

Representation from BAE SYSTEMS about ECGD's proposed arrangements for handling information about agents' identities.

1. BAE SYSTEMS is one of the UK's largest exporters of manufactured goods, and employs around 38,000 people in the UK. Our export business complements our work for the UK MoD, reducing overhead costs and reinforcing international government to government relationships.
2. BAE SYSTEMS has established stringent procedures to combat bribery and corruption in its export business. These include a detailed due diligence process to be followed as an integral part of the appointment of overseas agents, and a comprehensive employee education plan mandated for all those involved in the company's export business. Details of these procedures have been provided to ECGD. UK industry is subject to some of the world's most stringent anti-bribery legislation which provides severe sanctions applicable to both individuals and corporations. BAE SYSTEMS believes that these sanctions are the primary deterrent in the UK against bribery and corruption.
3. Subject to the further comments set out in paragraphs 4-9 below, BAE SYSTEMS believes that the procedures set out in the Final Response are potentially workable. BAE SYSTEMS supports the proposal that exporters can elect to use the special handling arrangements and agree with ECGD the method of transmission of sensitive information.
4. Paragraph 2.1 of Annex C of the Final Response suggests that special handling arrangements will only apply to the name(s) and address(es) of Agents. Other information relating to the use of Agents is to be provided on the Application Forms. However, other information relating to agents may be equally confidential and commercially sensitive as the name itself. BAE SYSTEMS believes that all information relating to Agents should be subject to special handling arrangements and this includes, but is not limited to, amounts of commission paid, location of payment and contractual performance requirements. This point was made in our submission to the consultation dated 10th June 2005 at paragraph 15 of the executive summary and paragraph 47 of the main body of the submission.
5. The special handling arrangements are designed to reassure ECGD's customers that confidential information provided to ECGD will not leak into the public domain. In order to underpin this reassurance we propose that the arrangements should provide for specific sanctions against ECGD, at a value to be agreed on a case by case basis, as a deterrent against allowing such leaks to occur.
6. As explained in paragraph 2 above BAE SYSTEMS employs a comprehensive due diligence process in relation to overseas agents already. We propose that any further enquiries that ECGD may wish to make subsequent to the receipt of agents' details should be conducted in the first instance through our due diligence process in order to establish whether this process can usefully assist in resolving ECGD's concerns. We also propose that any significant findings of this or any other enquiry entered into by ECGD should be shared with us.

7. Paragraph 3 of Annex C refers to the Freedom of Information Act 2000 (the Act) and to some relevant exemptions from disclosure, including “where information is protected by the law of commercial confidence.” Paragraph 70 of the Final Response states, “Information which is properly protected by the law of Commercial Confidence will not be liable to publication by virtue of that Act.” As has been seen throughout the consultation process, the maintaining of confidentiality by ECGD over acknowledged sensitive information is a key concern of exporters. As referred to in paragraph 5 above, the special handling arrangements proposed in the Final Response are designed to reassure exporters that sensitive information will not leak, either inadvertently or otherwise from ECGD. The statement quoted above from paragraph 70 of the Final Response addresses the other principal concern of ECGD’s customers in relation to the provision of sensitive confidential information. It is a key part of ECGD’s justification to exporters of why sensitive information will be protected from disclosure in response to requests for information under the terms of the Act. In order for this justification to be effective BAE SYSTEMS believes that ECGD must be able to agree with exporters precisely what ECGD regards as information “properly protected by the law of Commercial Confidence.” With such an agreement in place, exporters will be able to ensure that sensitive information provided to ECGD does possess the necessary quality of confidence required by ECGD, and will therefore be reassured that it is capable of being subject to the exemption set out at s41 of the Act. Without this agreement exporters would be in the impossible position of not knowing whether ECGD would accept a duty of confidence until after the information had been provided to them.

We support ECGD’s intention expressed in Paragraph 3 of Annex C to inform its customers of applications made under the Act for release of information relating to Agents.

8. In paragraph 4 of Annex C, ECGD state their intention to amend the special handling arrangements without further discussion by posting notice on their website. Given the consequences that arose as a result of ECGD not consulting with its customers on the changes introduced in March 2004, leading to extensive non productive expenditure of time and money for all concerned, we propose that any further change to the special handling arrangements should only be made with the agreement of ECGD’s customers who are the parties directly affected by the arrangements. Any changes made in the future to the special handling arrangements should not be automatically retrospective.

9. BAE SYSTEMS is a member of the CBI’s Export Finance Committee. We have contributed to the CBI’s response on the special handling arrangements, and fully endorse it. For the avoidance of doubt we also reiterate our representations made in previous responses to this consultation.

27th April 2006