all EU countries for arms exports under international law. However, these regulations are interpreted and implemented in very different ways. Furthermore, EU countries have very different national regulations. The GKKE Report discusses a number of suggestions that aim to create institutional coherence of an EU arms exports control regime. In essence, to promote compliance with the Common Position and its criteria, the aim must be to create a political effect by virtue of an obligation to justify and state reasons as well as to generate social sanctions through procedures of public 'naming and shaming'. This also requires increased interactions of EU institutions, the member states and their parliaments as well as civil society actors. The GKKE is in favour of banning arms exports to third countries in principle and of defining exceptions in a concerted manner, for example, via a White List. The European Parliament here should be given increased responsibility to keep under review and evaluate the implementation of the Common Position by the Member States.

Civil society protests and legal proceedings against arms deliveries to warring parties in the conflict in Yemen in EU Member States

(0.13) The majority of the German public is against arms exports, particularly to regions of war and in crisis. Civil society protests against arms exports to Saudi-Arabia take place not only in Germany but also in other countries of the European Union. Together with non-governmental organisations, dockworkers in Genua / Italy have refused to load a freighter from Saudi-Arabia. A similar protest action also took place in France. New research opportunities, such as the analysis of ship data and satellite imagery help journalists to prove that European weapons are being used in the war in Yemen. European non-governmental organisations are also making use of legal proceedings to pressure governments to reverse their policies—as happened in Italy against RWM Italia, a Rheinmetall subsidiary. In Great Britain, too, the London High

Court ruled that the UK Government must better fulfil its duty to carefully weigh up the risks involved when exporting weapons to Saudi-Arabia. Bringing arms manufacturers before national courts is yet another form of sanctioning. This kind of action is valuable because of their legal references and debates and strengthens not only the positions of international humanitarian law but also European legal frameworks, such as the EU Common Position.

0.6 International efforts to control the arms trade

The Fifth Conference of the Parties to the International Arms Trade Treaty

(0.14) Global trade in conventional weapons continues to grow. This fact was underlined by Izumi Nakamits, United Nations Under-Secretary-General of Disarmament Affairs, on the occasion of the Fifth Conference to the International Arms Trade Treaty (ATT). The hope, entertained in particular by many African countries that the trade in conventional weapons could be reduced as a result of the ATT does not seem to come true. On the contrary, five years after its entry into force, first signs of slacking off are becoming apparent, in particular with regard to Member States' duty to report, but also concerning the payment of membership fees. Non-governmental organisations warn of a loss of importance of the ATT. Their criticism was sparked by the arms supplies to the Yemen war coalition whose members violate international humanitarian law by bombing civilian targets. To also strengthen the ATT, the GKKE calls on the Federal Government to stop all arms exports to countries that are part of the Yemen war coalition.

1. Focus: The German Government's revised Political Principles on the Export of War Weapons and other Military Equipment

1.1 On the tightening and weakening of German arms exports controls

(1.01) "In 2018, we are tightening the arms exports guidelines from the year 2000 and thus respond to the changed circumstances", the coalition agreement of the Federal Government states. With a slight delay, the Federal Government presented the announced 'stricter' principles in July 2019.¹ After 19 years now, putting innovations on arms exports policy that were developed in at least some areas into practice could indeed contribute to German arms exports policy becoming more restrictive. Yet, these revisions often contain formulations such as "in principle" or "may", which still allow for exceptions. Sections on European arms cooperation give additional cause for concern as they run counter to the original intention of tightening the political principles.²

(1.02) Since 1971, the German War Weapons Control Act (*Kriegswaffenkontrollgesetz*) and the Foreign Trade & Payments Act (*Außenwirtschaftsgesetz*) and their implementing regulations have been complemented by the Political Principles on the Export of War Weapons and other Military Equipment. The Political Principles, which are not legally binding, must be understood as declarations of intent by the respective Federal Governments to shape arms exports in accordance. So far, every Federal Government and the ministries responsible for export licenses have all described the arms exports policy as "restrictive". After 1971, the Political Principles were revised, extended in scope and changed in 1982, 2000 and in 2019. They are an interesting yardstick in that they reflect the respective historical context but are also subject to political agendas and so, undoubtedly, have a history full of change.³

(1.03) Some of the revised Political Principles of June 2019 contain necessary tighter rules which, however, have long since been anchored in other international sets of regulations, particularly with regard to the non-proliferation of small arms and light weapons. The goal of helping to reduce the risk of the proliferation of small arms and light weapons and of supporting international efforts to combat the illegal trade with these weapons is already mentioned in the preamble. At least in parts, the revised Political Principles are more 'restrictive'; even more than the Principles governing the export of small arms of 2015.⁴ A real tightening is found in the principle that foresees a ban on the export of small arms and

¹ German Federal Government, Politische Grundsätze der Bundesregierung für den Export von Kriegswaffen und sonstigen Rüstungsgütern, Berlin 2000 (Political Principles on the Export of War Weapons and other Military Equipment, Berlin, 2000).

² Max Mutschler/Simone Wisotzki, Sind die überarbeiteten Politischen Grundsätze der Bundesregierung für den Export von Kriegswaffen und sonstigen Rüstungsgütern tatsächlich „restriktiver“?, Available (in German) at https://www.bicc.de/uploads/tx_bicctools/Commentary_Politische_Grundsätze_040719.pdf (14.10.2019).

³ Bernhard Moltmann, „Ist es r/Recht so?“ Reflexionen zu Grundlagen und Perspektiven der deutschen Rüstungsexportpolitik, HSKF-Report 6/2001 (in German).

⁴ German Federal Ministry of Economics and Technology (BMWi), Principles of the German Federal Government governing the export of small arms and light weapons, corresponding ammunition and production equipment to third countries. Available at <https://www.bmwi.de/Redaktion/EN/Downloads/small-arms-export-principles-german-federal-government.html>

light weapons to third countries albeit with the addition of ‘in principle’, which allows exceptions from this rule. The Federal Government ought to commit itself to provide explicit and comprehensive reasons for its decision in the event of such an exception—and it would have been well advised if it had laid this down in the Political Principles. Nonetheless, the orientation of the new Political Principles goes beyond the provisions laid down in the 2015 Small Arms Principles. These Principles only foresaw that licences are not to be granted to non-state recipients in third countries. It should be noted, however, that SALW ammunition is not included in the principle on the ban on small arms exports to third countries. Otherwise, the Political Principles take on the 2015 Principles on small arms.

(1.04) The revised Political Principles now refer to the option of so-called post-shipment checks at the final destination of exported military equipment, which had already been introduced as part of the Small Arms Principles in 2015⁵. This, however, is nothing more than an optional provision. The approval of a license may be made dependent on whether the potential recipient country goes along with such checks, but it is not mandatory. The situation is similar with regard to the consequences in case of non-compliance with the end-user certificate. If the post-shipment controls reveal such non-compliance (or if they are refused despite previous consent given), the recipient will on principle, “as long as such conditions persist”, be excluded from receiving any further deliveries of war weapons or other military equipment related to war weapons. However, it remains unclear what this means exactly. Moreover, again, there is the restriction of ‘on principle’. Only time will show whether and in how far post-shipment controls will be used beyond small arms to verify the final destination of other conventional war weapons and military equipment.

(1.05) The revised Political Principles further list international agreements on arms and arms exports controls that were concluded in the past 19 years and that are binding under international law for exports controls in Germany. The preamble lists the legal foundations: German War Weapons Control Act (KWVG), German Foreign Trade & Payments Act (AWG) and the 2008 EU Common Position. They are complemented by the 2014 Arms Trade Treaty (ATT), which has now become part of the Political Principles. Besides the support of the UN-weapons register, the support of the Convention on Certain Conventional Weapons, the Mine Ban Treaty, the Convention on Cluster Munitions as well as Section III.9 of the ATT must now be included in the evaluation of the recipient countries of German arms exports. It should be noted, however, that the Principles leave out how the Federal Government defines ‘support’. Rather than support, it should have said: Signature or ratification by the recipient country. What it actually means for German arms export practice when the support of the ATT by the importing country is to be “taken into account” will only become clear in the further course of the process. Whether a new practice will actually be derived from this, e.g. that India, Pakistan, Saudi Arabia or, after having withdrawn its signature, even the United States, all of which have neither signed nor ratified the ATT, will no longer be receiving weapons is rather questionable.⁶

(1.6) The Federal Government intends to—hopefully—address a major regulatory gap with regard to the relocation of German arms production abroad. In future, it is to be examined whether the “establishment of arms production capacities in foreign countries is facilitated that is not in line with the German Government’s restrictive arms exports policy laid down in these Principles”⁷ (Section I.6). Should the Federal Government conclude that this danger is real, it can—but does not have to—assert re-export reservations for the military equipment manufactured with German technology. It is a good thing that in the future, the Federal Government intends to pay more attention to the build-up of foreign arms production capabilities by German arms manufacturers than it has so far. The worldwide proliferation of small arms and light weapons from foreign production under German license and with German technology, for instance, demonstrates the fatal consequences of the Federal Government’s blindness to this problem to date. However, the German Government has yet to prove whether it is indeed serious about this declaration of intent by adopting a corresponding licensing practice and, above all, by submitting suitable legislative proposals and their introduction as Government draft into parliament. Furthermore, the Federal Government ought to finally subject the founding of joint ventures and subsidiaries of German arms manufacturers abroad to licensing requirements to prevent that companies, such as Rheinmetall, use this loophole to continue to export bombs to Saudi-Arabia — via a subsidiary in Italy, for instance.⁸ The GKKE has made detailed legal proposals on this in its 2018 Report.⁹ A motion by the parliamentary group “Die Linke”

⁵ See Chapter 5.1: Post-shipment controls (PSC): Taking stock and suggestions for improvement (in German only).

⁶ Simone Wisotzki, Violating the Arms Trade Treaty. Arms Exports to Saudi Arabia and the Humanitarian Crisis in Yemen, Frankfurt am Main: Hessische Stiftung Friedens- und Konfliktforschung, 2018 (PRIF Spotlight 1/2018).

⁷ Own translation as there was no official translation available at the time of translation.

⁸ Philipp Gröll /Karl Hoffmann, Exportstopp mit Schlupflöchern. Wie Rheinmetall weiter Geschäfte mit den Saudis macht, 04. Dezember 2018 (in German), Available at <https://www.br.de/femsehen/das-erste/sendungen/report-muenchen/rheinmetall-ruestungsexporte-saudi-arabien-102.html> (23.11.2019).

⁹ GKKE-Rüstungsexportbericht 2018, Berlin 2017, S. 74-76 (GKKE Arms Exports Report 2018, in German only).

and “Bündnis 90/Die Grünen” calls for the elimination of further loopholes in the law.¹⁰ The same applies to technical support by German citizens and investments of German defence companies in foreign production facilities, for example by acquiring shares, which must also be understood to be covered by arms exports controls and regulated accordingly by law.

(1.07) Other sections of the revised Political Principles contain contentious material which could bring about changes that are decisive for German arms exports policy and, from the GKKE’s point of view, are highly problematic. Thus, as stated in the preamble, the aim is to promote arms cooperation at the European level to strengthen the European defence-industrial base. To promote European cooperation in the arms sector, the Principles now explicitly refer to the possible use of so-called de-minimis regulations. This has the following implications: When it comes to supplying parts from Germany that will be fitted in war weapons or other military equipment in another EU- or NATO-country (or one of the NATO-equivalent countries), the Federal Government reserves the right to raise objections to certain exports of these weapons of war or military equipment. This has been the case so far and should, in principle, remain so. However, the adoption of the de-minimis regulation would mean that objections should and can only be raised when the share of German parts in the overall system exceeds a certain value or percentage—how high that percentage is supposed to be is not mentioned in the Principles. Such de-minimis regulations are not new; they have also been used in earlier cooperation agreements. However, these were generally very low percentages. In the course of pressure exerted particularly by France for laxer export controls, rates of 20 per cent have now been agreed.¹¹ In the case of the export of weapons components, this is de facto equivalent to the removal/ elimination of German export controls by European arms exports cooperation.

Evaluation

(1.08) The GKKE welcomes the fact that some progress, both in terms of policy and in practice, such as the Principles governing the export of small arms, post-shipment controls and some more transparency, has been explicitly included in the revised Political Principles. There is the potential of an indeed more restrictive policy in the new wording on small arms exports to third countries and on the control of technology for arms production. However, here—as with all other provisions of these Principles—the wording is so soft (“generally”, “can”, “reserves the right”) that the Federal Government ultimately does not commit itself to any concrete action. This is why the GKKE repeats its core demand for an arms exports control act. In the case of the revised Political Principles, only implementation and application practice will show how the Federal Government interprets the changed Political Principles. At least the advocates of more restrictive arms export controls can now refer to these passages in the Political Principles. So much for the positive aspects, which can indeed be interpreted as “tightened measures”.

(1.09) By contrast, the opportunity was missed to add a ban on the export of SALW ammunition to third countries to the new principle of “no small arms to third countries” in the revised Principles. This deficit runs counter to the political efforts of the Federal Government to establish ammunition control in the United Nations as a political programme of action equivalent to that of export controls on small arms and light weapons.¹²

(1.10) The new Principles on facilitating European intergovernmental and inter-company arms cooperation lead to a comprehensive relativisation or even explicit elimination of any mandatory legal or political export control restrictions on the export of German weapons of war and other military equipment to third countries. The principle is not new that the export of weapons of war and other military equipment to EU-Member States, NATO-countries and NATO-equivalent countries—Australia, Japan, New Zealand and Switzerland—is not to be restricted as a matter of principle unless a restriction is necessary in individual cases for special political reasons, as—in the opinion of the GKKE—is currently the case with Turkey, for example,¹³

(1.11) Cooperative arms projects, such as the envisaged Future Combat Air System (FCAS, successor of Eurofighter) or the European Main Battle Tank (EMBT, successor of Leopard main battle tank) not only make sense in economic but also political terms provided they help to reduce pressure for the European arms industry to sell their products on the

¹⁰ Bundestagsdrucksache 19/14917 vom 8. November 2019, Antrag Der Fraktion Die Linke sowie der Fraktion Bündnis 90/Die Grünen, Lücken bei der Exportkontrolle schließen.

¹¹ Anne-Marie Descotes, Vom “German-free” zu gegenseitigem Vertrauen, Bundesakademie für Sicherheitspolitik, Berlin: Bundesakademie für Sicherheitspolitik, 2019 (Arbeitspapier Sicherheitspolitik Nr. 7/2019).

¹² See chapter 7.1 of the German version.

¹³ On this, please also refer to the GKKE Arms Exports Report 2017, chapter 5.2. “No arms exports to Turkey”. (In German only)

world market. However, it is politically highly questionable that in cooperative projects, the Federal Government only reserves the right to “oppose to certain export projects of their cooperation partners in a consultative manner”, i.e. to waive its veto, when it comes to enforcing its Principles on arms exports policy. Given the favourable attitude of other EU Member States, in particular France, towards arms exports, there is a threat here that Germany’s position on arms exports controls with its still restrictive stance vis-a-vis exports to third countries, at least on paper, is marginalised. The GKKE demands that the Political Principles must also apply without compromise for joint projects such as those with the cooperation partner France.

(1.12) The mere initiation of consultative procedures of this kind also requires a complex assessment procedure between the Foreign Federal Office, the Federal Ministry for Economic Affairs and Energy, the Ministry of Defence and the German Chancellery. In the context of new cooperation agreements, such a consultation process is merely “to be aspired to in principle”, which means not even in every case. In actual fact, these procedures ought to have been tightened rather than watered down in view of the development described above. The same principles apply for cooperation at the company level. The German companies involved must make sure that corresponding contractual measures are in place so that they can influence consultations. Hence, there is hardly any leeway left to enforce the explicit instructions of the existing and the revised Principles on the export of arms to third countries—no export of weapons of war unless in special, well-founded exceptions. As it is up to the respective cooperation partner to decide whether and to what extent they are prepared to even agree to consultations, let alone whether they will comply with or at least consider the respective German requests.

(1.13) In addition to this tendency to undermine the German restrictions, the revised Principles also contain the explicit option of so-called de-minimis regulations for German supplies of parts and components that are destined for weapons of war or other military weapons. In plain language: If the value of this military equipment, which is entirely subject to German export controls, is below a certain threshold value of the total value of a weapon system, the necessity of a license is removed. To speak of insignificance—de minimis— at a threshold value of 20 per cent is out of the question.

(1.14) The corresponding passages in the Political Principles are alarming and point to the urgency of strengthening arms export controls at the European level.¹⁴ Here, the Federal Government must do more to promote a uniform and strict interpretation of the Common Position. Violations by the Member States ought to be punished by sanctions as also demanded by the European Parliament.¹⁵ What ultimately remains is this: To bring about real improvements in the system of German arms export controls, much more far-reaching and precise regulations are needed that would best be implemented as an arms export control act that binds the Federal Government.¹⁶ Otherwise, European cooperation, which in principle is to be welcomed, threatens to undermine German arms export controls. This would entail considerable foreign- and security policy risks. Current examples give first insights into a ‘creative’ circumvention of German arms exports controls. For example, the German Federal Security Council permitted the Ulm-based company KAMAG to export technology for low-bed semi-trailer production to France. These trailers were originally intended to be produced by KAMAG in Ulm to be then shipped to Saudi-Arabia—but the moratorium stopped this. Now, the trailers that also make the transport of tanks by Saudi-Arabia to the conflict in Yemen possible are manufactured by KAMAG’s French affiliate, Nicholas Industries.¹⁷

(1.15) A look at the recent history of the Middle East shows what unregulated arms exports to regions of crisis can lead to. It is paradigmatic for a succession of civil wars, revolutions and regime change without stability. The historic examples are diverse and range from Egypt, Algeria, Iran, Iraq, and Syria to the anarchic political situation in Libya. In nearly all cases, arms were exported from the West—including from Germany—despite the fact that neither stabilisation, least of all democratisation, took place. In most cases, the new regime was able to take over the weapons of the previous government. Something similar could happen in Saudi-Arabia at any time—the country which receives a large amount of arms exports from Western countries and Germany. Furthermore, there is the real threat that these weapons from the West, and from Germany, could be used against their own soldiers when they are deployed in the region. Arms

¹⁴ Max Mutschler, Für eine strenge Rüstungsexportkontrolle in Deutschland und in Europa. Eüstungstechnische Kernfähigkeiten erhalten, ohne dass diese zu Lasten von Menschenrechten gehen, Berlin: Bundesakademie für Sicherheitspolitik, 2019 (Arbeitspapier Sicherheitspolitik Nr. 12/2019).

¹⁵ See chapter 6 on the arms export control act in the GKKE Arms Exports Report 2016, pp. 94ff. (In German only)

¹⁶ See Otfried Nassauer, Kreativer Rüstungsexport nach Saudi-Arabien - Bundesregierung hilft Rheinmetall und KAMAG, Berliner Informationszentrum für Transatlantische Sicherheit, 14. April 2019.

exports from Germany to this region should continue to be carried out with extreme caution and should generally be avoided—also, and particularly in connection with European cooperation projects.
