PROPOSED CHARGING LETTER

Mr. John Harrison
General Counsel
Airbus SE

P.O. Box 32008
Leiden, 2303 DA
Zuid-Holland, The Netherlands

Re: Alleged Violations of the Arms Export Control Act and the International Traffic in Arms Regulations by Airbus SE

The Department of State ("Department") charges Airbus SE, including its operating divisions, subsidiaries, and business units ("Respondent" or "Airbus") with violations of the Arms Export Control Act ("AECA"), 22 U.S.C. 2751 *et seq.* and the International Traffic in Arms Regulations ("ITAR") (22 C.F.R. parts 120-130) in connection with providing false statements on authorization requests; the failure to provide accurate and complete reporting on political contributions, commissions, or fees that it paid, or offered or agreed to pay, in connection with sales; the failure to maintain records involving ITAR-controlled transactions; and unauthorized reexports and retransfers of defense articles. A total of 75 violations are alleged at this time.

The essential facts constituting the alleged violations are described herein. The Department reserves the right to amend this proposed charging letter, including through a revision to incorporate additional charges stemming from the same misconduct of Respondent. This proposed charging letter, pursuant to 22 C.F.R. § 128.3, provides notice of our intent to impose civil penalties in accordance with 22 C.F.R. § 127.10.

When determining the charges to pursue in this matter, the Department considered a number of mitigating factors. In particular, the Department has taken into account Respondent's cooperation with Department requests, history of voluntarily disclosing violations, and efforts to mitigate the harm to U.S. national security and foreign policy arising from its violations. Especially important were Respondent's filing of remedial Part 130 reports related to payments of political contributions, commissions, or fees that were discovered during Respondent's investigation, and the Airbus General Counsel's memorandum of December 2016

requiring immediate implementation of procedures to ensure that Respondent file complete and accurate Part 130 reports going forward.

The Department also considered countervailing factors, including: (a) significant compliance program deficiencies and a lack of internal controls, despite Respondent's identification of Part 130 as a risk area multiple times over the years, as stated in Airbus' voluntary disclosure to the Department, including when senior compliance officials raised specific concerns regarding Respondent's compliance with the Part 130 requirements described in the consent agreement between the Department and a U.K.-based aerospace and defense company; (b) inadequate processes undertaken by Empowered Officials and other officials in the United States to verify the accuracy of Part 130 statements and file the necessary reports; and (c) uneven recordkeeping that contributed to the systemic failure to provide accurate Part 130 reports and that hampered the investigation into the violations discussed herein.

We note that had the Department not taken into consideration Respondent's mitigating factors, the Department may have charged Respondent with additional violations. In the absence of such action, charges against and penalties imposed upon Respondent may have been more significant.

JURISDICTION

Airbus SE is a publicly traded company organized under the laws of the Netherlands and is a multinational corporation with over 500 subsidiaries. Airbus SE is a foreign person within the meaning of 22 U.S.C. § 2778(g)(9) and 22 C.F.R. § 120.16 of the ITAR, and along with its operating divisions, subsidiaries, and business units, is subject to the jurisdiction of the Department under the AECA and the ITAR for matters identified herein.

Airbus SE is a holding company that operates worldwide through its subsidiaries and affiliated entities, including multiple subsidiaries in the United States that were registered as brokers, exporters, and manufacturers with DDTC in accordance with 22 U.S.C. § 2778(b), 22 C.F.R. § 122.1, and 22 C.F.R. § 129.3 during the period described herein. Airbus SE filed disclosures on behalf of its subsidiaries, including its subsidiaries in the United States that were registered with the Department.

During the period covered by the violations set forth herein, Respondent paid, or offered or agreed to pay, political contributions, fees or commissions that it was obligated to report to the Department in accordance with Part 130 of the ITAR. The described violations relate to defense articles, including technical data, and defense services controlled under Categories IV, VIII, XI, XII, XIII, and XV of the U.S. Munitions List ("USML"), 22 C.F.R. § 121.1, at the time of the alleged violations.

BACKGROUND

Respondent is a multinational aerospace corporation. It designs, manufactures, and sells aerospace products and aircraft worldwide for use in the government, defense, and commercial sectors.

VIOLATIONS

ITAR violations included in this proposed charging letter are derived from Respondent's voluntary disclosures to the Department submitted in accordance with 22 C.F.R. § 127.12. Due in part to the large number of violations over an extended period of time, the Department provides a summary of the violations. Respondent was involved in the following types of ITAR violations: providing false statements on authorization requests; the failure to provide accurate and complete reporting on political contributions, commissions, or fees that it paid, or offered or agreed to pay, in connection with sales; the failure to maintain records involving ITAR-controlled transactions; and the unauthorized reexport and retransfer of defense articles.

I. Part 130 Obligations, False Statements, and Reporting

Respondent experienced systemic issues regarding its Part 130 obligations. Respondent disclosed that senior officials were aware of Part 130 and "how commission payments abroad can potentially turn into mandatory ITAR disclosures." Although Respondent was aware of Part 130 requirements and identified the associated risks of non-compliance, Respondent failed to develop policies, directives, or procedures at the corporate level to ensure compliance with Part 130 before disclosing the violations to the Department.

The absence of policies, directives, or procedures created misunderstandings within the Respondent's organization as to which personnel

were responsible for Part 130 compliance. Respondent explained that "the export compliance personnel perceived [Part 130 requirements] as a non-export control issue (because all of the information [related to political contributions, commissions, or fees] remained outside of export compliance) and personnel responsible for broader compliance believed it to be an export control issue." Another consequence of Respondent's failure to develop such policies, directives, or procedures is that individual compliance personnel relied upon their own standards for Part 130 compliance, thereby leading to inaccurate Part 130 filings.

In addition to lacking formal policies, directives, or procedures on Part 130 compliance, Respondent identified a systemic gap with respect to the reporting of payments of political contributions, commissions, or fees on authorization requests. Respondent's Empowered Officials had limited access to the necessary authorization and Part 130 information and lacked accurate, reliable, and verifiable information because of the inadequate corporate compliance structure. Respondent treated information required to accurately certify authorization requests and provide Part 130 reports with extreme sensitivity, with only a limited group of people able to access it. Respondent also had no formal mechanism in place to capture political contributions, commissions, or fees for reporting purposes. Finally, Empowered Officials or officials responsible for authorization requests did not have access to a central database and had to rely upon paper records, which were frequently incomplete and/or scattered across multiple countries.

Contributing to the systemic gap with respect to the reporting of payments of political contributions, commissions, or fees was a particularly problematic template that certain European subsidiaries inserted as a matter of course into reexport authorization requests. The template states: "In furtherance of ITAR 130.10, we certify that neither [Entity legal name] nor its Vendors (as defined by 22 C.F.R. § 130.8) have paid, nor offered to pay in respect to any sale for which this license is requested: (i) Political Contributions in an aggregate amount of $5,000 or more, or (ii) Fees or Commissions in an aggregate amount of $100,000 or more." Respondent disclosed that "the template contained no alternative language to be used if Fees, Commissions or Political Contributions needed to be reported." Respondent explained that there was a fundamental breakdown with the responsible European personnel thinking that their counterparts in the United States would verify any political contributions, commissions, or fees, but the compliance and export control team in the United States did not have knowledge of or access to the necessary information. The inclusion of such language in templates fundamentally undercuts an effective and robust compliance program.

From 2011 to 2017, Respondent sought authorizations for the export, reexport, or retransfer of defense articles, and/or the provision of defense services with respect to the C-295, a twin turboprop tactical military transport aircraft, without providing accurate Part 130 statements for sales to or for the use of the armed forces of Colombia, Egypt, Ghana, Jordan, Indonesia, Kazakhstan, Mexico, Poland, and Vietnam. Respondent required the written approval of the Department because Airbus incorporated ITAR-controlled defense articles into the aircrafts. Respondent also failed to provide Part 130 reports corresponding to fees or commissions paid, or offered or agreed to be paid, to facilitate these sales as required under 22 C.F.R. § 130.9. After Respondent investigated its Part 130 compliance and corresponding shortfalls, it submitted remedial Part 130 reports disclosing the fees paid or offered or agreed to be paid in connection with the relevant ITAR applications that Respondent submitted to the Department.

Respondent sought authorizations for the reexport of technical data related to the data link and interface for the Advanced Medium Range Air to Air Missiles ("AMRAAM") and Paveway IV missiles with the internal software for 15 EF-2000 Eurofighter "Typhoon" aircraft from Germany to Austria. Respondent acknowledged that it paid certain fees to private parties in connection with this sale. Respondent was required to report these fees but failed to submit the required Part 130 statement and required reports under 22 C.F.R. § 130.9. After Respondent disclosed the violation related to payment of fees, Respondent provided amended Part 130 reports as part of its disclosure of the violations.

In 2013, Respondent sought authorizations for the reexport of defense articles or provision of defense services with respect to the A400M, "Atlas," a twin turboprop tactical military transport aircraft with strategic capabilities, without providing accurate Part 130 statements for sales, to or for the use of the armed forces of France, the United Kingdom, Spain, Belgium, Luxembourg, Malaysia, Turkey and Germany. Respondent provided amended Part 130 reports in connection with these sales as part of its disclosure of the violations.

In June 2016, Respondent sought a Technical Assistance Agreement ("TAA") related to the sale of H125 and/or H145 helicopters to Israel. On its original request, Respondent indicated that Part 130 threshold requirements were not met. Respondent later amended the authorization request to indicate that, although the transaction meets the requirements of 22 C.F.R. § 130.2, neither Respondent nor its vendor made payments. Subsequently, as a result of the

investigation related to Part 130 compliance, Respondent amended the authorization request and submitted remedial reports with commissions paid in relation to the transaction.

In its disclosure of January 30, 2018, Respondent acknowledged making payments to business partners related to the retransfer of ITAR-controlled items – in particular, components and parts for the SKYNET 5D Satellite – within the United Kingdom from Astrium Limited to Paradigm Secure Communications. Respondent did not disclose these payments in the retransfer General Correspondence ("GC") request of November 2012. Respondent failed to disclose political contributions, fees, or commissions paid, or offered or agreed to be paid, pursuant to 22 C.F.R. § 130.9. Respondent as part of the disclosure process provided an amended Part 130 statement and related reports of payments corresponding to the retransfer.

Respondent acknowledged making undisclosed payments to business partners related to the reexport of satellites and incorporated defense articles, including technical data, without providing accurate Part 130 statements on license applications for sales to or for the use of the armed forces of Brazil, France, Italy, Japan, Canada, and Russia. Respondent acknowledged that it made payments to facilitate these transactions and submitted remedial Part 130 reports as necessary after investigating its Part 130 compliance and making a disclosure to the Department.

Respondent acknowledged paying fees or commissions to their in-country representatives that Airbus did not disclose in connection with a TAA application related to maintenance, repair, and overhaul ("MRO") activities for the C-101, C-212, CN-235, C-295, A400, and the P-3 Orion fixed-wing aircraft. Respondent sought to provide related technical data and defense services to government entities in over 80 countries. Although Respondent's authorization request indicated that the transaction met the threshold requirements of 22 C.F.R. § 130.2, it also indicated neither the applicant nor any of its vendors paid, or offered or agreed to pay, fees or commissions. Respondent failed to submit the required Part 130 reports with respect to payments made to more than 20 recipients who were paid fees or commissions.

II. Failure to Maintain Part 130 Records

Respondent failed to maintain records as required by 22 C.F.R. §§ 122.5 and 130.14. Respondent lacked a system for maintaining records related to both the information necessary to provide Part 130 reports and the underlying authorization requests. As a result, Respondent did not have complete records for authorization requests submitted to the Department in the past five years.

III. Unauthorized Reexports of Defense Articles

Respondent disclosed that in January 2019, Airbus Defense and Space S.A. ("Airbus Spain") without authorization reexported one APM-424(V)5 Interrogator Friend or Foe ("IFF")/Transponder MK XIIA Test Set with KIV-77/78 Adapter to Northrop Grumman Integrated Defence Services Pty Limited ("Northrop Grumman Australia") in Australia. Airbus Spain originally procured the Aeroflex IFF Tester from Airbus U.S. through Adler Instrument S.L. of Spain for use for the A400M program, but Airbus Spain reexported the IFF Tester to be used on the Australia MOD A300-Multi Role Tanker Transport ("MRTT").

Respondent disclosed that its procurement department did not indicate that Northrop Grumman Australia was the intended end user. Once the IFF tester was in Spain, Airbus Spain failed to verify that Northrop Grumman Australia was on the license and that the intended end use was authorized.

Separately, Respondent disclosed that Airbus Spain without authorization reexported five fuel flow switches and two ram air turbines, all of which are controlled under Category VIII(h)(11) of the USML, to the Government of Malaysia. The fuel flow switches were authorized for use in the A400M program, but Airbus Military S.L. in Spain was the only authorized end user. The two ram air turbines were authorized for use in the A400M program, but the authorization was limited to flight tests at Airbus facilities in England, Spain, and France for the A400M program.

IV. Unauthorized Retransfers of Defense Articles in Spain

Respondent disclosed that from 2007 to August of 2019, Airbus Spain and Airbus Helicopters España S.A. ("AH Spain") without authorization retransferred defense articles, including technical data to Babcock Mission Critical Services Fleet Management S.A.U., its affiliates, sub-contractors and predecessors ("Babcock") in Spain. In particular, the Spanish Government's maritime search and rescue organization, the Sociedad de Salvamento y Seguridad Maritima

("SASEMAR"), acquired from Airbus Spain three Spanish CN-235s (including spares) fixed wing aircraft equipped with various USML equipment, including a FLIR Systems, Inc. thermal camera and a Telephonics Corp. Ocean Eye radar. In addition, SASEMAR acquired from AH Spain one EC225 helicopter, a long-range passenger transport aircraft, equipped with an L3Com Wescam MX15 HDi Electro Optica/Infrared Surveillance System (the "MX15"). In both cases, Babcock had a MRO service contract with SASEMAR and had been operating the aircraft on behalf of SASEMAR while providing MRO services. However, Babcock was not identified as an authorized foreign consignee.

Airbus Spain provided Babcock specific training on the maintenance and operation of the CN-235, and subsequently, provided refresher training and technical publications in support of maintenance. Similarly, with the EC225 helicopter, Airbus Spain provided technical manuals to SASEMAR related to the MX15 camera, which were subsequently shared with Babcock.

RELEVANT ITAR REQUIREMENTS

The relevant period for the alleged conduct is September 29, 2011 through December 23, 2019. The regulations effective as of the relevant period are described below.

22 C.F.R. § 121.1 for the entire period of the alleged conduct identified the items that are defense articles, technical data, and defense services pursuant to Section 38 of the AECA.

22 C.F.R. § 122.5(a) stated that a person who is required to register must maintain records concerning the manufacture, acquisition and disposition, of defense articles; of technical data; the provision of defense services; brokering activities; and information on political contributions, fees, or commissions furnished or obtained, as required by Part 130. All records subject to the section must be maintained for a period of five (5) years from the expiration of the authorization or from the date of the transaction.

22 C.F.R. § 127.1(a) described that without first obtaining the required license or other written approval from the Directorate of Defense Trade Controls, it is unlawful to export, import, reexport or retransfer any defense article or technical data or to furnish any defense service for which a license or written approval is required by the ITAR. 22 C.F.R. § 127.1(c) stated that any person who is granted a

license or other approval or acts pursuant to an exemption under this subchapter is responsible for the acts of employees, agents, brokers, and all authorized persons to whom possession of the defense article, which includes technical data, has been entrusted regarding the operation, use, possession, transportation, and handling of such defense article abroad.

22 C.F.R. § 127.2(a) described that it is unlawful to use or attempt to use any export or temporary import control document containing a false statement or misrepresenting or omitting a material fact for the purpose of exporting any defense article.

22 C.F.R. § 127.2(b) described export and temporary import control documents for the purposes of 22 C.F.R. § 127.2(a).

22 C.F.R. § 130.9 described that applicants which satisfy the definition in Section 130.2 must inform DDTC as to whether the applicant or its vendors have paid or offered or agreed to pay political contributions, fees or commissions, as defined in Sections 130.5 and 130.6, in respect of any sale for which a license or approval is requested.[1]

22 C.F.R. § 130.10 for the entire period of the alleged conduct described that persons required under 22 C.F.R. § 130.9 to furnish information must furnish the information described in 22 C.F.R. § 130.10 to DDTC.

22 C.F.R. § 130.14 for the entire period of the alleged conduct described that each applicant must maintain a record of any information it was required to furnish or obtain under Part 130 and all records upon which its reports are based for a period of not less than five years following the date of the report to which they pertain.

CHARGES

Respondent violated 22 C.F.R. § 127.2(a) thirty-three (33) times when Respondent submitted license applications for the export, retransfer, or reexport of defense articles, including technical data, or the provision of defense services that contained false statements or misrepresented or omitted material facts regarding

[1] 79 FR 8082, dated February 11, 2014, effective February 11, 2014.

the payment of commissions, fees or political contributions paid, offered, or agreed to be paid in respect of a sale as required under 22 C.F.R. § 130.9.

Respondent violated 22 C.F.R. § 127.2(a) thirty-six (36) times when Respondent failed to submit Part 130 reports or submitted reports that contained false statements or misrepresented or omitted material facts regarding payments of commissions, fees or political contributions on thirty-six different (36) different authorization requests as required under 22 C.F.R. § 130.9 and 22 C.F.R. § 130.10.

Respondent violated 22 C.F.R. § 122.5 one (1) time when Respondent failed to collect and maintain records regarding authorization requests. Respondent violated 22 C.F.R. § 130.14 one (1) time when it failed to maintain Part 130 records.

Respondent violated 22 C.F.R. § 127.1(a) one (1) time when Respondent reexported without authorization defense articles (military electronics, materials and miscellaneous articles, and associated technical data) controlled under USML Categories Xl(a)(11) and XIII (b)(1) to Australia for which a license or written approval was required.

Respondent violated 22 C.F.R. § 127.1(a) one (1) time when Respondent reexported without authorization defense articles (fuel flow switches and ram air turbines) controlled under USML Category VIII(h)(11) to Malaysia for which a license or written approval was required.

Respondent violated 22 C.F.R. § 127.1(a) two (2) times when Respondent retransferred without authorization defense articles and related technical data controlled on the USML to an unauthorized recipient in Spain.

ADMINISTRATIVE PROCEEDINGS

Pursuant to 22 C.F.R. § 128.3(a), administrative proceedings against a respondent are instituted by means of a charging letter for the purpose of obtaining an Order imposing civil administrative sanctions. The Order issued may include an appropriate period of debarment, which shall generally be for a period of three (3) years, but in any event will continue until an application for reinstatement is submitted and approved. Civil penalties, not to exceed $1,163,217, per violation, may be imposed as well, in accordance with 22 U.S.C. § 2778(e) and 22 C.F.R. § 127.10.

A respondent has certain rights in such proceedings as described in 22 C.F.R. part 128. This is a proposed charging letter. In the event, however, that the Department serves Respondent with a charging letter, the company is advised of the following:

You are required to answer a charging letter within 30 days after service. If you fail to answer the charging letter, your failure to answer will be taken as an admission of the truth of the charges and you may be held in default. You are entitled to an oral hearing, if a written demand for one is filed with the answer, or within seven (7) days after service of the answer. You may, if so desired, be represented by counsel of your choosing.

Additionally, in the event that the company is served with a charging letter, its answer, written demand for oral hearing (if any) and supporting evidence required by 22 C.F.R. § 128.5(b), shall be in duplicate and mailed to the administrative law judge designated by the Department to hear the case at the following address:

USCG, Office of Administrative Law Judges G-CJ,
2100 Second Street, SW
Room 6302
Washington, DC 20593.

A copy shall be simultaneously mailed to the Deputy Assistant Secretary for Defense Trade Controls:

Deputy Assistant Secretary Michael Miller
US Department of State
PM/DDTC
SA-1, 12th Floor,
Washington, DC 20522-0112.

If a respondent does not demand an oral hearing, it must transmit within seven (7) days after the service of its answer, the original or photocopies of all correspondence, papers, records, affidavits, and other documentary or written evidence having any bearing upon or connection with the matters in issue.

Please be advised also that charging letters may be amended upon reasonable notice. Furthermore, pursuant to 22 C.F.R. § 128.11, cases may be settled through consent agreements, including after service of a proposed charging letter.

The U.S. government is free to pursue civil, administrative, and/or criminal enforcement for AECA and ITAR violations. The Department of State's decision to pursue one type of enforcement action does not preclude it, or any other department or agency, from pursuing another type of enforcement action.

Sincerely,

Michael F. Miller
Deputy Assistant Secretary