

COUNCIL OF STATE, ADMINISTRATIVE LITIGATION SECTION.

THE PRESIDENT OF THE XV – CHAMBER SITTING IN REFERENCE

ARRÊT

n° 240,901 dated March 6, 2018

224.003/XV-3597

In cause:

**1. the National Coordination of Action for
Peace and Democracy,**

2. the League of Human Rights,

having taken up residence at
M^{me} Vincent LETELLIER, lawyer,
rue Depacqz 78-80/2
1060 Brussels,

versus :

the Walloon Region,

having taken up residence at
M^{me} Geoffroy GENERET, avocat,
rue Capitaine Crespel 2-4
1050 Brussels,

applicant in intervention:

CMI Defense

having taken up residence at
M^{me} Jean-Marc RIGAUX, lawyer,
270 Avroy Boulevard
4000 Liege.

I. Object of the request

Considering the request introduced on December 18, 2017 by (1) the a.sbl National Coordination of Action for Peace and Democracy (CNAPD), and (2) the non-profit League of Human Rights, in that it seeks to suspend the execution of the decision of 18 October 2017 of the Minister-President of the Walloon Region to issue to "an unknown operator" arms export licenses n° 2178/031444, n° 2178/031445 and n° 2178/031446 for delivery to the Kingdom of Saudi Arabia of land vehicles and their components;

II. Procedure before the Council of State

The note of observations and the administrative file have been filed.

Mr. Christian AMELYNCK, first auditor at the Council of State, wrote a report on the basis of article 12 of the royal decree of December 5, 1991 determining the procedure for summary proceedings before the Council of State.

By order of February 9, 2018, the parties were summoned to the hearing of February 21, 2018 and the report was notified to them.

By a request introduced on February 9, 2018, sa CMI Defense asks to be admitted as an intervener.

Mr. Michel LEROY, Chamber President, reported.

M^{re} Harold SAX, *loco* M^{re} Vincent LETELLIER and Olivia VENET, lawyer, appearing for the claimants, M^{re} Geoffroy GENERET, avocat, appearing for the opposing party, and Me Jean-Marc RIGAUX, lawyer, appearing for the applicant in intervention, were heard in their observations.

Mr. Christian AMELYNCK, first auditor, was heard in his 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

Considering that the facts relevant to the examination of the appeal are as following:

During the months of January to July 2017, sa FN Herstal and sa CMI Defense submitted to the opposing party various applications for licenses to export arms or defense-related products to Saudi Arabia. These requests were the subject of opinions by an "Advisory Committee on export licenses for conventional arms/dual-use products", during meetings of this committee which were held on the 17 March, May 9, June 26, and September 11, 2017.

By letter dated 26 September 2017, the first applicant wrote to the Minister-President of the Walloon Government to request that he review the mechanisms and criteria for granting arms export licenses to Saudi Arabia.

The newspaper *La Libre Belgique* of October 18, 2017 reports that the Walloon Region has granted various licenses for the export of arms to this State. On October 19, the second applicant asked the Minister-President for confirmation of this information, as well as the communication of a copy of the decisions taken. This request is reiterated on October 27. On November 3, the Minister-President responds by explaining certain aspects of the policy carried out with regard to the allocation of authorizations for the export of military equipment. He makes no reference to the export licenses mentioned in the October 18 article. On November 13, the Chief of Staff of the Minister-President replied in these terms:

“The Minister-President is [...] not in a position to take immediate action on your request for communication of a copy of administrative acts.

Indeed, the Minister-President has forwarded your request to the administration so that it can verify in particular the content of the press article in *La Libre Belgique* of 18 October 2017, as well as the merits of the request for access to individual administrative decisions, formulated by the non-profit organization *La Ligue des Droits de l'Homme*.

This informing you of the reasons for adjourning his decision, the Minister-President will not fail to get back to you within the deadlines set out in article 6, § 5, paragraph 1, of the decree of March 30, 1995 relating to the publicity of the Administration”.

On the same day, the applicants lodged, in accordance with the procedure of extreme urgency, a request for the suspension of those licenses. The administrative file filed during this procedure includes, in particular, various licenses authorizing the import, export or transfer of military equipment, and among others those whose suspension is requested by this appeal. This request was rejected by judgment no. 239.962 of November 24, 2017 for lack of extreme urgency, the applicants not having done all they could to seize the Council of State as soon as possible.

The licenses contested by the present action were issued under the numbers 2178/031444, 2178/031445 and 2178/031446; signed copies of the 'original for the applicant', the particulars of which identifying their purpose have been omitted, were annexed to the request; copies of the “copy for the license service”, bearing these mentions but not signed, are placed in the file, in the confidential documents; the description of the goods does not correspond to what the request indicates. Both the confidential copies and those annexed to the request indicate that it concerns the renewal of previous licenses which had the same object;

IV. Intervention

Considering that sa CMI Defense asks to intervene in the cause; that it is the beneficiary of the contested licenses; whereas his intervention should be allowed;

V. Admissibility

A. Arguments of the opposing party

Considering that the opposing party disputes the admissibility of the appeal in so far as that it refers to three distinct administrative acts; that it sets out in particular the following:

“The opposing party wishes to recall that in principle, it is not permitted to pursue the annulment (and suspension) of several separate administrative acts by a single and same request, except in the case of connection.

It is therefore appropriate for the applicants to demonstrate the existence of a connection between the decisions to grant licenses adopted by the opposing party to Saudi Arabia disputed in the context of this appeal.

However, the applicants in no way justify their decision to quarrel jointly over the three disputed licenses even though they have taken the trouble to introduce numerous applications against the various licenses granted by the opposing party to Saudi Arabia .

The opposing party insists on the fact that each license is the subject of a separate and distinct analysis by the Government, which takes into account in particular the material and the recipient as well as the risks related to the specific case, to the license in question. (approach confirmed by the Minister-President in his letter of 03/11/2017: “In this regard, I would like to inform you that each file is examined on a case-by-case basis in an extremely meticulous manner...”). The elements of motivation linked to the issue or refusal of a license will therefore be different in each specific case since all the factual elements are analysed. In addition, the execution of said licenses is also separate.

... (*Following case law citations*)

In the present case, as has been developed, the disputed licenses have distinct objects, the cancellation of one does not have any consequence on the other which could subsist, and each of them was the subject separate and differentiated analysis given their different purpose.

In the absence of demonstrated connection between the licenses concerned by the present appeal, it should be considered that the appeal is in any event inadmissible.”

B. Arguments of the intervener

Considering that with regard to license n° 2178/031444, it states that;

- it is a renewal license;
- the fact that the applicants for annulment have not brought an action against a similar, earlier decision does not automatically deprive them of their interest in bringing proceedings against a subsequent similar decision;
- however, unless the course of action is broken following new events since the initial decision, the previous decisions granting the

initial license have become final and include the same motivation as subsequent renewal decisions;

- unless there is a new element that the annulment applicants would have to demonstrate, the applicants lose their interest in taking action against the renewal licenses;
- the applicants could have taken action against the original licenses since they were aware that the contested acts were renewal licenses, but in November 2017 they did not request a copy of these original licenses;
- further, the applicants fail to demonstrate that Saudi Arabia would be in different conditions today than it was in 2015 when the original license was granted;

C. Assessment by the Council of State

Considering that it appears from the confidential documents added to the file that the three contested licenses have the same addressee, and that they relate to similar equipment; that it is necessary to admit the connection between the three objects of the request; that this is admissible with regard to the three contested licenses;

Considering that the fact that the contested licenses are renewal licenses does not mean that the appeal must be declared inadmissible; that it could indeed be that the renewal of an original license is tainted with inherent defects;

VI. On the emergency

A. Arguments of the applicants

Considering that the applicants state that the immediate execution of the contested acts risks having irreversible consequences, being:

- the violation of the fundamental rights and freedoms of individuals;
- the use of material whose export they authorize in the context of an armed conflict, in violation of international law and particularly international humanitarian law;
- the arming of a country which does not respect fundamental rights or international law;
- a risk of weapons being diverted to terrorist groups;

that they add that "the danger is serious and would be irreparable since the delivery of the weapons would prevent any possible compensation for the damage which would be suffered by [them] and by the third parties whose [they] are intended to protect";

B. Arguments of the opposing and intervening parties

Considering that the opposing party does not dispute the urgency invoked supporting the request for suspension;

Considering that the intervener explains that the renewal licenses n° 2178/031445 and n° 2178/031446 have been fully executed so that the request against them has become devoid of purpose;

C. Assessment by the Council of State

Considering that licenses n° 2178/031445 and n° 2178/031446 have been fully executed; that the request for suspension no longer has any purpose as it is directed against them;

VII. Means

A. First plea

1. Request

Considering that the applicants take a first ground of violation of Articles 14, § 1 , paragraph 1 , and 19 of the decree of June 21, 2012 relating to the import, export, transit and transfer of civilian weapons and defence-related products; that they quote the text of these provisions, and add the following:

“The commentary to this provision specifies that the operating procedures of the Commission that the Government must adopt are intended “to enable its President to receive on a regular basis the list of files introduced and therefore likely to be the subject of an opinion of the Commission and to allow its members to have sufficient time to be able to communicate to the President their wish to see the Commission take up a file with a view to rendering an opinion”.

To date, neither Article 14, § 1 , first paragraph , nor Article 19, § 2, have been executed so that the contested acts were necessarily adopted outside any procedure decided by the Government and without having been consulted by the Advisory Committee on the basis of previously and validly established operating procedures.”;

2. Assessment by the Council of State

Considering that article 14 of the decree of June 21, 2012 relating to the import, export, transit and transfer of civilian weapons and defense-related products, provides as follows in its § 1 , paragraph 1st :

“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.”;

that article 19 of the same decree provides as follows:

«§ 1^{is}. An "Advisory Committee on arms export licenses" is created, responsible for formulating, at the request of the Government or on its own initiative, reasoned opinions within the framework of the analysis of requests for the export of defence-related products.

These opinions are issued on the basis of a geostrategic, ethical and economics of the cases submitted to it.

In these opinions, the Commission first seeks to express its opinion by means of consensus. In the absence of a consensus, the Commission's opinion reflects any minority opinions. If there is a vote, a member may request that the vote be secret.

In any event, the committee's opinion indicates the number of votes obtained by each proposal. § 2. The Government determines the seat of this Commission and decides

the procedures for its operation.";

Considering that it is undisputed that the procedure referred to *in fine* of the quoted passage of Article 14 has not been determined; that the complete commentary that the explanatory memorandum gives of Article 19 is as follows:

"This article creates an Advisory Commission for exports 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, foreign policy analysis, human rights", of the report of the High Representative for Human Rights in Geneva and bilateral issues and of all the other information available to it.

With regard to the Commission's exercise of its right of initiative, it will be up to the Government to set the terms and conditions in such a way as to enable its Chairman to receive on a regular basis the list of files submitted and therefore likely to the subject of an opinion from the Commission and to allow its members sufficient time to be able to communicate to the President their wish to see the Commission take up a file with a view to rendering an opinion.

Considering that the passage of the explanatory memorandum quoted in the request concerns only the right of the committee to issue own-initiative opinions; that in this case, the commission was consulted by the Government; that the reference to this passage of the explanatory memorandum is irrelevant;

Considering that the *raison d'être* of the procedure that article 14 charges the Government to determine to issue export licenses outside the European Union was not clarified during the preparatory work; that there is nothing to indicate that the purpose of this procedure should be to ensure that the interests of one or the other subject are taken into account; that more than five years after the entry into force of the decree, while arms exports have continued regularly without the absence of determination of the procedure in question hindering them, it does not appear that this absence constitutes an irregularity which is likely to influence the meaning of the decision taken, which has deprived interested parties –

moreover unidentified – of a guarantee or which had the effect of affecting the jurisdiction of the author of the act; that pursuant to Article 14, § 1, paragraph 2, of the coordinated laws on the Council of State, it cannot give rise to cancellation or suspension; that the plea is not serious;

B. Second plea

1. Arguments of the parties

a) Request

Considering that the applicants take a second ground of violation of Articles 1, § 1, 2 and 10 of Common Position 2008/944/CFSP of Council of 8 December 2008 defining common rules governing the control of exports of technology and military equipment, 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, articles 2 and 3 of the law of 29 July 1991 relating to the formal motivation of administrative acts, the absence or insufficiency of the reasons or the manifest error of assessment;

that they maintain that:

- the contested acts are subject to the formal obligation to state reasons which derives from the law of July 29, 1991, the violation of which is alleged in their plea;
- justification should have appeared formally in the contested decisions, having regard in particular to the Common Position of the Council of 8 December 2008 invoked in their plea;
- none of the circumstances likely to justify, under article 4 of the law of July 29, 1991, an exemption from giving reasons, is met in this case:
 - the indication of the reasons for the granting of licenses would not be likely to compromise the external security of the State, nor to undermine public order, nor to violate the right to respect for private life, nor to constitute a violation of the provisions on professional secrecy, these circumstances having to be interpreted in a restrictive manner;
 - the invocation of exceptions to the obligation to give reasons is intended to to remain... exceptional;

- ÿ the exemption from giving reasons invoked by the opposing party would only serve the interest of the opposing party, combined with that of the beneficiary and that of the recipient country, not to be exposed to judicial review and this in disregard of the right of to be able to read the reasons for an administrative decision in the act itself, which must be guaranteed not only with regard to license applicants, but also for all third parties interested in these licenses such as applicants;
- ÿ arms export licenses are therefore subject to the obligation of formal motivation, which consists of indicating, in the act, the legal and factual considerations serving as the basis for the decision, motivation which must be adequate;
- in accordance with Article 29 of the Treaty on European Union, Member States must ensure that their national policies comply with the Union's positions on the common foreign and security policy and Article 14 of the Decree of 21 June 2012 constitutes the implementation by the Walloon Region of Belgium's obligation to implement the Common Position of the Council of 8 December 2008 defining common rules governing the control of exports of technology and military equipment;
- under the terms of Article 1 , § 1 , of the aforementioned Common Position, "Each Member State assesses, on a case-by-case basis, having regard to the criteria of Article 2, the applications for export authorization which it are addressed by equipment included in the European Union Common Military List referred to in Article 12";
- the criteria covered by article 2 to which article 1 ^{is} refers, are included in Article 14, § 1 , paragraph 2, of the aforementioned decree of June 21, 2012;
- these criteria constitute 'high common standards which will be considered as the minimum in terms of management and moderation in the field of transfers of military technology and equipment by all Member States', the latter being 'determined to prevent exports of military technology and equipment that could be used for internal repression or international aggression or contribute to regional instability';
- Article 10 of the aforementioned Common Position provides: "Although Member States may also, where appropriate, take into account the effects of proposed exports on their economic, social, commercial and industrial interests, these factors do not application of the above-mentioned criteria";
- it follows that reading the contested decisions should reveal:
 - ÿ that the opposing party has conducted a thorough and accurate examination of the human rights situation in Saudi Arabia, as well as its involvement in terrorism and serious violations of humanitarian law in Yemen,
 - ÿ that it has effectively confronted this situation with the criteria defined by Article 14, § 1 , paragraph 2, of the aforementioned decree of June 21, 2012, as required by the Common Position, knowing that, "the sixth criterion must be taken in consideration for buyer countries whose government has a negative attitude towards the above provisions; [that] therefore, emphasis is not placed during the evaluation on the identity and nature of the end user of the equipment to be exported. In fact, the analysis focuses on the behavior of the buyer cour

possible concerns that a particular transfer may have particular adverse consequences”;

• that if it took socio-economic factors into consideration, these did not affect the assessment of the criteria of Article 14, § 1, al. 2, as required by Article 10 of the Common Position;

• and that at the end of this meticulous examination of the situation in Saudi Arabia and in the region, and in particular the situation in Yemen, it was able to consider that it was not in a situation where its competence to refuse the license was bound and that exports to that country should be permitted;

- the contested acts do not contain any formal reasoning, nor justification that they would not be subject to the requirement of articles 2 and 3 of the law of July 29, 1991;

b) The opposing party

Considering that the opposing party, which responds simultaneously to the criticisms formulated in the second and third pleas, observes in particular that while it is true that the disputed licenses are not based on a formally expressed reason, the fact remains that:

- opinions have indeed been 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: for example, the analysis of criterion No. 4 concerning the "regional situation" to which the report falls this following:

“Saudi forces have been carrying out military operations in Yemen since March 2015 at the request of the deposed and exiled president of Saudi Arabia, Abd Rabo Mansour Hadi, in order to fight against the Shiite rebels (Houthis). The Saudi intervention to restore legitimate power in Sanaa is supported by most Gulf countries, the Arab League and a good part of the international community.

The intervention in Yemen is increasingly criticized because of the bombardments carried out by Saudi Arabia which cause a large number of civilian victims and make the humanitarian situation increasingly difficult.

The armed forces of Saudi Arabia intervened in 2011 in Bahrain, at the latter's request, and with a mandate from the Cooperation Council for the Arab States of the Gulf (GCC), to guarantee the maintenance of order following the demonstrations organized by the Shiite minority.

Saudi Arabia supports the rebels in Syria against the power of Bashar Al-Assad with logistics and military equipment. The authorities in Saudi Arabia have however placed the Al-Nusra Front and the Islamic State on the list of terrorist movements.

In December 2015, Saudi Arabia announced the creation of a coalition of around 30 countries to fight terrorism. This coalition includes a series of countries from the Gulf, Asia and Africa. Saudi Arabia, however, appears increasingly isolated regionally due to the important role played by Russia and its allies in the Middle East.

- this analysis demonstrates the detailed approach to the situation made by the advisory board;

- insofar as necessary, the meticulous examination carried out by the advisory committee is also confirmed in the annual report to the Walloon parliament (*see above*), which expressly mentions that the advisory committee "carries out a complete analysis of the files sensitive, particularly with regard to the Common Position. It indicates the precedents registered within the European Union concerning the country concerned and sheds light on the concordance with the international interests of Belgium. When the administration considers that it has sufficient convincing elements, it punctuates its analysis with an opinion serving as a proposal for a decision" and that this "issues both an opinion of legality on the basis of the Walloon decree of 21 June 2012 and the Common Position and advisory opinions aimed at enlightening the Walloon Government".
- the detailed analysis of the situation on a case-by-case basis led the advisory committee to adopt differing opinions, which led the Minister-President of the opposing party to refuse certain license applications with regard to the type of equipment or the final recipient; thus, it emerges from the same report as that in which the advisory committee issues a favorable opinion on the contested licenses that the committee considered it necessary to issue an unfavorable opinion on another license application since "the risk of The use of these supplies for Saudi Arabia's intervention in Yemen is too extensive. The transaction proposals submitted (...) indeed target equipment likely to be used in the context of bombardments carried out by Saudi Arabia which are causing a large number of civilian victims and making the humanitarian situation increasingly difficult in Yemen. The advisory committee therefore issues an unfavorable opinion (...) and invokes criteria 2 (human rights) and 4 (regional situation) of Common Position 2008/944";
- each request is analyzed individually with regard to its content and in the light of the criteria set out in the Common Position and integrated into the decree of 21 June 2012;
- taking into account the foregoing, it cannot therefore be reasonably maintained, despite the absence of formal motivation contained in the disputed decisions, that these decisions would not be validly motivated, even implicitly, and motivation by reference, even if it is implicit, is accepted when the opinion on which the act is based is itself duly substantiated;
- if the case law of the Council of State is fixed in the sense that the opinion to the motivation of which reference is made must in principle be annexed to the final decision, this could not be the case in this case because of the nature confidentiality of the opinions issued by the commission and the sensitivity of the elements included in the license applications with regard in particular to business secrecy;
- in this respect, the opposing party considers that Article 87, § 2, of the Regent's decree of August 23, 1948 determining the procedure before the administrative litigation section of the Council of State is applicable in accordance with the argument developed above and to which it is expressly referred;
- consequently, the non-disclosure of the opinions of the appeals committee, these being covered by confidentiality, does not have the effect of depriving the disputed licenses of the motivation with which they are provided and this by implicit reference ;

c) The intervener

Considering that the intervener refers to the arguments developed by the Walloon Region in its note of observations and adds that:

- the contested acts are renewal licenses which do not require any specific reasoning except in the event that new elements have occurred since the initial license was issued;
- it has not been demonstrated by the applicant for annulment that the war situation in Saudi Arabia or the conditions of terrorism or internal repression changed between the moment when the initial licenses were granted and the moment when the renewal licenses were granted;
- in this case, it is logical that the renewal licenses refer to the original prior licenses;
- if these original licenses have become final within the meaning of administrative law, regardless of the defect affecting them or not, it is permissible to consider that even if the renewal licenses are new acts and not confirmatory acts, these refer, at the level of their motivation, to previous acts which, at this stage, are no longer open to criticism;

2. Assessment by the Council of State

a) Regarding Common Position 2008/944/CFSP

Whereas, in so far as the plea alleges infringement of Common Position 2008/944/CFSP of the Council of 8 December 2008 defining common rules governing the control of exports of technology and equipment military, that Article 288 TFEU reads as follows:

“Article 288. To exercise the powers of the Union, the institutions adopt regulations, directives, decisions, recommendations and opinions.

The regulation is general in scope. It is obligatory in all its elements and it is directly applicable in all Member States.

The directive is binding on any Member State to which it is addressed as to the result to be achieved, while leaving the national authorities with competence as to form and means.

The decision is binding in all its elements. When it designates recipients, it is only binding for them.

Recommendations and opinions are not binding.

Considering that Common Position 2008/944/CFSP has indeed been adopted by the Council; whereas, as regards its content, it is presented as a normative text, but constitutes neither a directive nor a regulation; that in its preamble, it refers to "the Treaty on European Union, and in particular Article 15 thereof", which provides in its first paragraph that "The European Council shall give the Union the impetus necessary for its development and define its general political orientations and priorities"; but also that "it does not exercise a legislative function"; whereas it follows that this "Common Position" does not constitute a rule of law the breach of which may

to be invoked in court; that the plea is not serious in that it is taken from its violation;

b) Regarding the decree of June 21, 2012

Considering that the passages of article 14 of the decree of June 21, 2012, the violation of which is alleged, are worded as follows:

«Art. 14. § 1er

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:

...

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 may 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 mentioned 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;

...

4. Fourth criterion: preservation of regional peace, security and 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 into account the following elements in particular:

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

...

6. Sixth criterion: behavior of the buyer country towards 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;

...

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;'

Considering that the advisory committee on export licenses d'armes examined the application for a license according to the criteria of the Position municipality and decree; that its opinion is placed in the file as a confidential exhibit; that the relevant part of this opinion with regard to the situation in Yemen is quoted in the observation note; that the opinion of the commission examines the situation of Saudi Arabia with regard to the seven criteria established by article 14 of the decree, as well as the precise destination of the goods for the export of which a license is requested; that while it is true that the assessment based on some of these criteria may be controversial, it does not appear that the Government in this case committed a manifest error of assessment; that as he invokes the

violation of the provisions of article 14, § 1 ^{is} of the decree, the plea is not serious;

c) With regard to the formal motivation

Considering that the contested licenses are renewal licenses; whereas, by their nature, such licenses have no other purpose than to authorize the export of material identical to that which was the subject of a previous licence; that unless there is a substantial change in the situation on the basis of which decisions relating to the export of this material are taken, which is not alleged in this case, the indication that it is of a renewal license suffices to refer implicitly but certainly to the reasons which led to the awarding of the original license, reasons which are well known to the recipient of the licence;

Considering it is true that third parties, such as the applicants, are unaware of the background and particularly of the license for which the contested license provides for renewal, so that the absence of more explicit formal motivation prevents them from having knowledge of the reasons for the contested decisions; that the purpose of the obligation to give formal reasons for administrative acts is to allow persons who are entitled to become acquainted with these acts to understand the reasons; that these are their addressees and the persons with regard to whom it is foreseeable that they will have an effect or who have been involved in their preparation procedure, in particular by means of a public inquiry; that when a document is drawn up at the request of a citizen following a procedure that does not involve any publicity and that it has direct effect only with regard to its addressee and the administrative departments responsible for its execution, it would be unreasonable to impose that it be accompanied by a motivation understandable by the generality of the citizens on the grounds that it is not excluded that one or the other of them takes the initiative to challenge it in court; that in that he invokes the lack of formal motivation, the plea is not serious;

C. Third plea

Considering that due to the rejection of the first two grounds by this judgment, it is appropriate to examine the third plea and to reopen the proceedings to that end;

**FOR THESE REASONS,
THE COUNCIL OF STATE DECIDED:**

Article 1er

The motion to intervene introduced by sa CMI Defense is granted.

Article 2.

There is no longer any need to rule on the request for suspension as it is directed against licenses n° 2178/031445 and n° 2178/031446.

Article 3.

The debates are reopened on the request for suspension as it is directed against license n° 2178/030817.

Article 4.

The member of the Auditor's Office designated by the Auditor General is responsible for continuing the investigation and drawing up an additional report on the third medium.

Article 5.

The costs are reserved.

Thus delivered in Brussels, in open court of the XVth Chamber sitting in summary proceedings, on March 6, two thousand and eighteen by:

Mr. Michel LEROY,	chamber president,
M ^{me} Nathalie ROBA,	clerk.

The Registrar,	President,
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Nathalie ROBA	Michel Leroy
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