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**WG ON FIREARMS
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 FROM ARMS TRANSFERS TO FIREARMS TRAFFICKING. APPLICATION OF THE FIREARMS PROTOCOL
 IN THE CONTEXT OF DIVERSION. ITALIAN BEST PRACTICES**

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1. *Introductory remarks: emerging policies to prevent, detect and combat the diversion of firearms*

Diversion is a complex problem, since the movement from the licit to the illicit sphere may occur as the result of different conducts, taking place at different points of the life of a firearm.

The prevention of different forms of firearms diversion call on states to adopt domestically and internationally comprehensive and multidimensional strategies, encompassing both *preventive measures* and *criminal justice responses*.

Within the on-going implementation process of the FP growing awareness is emerging among states parties that such policies should take full advantages and maximizing existing synergies among different arms control international legal frameworks.

For instance, the Preamble of COP Resolution 10/2 of 2020 underlines the complementarity of the FP with other instruments such as the ATT, POA and International tracing instrument, as well as other relevant regional instruments, aimed at reducing the risk of diversion.

Moving from this rationale, I would like to share with you some thoughts, especially highlighting *best Italian legislative practices* aimed to prevent diversion, both during the *manufacturing process* and *arms transfers*.

2.1 Diversion during the manufacturing process (marking)

The FP contains several provisions to address the risk of diversion during the *manufacturing process*, including some mandatory requirements (administrative measures and criminal law provisions) with the purpose to prevent that manufacturers produce firearms without appropriate *marking*.

COP Resolution 10/2 recommends states parties to addressing any existing gap in the area of marking, tracing and record-keeping. Accordingly, *states parties should prioritize legislative interventions*, especially with the aim to better harmonize domestic frameworks on the *marking of parts and components of firearms*.

Indeed, a number of studies and reports confirm that the lacking in uniformity still facilitates criminals in illegally trading *weapon parts or illicitly reactivating firearms*; and it make difficult to track them in case of theft, loss, diversion from the licit to the black market.

To this purpose, in 2018, Italy has amended legislation on marking with the aim to transpose in to domestic legislation the EU Directive of 2017 on firearms, which, *inter alia*, obliges member states to affix a unique marking on “any essential component” of a firearm manufactured or imported in to the Union after the entry into force of the Directive.

With the purpose to enhance the traceability of firearms diverted at the time of manufacture, *states parties should also consider*, with the contribution of the firearms manufacturing industry, to *adopting common guidelines on marking techniques*, establishing technical specifications and standards, so that the marking of firearms and unassembled parts and components will be harder to erase. The FP provides a solid legal basis to that purpose, since

it requires states parties to encourage manufacturers to develop measures against the removal or alteration of markings.

2.2 Diversion during the manufacturing process (conversion and reactivation of firearms)

Another form of diversion that may occur during the manufacturing process that raises growing concern internationally deals with the so-called “*converted weapons*”, a broad notion encompassing both the illicit conversion of alarm weapons and imitation firearms to lethal-purpose weapons, and the reactivation of deactivated firearms.

The FP recognizes these problems by defining a “firearm” to include a weapon that “maybe readily converted” to function as a firearm, and requiring that deactivated firearms be rendered permanently inoperable. However, the FP does not address these issues comprehensively, only establishing some general, although mandatory, principles to prevent the reactivation of deactivated firearms.

Notwithstanding this “minimalist approach” of the FP, *states parties should consider to strengthening their common efforts* in these two sensitive areas, especially with the aim to possibly *identify common guidelines on deactivation standards and techniques* (including markings, registries, certificates, verification processes, and possibly criminal law provisions) as well as technical specifications and requirements on conversion of firearms.

Any concrete action in this direction would be consistent with the purpose of the FP, and it might significantly contribute to improving law enforcement and judicial cooperation, as well as the traceability of converted firearms, which significantly bolstered new form of firearms’ smuggling and diversion in several part of the world and throughout Europe.

The recent innovative legislative policy of the EU in the area of converted firearms could provide source of inspiration.

3.1 Arms transfers and diversion (licensing and authorization systems)

The adoption of strict systems of *licensing or authorization* to control the import, export and transfer of firearms (including their parts and components and ammunition) is at the heart of effective and comprehensive strategies to prevent, detect and combat diversion that may occur during *arms transfers*.

The FP normative framework offers adequate guarantees that arms transfers take place with the consent of all states involved (including transit states), and with minimum standards of security.

Supplementary measures are however required to prevent more effectively the risk of diversion during arms transfers.

First, it is of paramount importance that domestic legislations on licensing or authorization of firearms transfers fully reflect *the respect for fundamental principles of the international community* (such as peaceful settlement of disputes, maintenance of international peace and security, and protection of human rights).

To this purpose, it is highly recommended that states parties to the FP, who have not yet done so, *ratify the Arms Trade Treaty (ATT)*, which set out comprehensive *standard criteria* for conventional arms transfers authorizations based on the principle “no weapons for abuse”.

Accordingly, states shall not authorize arms export if they determine that there is a *substantial risk* that small arms and light weapons (SALW) could be used, in consequence of their diversion, by unauthorized recipients (non-state armed groups, organize crime and terrorist groups) or to commit war crimes and crimes against humanity.

In line with the ATT standards, *states parties* to the FP *should consider to establishing domestically effective risk assessment procedures* (at licensing stage) for all weapons transfer authorizations (including firearms).

These assessments could be based on different potential *risk indicators* such as for instance: i) official reports of UN bodies inquiring breaches of IHL and grave violations of

human rights, or ii) judgement and reports of judicial and quasi –judicial bodies on human rights).

Moreover, the ATT, at greater extent than the FP, requires states parties to *undertake measure to mitigate the risks of diversion*, including confidence-building measures, and agreed programmes by the exporting and importing states.

Accordingly, *States parties to the FP are encouraged to adopting appropriate standards to increase effective accountability of firearms transfers.*

For instance, the Italian legislation provides that, in relation to weapons of war transfers (as well as in certain cases of common firearms transfers, namely when the recipients of the weapons are armed or law enforcement forces), the application for authorization to transfer has to be accompanied by *a certificate of final use* (CUF). The governmental authorities of the recipient country have to issue such a certification, including a *non-re-export clause*, by which they offer guarantees of non-re-transfer without prior authorization from the Italian authorities. The *validity* of such certificate results from the authentication provided by the Italian diplomatic or consular authorities accredited in the import country.

States parties to the FP should discuss the feasibility of developing *common practical guidelines for end-user certificates* of firearms transfers.

In order to ensure that weapons actually arrive at their destination and to prevent the risk of diversion, the Italian legislation, in case of war firearms transfers, also provides some other accountability measures, such as *post-shipment* checks following the granting of authorization for the transfer (for example, the obligation to produce certificates transit and arrival at destination).

Another good practice characterizing Italian legislation finally concerns the Government's obligation to submit to Parliament an annual report (followed by a debate) on the operations authorized, and carried out for the control of the export, import and transit of

arms transfers. The latest annual reports would seem to confirm that this transparency measure is, in practice, applicable to all arms transfers, including common firearms.

3.2 Arms transfers and diversion (brokering activities and arms embargoes)

I would like to conclude my observations on arms transfer and diversion underlying the *need* to enhance the discussion about states parties' efforts to regulate *brokering activities*, which is of paramount importance to strengthening the effectiveness of arms embargo.

The on-going implementation process of the FP (whose Article 15 expressly deals with brokers and brokering) provides an extraordinary opportunity for states parties to adopt, adjourn and progress their domestic legislation on arms intermediation activities (licensing, registration, penalties).

For instance, in Europe many legislations still do not expressly regulate *extraterritorial brokering activities*. This, notwithstanding the EU since long ago call on states members to take action in this direction. Many gaps and lacunae remain also in the regulation of *activities closely related to brokering*, such as the transport of weapons, and the provision of financial or other services. Given the numerous issues at stake, the proposal contained in the background paper to hold in the future an *ad hoc* meeting to discuss this topic comprehensively is really a welcome one.

Thank you.