



**RESOLUTION OF THE REQUEST FOR INFORMATION No. 001-041739 made on 9
March 2020 by GREENPEACE ESPAÑA under Law 19/2013, of December 9, on transparency,
access to public information and good governance.**

March 10, 2020

1st. On March 9, 2020, the General Directorate of Commercial Policy received a request for access to public information under Law 19/2013, of December 9, on transparency, access to public information and good governance, request which was registered with the number 001-041739.

"Copy of the administrative file or files referring to each of the authorizations or licenses granted for the export of artillery ammunition manufactured by EXPAL SYSTEMS destined for the United Arab Emirates and/or Saudi Arabia, between 2017 and the present.

In particular, and without prejudice to the delivery of all the documents that have been included in such file, the following documents are specifically requested:

- *The authorization or license granted.*
- *Documents containing detailed information on the evaluation carried out based on the requirements of Article 7 of the Arms Trade Treaty.*
- *The minutes of the meeting of the Interministerial Regulatory Board for Foreign Trade in Defense Material and Dual Use -JIMDDU-, in which the decision to authorize said export was adopted.*
- *The documents containing the reasoned decision of the JIMDDU in favor of the granting of export authorizations, in the event that this point is not recorded in the record referred to in the previous paragraph.*

2nd. According to letters a), b), j) and k) of section 1 of article 14 of the aforementioned Law 19/2013, the right of access may be limited when accessing the information is detrimental to national security; the defense; professional secrecy and intellectual and industrial property; and the guarantee of confidentiality or secrecy required in decision-making processes.

Likewise, according to section 2 of the same article 14, of the aforementioned Law, the application of the limits to the right of access to public information must be justified and proportionate to its object and purpose of protection, taking into account the circumstances of the specific case. , especially, to the concurrence of a higher public or private interest that justifies their access.





3rd. Once the request has been analyzed and the administrative deadlines suspended under art. 9 of Royal Decree 527/2020, of May 22, which extends the state of alarm declared by Royal Decree 463/2020, of March 14, this General Directorate generally considers that the disclosure of information to the one that is intended to be accessed would be detrimental to the matter indicated in the preceding expository.

As a starting premise, Law 53/2007, of December 28, on the control of foreign trade in defense and dual-use material, includes in its Motives, the following: "From the perspective of national security and Internationally, it is about preventing the illicit traffic and proliferation of weapons and sensitive technologies in favor of States or non-state actors likely to act against peace and security or to get involved in terrorist activities. On the other hand, it seeks to respond to a significant political and social demand for control of trade in defense material and dual-use products and technologies." Article 297 of the Constitutive Treaty of the European Community allows Member States to adopt the necessary measures for the protection of their essential security interests and that refer to the production or trade of arms, ammunition and war material.

Following the tenor of the same Law 53/2007, of December 28, it corresponds to the Interministerial Regulatory Board of Foreign Trade of Defense Material and Dual Use (JIMDDU) to inform, with a mandatory and binding nature, the administrative authorizations of export of said equipment (article 14). This report, binding, has as a direct consequence the granting or denial of administrative authorizations that are the responsibility of the Secretary of State for Commerce.

Based on the foregoing, regarding the request for the minutes of the meeting of the JIMDDU where the exports were authorized, it should be noted that the Agreement of the Council of Ministers of March 13, 1987 declared "classified matter" with the qualification of secret the records of the JIMDDU and, as such, constitute classified documentation in accordance with Law 9/1968, of April 5, on Official Secrets, which in its article 13 establishes that "classified matters" may not be communicated, disseminated, or published, nor used its content, outside the limits established by this Law.

With regard to the export authorizations granted to EXPAL SYSTEMS, together with the documents containing the detailed information on the evaluation carried out based on the requirements of article 7 of the Arms Trade Treaty (parameters used in the analysis of the exports) it should be noted that the entire file contains sensitive commercial information of a private operator that the Administration has collected in the exercise of its powers and that it must treat with due diligence and confidentiality.





Along with this, it is relevant to highlight that the administrative export authorizations issued by the Secretary of State for Commerce are a direct consequence of the agreements and reports adopted by the JIMDDU and therefore, such reports as the data concerned that are taken into consideration for the issuance of the same licenses or authorizations are included in the Minutes of the sessions of the JIMDDU.

This criterion has been confirmed in report No. 271/2019, of September 25, issued by the State Attorney at the Secretary of State for Commerce, in which it is indicated "that the secrecy affects all minutes of the JIMDDU, which which includes its Annexes that are an integral part of them (...). Therefore, it is concluded that "the qualification of "classified matter" with the qualification of "secret" that the Agreement of the Council of Ministers of March 13, 1987, made of the minutes of the JIMDDU affects all the documents included in the Annexes of said Minutes".

This argument has been endorsed by Resolution No. 648/2019, of December 4, 2019 of the Council for Transparency and Good Governance

4th. Notwithstanding the foregoing, in accordance with article 16 of Law 53/2007, of December 28, on the control of foreign trade in defense and dual-use material, it should be noted that the pertinent information is sent to the Congress of Deputies every six months on exports of this type of product, and the data corresponding to exports of artillery ammunition can be consulted in the annual statistical reports on Spanish exports of defense material, other material and dual-use products and technologies at the following address:

<http://www.comercio.gob.es/es-ES/comercio-exterior/informacion-sectorial/material-de-defensa-y-de-doble-uso/Paginas/Publicaciones-MDDU.aspx>

5th. Consequently, based on the application of the limits to the right of access to information provided for in article 14.1. letters a), b), j) and k) 14.2 of Law 19/2013, of December 9, on transparency, access to public information and good governance, access to public information whose request was entered in this section is denied. General Directorate dated March 9, 2020 and which was registered with the number 001-041739.

Against this information request resolution, which puts an end to the administrative procedure, a contentious-administrative appeal may be filed before the Court Superior Court of Justice of Madrid (Law 39/2015, of October 1, on the Procedure Common Administrative Law of Public Administrations in relation to Law 19/2013, of December 9, on transparency, access to information and good governance, and Law 29/1998, of July 13, regulating contentious-administrative jurisdiction) , within a period of two months or, previously and optionally, claim before the Council of





Transparency and Good Governance within a month; In both cases, the period will be counted from the day following the notification of this resolution.

THE GENERAL MANAGER OF
COMMERCIAL POLICY

PS Alvaro Rodriguez Ruiz
Deputy Director General for Trade Policy of the European Union
(Fifth DA of RD 998/2018)

