COUNCIL OF STATE, ADMINISTRATIVE LITIGATION SECTION.

XV - BEDROOM

ARR Ê T

n O 244.802 of June 14, 2019

A. 224.004/XV-3598

In cause:

1. **the non-profit association**
COORDINATION NATIONALE D'ACTION
FOR PEACE AND DEMOCRACY,
2. **the non-profit association**
LEAGUE OF HUMAN RIGHTS,
formerly known as the
LEAGUE OF HUMAN RIGHTS,
both having taken up residence at
M - Vincent LETELLIER, lawyer,
rue Defacqz 78-80 box 2
1060 Brussels,

versus :

the Walloon Region,
represented by its Government,
having taken up residence at
M - Geoffroy GENERET, avocat,
rue Capitaine Crespel 2-4
1050 Brussels.

I. Object of the request

By a request submitted electronically on 18 December 2017, the asbl NATIONAL COORDINATION OF ACTION FOR PEACE AND DEMOCRACY and the asbl LEAGUE OF HUMAN RIGHTS, currently called LEAGUE OF HUMAN RIGHTS, request, on the one hand, the suspension of the execution of "the decision taken on October 18, 2017 by the Minister-President of the Walloon Region to issue the arms export license no 2178/030219 for the delivery in the Kingdom of Saudi Arabia of smooth-bore weapons with a caliber of < 20mm, other weapons and automatic weapons with a caliber of ÿ 12.7 mm (0.50 inch caliber) and accessories, and specially designed components therefor (ML1)" and, secondly, the annulment of that decision.

II. Procedure

Judgment no . 240.902 of March 6, 2018 ruled that there was no longer any need to rule on the request for suspension and reserved the costs. It has been notified to the parties.

By letter dated April 6, 2018, the applicants requested the continuation of the procedure.

The administrative file has been filed.

The briefs in reply and in reply have been regularly exchanged.

Mr. Christian AMELYNCK, first section auditor at the Council of State, wrote a report on the basis of article 12 of the general rules of procedure.

The report was notified to the parties.

The parties filed a final brief.

By order of May 10, 2019, the case was scheduled for a public hearing on June 11, 2019 at 9:30 a.m.

M me Pascale VANDERNACHT, President of the Chamber, reported.

M me Vincent LETELLIER, lawyer, appearing for the parties applicants, and Mr. me Geoffroy GENERET, lawyer, appearing for the part opponent, were heard in their observations.

Mr. Christian AMELYNCK, first section chief auditor, was heard in his contrary opinion.

The provisions relating to the use of languages, listed in Title VI, Chapter II, of the laws on the Council of State, coordinated on January 12, 1973, are applied.

III. Facts

The facts were set out in judgment no . 240.902 of March 6, 2018. Reference should be made to this.

IV. Admissibility

IV.1. Theses of the parties

The opposing party considers that the recourse which is directed against a license which has been fully executed has become devoid of purpose. It thus indicates that an administrative act which has fully produced its effects is no longer subject to cancellation.

In reply, the applicants argue that while the fact that a license has been executed is such as to impede their interest in obtaining a suspension, it is in no way such as to entail the same consequence as regards the annulment proceedings. They point out that the Council of State has previously canceled arms export licenses intended for Libya, which had already been executed.

In its last memorandum, the opposing party emphasizes that the contested license has been fully executed so that the appeal would no longer have any purpose. It refers to the aforementioned suspended judgment.

In their last memorandum, the applicants reiterate their arguments and indicate that the opposing party is confusing the object of the appeal with the question of maintaining the interest in suing for the annulment of an act which has been performed. In their view, whether or not the license has been executed, the remedy retains its object. Relying on judgment no . 201.855 of March 12, 2010 and on judgment no . 212.559 of April 7, 2011, which concerned arms exports to Libya, they claim to maintain a moral interest in the cancellation of the contested license .

IV.2. Appreciation

The fact that the contested license has already been executed does not mean that the requesting parties would no longer have an interest in its cancellation. They retain, at the very least, a moral interest in view of the values that they intend to protect within the framework of the missions that they assume with regard to the corporate purpose that they have set themselves. This plea of inadmissibility cannot therefore be upheld.

V. Confidentiality

V.1. Theses of the parties

The applicants argue that they oppose any request for confidentiality of the administrative file. They consider that such a request "would prevent an effective control of legality insofar as the opposing party hides the exact nature of the products whose export it authorizes and the recipient of the order in particular, whereas these are two determining factors in the assessment of the legality of the export with regard to the criteria of Common Position 2008/944/CFSP" of 8 December 2008 defining common rules governing the control of exports of military technologies and equipment and of the decree of the Walloon Region of 21 June 2012 relating to the import, export, transit and transfer of civilian arms and defense-related products.

They refer to various judgments rendered by the Constitutional Court, the Council of State and the Court of Justice of the European Union, relating to the examination of requests for the confidentiality of documents. They recall that such requests must be examined on the basis of the right to a fair trial. They maintain that if the confidentiality of documents is granted, it must be limited to what is strictly necessary and following a concrete examination. They also point out that, as they are not in a position of competition in relation to the firms concerned, no confidentiality could be opposed to them on the basis of considerations relating to commercial interests. They state that it is "[...] essential, in order to assess in particular the arguments relating to the suspension [or] the cancellation of the licence, to be able to access in particular the following information: what is the type of weapon precisely covered by the license, how many weapons will be sold, who are the recipients and, if possible, when the deliveries are expected". However, they admit that the sale price of the weapons concerned is not an element that interests them and that may well be covered by secrecy.

The opposing party requests that, pursuant to Article 87, § 2, of the general rules of procedure, exhibits 1 and 2 of the filed administrative file be kept confidential. It considers that this confidentiality is justified, in this case, "taking into account the issues linked in particular to the international relations of the Walloon Region", as well as "to business secrecy". In support of her claim, she cites judgments of the Court of Justice of the European Union, a judgment of the Constitutional Court and a judgment of the Council of State. It adds that "companies receiving licenses are bound by contractual undertakings of strict confidentiality vis-à-vis their customers, in this case Saudi Arabia", that "these confidentiality undertakings concern not only the products covered by

disputed licenses, but also all information and exchanges concerning the contractual relations between parties", and that "the disclosure of strategically sensitive information (final recipient, nature and quantity of products, price, technical characteristics, *etc.)* concerning the products concerned would undermine business secrecy and would seriously harm the companies concerned by jeopardizing their credibility on the market which is theirs".

It also recalls that the attack on the international relations of the Walloon Region constitutes a cause of exception to the publicity of the administration, by virtue of article 6 of the decree of March 30, 1995 relating to the publicity of the administration. It also notes that "the applicants refrained from seizing the Appeals Board against the implied decision of refusal to communicate the licenses of October 27, 2017". It considers that, in the absence of the introduction of such an appeal, on the basis of the decree of March 30, 1995, cited above, against this implicit refusal, the latter "must henceforth be considered legal".

In reply, the applicants argue that the absence of referral to the Appeals Commission set up by the decree of March 30, 1995, cited above, against the implicit decision of the Minister-President to refuse to communicate the licenses, of the October 27, 2017, has no bearing on the fate to be reserved for the request for confidentiality of the administrative file. According to them, this request falls within a different legal context from that of the request for information which gave rise to this implicit refusal. In the present case, they point out that it is the opposing party who requests the confidentiality of a file, as an exception to the principle of its accessibility to the registry and that this question must be decided by application of article 87 of the general rules of the procedure.

They point out that the principle is therefore access to the file, confidentiality must remain the exception and be limited to what is strictly necessary. They thus emphasize that if the opposing party wishes to exceptionally request the confidentiality of certain documents, it is up to him to mention their confidential nature expressly and to set out the reasons for his request in the pleadings to which the said document is attached. and to establish an inventory in which it is specified for which part confidentiality is required.

Then, in their view, it is up to the Council of State to assess the alleged confidentiality, by balancing the requirements of a fair trial and those of the reasons given to justify the request, with a view to subjecting these documents to contradiction. of the parties or, on the contrary, with a view to exempting them from it. They consider that, in this balancing of interests, the Council of State must also take into account the consequences of its decision with regard to the effectiveness of the ri

the legal remedy and the democratic issues underlying the action in the context of which the opposing party requests the confidentiality of the administrative file. From their point of view, it is necessary to assess the breach that confidentiality would cause to their prerogatives when they act not to assert their private interest but within the framework of a mission to control the legality of the government action, essential in a democratic State, and which the rule of secrecy would seriously undermine.

They point out that, in civil service litigation, the Council of State requires that, when the opposing party requests the confidentiality of a document on the grounds that it relates to private life and business secrecy, that document indicates why the information contained in the document requires such protection, and requires that these explanations be additionally complete. They consider that nothing justifies a different approach in a dispute such as the one at issue here and that, on the contrary, given the prerogatives they hold as "watchdogs" and their right to freedom of expression in the sense defined by the European Court of Human Rights in the Magyar Helsinki Bizottság c.
Hungary, they should be able to access information whose confidentiality is claimed. They also note that the commission for access to administrative documents requires that the authority which invokes the need to protect its international relations must demonstrate how the communication of the requested documents could harm said international relations and that the reasons for the decision must also specify the reason why the interest served by the advertisement does not outweigh the protected interest. However, according to them, the opposing party limits itself to affirming that "confidentiality is justified in this case taking into account the issues linked in particular to the international relations of the Walloon Region, on the one hand, and to business secrecy, on the other. share" and the only development provided consists in arguing that the disclosure of this information "would seriously harm the companies concerned by jeopardizing their credibility on the market which is theirs". They thus note that no explanation is provided as to how the communication of the documents and the opinions of the adviso international relations of the Walloon Region or business secrecy.

As they raised in their request for access to the file

administrative, the opposing party thus takes it for granted that the opinion of the advisory committee and the export licenses would be "by nature" confidential, contenting itself with evoking confidentiality *in abstracto,* because, in principle, the communication of this type of decision would harm the interests invoked.

In their view, this approach was expressly invalidated by the Constitutional Court in its judgment no . 169/2013 of 19 December 2013 annulling the

provisions of the decree of 21 June 2012 relating to the import, export, transit and transfer of civilian arms and defense-related products which aimed, in reaction to the case law of the Council of State in the cases “Libyan”, to guarantee confidentiality in this matter. They recall that the Court considered that the measures aimed at devoting “a general and absolute exception to the right to administrative transparency for all certificates and licenses” were disproportionate. and "for all the opinions of the Advisory Committee" and that the application of the "reasons for exception" to the principle of transparency which are the taking into consideration of the international relations of the Region (5o) or of 'an economic or financial interest of the Region (6o)” “requires a concrete assessment of the request”.

In this case, they note that the opposing party invokes "business secrecy", the "contractual confidentiality commitments" and the "international relations" of the Walloon Region.

As for "business secrecy", they argue that, according to the European Commission, such secrecy protects in particular "technical and financial information relating to know-how, cost calculation methods, manufacturing secrets and processes, sources of supply, quantities produced and sold, market shares, customer and distributor files, commercial strategy, cost and price structure or even a company's sales policy". However, they are of the opinion that the information concerning the categories of arms covered by the export license and the reasons for the decision to grant this license - with regard to the requirements of international law and European law, which involves verifying that the authority has carried out a thorough and accurate examination of the human rights situation in Saudi Arabia, as well as that country's attitude towards terrorism and its involvement in the serious violations of humanitarian law committed in Yemen - do not fall within the scope of information relating to business secrets. In the present case, they claim that only the indication of the value of the material whose export is authorized could constitute sensitive data from a commercial point of view, which is why they admit that it may be covered by the privacy.

They also insist on the fact that they are not competing companies of the one to which the arms export license was granted and that they have no common commercial interest so that the reference to which the opposing party, in its statement in response, to the judgment of the Court of Justice of July 13, 2016 regarding respect for business secrecy, is devoid of any relevance.

As for the fact that "the companies benefiting from the licenses are bound by contractual commitments of strict confidentiality with regard to their customers, in this case Saudi Arabia", they observe that the opposing party does not, however, produce any document allowing to verify its existence and that in any case if such contractual commitments exist, it is obvious that these can only bind the buyer and the seller and not the Minister-President of the Walloon Region, and even less the Council of State, such a clause cannot be claimed by a third party to the contract to evade the adversarial principle in the judicial procedure.

Finally, as for the "international relations of the Walloon Region", they are of the opinion that this reason is not sufficient and that the party invoking it must explain how transparency would harm them.

They also do not share the reasoning developed by the Council of State in its judgments no. 242.022 to 242.031 of June 29, 2018 which granted confidentiality requests made by the opposing party in other arms export cases to the Kingdom of Saudi Arabia.

They consider, first of all, that the Council of State has shown itself to be particularly conciliatory with the opposing party by taking it for granted that the disclosure of the opinion of the commission and the reasons for the decision "would indeed be likely to have repercussions on international and economic relations" of the Walloon Region. However, from their point of view, the Council of State adopted this exceptional criterion *in abstracto,* which cannot be accepted. They add that it is rather the refusal to grant export licenses which could have called into question the international relations of the Walloon Region with Saudi Arabia.

They also criticize this case-law since it is based on a strictly limited balance of interests, as far as they are concerned with regard to "the requirements of a fair trial", ignoring their arguments as to the infringement of their right of access in the administrative file as a corollary of the right to information, as enshrined in Article 10, § 1 of the Safeguard Agreement human rights and fundamental freedoms. They thus qualify the contentious information as information of public interest to which they must have access, unless they demonstrate, with particular acuity, that this right must give way to the interests invoked by the opposing party. Since the appeal for abuse of power essentially has as its object the respect of legality by the administration and that they consider themselves admissible to challenge the arms export licenses in order to have compliance with the regulations checked by the authority empowered to authorize exports, they consider that the Council of State cannot reduce their interest to

access to the file only on the basis of a "fair trial", and even less through a simple, unjustified assertion, which gives precedence to the possibility of "repercussions on its international and economic relations" without even identifying them.

From their point of view, while it is conceivable that certain information making it possible to identify sources of information, and in particular military information, could be confidential with regard to the stakes of international relations, it does not appear from the procedural documents of the opposing party, nor of the judgments of the Council of State that it is this type of information that is protected in this case, but only the assessment of the human rights situation in the country of destination or the way in which it respects international law, including international humanitarian law. They therefore doubt that diplomatic relations could suffer from the communication of these elements and fear that this confidentiality will prevent them, in the future, from exercising effective control over arms export licenses. Citing the parliamentary works of the law of April 11, 1994 relating to the publicity of the administration as well as the judgment of the Constitutional Court no . 169/2013 of December 19, 2013, they affirm that the Constituent established the right to administrative documents into a fundamental right and that exceptions to this principle are only possible under the conditions set by law, decree or ordinance, must be justified and are strictly interpreted. They add that the Court also ruled that "It should, in this regard, be emphasized that administrative transparency contributes to the effectiveness of the exercise of the right of appeal by citizens before the Council of State or before the judicial courts. [...]".

They repeat that the confidentiality of the opinion of the advisory committee on arms export licenses undeniably shields the granting decisions from any democratic and jurisdictional control.

Even if the Council of State has the entire administrative file, they consider that this does not guarantee the effectiveness of a control of legality. Since the latter requires that each party be able to have the relevant documents and explain their point of view to the judge in full knowledge of the facts, they are convinced that the judge cannot correctly rule on the legality of an administrative act without having heard the arguments of each party, respecting the right to a fair trial and the adversarial principle.

In their last brief, they reiterate the essential arguments which they have developed in their previous pleadings and recall that,
in a previous case relating to export licenses to Libya, the

opposing party had not requested the confidentiality of the administrative file, which notably included the opinion of the competent commission to examine these requests. It concludes that transparency therefore does not harm the international relations of the opposing party.

V.2. Appreciation

In its judgments 242.022 to 242.031 of June 29, 2018, the Council of State ruled as follows:

"In its article 87, § 2, the general rules of procedure allow a party to request from the Council of State that it order the confidentiality of the documents that it files.

In this case, such a request is made by the opposing party for certain exhibits filed (Exhibits Nos . 1, 2 and 3). It is justified by the "issues linked [...] to the international relations of the Walloon Region", to "business secrecy", as well as to the "contractual commitments of confidentiality" taken with regard to Saudi Arabia by the beneficiary company of the licenses concerned.

In its judgment no . 169/2013 of 19 December 2013, the Constitutional Court considered an action for annulment brought by the second applicant party against Articles 19, § 1, paragraph 1 and 21 of the decree of the opposing party of 21 June 2012, supra. In this judgment, it held in particular the following:

"As to the lack of publicity of certificates and licenses, as well as of the opinions of the Advisory Commission

B.15. In its first plea, the applicant alleges a discriminatory infringement of the right to administrative transparency guaranteed by Article 32 of the Constitution, in that the arms export licenses and the opinions of the Advisory Committee are exempt from publicity organized by the Walloon decree of March 30, 1995 relating to the publicity of the administration, which has the effect of depriving the persons concerned of the control of the Commission of access to administrative documents, then of the control of the Council of State .

In its third plea, the applicant considers that by exempting the certificates, licenses and opinions of the Advisory Commission from administrative publicity, the regional legislator infringed the jurisdiction of the Council of State and of the courts and tribunals; this infringement would thus disregard federal jurisdiction, and would also create discrimination between litigants.

The Court examines these two pleas together.

B.16.1. Article 32 of the Constitution provides:

“Everyone has the right to consult each administrative document and to have a copy given to him, except in the cases and conditions established by the law, the decree or the rule referred to in article 134”.

B.16.2. By declaring, in article 32 of the Constitution, that each administrative document - a concept which, according to the Constituent, must be interpreted very broadly - is in principle public, the Constituent has erected the right to publicity of administrative documents into a right fundamental.

Exceptions to the principle of the publication of administrative documents are only possible under the conditions set by law, decree or ordinance. They must be justified and are strictly interpreted *(Doc. parl.,* Senate, 1991-1992, no . 100-49/2o , p. 9).

B.16.3. By allowing a legislator to provide in which cases and under which conditions the principle of administrative transparency may be waived, the Constituent did not exclude that access to certain documents be subject to conditions or be limited, for provided that such restrictions are reasonably justified and do not lead to disproportionate effects.

In this regard, it should be emphasized that administrative transparency contributes to the effectiveness of the exercise of the right of appeal by citizens before the Council of State or before the courts.

B.17. The decree of the Walloon Region of March 30, 1995 relating to the publicity of the administration (hereafter: the Walloon decree of March 30, 1995) organizes in the Walloon Region the publication of administrative documents.

Under the terms of Article 1, paragraph 2, 2o . of the Walloon decree of March 30, 1995, by administrative document is meant “any information, in any form whatsoever, available to an administrative authority”. Articles 4 and 5 of the Walloon decree of March 30, 1995 organize the right in principle to consult an administrative document, to obtain a copy and to receive explanations relating thereto.

Article 6, § 1, of the Walloon decree of March 30, 1995 provides for a series of exceptions to this principle of publicity, by stipulating:

> “The regional or non-regional administrative authority rejects the request for consultation, explanation or communication in the form of a copy of an administrative document, if it has found that the interest of publicity does not outweigh the protection one of the following interests:
>
> 1 O public safety;
> 2 O the freedoms and fundamental rights of citizens;
> 3 O public order;
> 4 O the investigation or pursuit of punishable acts;
> 5 O the Region's international relations;
> 6 O an economic or financial interest of the Region”.

Article 8 of the Walloon decree of March 30, 1995 establishes a Commission for access to administrative documents, which can issue an opinion on a request for consultation or correction of an administrative document, with the possibility of appeal to the Council of State. against the advice of this Commission.

B.18. By providing that the certificates and licenses referred to in B.9.4, as well as the opinions of the Advisory Committee, do not constitute administrative acts within the meaning and for the application of the Walloon decree of March 30, 1995, Article 21, § 1 . paragraph 1, and § 2, as well as the words “and confidential for the sole attention of the Government” in article 19 of the Walloon decree of 21 June 2012 establish a general exception to the fundamental right guaranteed by article 32 of the Constitution.

The resulting difference in treatment between persons wishing to examine the documents referred to in the contested provisions, who are automatically excluded from this right, and persons wishing to examine other administrative documents, who benefit from the procedure established by the Walloon decree of March 30, 1995, can only withstand a review under Articles 10 and 11 of the Constitution if it is based on an objective criterion and if it is reasonably justified. The principle of equality is violated when it is established that there is no reasonable relationship of proportionality between the means employed and the aim pursued.

Regarding certificates and licenses

B.19. Concerning the provision of the preliminary draft which has become Article 21, § 1 is . paragraph 1, the legislation section of the Council of State considered the following:

> “The draft paragraph must be examined in the light of article 32 of the Constitution, from which it follows that everyone has the right to consult each administrative document and to be given a copy thereof, except in the cases and under the conditions determined by the decree.
>
> In the Walloon Region, the exercise of this fundamental right is governed by the aforementioned decree of March 30, 1995.
>
> By virtue of Article 32 of the Constitution, this decree of 30 March 1995 therefore determines, for the Walloon Region, the cases and conditions in which the recognized right of everyone to consult administrative documents and to receive a copy thereof may be limited.
>
> In order to guarantee the citizen's fundamental right to publicity of administrative documents, the aforementioned decree of 30 March 1995 submits requests for consultation of administrative documents to a procedure

detail in which the intervention of an *ad hoc Commission is provided for.*
The decisions taken within the framework of this procedure are *ultimately* subject to judicial review.

It so happens that the aforementioned decree of March 30, 1995 as it was conceived, and particularly its article 6, makes it possible to meet the concerns of the author of the preliminary draft since, on the basis of a reasoned decision , it will always be open to the regional authority to refuse the consultation of a license which contains sensitive information.

To provide that the licenses referred to in the preliminary draft would not constitute administrative documents within the meaning of the aforementioned decree of March 30, 1995 is therefore useless to ensure the protection of the interests referred to in the commentary to the articles.

It can therefore be deduced from the foregoing that Article 24, § 1
paragraph 1 , of the preliminary draft [now Article 21, § 1, paragraph 1, contested] cannot be legally admitted. Article 24, § 1, first paragraph , of the preliminary draft is in fact analyzed as a limitation brought to the fundamental right enshrined in article 32 of the Constitution. However, an unnecessary limitation of a fundamental right necessarily violates the principle of proportionality, with the consequence that such a limitation becomes devoid of foundation since it is the rule that any limitation made to a fundamental right is only admissible if it respects the principle of proportionality.

Article 24, § 1, first paragraph , will therefore be omitted" (Doc. *parl., French* Parliament wallon, 2011-2012, no 614/1, p. 25).

B.20. The Walloon legislative legislator decided not to follow the opinion of the section of legislation under the following considerations:

"The question posed by the opinion of the Legislation Section is therefore not that of the competence *sensu stricto* of the Region, but that [of] knowing whether the decree of March 30, 1995 and the appeal procedure should be given priority. that it organizes, in its article 8 or if it is preferable to provide for an additional exception to those referred to in article 6 of this decree.

The draft text favors this second option.

Indeed, it is clear that it is above all, in a sensitive matter, not only in matters of competition, but also of international relations, to prevent the disclosure of information of this type.

In this regard, the fact that there is an administrative remedy and judicial review is not in itself sufficient to ensure that this information will be effectively protected and will not be disclosed.

Indeed, if, according to the Legislation Section, it will always be open to the regional authority to refuse the consultation of a license which would contain sensitive information, a citizen can always appeal to the Commission for access to documents. administrative.

However, who says Appeals Commission means that the latter will have a power of appreciation as to the exception, based on the text currently in force of the decree of March 30, 1995. Such a power of appreciation will never be subject only to marginal control by the Administrative Litigation Section of the Council of State and by reference to the notion of manifest error.

There is therefore no real guarantee that commercial or politically sensitive information will [ultimately] be made public and it is therefore inaccurate to argue that the draft text is unnecessary to ensure the protection of the interests referred to in the commentary to the articles .

Faced with this risk, the path of safety is preferred. In doing so and for the foregoing reasons, it cannot be argued that the draft text constitutes a disproportionate limitation to the fundamental right to administrative transparency enshrined in Article 32 of the Constitution"
(Doc. parl., Walloon Parliament, 2011-2012, no . 614/1, pp. 6-7).

B.21.1. The certificates and licenses referred to in B.9.4 constitute administrative acts of individual scope. These acts fall in principle under the protection offered by Article 32 of the Constitution.

When the Constituent adopted article 32 of the Constitution, it was underlined that the exceptions to this right call in principle for a case-by-case examination of the various interests involved: “the interest of the publication must each time concretely counterbalance the interest which is protected by a ground of exception” (Doc. *parl.,* Chamber, 1992-1993, no . 839/1, p. 5).

B.21.2. The Walloon Government justifies the confidentiality regime established by the concern for security, and by the fact that these documents contain sensitive information in terms of economic competition or international relations.

Assuming that these documents may, in certain cases, contain sensitive information, the Walloon Government has failed to demonstrate that the exceptions and the procedure established by the Walloon decree of 30 March 1995 would be insufficient to guarantee the confidentiality of such information, when they are contained in the certificates and licenses referred to in B.9.4.

Indeed, as indicated in B.17, article 6 of the Walloon decree of March 30, 1995 provides for several exceptions to the right of access, in particular in consideration of the Region's international relations (5o) or of an economic interest or financier of the Region (6o); the application of these “grounds for exception” requires a concrete assessment of the request, the Commission for access to administrative documents ensuring compliance with these exceptions, under the possible control of the Council of State; finally, the administrative documents obtained pursuant to the Walloon decree of March 30, 1995 "cannot be distributed or used for commercial purposes", in accordance with article 10 of the Walloon decree of March 30, 1995, so that any person who disregards this prohibition would risk incurring its liability. The security objective pursued could therefore be achieved by resorting to the procedure organized by the Walloon decree of March 30, 1995.

B.21.3. By establishing a general and absolute exception to the right to administrative transparency for all the certificates and licenses referred to in B.9.4, the legislative legislator has taken a measure that is not proportionate to the objective pursued.

B.22. To that extent, the pleas are founded. Consequently, the article 21, § 1 , first paragraph , of the Walloon decree of 21 June 2012 must be annulled.

With regard to the opinions of the Advisory Committee

B.23. The travaux preparatoires comment on the contested article 19 as follows:

> “This article establishes an Advisory Commission for the export of defence-related products.
>
> This Commission submits its opinions only to the competent Minister, designated as such by the order establishing the Government.
>
> Its members exercise their functions within the Commission independently and no instructions may be given to them in the context of the preparation of the Commission's opinions, in particular by a hierarchical superior; within the framework of the exercise of their missions within the Commission, the agents from the services of the Governments are exempted from referring to and reporting to their superiors on the work carried out.
>
> Embodying the continuity of the public service at the level of Wallonia, the Commission will bring, within the framework of a reinforced independence, the expertise required for the analysis of the most sensitive files.
>
> The Commission will communicate to the competent Minister an opinion after an in-depth analysis of the file from the geopolitical, ethical and economic angles, in particular in compliance with the criteria of the European Code of Conduct, European case law, the report of the head of the service “ license control, analysis of foreign policy, human rights, of the report of the High Representative for Human Rights in

Geneva and bilateral issues and all the other information available to it" (Doc. *parl.,* Walloon Parliament, 2011-2012, no 614/1, pp. 5-6).

B.24. Regarding the provision of the preliminary draft which became article 19 of the decree of June 21, 2012, the legislation section of the Council of State considered:

"As consultation of this Commission is not obligatory and its opinions are not likely to bind the authority, the legislator does not have to interfere in the organization of the executive power by creating a Commission of notice. As this Commission is conceived, it is in fact up to the Government, if it deems it appropriate, to set it up.

Article 4 therefore has no raison d'être and must therefore be omitted" (Doc. *parl.,* Walloon Parliament, 2011-2012, no 614/1, p. 21).

B.25.1. The initial text of article 24, § 2, of the preliminary draft submitted for the opinion of the legislative section of the Council of State provided:

"The opinions issued by the Commission referred to in Chapter III do not constitute administrative acts within the meaning and for the application of the decree of March 30, 1995 relating to the publicity of the administration and cannot, moreover, be communicated to another authority than the government. These notices are not communicated in the event of appeals brought against a decision of the Walloon Region relating to the granting, refusal, suspension or withdrawal of an export license and this within the framework of an appeal brought before the Council of State or before a court of the judicial order" (ibid., p. 40).

B.25.2. With respect to this draft provision, the Legislation Section of the Council of State considered:

"By virtue of its paragraph 2, the opinions delivered by the Commission instituted by the preliminary draft are withdrawn from the scope of the aforementioned decree of March 30, 1995. The objections set out in the first observation under article 24 are valid *mutatis mutandis :* the limitation which is thus brought to the fundamental right to consult administrative documents is not necessary to meet the objectives pursued by the author of the project in such a way that this limitation violates the principle of proportionality; if it turns out that certain opinions given by the Commission contain information deemed to be sensitive, the regional authority will be free to refuse consultation of them on the basis of the procedure provided for by the aforementioned decree of 30 March 1995" (Spoken *Doc. ,* Walloon Parliament, 2011-

2012, no 614/1, p. 26).

She added:

"Paragraph 2 also states that the opinions of the Commission set up by the preliminary draft are not communicated in the file submitted to the courts of law and to the Council of State when these courts are seized of an "appeal " relating to the granting, refusal, suspension or withdrawal of an export licence.

Since the Walloon Region is not competent for the organization of the procedures which take place before the courts and before the Council of State, it is not for it to lay down rules which affect the content of the files submitted to these courts.

The legislation section also observes that, following the judgments of the Court of Justice of the European Union and of the Constitutional Court which held that the parties to judicial proceedings should, despite the principle of adversarial proceedings and respect for rights of defence, being able to invoke the confidentiality of certain documents in the files submitted to the courts, the decree of the Regent of 23 August 1948 "determining the procedure before the administrative litigation section of the Council of State"

provides, in its article 87, replaced by the royal decree of 24 May 2011 "modifying various decrees relating to the procedure before the administrative litigation section of the Council of State concerning the confidentiality of documents", that the parties may request that certain documents in the file are not communicated to the other parties.

In conclusion, paragraph 2 therefore falls outside the competences of the Walloon Region and has no raison d'être" (ibid.).

The Legislation Section of the Council of State concluded that “article 24 must be omitted in its entirety since the rules it contains cannot occur without violating the legal framework in which they are called upon to fit” (ibid. ., p. 27).

B.25.3. The Walloon legislative legislator has, in article 21, § 2, attacked, partially taken into account the observations of the Council of State, by deleting part of the text in draft, but maintaining the principle of the confidentiality of the opinions of the Commission opinion, established by Article 19 contested and specifying that these opinions „cannot, moreover, be communicated to any authority other than the Government'. It was stressed that it was “essential to impose the confidentiality of these opinions, which can only be done by decree” *(CRI,* Walloon Parliament, 2011-2012, no 19, p. 22, and *CRIC,* Walloon Parliament, 2011-2012, no 148 (Monday 18 June 2012), p. 7).

The preparatory works explain that the opinions “cannot therefore be transmitted to Parliament” (Doc. *parl.,* Walloon Parliament, 2011-2012, no 614/1, p. 6), while specifying:

“This naturally in no way affects the power of the judicial authorities within the framework of their power and mission of investigation as they are organized by the Code of Criminal Investigation or by the Penal Code.
This provision is explained, on the one hand, by the fact that the opinions of the Commission contain commercial and confidential information and, on the other hand, by the fact that these reports contain sensitive information and considerations, in particular in geopolitical terms. and diplomatic which require that they never risk being broadcast” (ibid.).

Judicial control “remains possible on the basis of the administrative file, which is not exempt from said control, except if it was [made] use of the faculty offered by article 87 of the decree of the Regent of August 23, 1948 determining the procedure before the Administrative Litigation Section of the Council of State” (ibid., p. 7):

“It is moreover because of this option that the preliminary draft has been revised by removing the fact that the opinions given by the Advisory Committee on arms export licenses should not [be] communicated in the event of appeals lodged against a decision of the Walloon Region relating to the granting, refusal, suspension or withdrawal of an export license and this both within the framework of a appeal brought before the Council of State or before a court of the judicial order” (ibid.).

B.26.1. By exempting from the publicity organized by the Walloon decree of March 30, 1995 the opinions of the Advisory Committee, and by providing that these opinions may not be communicated to any authority other than the Walloon Government, Articles 19 and 21, § 2 , of the Walloon decree of 21 June 2012 prevent any person, or any authority other than the Walloon Government, from taking cognizance of these notices.

Although these opinions relating to the granting of arms export licenses are not as such administrative acts subject to appeal, they nevertheless constitute preparatory acts for the adoption of individual decisions relating to requests for arms export licenses; these elements not only come under the principle of the right to administrative transparency, but may also constitute information enabling the person concerned to be able to lodge an appeal with full knowledge of the facts, with regard to administrative acts of individual scope, such as decisions on applications for arms export licenses.

B.26.2. Furthermore, assuming that these opinions contain sensitive information, the Walloon Government has failed to demonstrate that the exceptions and the procedure established by the Walloon decree of 30 March 1995 would be insufficient to guarantee the confidentiality of such information, when it is contained in the opinions of the Arms Export Licensing Advisory Committee.

Indeed, as indicated in B.17, article 6 of the Walloon decree of 30 March 1995 provides for several exceptions to the right of access, in particular in consideration of the Region's international relations (5o) or of an interest

economic or financial of the Region (6o); the application of these "grounds for exception" requires a concrete assessment of the request, the Commission for access to administrative documents ensuring compliance with these exceptions, under the possible control of the Council of State; finally, the administrative documents obtained pursuant to the Walloon decree of March 30, 1995 "may not be distributed or used for commercial purposes", in accordance with article 10 of the Walloon decree of March 30, 1995, so that any person who disregards this prohibition would risk incurring its liability. The security objective pursued could therefore be achieved by resorting to the procedure organized by the Walloon decree of March 30, 1995.

Furthermore, when examining the exceptions provided for in Article 6 of the decree of 30 March 1995, account should be taken of the confidentiality provided for by the provisions of Common Position 2008/944/CFSP of the Council of 8 December 2008 defining common rules governing the control of exports of military technology and equipment.

B.26.3. The Walloon Government also argues that the opinions of the Advisory Committee are based on classified information within the meaning of the law of 11 December 1998 relating to classification and security clearances, certificates and opinions. The classification concerns information, documents or data, equipment, materials or materials, in any form whatsoever, the inappropriate use of which may harm one of the interests listed in article 3 of the law of 11 December 1998 cited above. The degree of classification - Top Secret, Secret or Confidential (Section 4) - is determined by the content (Section 5).

If certain opinions of the Advisory Committee are based on classified documents, it may then be justified that access to these documents be refused on a case-by-case basis, according to the procedure organized by the Walloon decree of 30 March 1995, subject to control of the Commission for access to administrative documents.

B.26.4. By establishing a general and absolute exception to the right to administrative transparency for all the opinions of the Advisory Committee, and by providing for their absolute confidentiality, without being able to be communicated to an authority other than the Walloon Government, the legislative legislator has taken a measure which is not proportionate to the objective pursued.

B.26.5. In addition, this measure also limits the possibilities of judicial appeal against individual decisions relating to arms export licenses.

Even assuming that the modification of the text of the preliminary draft authorizes that the opinions be communicated in the administrative file in the event of appeal before the Council of State or before a court of the judicial order, this circumstance does not change this conclusion, since this post-appeal communication does not make it possible to knowingly bring appropriate appeals against individual decisions relating to arms export licenses.

B.27. To that extent, the pleas are founded.

Consequently, it is necessary to cancel, in article 19, § 1 . paragraph 1, of the Walloon decree of 21 June 2012, the words “and confidential for the sole attention of the Government”, and article 21, § 2, of the same decree”.

It thus follows from the aforementioned cancellations that the licenses referred to in this case and the opinions of the advisory committee cannot be excluded from the scope of the aforementioned decree of March 30, 1995 and that the applicants were perfectly entitled to to the Walloon Government to request a copy of the aforementioned documents, which was done by letter dated October 19, 2017 and reiterated by a second letter dated October 27. By a letter of November 3, 2017, the Minister-President limited himself to general considerations on the policy carried out with regard to the allocation of authorizations for the export of military equipment and on the same day, the director of cabinet of the Minister-President indicated to the second applicant that the Minister-President was not in a position to grant an immediate response to his request for communication of the administrative acts concerned, this request being submitted to the administration for examination and that in any event, a decision would be communicated to him within the

fifteen-day period provided for in Article 6, § 5, of the decree of March 30, 1995, cited above. Without waiting for this deadline, the applicants filed an extremely urgent appeal with the Council of State on November 13, 2017, arguing that they learned of the existence of these decisions from the press and more particularly from a article published in La Libre Belgique of 18 October 2017, that they are unable to send a copy of the contested acts, the opposing party having reserved no response to their express and repeated requests and that, given the urgency to see the legality of these controlled decisions, they cannot adapt to the procedure and the deadlines provided for by the decree of March 30, 1995, cited above. What was noted by the Council of State since by some of its judgments of March 6, 2018, pronounced this time within the framework of the ordinary suspension, it rejected the appeals on the grounds that several licenses had already been executed between -time.

Although Article 87 of the general rules of procedure allows the parties to request the confidentiality of certain documents which, in principle, should be useful in resolving the dispute, it should be recalled that the filing of the administrative file is prescribed by the legislation in the aim of enabling the judge to rule on the basis of knowledge that is as precise as possible of the factual circumstances and the legal grounds which led to the drawing up of the contested act. It is thus up to the Council of State to assess the alleged confidentiality of certain documents contained in the administrative file, by balancing the requirements of a fair trial against those of business secrecy or the safeguard of the economic or international interests of a region, with a view to subjecting these documents to the contradiction of the parties or, on the contrary, with a view to removing them from it.

Thus, the “issues related [...] to the international relations of the Walloon Region” can justify a favorable response to the request for confidentiality made by this party. The agreement of the opposing party is indeed required for an export of military equipment to take place to Saudi Arabia. If the elements justifying its position were revealed, they would be likely to have repercussions on its international and economic relations.

The concern expressed by the authority to avoid harm to its international relations therefore makes it possible to consider that the confidentiality of the documents for which it is requested deserves to be maintained, even if the requesting parties are not in a competitive position with respect to FN HERSTAL sa or CMI *Defence.* It should also be noted that maintaining confidentiality is not such as to prevent an effective control of legality, as requested by the applicants, from being exercised by the Council of State. However, these reasons do not justify confidentiality going so far as to prevent requesting parties from correctly identifying the nature of the material to which each license applies. The opposing party acknowledged this by providing the requesting parties with a summary table listing the various licenses issued between November 2016 and October 2017 and indicating for each of them the category of goods concerned. However, it appeared that this table contained errors, particularly as regards the nature of the goods covered by certain contested licenses.

For the continuation of the examination of the appeal, the opposing party is invited to communicate to the requesting parties exact information on the nature of the goods covered by the licenses concerned by filing new documents in the administrative file as soon as possible.

For the rest, the request to maintain the confidentiality of documents formulated by the opposing party is favorably received".

It emerges from the case law of the European Court of Human Rights that persons and organizations performing “watchdog” functions must have precise information in order to carry out their activities and therefore often need to have access to certain information to fulfill their role of providing information on matters of public interest. Still according to the Court, the obstacles

established to restrict access to information may result in those working in the media or related fields being less able to play their watchdog role and their ability to provide accurate information and reliable could be diminished. If the applicants refer to the Magyar Helsinki Bizottsag v. Hungary of 8 November 2016, it should however be noted that, in this case, the information refused was not of the same nature as that which is requested here.

Freedom of expression is an essential fundamental right in a democratic society and implies the right to receive or impart information without, in particular, excessive interference by public authorities. Furthermore, the Court accepts that where access to information is decisive for the exercise of the right to receive and impart information, refusing such access may constitute an interference with the exercise of this right.

The settlor as well as the federal legislators and federated entities recognize this right of access to information by means of the consultation of the administrative documents of the various public authorities. However, this right of access is not absolute, just as freedom of expression is not absolute under Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

As emphasized in the judgments of June 29, 2018, confidentiality must remain exceptional and cannot have the effect, in the context of legal proceedings, of preventing the exercise of the rights of the defense and the adversarial debate between the parts.

In the present case, it is justified to maintain the confidentiality of exhibits Nos 1 and 2 of the administrative file not because they are an arms export license and an opinion from the opinions on export licenses for conventional arms/dual-use products as such, but because these documents, if released to the requesting parties and the public, could have significant implications for the international and European relations of the opposing party and deprive it, in the future, of the information it needs in the context of the control it must exercise when processing applications for arms export licenses, particularly with regard to the situation of the recipient countries of these weapons. With regard to certain provisions (Articles 4, 8 and 9) of Council Common Position 2008/944/CFSP of 8 December 2008 defining

common rules governing the control of exports of technology and military equipment, Belgium and, consequently, the regions which

compose, have an obligation of confidentiality in the exchanges of information that they have with the other European partners about these exports. It follows that the possible publication of the aforementioned documents in the administrative file could jeopardize Belgium's cooperation with its European partners.

Finally, the confidentiality of these documents did not in any way prevent the applicants from bringing this action and fully presenting their arguments as to the legality of the contested license.

In view of all of these elements, the confidentiality of exhibits 1 and 2 of the administrative file is maintained.

VI. Third plea

VI.1. Theses of the parties

The third ground is taken from “the violation of Articles 1, § 1, 2 and 10, of Common Position 2008/944/CFSP, [cited above], of Article 14, § 1, paragraph 2, 2 (second criterion), *litteras* a), b) and c), 4 (fourth criterion), *litteras* a) and c) and 6 (sixth criterion), *litteras* a) and b) of the decree of June 21, 2012, [cited above], of the violation of the principle of good administration, of the duty of meticulousness and prudence, and of excess of power”.

The applicants criticize the assessment made by the opposing party of the second, fourth and sixth criteria enshrined in Common Position 2008/944/CFSP, cited above, and in Article 14, § 1, paragraph 2, of the decree of 21 June 2012, supra.

They point out that under the latter provision, an assessment
negative of an application in the light of one of these criteria must lead to its rejection.

In the first part, they state that the authority did not examine the involvement of the recipient country in an international or internal conflict, since it attached to its decision a condition under the terms of which “the validity of the [...] license is suspended when the recipient country is involved in an international or internal conflict”. They also argue that through this condition, the opposing party actually delegates its jurisdiction to assess the situation to an unidentified third party, in violation of the provisions referred to in its plea.

In a second part, they argue that by authorizing arms deliveries to Saudi Arabia, the opposing party violates the above criteria,

especially the last one. They believe that the opposing party did not carry out the careful analysis that it should have carried out, or that it carried out it in an incomplete manner, or that it concluded that there was an "absence of risk" - which would proceed of a manifest error of assessment. They consider that Saudi Arabia's responsibility for the war in Yemen and the humanitarian disaster resulting from the serious and flagrant violations of international humanitarian law should have led the opposing party to reject the requests for the granting of arms export licenses. , except to commit an excess of power.

The opposing party, which responds simultaneously to the criticisms formulated in the second and third pleas, observes in particular that "if it is true that the disputed license is not based on a formally expressed motivation, the fact remains that - opinions were indeed requested from the advisory committee;

- the opinions issued are based on a complete and nuanced analysis of the situation in Saudi Arabia with regard to the relevant legal criteria [...];
- the detailed analysis of the situation on a case-by-case basis has led the advisory committee to adopt different opinions, which has [...] led the opposing party to refuse certain license applications with regard to the type of equipment and/ or of the final consignee [...]".

It deduces from this that it cannot “be reasonably maintained, despite the absence of formal reasons contained in the disputed decision, that this decision would not be validly reasoned, even implicitly”. It further adds that “a statement of reasons by reference, even if it is implicit, is accepted when the opinion on which the act is based is itself duly reasoned”.

It states that the opinions on which the contested act is based could not be attached to the final decision, because of their confidential nature - the latter resulting in particular from business secrecy. It refers, in this regard, to its argument in which it requests the application of Article 87, § 2, of the general rules of procedure.

In her last memoir, she refers to the judgment of the Council of State n° 240.902 of March 6, 2018 and maintains that the pleas are unfounded.

VI.2. Appreciation

The third ground is taken in particular from the violation of article 14 of the decree of June 21, 2012, cited above, which is worded as follows:

"Art. 14. § 1. The Government issues licenses for the export to a country which is not a member of the European Union of defence-related products on the basis of a procedure which it determines .

Export requests are rejected after examination against the following criteria, based on Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing the control of exports of military technology and equipment:

1. **First criterion :** compliance with the international obligations and commitments of Wallonia and Belgium, in particular the sanctions adopted by the United Nations Security Council or the European Union, agreements on, in particular, non-proliferation , as well as other international obligations.

An export license is refused if it is incompatible with, between others :

a) Belgium's international obligations and commitments to apply the arms embargoes decreed by the United Nations, the European Union and the Organization for Security and Cooperation in Europe;

b) the international obligations incumbent on Belgium and the Walloon Region under the treaty on the non-proliferation of nuclear weapons, the convention on biological and toxin weapons and the convention on chemical weapons;

c) the commitment made by Belgium and the Walloon Region to not export any type of anti-personnel landmine;

d) the commitments that Belgium has made within the framework of the Australia Group, the Missile Technology Control Regime, the Zangger Committee, the Nuclear Suppliers Group, the Wassenaar Arrangement and the Hague Code of Conduct against ballistic missile proliferation.

The Government refuses the export license when it appears that the export would seriously contravene the external interests of Belgium or the international objectives pursued by Belgium;

2. **Second criterion :** respect for human rights in the country of final destination and compliance with international humanitarian law by that country.

After having assessed the attitude of the recipient country with regard to the principles set out in this regard in international human rights instruments, the Government:

a) refuses the export license if there is a clear risk that the military technology or equipment whose export is envisaged will be used for internal repression or if there are sufficient indications with regard to a country recipient given that the export will contribute to a gross violation of human rights there or where it is established that child soldiers are fielded in the regular army;

(b) exercise, in each case and taking into account the nature of the military technology or equipment in question, particular caution in issuing licenses to countries where serious violations of human rights man have been observed by the competent bodies of the United Nations, by the European Union or by the Council of Europe.

To this end, technology or equipment that could be used for internal repression includes, in particular, technology or equipment for which there is evidence of use, by the intended end user, of these or of a similar technology or equipment for internal repression purposes or for which there is reason to believe that the technology or equipment will be diverted from its declared end use or its declared end user to be used for internal repression.

The nature of the technology or equipment will be carefully considered, particularly if it is intended for internal security purposes. Internal repression includes, inter alia, torture and other

cruel, inhuman and degrading treatment or punishment, summary or arbitrary executions, disappearances, arbitrary detentions and other serious violations of human rights and fundamental freedoms referred to in the relevant international human rights instruments , including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

After having assessed the attitude of the recipient country with regard to the principles set out in this regard in the instruments of international humanitarian law, the Government;

(c) refuse the export license if there is a clear risk that the military technology or equipment to be exported will be used to commit serious violations of international humanitarian law;

3. **Third criterion :** internal situation in the country of destination final (existence of tensions or armed conflicts).

The Government refuses the license for the export of technology or military equipment likely to provoke or prolong armed conflicts or to aggravate existing tensions or conflicts or in the event of civil war in the country of final destination;

4. **Fourth criterion :** preservation of peace, security and regional stability.

The Government refuses the export license if there is a clear risk that the intended recipient will use the military technology or equipment proposed for export aggressively against another country or to enforce a territorial claim by force. When examining these risks, the Government takes the following elements into account in particular:

(a) the existence or likelihood of an armed conflict between the recipient and another country;

(b) a claim to the territory of a neighboring country that the recipient has in the past attempted or threatened to assert by force;

(c) the likelihood that the military technology or equipment will be used for purposes other than the recipient's legitimate national security and defense;

(d) the need not to significantly undermine regional stability;

5. **Fifth criterion :** national security of Belgium and the Walloon Region and of the territories whose external relations fall under their responsibility, as well as that of friendly or allied countries.

The Government takes into account the following elements:

(a) the potential impact of the military technology or equipment proposed for export on their defense and security interests as well as those of Member States of the European Union and those of friendly or allied countries, any recognizing that this factor cannot prevent consideration of the criteria relating to respect for human rights and regional peace, security and stability;

(b) the risk of seeing the military technology or equipment concerned used against their forces or those of Member States of the European Union and those of friendly or allied countries;

6. **Sixth criterion :** behavior of the buyer country with regard to the international community and, in particular, its attitude towards terrorism, the nature of its alliances and respect for international law.

The Government takes into account, among other things, the country's background buyer in the following areas:

(a) supporting or encouraging terrorism and international organized crime;

(b) compliance with its international commitments, in particular with regard to the non-use of force, and with international humanitarian law;

c) its commitment to non-proliferation and other areas of arms control and disarmament, in particular the signing, ratification and implementation of relevant arms control and disarmament conventions referred to in point (b) of the first criterion;

7. **Seventh criterion :** existence of a risk of diversion of technology or military equipment in the buyer country or of re-export thereof under undesirable conditions.

When assessing the impact of the military technology or equipment proposed for export on the recipient country and the risk of such technology or equipment being diverted to an undesired end-user or for undesired final, the following elements are taken into account:

(a) the legitimate interests of the recipient country in terms of defense and national security, including its possible participation in peacekeeping operations of the United Nations or other organisations;

(b) the technical capacity of the recipient country to use this technology or such equipment;

(c) the ability of the recipient country to exercise effective control over exports;

(d) the risk of such technology or equipment being re-exported to undesired destinations and the recipient country's track record of compliance with re-export or prior consent to re-export provisions that the State
exporting member sees fit to impose;

(e) the risk of such technology or equipment being diverted to terrorist organizations or terrorists;

(f) the risk of reverse engineering or unintended technology transfer;

8. **Eighth criterion :** compatibility of exports of technology or military equipment with the technical and economic capacity of the recipient country, taking into account the fact that it is desirable for States to meet their legitimate security and defense needs by devoting minimum human and economic resources to armaments.

The Government examines, in the light of information from authorized sources such as the reports of the United Nations Development Programme, the World Bank, the International Monetary Fund and the Organization for Economic Co-operation and Development, whether the project export risks seriously compromising the sustainable development of the recipient country. In this respect, it examines the comparative levels of military and social expenditure of the recipient country, also taking into account possible aid from the European Union or possible bilateral aid.

§ 2. Export licenses are valid for eighteen months.

They may be renewed as many times as necessary for the performance of the contract for which the initial license was granted.

In their application, the applicants submit observations regarding compliance with the second, fourth and sixth criteria, questioning the manner in which the opposing party exercised its duty of thoroughness and prudence in analyzing the situation in Saudi saudi.

The arguments presented by the opposing party, in its statement in response, tend only to establish that the application which gave rise to the contested decision was properly examined according to the fourth criterion provided for i

Article 14, § 1, paragraph 2, of the aforementioned decree of June 21, 2012, but, in particular, not according to the sixth of them. The opinion of the commission is indeed silent

on this sixth criterion which concerns "the behavior of the buyer country with regard to the international community and in particular its attitude towards terrorism, the nature of its alliances and respect for international law", the government being invited to take account of the past of the buyer country in the fields in particular of respect for its international commitments with regard to the non-use of force and international humanitarian law.

It follows that the second limb of the third plea is well founded.

VII. Other means

The other pleas, if well-founded, could not lead to a more extensive annulment. There is therefore no need to examine them.

VIII. Procedural allowance

In their last memorial, the applicants request procedural compensation of 820 euros, payable by the opposing party. It is necessary to
grant their request.

FOR THESE REASONS,
THE COUNCIL OF STATE DECIDED:

Article 1er

The confidentiality of exhibits 1 and 2 of the administrative file is maintained.

Article 2.

The decision of 18 October 2017 of the Minister-President of the Walloon Region to issue to the public limited company FN HERSTAL the arms export license no 2178/030219, with a view to delivery to the Kingdom of Saudi Arabia is
cancelled.

Article 3.

The opposing party bears the costs, namely the court fee of 800 euros, the contribution of 40 euros and the procedural indemnity of 820 euros, granted to the applicants, up to half each.

Thus pronounced in Brussels, in public audience of the XV bedroom, on the fourteenth day of June, two thousand and nineteen, by:

Pascal VANDERNACHT,	president of the
Diane DÉOM,	chamber, councilor of
Marc Joassart,	state, councilor of state,
Frédéric QUINTIN,	assumed clerk

The Assumed Registrar, President,

Frédéric QUINTIN. Pascal TONIGHT.