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IRAQ – KRG EXPORT LICENSING POLICY 2015

(Updated November 2015)

Arms Export Policy Department – Internal Planning Document

Summary – Exports of Military Goods to the KRG

1. HMG has received a very clear instruction from the sovereign Government of Iraq on how they would like us to handle the export of **military goods** destined for the KRG. Relations between the GoI and KRG are complicated.
2. [Redacted] clear instructions from the Iraqi Prime Minister, AEPD's current policy on receipt of export licence applications for **military goods** for end use in, or by Kurdistan Regional Government military and/or security forces, which also include police forces is:
 - If the export licence application does not include an End User Undertaking certificate stamped and signed by the central Government of Iraq, a Request For Information (RFI) should be submitted on Spire to request one via the UK exporter.
 - If, after submitting an RFI, the appropriate EUU is not provided AEPD should recommend refusal of the application under Criterion 1 of the Consolidated EU and National Arms Export Licensing Criteria.
3. Defence Attaché Baghdad is currently considering testing KRG appetite for seeking EUUs from the GoI by themselves.

Background

- 5 A review of the situation began in March 2015 to reconfirm GoI's continued consent for arms and related materiel to be shipped to the Peshmerga/KRG.

Current Situation

- 10 In June 2015 Iraq Team and Post subsequently undertook to confirm with the GoI their continued consent for the export/shipment of military goods to the Peshmerga/KRG. This was a long process but was resolved and agreed during an **8 July meeting between the British Embassy Charge D'Affairs and Iraqi Protocol Director MFA**. The Charge raised the matter of two arms export licence applications in process at the time (SIE2015/005040 & SIE2015/006863 which were both for the direct export from the UK to the KRG of weapons and ammunition. The End User Undertakings for these two licence applications were provided by the KRG.

- 11 The Iraqi Protocol Director (MFA) confirmed on 8 July that they could not consent to the export of the goods in these two licence applications and additionally, they explained that the Iraqi Prime Minister has stated that the GoI wanted to retain the authority for issuing End User Undertakings for future exports/shipments of military goods to the KRG.
- 12 The crucial point here for AEPD is that unless the EUU is provided by the GoI it will not exempt the KRG from the UN Arms Embargo on Iraq. UNSCR 1546 (2004) provides the exemption for military goods to GoI end users – this does not include the Peshmerga/KRG unless export licence applications are accompanied by a GoI issued EUU.**
- 13 Subsequently, in further consultation with Legal Advisers and IOD Sanctions Team, AEPD explained the situation to BIS [Redacted]. BIS accepted our recommendation to refuse the above two licence applications under Criterion 1 (sanctions) and noted that in future all licence applications for military goods for end use by the Peshmerga/KRG must have a Govt of Iraq EUU.
- 14 BIS since informed the exporter, [SECTION 43 – COMMERCIAL INTERESTS], that they would need a GoI EUU for the applications to be processed further. As of 22 October export licences for these two applications have not been granted.

Gifting

- 15 The above arrangement does not impact on UK Gifting of arms or related materiel to the GoI or Peshmerga/KRG. Gifting is an MoD lead.
- 16 It is government policy to assess gifts of controlled equipment against the same export control criteria as a commercial export. In September 2014, the Foreign Secretary recommended approval of a first package of MoD gifted lethal equipment to the Peshmerga, subject to conditions designed to reduce the risks against the Criteria. These were:
 - a. MOD to seek additional Iraqi consent for the transfer of equipment to the KRG to meet the requirements of the UN arms embargo.
 - b. MOD to continue to monitor the distribution of equipment to ensure that it is based on operational need, and that distribution does not cause tensions between Kurdish groups.
 - c. MOD to continue to monitor the distribution process to prevent an increase in the risk that equipment could be diverted to other Kurdish groups, or stockpiled for future conflicts.
 - d. MOD to satisfy themselves that they are content with the risk of diversion, and to take steps to mitigate that risk where possible.
- 17 Subsequent gifting assessments have been made under the above consideration.

Agreed by Iraq Team and Legal Advisers

References:

- E Iraq Team email dated 23 April 2015 “UK Humanitarian Action” about [Section 43 - Commercial Interests].
- F Baghdad Note Verbal (0617/2015) dated 7 June 2015 to Iraqi MFA about [Section 43 – Commercial Interests]
- G Charge Baghdad email dated 12 June 2015 “Exports & transport of weapons to KRG”
- H Charge Baghdad email dated 8 July 2015 “Call on Director MFA Protocol”.

**SUBJECT: REFUSAL OF LETHAL EXPORTS TO KRG - Post's Call on director Iraqi MFA Protocol
Emails between FCO, British Consulate in Erbil and British Embassy in Baghdad**

From: FCO Iraq Team

Sent: 14 July 2015 11:19

To: [Redacted]

Cc: [Redacted]

Subject: FW: REFUSAL OF LETHAL EXPORTS TO KRG - Post's Call on director Iraqi MFA Protocol

[SECTION 40 – PERSONAL INFORMATION]

On the basis of the guidance provided by the GoI regarding end user undertakings, we now have a degree of clarity as to export licensing for the KRG:

1. Licenses that have already issued (including the initial [SECTION 43] license) remain valid. It is for the KRG/companies involved to negotiate a contract and move forward.
2. For those licences which are currently being considered by HMG, BIS will recommend that these are withdrawn and requests for end user undertakings are made from the GoI. If these are successfully obtained the applications can then be resubmitted.
3. All future applications will require valid end user undertakings from the GoI if they are to be considered/approved.
4. The GoI decision on KRG end user status *will not impact HMG gifting*, which will continue to be handled separately by the MOD.

KRG Handling and Next Steps:

[SECTION 27(1)(A) – INTERNATIONAL RELATIONS] we will want to make clear that:

1. The UK is bound by the UN Arms Embargo, which prevents us from exporting defence or dual use equipment to any organisation other than the federal Government of Iraq.
2. Those licences that were issued for the KRG were issued on the basis of permissions given to HMG by the GoI last summer. The GoI has now clarified these permissions, making clear that the KRG does not have explicit end user status. As a consequence end user undertakings must be issued by the GoI.

3. The KRG is still able to procure defence equipment from the UK, but an end user undertaking will need to be obtained from the GoI first.
4. [SECTION 27 (1) INTERNATIONAL RELATIONS]
5. This change in procedure will not/not impact UK military gifting to the KRG.

[Redacted]- I would be grateful if you could take forward (4) with GoI contacts.

Many thanks and do let me know if you require any further information at this stage.

Regards

FCO Iraq Team

[SECTION 40 - PERSONAL INFORMATION]

From: FCO, Arms Export Policy Department

Sent: 14 July 2015 09:20

To: FCO Iraq Team

Cc: [Redacted]

Subject: REFUSAL OF LETHAL EXPORTS TO KRG - Post's Call on director Iraqi MFA Protocol

Hi [Redacted]

I need to get back to BIS about the two export licence applications for weapons to the KRG. I'll be doing that before midday today.

Given the GoI's recent confirmation (8 July) that they should be the End User Undertaking (EUU) issuing authority, we cannot now accept EUUs from the KRG. These two applications come with KRG EUUs.

I will explain this to BIS and suggest that both applications are refused as the end user is not exempt from UN sanctions, or, that the exporter withdraw their applications until the GoI & KRG set up a process whereby GoI can provide the EUUs for KRG.

Cheers

From: FCO, Arms Export Policy Department

Sent: 09 July 2015 15:27

To: FCO, Iraq Team

Cc: [SECTION 40 – PERSONAL INFORMATION]

Subject: LETHAL EXPORTS TO KRG - Post's Call on [Redacted] Iraqi MFA [SECTION 27 (1) INTERNATIONAL RELATIONS]

Thanks [Redacted],

1. It is the exporters responsibility to obtain an End User Undertaking (EUU)/certificate from the end user of the goods in the country of final destination.
2. The purpose of a completed undertaking for export control purposes is to guard against the risk of UK exports being diverted or re-exported to 'undesirable' end-users. This diversionary risk is among those identified in the Consolidated EU and National Arms Export Licensing Criteria, which sets out the factors to be considered in all case-by-case assessments for applications of strategic (military or dual-use) items.
3. The EUU for the two export licence applications you and I have been discussing:
 - [SECTION 43 – COMMERCIAL INTERESTS]

are both from the KRG Ministry of Interior and were provided through the UK exporter “ [SECTION 43 – COMMERCIAL INTERESTS].” Same exporter for both export licence applications. The exporter then adds the EUUs to BIS’s export licence application database when apply for the licence. I am then able to see the EUU’s when I make my risk assessments.
4. [SECTION 27 (1) INTERNATIONAL RELATIONS] This will undoubtedly prolong the application process for UK exporters and the two export licence applications above are now well outside HMG business targets and the exporters are chasing for a response.
5. I will have to update BIS on the current situation. It will be for BIS to decide how to handle the expectations of the UK exporter and for the exporter to decide whether to go back to the KRG MoI and request EUUs from the GoI or whether to withdraw the application. **If I do not hear otherwise from cc addressees by 09.00 tomorrow I will proceed on that basis**
6. For consideration in due course I’d like to follow up with you and [Redacted] on setting up a simple process by which we can keep the GoI informed of all exports of military goods to the KRG (by letter or NV transmitted by a named individual at the embassy). This will provide a clearer audit trail for our purposes and for any future potential Judicial Review should that matter arise down the line.

Hope that helps.

If you need any further information please do let me know.

Cheers

FCO, Arms Export Policy Department

From: FCO, Iraq Team

Sent: 09 July 2015 14:56

To: FCO, Arms Exports Policy Department

Subject: FW: Call on MFA [SECTION 27 (1) INTERNATIONAL RELATIONS]

[Redacted],

See below. Grateful for advice on the point [Redacted] mentions of how end-user certificates are received in the UK.

Thanks,

From: FCO, Baghdad

Sent: 08 July 2015 15:10

To: FCO, Baghdad

Cc: [Redacted]

Subject: Call on director MFA Protocol

Actions: CS/OSM Item 1, 1 Sec Pol/Econ Item 2, Def Sec Item 4, MENAD Item 5.

[Redacted],

I called on the [Redacted] MFA on 8th July. It was mainly a transactional meeting. I raised:

- I handed over the NV on the latest tranche of arms to the Kurds. He said they would not be able to provide an answer by 13th July as requested,. However they had an answer to our previous note. The matter had been referred to [SECTION 27 (1) INTERNATIONAL RELATIONS] and he had said End User Certificates for supplies to the Kurds should be issued/authorised by GOI in Baghdad. I said I would check how End User certificates were received in Britain. I noted they would not be able to provide an answer to this tranche by 13th July, but if GOI wanted to authorise End User certificates for the KRG then the GOI/KRG needed to put in place processes to allow this to happen easily.

[Redacted]

**SUBJECT ACTION ----- Exports and transport of weapons to KRG
EMAILS BETWEEN FCO DEPARTMENTS, MINISTRY OF DEFENCE, UK TRADE AND INVESTMENT,
BRITISH EMBASSY BAGHDAD, BRITISH CONSULATE IN ERBIL AND KURDISTAN REGIONAL**

From: FCO, Iraq Team
Sent: 23 April 2015 15:40
To: [Redacted]
Cc: Angus McKee (Sensitive); [Redacted]
Subject: RE: Exports and transport of weapons to KRG

Dear all,

[Redacted], myself and the [Redacted] sat down this morning to discuss how to manage export licenses for the KRG on the back of our conversations last week on the [SECTION 43 – COMMERCIAL INTEREST]

[SECTION 35 – FORMULATION OF GOV POLICY]

[SECTION 35 – FORMULATION OF GOVERNMENT POLICY]

Grateful for comments.

Regards

From: FCO, Iraq Team
Sent: 17 April 2015 16:36
To: MOD, UKTI
Cc: [Redacted]
Subject: RE: Exports and transport of weapons to KRG

All,

Many thanks to [Redacted] for talking this through with me. It's clear that there is confusion as to where we stand on this.

Forgive me if I'm wrong, but I don't think Iraq Team was consulted prior to the SIEL issuing in January, [Redacted]

It appears that the licence was issued on the basis of the permissions the GoI provided last year. I'd be grateful if [Redacted] could circulate a version of this for review. It is our view that we should not/not approve any further licences (excluding gifting) on the basis of the permissions provided by

the GoI last year. At the very least we need to speak to the GoI to ensure that they are content that the permissions still stand.

As for ways forward:

[SECTION 27 (1) INTERNATIONAL RELATIONS]

Best regards and do let me know if you'd like to discuss in more detail.

Regards

From: FCO, Arms Export Policy Department
Sent: 17 April 2015 15:50
To: MOD, UKTI
Cc: [Redacted]
Subject: RE: Exports and transport of weapons to KRG

[Redacted]

Yes the application was approved by FCO and BIS has issued it.

Cheers

From: FCO, Iraq Team
Sent: 17 April 2015 15:33
To: MOD, UKTI
Cc: [Redacted]
Subject: RE: Exports and transport of weapons to KRG

Hi [Redacted],

Apologies for being a pedant, but I don't think we should get too excited about this.

From what I can see from the email, [Redacted] is referencing the permissions the GoI provided last year for the gifting of UK military kit, rather than any new information or GoI/KRG agreement on KRG procurement.

[Redacted] can you confirm whether this SIEL has or has not been approved?

Thanks

From MOD
Sent: 17 April 2015 14:22
To: UKTI, FCO
Cc: [Redacted]
Subject: FW: Exports and transport of weapons to KRG

[Redacted],

[SECTION 35 – FORMULATION OF GOVERNMENT POLICY]

Furthermore it looks like [Redacted] has been purchased and we are looking at possible delivery options to the KRG.

From: MOD
Sent: 17 April 2015 13:35
To: MOD, FCO
Cc: [Redacted]
Subject: Exports and transport of weapons to KRG

Dear all,

[SECTION 27 (1) INTERNATIONAL RELATIONS]

[SECTION 27 (1) AND SECTION 35]

It transpires, as the attached email from Arms Control and Counter Proliferation (ACP) explains, [SECTION 27 (1) AND SECTION 35]

So as all the export licensing requirements have been met, can we help transport these weapons to Erbil?

[SECTION 27 (1) INTERNATIONAL RELATIONS]

I am not sure of who exactly should take this forward from now on but I have included who I thought the interested parties would be in the address bar.

I hope all clear,

Many thanks,

**SUBJECT MILITARY GOODS TO KRG - GOVT OF IRAQ AGREEMENT
EMAILS BETWEEN FCO OFFICIALS**

From: FCO, Arms Export Policy Department

Sent: 31 March 2015 17:23

To: FCO

Subject: MILITARY GOODS TO KRG - GOVT OF IRAQ AGREEMENT

Hi [Redacted] and [Redacted],

[SECTION 35 – FORMULATION OF GOV POLICY]

Is my understanding correct?

"ML items are caught by the UN arms embargo on Iraq. There is only one exemption to the embargo, set out in Para 21 of UNSCR 1546, for "arms or related materiel required by the Government of Iraq or the multinational force to serve the purposes of this resolution." [SECTION 35 – FORMULATION OF GOVERNMENT POLICY]

Thanks

**SUBJECT: HEADS-UP IRAQ / KRG ARMS EXPORTS
EMAILS BETWEEN FCO DEPARTMENTS**

From: FCO, Iraq Team

Sent: 23 June 2015 13:45

To: FCO

Subject: FW: ACTION - Deadline Tues 23 June - HEADS-UP IRAQ / KRG ARMS EXPORTS

I haven't had a chance to look at this yet. Could you please as a matter of urgency.

Regards

From: FCO, Arms Export Policy Department

Sent: 19 June 2015 15:26

To: FCO

Cc: [Redacted]

Subject: ACTION - Deadline Tues 23 June - HEADS-UP IRAQ / KRG ARMS EXPORTS

[Redacted],

[Redacted] and I will be discussing with Legal Advisers next week the concerns around our legal position on arms exports to the Kurdistan Regional Government (KRG). This discussion will cover how the current KRG export policy fits in with sanctions and the Government of Iraq's agreement that we can (legally) export goods to the KRG (or approve export licences for UK insurance of arms from other countries) and how we move forward on it.

I have highlighted where I think you can help with that – [Redacted] in green, [Redacted] in yellow. Please could you provide clear (& hopefully concise) information where applicable.

I will provide the remainder of the information.

We hope to meet legal Advisers on Wednesday but to give me time to check I have all relevant information could you please fully respond by **noon on Tuesday 23 June**.

Thanks as usual for all your help and support over these complex issues.

Cheers

From: FCO, Arms Export Policy Department

Sent: 17 June 2015 14:00

To: FCO

Cc: [Redacted]

Subject: HEADS-UP OFFICIAL SENSITIVE: IRAQ / KRG ARMS EXPORTS

Hi [Redacted], I'd be grateful if you, I and [Redacted] could discuss this sometime tomorrow – I need to inform the [SECTION 27 – INTERNATIONAL RELATIONS] of what we're going to do with the second licence application (below) so they can make contingencies. [SECTION 27 – INTERNATIONAL RELATIONS]

Background

1. There have been some recent concerns about the export of arms/ammunition to the Kurdistan Regional Government by UK exporters. Tied into this are similar concerns about where we stand when a UK insurance company provides shipment cover to KRG end users – [SECTION 27 – INTERNATIONAL RELATIONS]
2. These concerns initially stemmed from confusion about the 2014 agreement HMG had with the Govt of Iraq which was that we could export arms/weapons/lethal goods etc to KRG end users so they could assist in the fight against ISIL.

[SECTION 35 – POLICY FORMULATION]

With apologies for the length of time it took to get a call, I saw the MFA on this topic earlier this week. I handed over the agreed letter. MFA asked me what I was expecting in reply. I said not necessarily anything but they were welcome to acknowledge receipt. [SECTION 27 (1) – INTERNATIONAL RELATIONS]

The MFA Director said he would show it to the FM. If they had a view on the long term implications they would make a further reply in due course. The FM leaves today for a pre-Ramadam visit to China. I doubt any reply will be forthcoming before we transport the kit, so my advice would be to move swiftly.

[SECTION 27 (1) INTERNATIONAL RELATIONS]

[SECTION 35 – POLICY FORMULATION]

8. I have two overdue licence applications that we need to move very quickly on:

I'd be grateful if you, I and [Redacted] could discuss this sometime tomorrow – I need to inform the [Redacted] of what we're going to do with the second licence application so they can make contingencies.

Thanks

