



The European Union Trade Control Regime of Items which could be used for Capital Punishment, Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment

Comment of the Legislation: Article-by-Article

Pr. Dr. Quentin MICHEL

Lia CAPONETTI

April 2020

Please do not hesitate to send any comments, remarks, and questions on the present document to qmichel@uliege.be

**European Studies Unit - Political Science Department
Faculty of Law, Political Science and Criminology - Liege University - Belgium**



TABLE OF CONTENTS

BASIC PRINCIPLES.....	5
IMPORTANT REMARK	6
PREAMBLE	8
CHAPTER I: SUBJECT MATTER, SCOPE AND DEFINITIONS.....	22
Article 1 Subject matter	22
Article 2 Definitions.....	23
CHAPTER II: GOODS WHICH HAVE NO PRACTICAL USE OTHER THAN FOR THE PURPOSES OF CAPITAL PUNISHMENT, TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT	29
Article 3 Export prohibition.....	30
Article 4 Import prohibition.....	36
Article 5 Prohibition of transit.....	37
Article 6 Prohibition of brokering services.....	38
Article 7 Prohibition of training.....	39
Article 8 Trade fairs	40
Article 9 Advertising	41
Article 10 National measures	42



CHAPTER III: GOODS THAT COULD BE USED FOR THE PURPOSE OF TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT 43

Article 11 Export authorisation requirement 44

Article 12 Criteria for granting export authorisations 47

Article 13 Prohibition of transit 51

Article 14 National measures 52

Article 15 Authorisation requirement for certain services 56

CHAPTER IV GOODS THAT COULD BE USED FOR THE PURPOSE OF CAPITAL PUNISHMENT 58

Article 16 Export authorisation requirement 58

Article 17 Criteria for granting export authorisations 59

Article 18 Prohibition of transit 60

Article 19 Authorisation requirement for certain services 61

CHAPTER V AUTHORISATION PROCEDURES..... 62

Article 20 Types of authorisations and issuing authorities..... 62

Article 21 Authorisations 67

Article 22 Customs formalities..... 74

Article 23 Notification and consultation requirement 75

CHAPTER VII GENERAL AND FINAL PROVISIONS 76

Article 24 Amendments of Annexes 76



Article 25 Requests for adding goods to one of the lists of goods	77
Article 26 Exchange of information between Member States' authorities and the Commission	78
Article 27 Processing of personal data	80
Article 28 Use of information	81
Article 29 Exercise of the delegation	82
Article 30 Urgency procedure	83
Article 31 Anti-Torture Coordination Group.....	84
Article 32 Review.....	86
Article 33 Penalties.....	87
Article 34 Territorial scope	96
Article 35 Repeal	97
Article 36 Entry into force.....	98
LIST OF ANNEXES	99



Basic principles:

The EU trade control regime of items which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment is organised according to two essential principles:

- A transfer prohibition (import, export, transit, technical assistance and advertising) for a limited number of items listed in Annex II;
- A transfer authorisation principle (export, transit, brokering) for the transfer outside of the European Union of items listed in Annex III.

Transfers within the European Union are not submitted to authorisation and can, in principle, be transferred without restrictions between Member States.

It should be noted that the trade of those items could be also controlled by other EU legal instruments, in particular embargoes decisions.

States which are currently under EU trade restrictions on equipment that could be used for internal repression are the following:¹

- Belarus ;
- Iran ;
- Libya ;
- Myanmar ;
- Syria ;
- Venezuela ;
- Zimbabwe.

¹ <https://www.sanctionsmap.eu/#/main>.

Preamble

Important Remark:

In **June 2010**, the European Parliament adopted a Resolution on implementation of Council Regulation (EC) No 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (2011/C 236 E/17).

The Resolution “urges the Commission to come forward with a proposal” which should:

- review and update the list of items controlled by the Regulation (i.e. Annex II, III); and
- insert into the Regulation a number of relevant provisions such as a catch-all clause, a prohibition of brokering transactions, transit restrictions, etc.

The Parliament has decided to put the Commission and the Member States under pressure by emphasizing that the commitments required by the Regulation have not been accurately implemented by the 27 (see paragraph F to G of the Resolution).

In **December 2011**, the Commission adopted the Implementing Regulation (EU) No 1352/2011² which amends Annex II and III of the Council Regulation. It concerns:

- Medicinal products, which could be used for capital punishment;
- Electric shock belts;
- Spiked batons.

In **January 2014**, the Commission finally proposed to the European Parliament and the Council a Regulation amending Council Regulation (EC) No 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment.

This proposal intends essentially to:

- review the definition of *torture* and *other cruel, inhuman or degrading treatment or punishment*;
- prohibit certain brokering transactions and services (including technical assistance);
- define criteria for granting export authorisation;
- introduce an EU General Export Authorisation for certain medicinal products;
- delegate to the Commission the power to amend Annexes.

In **July 2015**, the Opinion of the Committee on Foreign Affairs for the Committee on International Trade ((COM(2014)0001 – C7-0014/2014 – 2014/0005(COD)) was adopted, on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No. 1236/2005, which seeks to strengthen the provisions on the ancillary services linked to the transfer of goods, as well as on transit, technical assistance and commercial marketing. It specifically aims at introducing a targeted end-use clause in order for Member States to prohibit or suspend the transfer of security-related items not listed in Annex II and III that clearly have no other practical use than the purpose of capital punishment, torture or other ill-treatment, or there are reasonable

² Commission Implementing Regulation (EU) No 1352/2011 of 20 December 2011 amending Council Regulation (EC) No 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (OJ L338, 21.12.2011, p. 31).

Preamble

grounds to believe that the transfer of those items would lead to the facilitation or the commission of judicial execution, torture or other ill-treatment.

Finally, on **23 November 2016**³ the Council adopted an amending Regulation concerning goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment. In general terms, the amendments provide for the following main changes to the Regulation:

- The definitions of “torture” and “other cruel, inhuman or degrading treatment or punishment” are strengthened by adding to the definition a sentence stating that “Capital punishment is not deemed a lawful penalty under any circumstances”;
- It facilitates by adopting a General Export Authorisation exports to countries that have abolished capital punishment for all crimes and confirmed that abolition through an international commitment;
- It prohibits brokering activities of goods located in third countries when those goods are subject to an import and export ban, as listed in Annex II (goods that can only be used for torture or capital punishment);
- It introduces a prior authorisation regime for brokering services and technical assistance related to goods listed in Annex III or IIIa (goods that could be used for torture or capital punishment but which also have legitimate applications);
- It introduces a prior authorisation regime for the supply of technical assistance concerning goods listed in Annex III or IIIa;
- It prohibits transport of goods in transit if they are listed in Annex II, III or IIIa (prohibition concerning goods listed in annex III or IIIa is not absolute but applies where the economic operator has some information about their use for torture or capital punishment in the country of destination);
- It prohibits the promotion at exhibitions and trade fairs in the EU and the advertising of goods listed in Annex II;
- It establishes a coordination group, which will serve as a platform for Member State experts and the European Commission to exchange information on administrative practices;
- It provides for an urgency procedure in case rapid amendment of the Regulation's annexes is necessary.

On **16 January 2019**, the original Council Regulation (EC) No 1236/2005 has been **codified by Regulation (EU) 2019/125** of the European Parliament and of the Council (OJ L 30/1 of 21/1/2019).

³ Regulation (EU) 2016/2134 of the European Parliament and of the Council of 23 November 2016 amending Council Regulation (EC) No 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (OJ L 338, 13.12.2016, p. 1–33).

Preamble

REGULATION (EU) 2019/125 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (codification)

Official Journal L 30/1, 31/1/2019

Preamble

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure⁴,

Whereas:

(1) Council Regulation (EC) No 1236/2005⁵ has been substantially amended several times⁶. In the interests of clarity and rationality, that Regulation should be codified.

(2) Pursuant to Article 2 of the Treaty on European Union, respect for human rights constitutes one of the values common to the Member States. The European Community resolved in 1995 to make respect for human rights and fundamental freedoms an essential element of its relations with third countries. It was decided to insert a clause to that end in any new trade, cooperation and association agreement of a general nature concluded with third countries.

Comment:

The human right clause is usually included in the part dedicated to the general objectives and principles of the trade agreement.

The first mention of human rights in an EU trade agreement can be found in Art. 5 of the 1989 Lomé IV Convention with ACP Countries⁷ where it was emphasised that development (the main aim of the Convention) ‘entails respect of and promotion of all human rights’. It was not yet a

⁴ Position of the European Parliament of 29 November 2018 (not yet published in the Official Journal) and Decision of the Council of 17 December 2018.

⁵ Council Regulation (EC) No 1236/2005 of 27 June 2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (OJ L 200, 30.7.2005, p. 1).

⁶ See Annex X (This Annex is available on the OJ L 30/1, 31/1/2019, on <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0125&from=en>).

⁷ See Fourth ACP-EEC Convention, signed in Lomé on 15 December 1989.

Preamble

conditionality clause, but rather a way to define one of the ‘objectives and principles of cooperation’.

Therefore, the EU adapted its reference to human rights in further agreements to move towards a formulation which, in full compliance with international treaty law, would progressively give it the possibility to suspend its obligations under international agreements (for instance the granting of trade preferences) and take other “appropriate measures”, thereby flanking these agreements with hard “human rights conditionality”. The typical “essential element” clause was given quite a number of different formulations since it was first attempted in the 1990 EU-Argentina Cooperation Agreement, in which it read “cooperation ties between the Community and Argentina and this Agreement in its entirety are based on respect for the democratic principles and human rights which inspire the domestic and external policies of the Community and Argentina”⁸.

The EU’s free trade agreements concluded with third countries after 2009 are linked to the human rights “essential elements” provisions that are contained in the political framework agreements with these countries. Such agreements often come in the form of “partnership & cooperation” or “association” agreements.

In 2018, nine countries (Armenia, Bolivia, Cape Verde, Kyrgyzstan, Mongolia, Pakistan, Paraguay, the Philippines and Sri Lanka) benefitted from the advantageous trade preferences under the so-called GSP+⁹ arrangement. This requires beneficiary countries to ratify and effectively implement 27 international conventions, including in relation to human rights and core labour standards.

Most recently, in September 2017, the EU together with Argentina and Mongolia, launched the **Global Alliance for Torture-Free Trade**. Since then, over sixty countries have joined the fight to end the trade in goods used to carry out the death penalty and torture. Alliance members commit to take measures to control and restrict exports of such goods used through domestic legislation and efficient enforcement. In September 2018, the Alliance called for a United Nations General Assembly Resolution on torture-free trade, which was adopted on 21 June 2019. The UN resolution calls for an examination of the feasibility, scope and parameters for possible common international standards in this area.¹⁰

(3) Article 5 of the Universal Declaration of Human Rights, Article 7 of the International Covenant on Civil and Political Rights and Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms all lay down an unconditional, comprehensive prohibition on torture and other cruel, inhuman or degrading treatment or punishment. Other provisions, in particular the United Nations Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment¹¹ and the 1984 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, place an obligation on States to prevent torture.

(4) Article 2(2) of the Charter of Fundamental Rights of the European Union (Charter) states that no one shall be condemned to the death penalty or executed. On 22 April 2013, the Council

⁸ See Framework Agreement for trade and economic cooperation between the European Economic Community and the Argentine Republic, Signed 2 April 1990, Art. 1 (1).

⁹ The EU’s current Generalised Scheme of Preferences (GSP) Regulation has been in force since 1 January 2014 and continues to provide the world’s most generous unilateral trade preferences to support economic development in developing countries.

¹⁰ To access to the official website of the Global Alliance for Torture-Free Trade: <http://torturefreetrade.org>.

¹¹ Resolution 3452 (XXX) of 9 December 1975 of the General Assembly of the United Nations.

Preamble

approved 'EU Guidelines on death penalty' and resolved that the Union would work towards the universal abolition of the death penalty.

(5) Article 4 of the Charter states that no one shall be subjected to torture or to inhuman or degrading treatment or punishment. On 20 March 2012, the Council approved 'Guidelines to EU policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment (An up-date of the Guidelines)'.

In accordance with those guidelines, third countries should be urged to prevent the use and production of, and trade in, equipment which is designed to inflict torture or other cruel, inhuman or degrading treatment or punishment and prevent the abuse of any other equipment to these ends. Moreover, the prohibition of cruel, inhuman or degrading punishment should impose clear limits on the use of the death penalty. Therefore, capital punishment is not to be considered a lawful penalty under any circumstances.

Complementary information: Guidelines on EU policy towards third countries on the death penalty (revised lastly on September 2019)

Taking into account human rights policies of international organisations such as the General Assembly of the United Nations, the Council of Europe and the Organization for Security and Cooperation in Europe (OSCE), EU Member States decided to elaborate a common framework in order to progress in the universal abolition of capital punishment. It should be noted that all Member States implemented the abolition of death penalty in their national legislations.

The first set of Guidelines on Death Penalty ("Guidelines to EU Policy Towards Third Countries on the Death Penalty") was adopted on 29 June 1998 by the EU General Affairs Council.¹²

The main objectives of these Guidelines were to work towards the **universal abolition** of the death penalty and, where the death penalty still exists, to call for its use to be progressively restricted and to insist that it be carried out according to minimum standards (set out in an annexed document to the guidelines).

The 1998 version of the Guidelines also provided Member States with a series of instruments and strategies to pursue these objectives:

- General demarches consisting in dialogue and consultation with third countries on the death penalty issue, taking into account judicial system of the country, its international obligations as well the transparency in its use of death penalty;
- Individual cases, consisting in specific demarches where the EU becomes aware of the death penalty cases violating the EU minimum standards established by these Guidelines;
- Human rights reporting, consisting in analysis of the application and use of capital punishment as well as the effectiveness of EU action therein¹³;
- Other initiatives, consisting in encouragement of third countries to accede to the international agreements such as the Second Optional Protocol to the International Covenant on Civil and Political Rights¹⁴ and other comparable regional instruments aiming at abolishing the death penalty;

¹² European Union, Guidelines to EU Policy Towards Third Countries on the Death Penalty, 29 June 1998, available at: <https://www.refworld.org/docid/4705f3d12.htm>.

¹³ EU Annual Human Rights Reports are available on the website of the European Union External Action Service: http://eeas.europa.eu/human_rights/index_en.htm.

¹⁴ For further information see <http://www.ohchr.org/EN/ProfessionalInterest/Pages/2ndOPCCPR.aspx>.

Preamble

- Action in multilateral fora, consisting in promotion of multilateral and bilateral conventions with third countries introducing a moratorium of the use of death penalty aiming in the long run at abolition thereof.

These **guidelines have been reviewed and updated in 2012**.¹⁵ However, since the 2012 revision, there have been numerous policy developments in the area of torture and other ill-treatment, both at global and EU level, making a new revision necessary. In particular, the Global Strategy for the EU's Foreign and Security Policy and the European Consensus on Development are now at the core of the EU policy framework for the promotion of human rights and human dignity.

For these reasons, **on 16 September 2019, the Council of the European Union published a revised version of the “Guidelines on EU Policy Towards Third Countries on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment”** (Brussels, 16 September 2019, 12107/19).¹⁶

The revised guidelines reaffirm the main objective to fight against torture and other ill-treatment, stating that it is a priority of EU external action, besides being enshrined in the European Union Treaties and Charter of Fundamental Rights. To this end, the guidelines supply a comprehensive approach that encompasses all essential elements to eradicate torture:

- **Prohibition** in law and reaffirming the absolute prohibition in policy;
- **Prevention** complying with safeguards and procedures relating to detention, providing efficient and safe complaints mechanisms and allowing efficient detention monitoring and oversight mechanisms;
- **Accountability** combatting impunity;
- **Redress** (including rehabilitation for victims).

At the multilateral level, one of the objectives to be achieved by 2024 is the global ratification and implementation of the UN Convention against Torture and Other Cruel, Inhuman and Degrading treatment or Punishment, through inter-state cooperation and dialogue.

(6) It is therefore appropriate to lay down Union rules on trade with third countries in goods which could be used for the purpose of capital punishment, and in goods which could be used for the purpose of torture and other cruel, inhuman or degrading treatment or punishment. These rules are instrumental in promoting respect for human life and for fundamental human rights and thus serve the purpose of protecting public morals. Such rules should ensure that Union economic operators do not derive any benefits from trade which either promotes or otherwise facilitates the implementation of policies on capital punishment or on torture and other cruel, inhuman or degrading treatment or punishment, which are not compatible with the relevant EU Guidelines, the Charter and international conventions and treaties.

¹⁵ Guidelines to EU Policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment - An up-date of the Guidelines, Council of the European Union, Brussels, 20 March 2012, available at: <http://data.consilium.europa.eu/doc/document/ST-6129-2012-REV-1/en/pdf>.

¹⁶ Guidelines on EU Policy Towards Third Countries on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment – 2019 Revision of the Guidelines, Council of the European Union, Brussels, 16 September 2019, available at: <https://www.consilium.europa.eu/media/40644/guidelines-st12107-en19.pdf>.

Preamble

(7) For the purpose of this Regulation, it is considered appropriate to apply the definition of torture laid down in the 1984 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and in Resolution 3452 (XXX) of the General Assembly of the United Nations. That definition should be interpreted taking into account the case-law on the interpretation of the corresponding term in the European Convention on Human Rights and in relevant texts adopted by the Union or its Member States. The definition of ‘other cruel, inhuman or degrading treatment or punishment’, which is not found in that Convention, should be in line with the case law of the European Court of Human Rights. The meaning of the term ‘lawful penalties’ in the definitions of ‘torture’ and ‘other cruel, inhuman or degrading treatment or punishment’, should take into account the Union's policy on capital punishment.

Comment:

The term “**torture**” was defined by two international instruments.

On one hand, by the General Assembly Resolution 3452 comprising the Declaration on the Protection of All Persons from Being Subjected of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment¹⁷.

Article 1 of this Declaration gives the following definition of torture:

“For the purpose of this Declaration, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners¹⁸.

Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment”.

On the other hand, the same term was defined by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment¹⁹. Article 1 thereof is drafted as follows:

“For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

¹⁷ This Declaration can be consulted at: <http://www.hrweb.org/legal/cat.html>.

¹⁸ Standard Minimum Rules for the Treatment of Prisoners adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977. This integral text can be found at: <http://www.ohchr.org/Documents/ProfessionalInterest/treatmentprisoners.pdf>.

¹⁹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984, entry into force 26 June 1987, in accordance with article 27 (1). The integral text can be found at: <http://www.ohchr.org/Documents/ProfessionalInterest/cat.pdf>.

Preamble

Even though the above-mentioned definitions are rather similar, the one proposed by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was implemented in Article 2(a) of this Regulation.

(8) It is considered necessary to prohibit exports and imports of goods which have no practical use other than for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment and to prohibit the supply of technical assistance in respect of such goods.

(9) Where such goods are located in third countries, it is necessary to prohibit brokers in the Union from providing brokering services in relation to such goods.

(10) In order to contribute to the abolition of the death penalty in third countries and to the prevention of torture and other cruel, inhuman or degrading treatment or punishment, it is considered necessary to prohibit the supply to third countries of technical assistance related to goods which have no practical use other than for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment.

(11) It is also appropriate to prohibit brokers and suppliers of technical assistance from providing training on the use of such goods to third countries as well as to prohibit both the promotion of such goods in trade fairs or exhibitions in the Union, and the sale or purchase of advertising space in print media or on the Internet and of advertising time on television or radio in relation to such goods.

(12) In order to prevent economic operators from deriving benefits from transporting goods which are intended to be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, and which pass through the customs territory of the Union on their way to a third country, it is necessary to prohibit transport within the Union of such goods, if they are listed in Annex II to this Regulation.

(13) It should be possible for Member States to apply measures restricting the supply of certain services in relation to goods which have no practical use other than for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment, in compliance with the applicable Union rules.

(14) This Regulation lays down an export authorisation system designed to prevent certain goods from being used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment.

(15) It is therefore necessary to impose controls on exports of certain goods which could be used not only for the purpose of torture and other cruel, inhuman or degrading treatment or punishment, but also for legitimate purposes. These controls should apply to goods that are primarily used for law enforcement purposes and unless such controls prove disproportionate, to any other equipment or product that could be abused for the purpose of torture and other cruel, inhuman or degrading treatment or punishment, taking into account its design and technical features.

Preamble

(16) As regards law enforcement equipment, it should be noted that Article 3 of the Code of Conduct for Law Enforcement Officials²⁰ provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1990, provide that, in carrying out their duty, law enforcement officials should, as far as possible, apply non-violent means before resorting to the use of force and firearms.

(17) In view of this, the Basic Principles advocate the development of non-lethal incapacitating weapons for use in appropriate situations, while admitting that the use of such weapons should be carefully controlled. In this context, certain equipment traditionally used by the police for self-defence and riot-control purposes has been modified in such a way that it can be used to apply electric shocks and chemical substances to incapacitate persons. There are indications that, in several countries, such weapons are abused for the purpose of torture and other cruel, inhuman or degrading treatment or punishment.

(18) The Basic Principles stress that law enforcement officials should be equipped with equipment for self-defence. Therefore, this Regulation should not apply to trade in traditional equipment for self-defence, such as shields.

(19) This Regulation should apply to trade in some specific chemical substances used to incapacitate persons.

Comment:

As concerns chemical weapons and toxic chemicals, these items can be considered as dual-use goods, thereby the exports thereof are controlled by the Regulation (EC) No 428/2009; or as military items, therefore such exports would be controlled by the Council Common Position 2008/944/CFSP.

It shall be noted that the Chemical Weapons Convention (CWC), which entered into force on 29 April 1997, gives the following definition of “chemical weapons” and “toxic chemicals”²¹:

Chemical Weapons mean the following, together or separately:

- (a) Toxic chemicals and their precursors, except where intended for purposes not prohibited under this Convention, as long as the types and quantities are consistent with such purposes;
- (b) Munitions and devices, specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in subparagraph (a), which would be released as a result of the employment of such munitions and devices;
- (c) Any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in subparagraph (b).

Toxic Chemical means:

Any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. This includes all such chemicals,

²⁰ Resolution 34/169 of 17 December 1979 of the General Assembly of the United Nations.

²¹ The full text of the CWC is available at the following website:
<http://www.opcw.org/chemical-weapons-convention/>.

Preamble

regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere.

(For the purpose of implementing this Convention, toxic chemicals which have been identified for the application of verification measures are listed in Schedules contained in the Annex on Chemicals.)

Tear gases and riot control agents, which are not assimilated either to chemical weapons or to toxic chemicals, are considered as dual-use goods, therefore the exports thereof are controlled by the Dual-Use Regulation No 428/2009 (see Part I of the present document). Indeed, Annex I of Dual-Use Regulation defines “**riot control agent**” as “*substances which, under the expected conditions of use for riot control purposes, produce rapidly in humans sensory irritation or disabling physical effects which disappear within a short time following termination of exposure*”. It should be noted that the Dual-Use Regulation considers tear gases as a subset of riot control agents.

Moreover, the Dual-Use Regulation rates riot control agents among Category 1 “Special materials and related equipment” of Annex I. Therefore, according to Article 3 of the Dual-Use Regulation an authorisation shall be required for the export of the dual-use items listed in Annex I, in particular of the riot control agents.

As concerns firearms, as those items are being part of SALW goods, exports thereof are controlled by Council Common Position 2008/944/CFSP²² and Council Common Position 2003/468/CFSP. In addition, the possession and acquisition of aforementioned goods by individuals are governed by Directive 2008/51/EC.

(20) As regards leg-irons, gang-chains and shackles and cuffs, it should be noted that Article 33 of the United Nations Standard Minimum Rules for the Treatment of Prisoners²³ provides that instruments of restraint must never be applied as a punishment. Furthermore, chains and irons are not to be used as restraints. It should also be noted that the United Nations Standard Minimum Rules for the Treatment of Prisoners provide that other instruments of restraint must not be used except as a precaution against escape during a transfer, on medical grounds as directed by a medical officer, or, if other methods of control fail, in order to prevent a prisoner from injuring himself or others, or from damaging property.

In order to protect staff and other people against spitting, prisoners are sometimes made to wear a so-called spit hood. As such a hood covers the mouth and often also the nose, it presents an inherent risk of asphyxiation. If it is combined with restraints, such as handcuffs, there is also a risk of neck injury. Exports of spit hoods should therefore be controlled.

(22) In addition to portable weapons, the scope of the export controls should include fixed or mountable electric discharge weapons covering a wide area and targeting multiple individuals.

²² The latest version of the “Common Military List of the European Union concerning equipment covered by Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment” has been adopted on 17 February 2020 by the Council and it has been published on 13 March 2020 on the *Official Journal of the European Union* (OJ C 85/1, 13.3.2020).

²³ Approved by Resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977 of the Economic and Social Council of the United Nations.

Preamble

Such weapons are often presented as so-called non-lethal weapons but present, at the very least, the same risk of causing severe pain or suffering as portable electric discharge weapons.

(23) As fixed devices for dissemination of irritating chemical substances for use inside a building are being marketed, and indoor use of such substances presents a risk of causing severe pain or suffering not associated with traditional use outdoors, exports of such equipment should be controlled.

(24) Export controls should also be applied to fixed or mountable equipment for the dissemination of incapacitating or irritating substances which covers a wide area, where such equipment is not yet subject to export controls in accordance with Council Common Position 2008/944/CFSP²⁴. Such equipment is often presented as so-called non-lethal technology but presents at the very least the same risk of causing severe pain or suffering as portable weapons and devices. Although water is not one of the incapacitating or irritating chemical agents, water cannons may be used to disseminate such agents in liquid form and their exports should be controlled.

(25) The export controls concerning oleoresin capsicum (OC) and pelargonic acid vanillylamide (PAVA) should be supplemented by export controls on certain mixtures containing these substances which can be administered as such as incapacitating or irritating agents or used for manufacturing of such agents. Where appropriate, references to incapacitating or irritating chemical agents should be construed as including oleoresin capsicum and the relevant mixtures containing it.

(26) It is appropriate to provide for specific exemptions from the export controls in order not to impede the functioning of the police forces of the Member States and the execution of peacekeeping or crisis management operations.

(27) Taking into account the fact that some Member States have already prohibited exports and imports of such goods, it is appropriate to grant Member States the right to prohibit exports and imports of leg-irons, gang-chains and portable electric shock devices other than electric shock belts. Member States should also be empowered to apply export controls on handcuffs having an overall dimension, including chain, exceeding 240 mm when locked, if they so wish.

(28) In order to limit the administrative burden for exporters, competent authorities should be allowed to grant an exporter a global authorisation in respect of goods listed in Annex III to this Regulation to prevent the relevant goods from being used for torture or for other cruel, inhuman or degrading treatment or punishment.

(29) In some cases, medicinal products exported to third countries have been diverted and used for capital punishment, notably by administering a lethal overdose by means of injection. The Union disapproves of capital punishment in all circumstances and works towards its universal abolition. The exporters objected to their involuntary association with such use of the products they developed for medical use.

²⁴ Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment (OJ L 335, 13.12.2008, p. 99).

Preamble

Comment:

Certain medicinal, in particular sodium thiopental, a sedative that is part of the normal three-drug mixture used by USA for death penalty execution, have been supplied indirectly by EU pharmaceutical industries. To conform the EU principle of an abolition of the death penalty in all circumstances to its trade policy, transfers of those drugs have been submitted to the condition that the supply will not contribute to capital punishment. The condition has to be demonstrated by the supplier.

(30) It is therefore necessary to impose controls on exports of certain goods which could be used for capital punishment in order to prevent the use of certain medicinal products for that purpose and to ensure that all Union exporters of medicinal products are subject to uniform conditions in this regard. The relevant medicinal products were developed for, inter alia, anaesthesia and sedation.

(31) The export authorisation system should not go beyond what is proportionate. It should, therefore, not prevent the export of medicinal products to be used for legitimate therapeutic purposes.

(32) The list of goods for whose export an authorisation is required with a view to preventing these goods from being used for capital punishment should only include goods that have been used for capital punishment in a third country that has not abolished capital punishment and goods whose use for capital punishment any such third country has approved, without having used them for that purpose yet. It should not include non-lethal goods which are not essential for executing a convicted person, such as standard furniture that may also be found in the execution chamber.

(33) Given the differences between capital punishment, on the one hand, and torture and other cruel, inhuman or degrading treatment or punishment on the other, it is appropriate to lay down a specific export authorisation system with a view to preventing the use of certain goods for capital punishment. Such a system should take into account the fact that a number of countries have abolished capital punishment for all crimes and have made an international commitment on this issue. As there is a risk of re-export to countries that have not done so, certain conditions and requirements should be imposed when authorising exports to countries that have abolished capital punishment. It is therefore appropriate to grant a general export authorisation for exports to those countries that have abolished capital punishment for all crimes and confirmed that abolition through an international commitment.

(34) If a country has not abolished capital punishment for all crimes and confirmed that abolition through an international commitment, the competent authorities should, when examining a request for an export authorisation, check whether there is a risk that the end-user in the country of destination would use the exported goods for such punishment. Appropriate conditions and requirements should be imposed to control sales or transfers to third parties by the end-user. If multiple shipments between the same exporter and end-user take place, the competent authorities should be allowed to review the status of the end-user on a periodic basis, for example every six months, rather than every time an export authorisation for a shipment is granted, without prejudice to the right of the competent authorities to annul, suspend, modify or revoke an export authorisation where warranted.

Preamble

Comment:

The Regulation indirectly positively discriminate states that have abolished the death penalty and states they have not. E.g. only certain countries that have abolished the death penalty could import certain medicinal products (Annex IV) under a General EU Authorisation (EUGEA (Annex V)).

(35) In order to limit the administrative burden for exporters, the competent authorities should be allowed to grant an exporter a global authorisation for all shipments of medicinal products from the exporter to a specific end-user for a fixed period of time, specifying, where necessary, a quantity corresponding to the end-user's normal use of such products. Such authorisation should be valid for between one and three years with a possible extension of up to two years.

(36) Granting a global authorisation would also be appropriate where a manufacturer intends to export medicinal products falling within the scope of this Regulation to a distributor in a country that has not abolished capital punishment, provided that the exporter and the distributor have concluded a legally binding agreement requiring the distributor to apply an appropriate set of measures ensuring that the medicinal products will not be used for capital punishment.

(37) Medicinal products falling within the scope of this Regulation may be subject to controls in accordance with international conventions on narcotic drugs and psychotropic substances, such as the 1971 Convention on Psychotropic Substances. Since such controls are not applied to prevent the relevant medicinal products from being used for capital punishment but to prevent illicit drug trafficking, the export controls of this Regulation should be applied in addition to those international controls. Member States should, however, be encouraged to use a single procedure in order to apply both control systems.

(38) The controls on exports in accordance with this Regulation should not apply to goods whose export is controlled in accordance with Common Position 2008/944/CFSP, Council Regulation (EC) No 428/2009²⁵ and Regulation (EU) No 258/2012 of the European Parliament and of the Council²⁶.

Comment:

- Council Common Position 2008/944/CFSP concerns export of military technology and equipment;
- Council Regulation (EC) No 428/2009 concerns dual-use items and technology;
- Regulation (EU) No 258/2012 of the European Parliament and of the Council concerns firearms, their parts and components and ammunition.

²⁵Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (OJ L 134, 29.5.2009, p. 1).

²⁶ Regulation (EU) No 258/2012 of the European Parliament and of the Council of 14 March 2012 implementing Article 10 of the United Nations' Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against Transnational Organised Crime (UN Firearms Protocol), and establishing export authorisation, and import and transit measures for firearms, their parts and components and ammunition (OJ L 94, 30.3.2012, p. 1).

Preamble

(39) The supply of brokering services and the supply of technical assistance in respect of the goods listed in Annex III or in Annex IV to this Regulation should be subject to prior authorisation in order to prevent the brokering services or the technical assistance from contributing to the use of the goods to which they relate for the purpose of capital punishment, torture or other cruel, inhuman or degrading treatment or punishment.

(40) The brokering services and technical assistance which this Regulation subjects to prior authorisation should be those that are supplied from within the Union, that is from within territories within the territorial scope of the Treaties, including airspace and any aircraft or any vessel under the jurisdiction of a Member State.

(41) When authorising the supply of technical assistance related to goods listed in Annex III to this Regulation, the competent authorities should endeavour to ensure that the technical assistance and any training on the use of such goods that would be supplied or offered in conjunction with the technical assistance for which the authorisation is requested are provided in such a way that they promote law enforcement standards that respect human rights and contribute to the prevention of torture and other cruel, inhuman or degrading treatment or punishment.

(42) In order to prevent economic operators from deriving benefits from transporting goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment and which pass through the customs territory of the Union on their way to a third country, it is necessary to prohibit transport within the Union of such goods, if they are listed in Annex III or Annex IV to this Regulation, provided the economic operator has knowledge of the intended use.

(43) The Guidelines to EU Policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment provide, *inter alia*, that the Heads of Mission in third countries will include in their periodic reports an analysis of the occurrence of torture and other cruel, inhuman or degrading treatment or punishment in the State of their accreditation, and the measures taken to combat it. It is appropriate for the competent authorities to take those and similar reports made by relevant international and civil society organisations into account when deciding on requests for authorisations. Such reports should also describe any equipment used in third countries for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment.

(44) While customs authorities should share certain information with other customs authorities using the customs risk management system in accordance with Union customs legislation, the competent authorities referred to in this Regulation should share certain information with other competent authorities. It is appropriate to require that the competent authorities use a secure and encrypted system for the exchange of information on denials. To that end, the Commission should make available a new functionality in the existing system set up pursuant to Article 19(4) of Regulation (EC) No 428/2009.

(45) To the extent that it concerns personal data, processing and the exchange of information should comply with the applicable rules on processing and the exchange of personal data in accordance

Preamble

with Regulation (EU) 2016/679 of the European Parliament and of the Council²⁷ and Regulation (EU) 2018/1725 of the European Parliament and of the Council²⁸.

(46) In order to adopt the provisions necessary for the application of this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amendments to Annexes I to IX to this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making²⁹. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(47) In order to allow the Union to respond quickly when new goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, are developed, and where there is a clear and immediate risk that those goods will be used for purposes that entail such human rights abuses, it is appropriate to provide for the immediate application of the relevant Commission act, where, in the case of amendment of Annex II or III to this Regulation, there are imperative grounds of urgency for such amendment. In order to allow the Union to respond quickly when one or more third countries either approve certain goods for use for capital punishment, or accept or violate an international commitment to abolish capital punishment for all crimes, it is appropriate to provide for the immediate application of the relevant Commission act, where, in the case of amendment of Annex IV or V to this Regulation, imperative grounds of urgency so require. Where the urgency procedure is followed, it is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.

(48) A coordination group should be established. The group should serve as a platform for Member States' experts and the Commission to exchange information on administrative practices and to discuss questions of interpretation of this Regulation, technical issues with respect to the goods listed, developments related to this Regulation and any other questions that may arise. The group should, in particular, be able to discuss issues related to the nature and the intended effect of goods, the availability of goods in third countries and the question whether goods are specifically designed or modified for capital punishment or for torture or other cruel, inhuman or degrading treatment or punishment. If the Commission decides to consult the group when preparing delegated acts, it should do so in accordance with the principles laid down in the Inter-institutional Agreement of 13 April 2016 on Better Law-Making.

²⁷ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

²⁸ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

²⁹ OJ L 123, 12.5.2016, p.1.

Preamble

(49) The Commission does not procure equipment for law enforcement purposes since it is not responsible for maintenance of law and order, proceedings in criminal matters or the enforcement of judicial decisions in criminal matters. Therefore, a procedure should be established to ensure that the Commission receives information on non-listed law enforcement equipment and products marketed in the Union in order to ensure that the lists of goods whose trade is prohibited or controlled are updated to take account of new developments. When addressing its request to the Commission, the requesting Member State should forward its request to add goods to Annex II, to Annex III or to Annex IV to this Regulation to other Member States.

(50) The measures of this Regulation are intended to prevent both capital punishment and torture and other cruel, inhuman or degrading treatment or punishment in third countries. They comprise restrictions on trade with third countries in goods that could be used for the purpose of capital punishment or for the purpose of torture and other cruel, degrading or inhuman treatment or punishment. It is not considered necessary to establish similar controls on transactions within the Union as, in the Member States, capital punishment does not exist and Member States will have adopted appropriate measures to outlaw and prevent torture and other cruel, inhuman or degrading treatment or punishment.

(51) The Guidelines to EU Policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment state that, in order to meet the objective of taking effective measures against torture and other cruel, inhuman or degrading treatment or punishment, measures should be taken to prevent the use, production and trade of equipment which is designed to inflict torture or other cruel, inhuman or degrading treatment or punishment. It is up to the Member States to impose and enforce the necessary restrictions on the use and production of such equipment.

(52) The Commission and the Member States should inform each other of the measures taken under this Regulation and of other relevant information at their disposal in connection with this Regulation.

(53) Member States should lay down rules on penalties applicable to infringements of the provisions of this Regulation and ensure that they are implemented. Those penalties should be effective, proportionate and dissuasive,

Article 1

HAVE ADOPTED THIS REGULATION:

CHAPTER I: Subject matter, scope and definitions

Article 1 Subject matter

This Regulation lays down Union rules governing trade with third countries in goods that could be used for the purpose of capital punishment or for the purpose of torture or other cruel, inhuman or degrading treatment or punishment, and rules governing the supply of brokering services, technical assistance, training and advertising related to such goods.

Comment:

The scope of this Regulation covers imports, exports, technical assistance, brokering, training and advertising of torture-related goods and technology outward or inward the European Union. Certain transit operations are prohibited by article 5. Provisions to rule advertising have no equivalent in other legislation related to other categories of sensitive items like dual use items or weapons. Hence, the transfers between Member States are not submitted to authorisation.

Article 2

Article 2 Definitions

For the purposes of this Regulation:

(a) “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from that person or from a third person information or a confession, punishing that person for an act that either that person or a third person has committed or is suspected of having committed, or intimidating or coercing that person or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted either by or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity. It does not, however, include pain or suffering arising only from, inherent in or incidental to, lawful penalties. Capital punishment is not deemed a lawful penalty under any circumstances;

Comment:

The definition is largely inspired from the one proposed by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Amendments provided by the EU Regulation concern the recognition that capital punishment could not be under any circumstances a lawful penalty.

(b) “other cruel, inhuman or degrading treatment or punishment” means any act by which pain or suffering attaining a minimum level of severity, whether physical or mental, is inflicted on a person, when such pain or suffering is inflicted either by or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity. It does not, however, include pain or suffering arising only from, inherent in or incidental to, lawful penalties. Capital punishment is not deemed a lawful penalty under any circumstances;

(c) “law enforcement authority” means any authority responsible for preventing, detecting, investigating, combating and punishing criminal offences, including, but not limited to, the police, any prosecutor, any judicial authority, any public or private prison authority and, where appropriate, any of the state security forces and military authorities;

(d) “export” means any departure of goods from the customs territory of the Union, including the departure of goods that requires a customs declaration and the departure of goods after their storage in a free zone within the meaning of Regulation (EU) No 952/2013 of the European Parliament and of the Council³⁰;

Comment:

This Regulation does not establish specific provisions for “temporary export” of items. Temporary exports concern transfers of controlled items for a fair or an exhibition that afterwards would be re-imported to the EU without any changes. Such transfer should normally be submitted to the standard export control rules. Therefore, temporary export of items listed in Annex III could be

³⁰ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

Article 2

authorized but for items listed in Annex III, it is prohibited unless it will have the exclusive purpose of public display in a museum in view of their historic significance (see article 3.2).

(e) “import” means any entry of goods into the customs territory of the Union, including temporary storage, the placing in a free zone, the placing under a special procedure and the release for free circulation within the meaning of Regulation (EU) No 952/2013;

(f) “Technical assistance” means any technical support related to repairs, development, manufacture, testing, maintenance, assembly or any other technical service, and may take forms such as instruction, advice, training, transmission of working knowledge or skills or consulting services. Technical assistance includes verbal forms of assistance and assistance provided by electronic means;

(g) “Museum” means a non-profit making, permanent institution in the service of society and of its development, and open to the public, which acquires, conserves, researches, communicates and exhibits, for purposes of study, education and enjoyment, material evidence of people and their environment;

(h) “competent authority” means an authority of one of the Member States, as listed in Annex I, which is, in accordance with Article 20, entitled to make a decision on an application for an authorisation or to prohibit an exporter from using the Union general export authorisation;

(i) “Applicant” means

1. the exporter, in the case of exports referred to in Article 3,11 or 16;
2. the natural or legal person, entity or body transporting the goods within the customs territory of the Union, in the case of transit referred to in Article 5;
3. the supplier of technical assistance, in the case of supplies of technical assistance referred to in Article 3;
4. the museum that will display the goods, in the case of imports and supplies of technical assistance referred to in Article 4;
5. the supplier of technical assistance or the broker, in the case of supplies of technical assistance referred to in Article 15 or brokering services referred to in Article 19;

Comment:

The term applicant has been adapted to the extension of the scope introduced by Regulation 1236/2016.

(j) “customs territory of the Union” means the territory within the meaning of Article 4 of Regulation (EU) No 952/2013;

Complementary information:

1. The customs territory of the Union shall comprise the following territories, including their territorial waters, internal waters and airspace:

- *the territory of the Kingdom of Belgium,*
- *the territory of the Republic of Bulgaria,*

Article 2

- *the territory of the Czech Republic,*
- *the territory of the Kingdom of Denmark, except the Faroe Islands and Greenland,*
- *the territory of the Federal Republic of Germany, except the Island of Heligoland and the territory of Büsingen (Treaty of 23 November 1964 between the Federal Republic of Germany and the Swiss Confederation),*
- *the territory of the Republic of Estonia,*
- *the territory of Ireland,*
- *the territory of the Hellenic Republic,*
- *the territory of the Kingdom of Spain, except Ceuta and Melilla,*
- *the territory of the French Republic, except the French overseas countries and territories to which the provisions of Part Four of the TFEU apply,*
- *the territory of the Republic of Croatia,*
- *the territory of the Italian Republic, except the municipalities of Livigno and Campione d'Italia and the national waters of Lake Lugano which are between the bank and the political frontier of the area between Ponte Tresa and Porto Ceresio,*
- *the territory of the Republic of Cyprus, in accordance with the provisions of the 2003 Act of Accession,*
- *the territory of the Republic of Latvia,*
- *the territory of the Republic of Lithuania,*
- *the territory of the Grand Duchy of Luxembourg,*
- *the territory of Hungary,*
- *the territory of Malta,*
- *the territory of the Kingdom of the Netherlands in Europe,*
- *the territory of the Republic of Austria,*
- *the territory of the Republic of Poland,*
- *the territory of the Portuguese Republic,*
- *the territory of Romania,*
- *the territory of the Republic of Slovenia,*
- *the territory of the Slovak Republic,*
- *the territory of the Republic of Finland,*
- *the territory of the Kingdom of Sweden, and*
- *the territory of the United Kingdom of Great Britain and Northern Ireland and of the Channel Islands and the Isle of Man³¹.*

2. *The following territories, including their territorial waters, internal waters and airspace, situated outside the territory of the Member States shall, taking into account the conventions and treaties applicable to them, be considered to be part of the customs territory of the Union:*

(a) FRANCE

The territory of Monaco as defined in the Customs Convention signed in Paris on 18 May 1963 (Journal officiel de la République française (Official Journal of the French Republic) of 27 September 1963, p. 8679);

(b) CYPRUS

³¹ This provision no longer applies since the EU Treaties ceased to apply to the United Kingdom, as a consequence of Brexit. However, there is a transition period until the end of 2020 while the UK and EU negotiate additional arrangements. New rules will take effect on 1 January 2021.

Article 2

The territory of the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia as defined in the Treaty concerning the Establishment of the Republic of Cyprus, signed in Nicosia on 16 August 1960 (United Kingdom Treaty Series No 4 (1961) Cmnd. 1252).

(k) “brokering services” means:

- (1) the negotiation or arrangement of transactions for the purchase, sale or supply of relevant goods from a third country to any other third country, or
- (2) the selling or buying of relevant goods that are located in a third country for their transfer to another third country.

For the purposes of this Regulation the sole provision of ancillary services is excluded from this definition. Ancillary services are transportation, financial services, insurance or re-insurance, or general advertising or promotion;

Comment:

Generally speaking, the exclusion of ancillary services from the scope of brokering services can be considered as a loophole of the Regulation. As concerns EU law, ancillary services are regularly covered by Council decisions implementing resolutions of the UN Security Council on restrictive measures against third countries. These provisions do not explicitly include nor exclude brokering activities related to ancillary services. The Council uses more vague wording and speaks about “direct or indirect” supply of controlled items. As long as brokering activities consist in an indirect supply of items including transport and financial services, brokering of ancillary services could be considered as covered by these specific Council decisions as it is, for example, the case for the Council Decision 2011/273/CFSP of 9 May 2011 concerning restrictive measures against Syria³², Article 1.2:

“it shall not apply to:

- a) Provide, directly or indirectly, technical assistance, brokering services or other services related to the items referred to in paragraph 1 or related to the provision, manufacture, maintenance and use of such items, to any natural or legal person, entity or body in, or for use in, Syria;*
- b) Provide, directly or indirectly, financing or financial assistance related to the items referred to in paragraph 1, including in particular grants, loans and export credit insurance, for any sale, supply, transfer or export of such items, or for the provision of related technical assistance, brokering services or other services to any natural or legal person, entity or body in, or for use in, Syria;*
- c) Participate, knowingly and intentionally, in activities, the object or effect of which is to circumvent the prohibitions referred to in points (a) or (b).”*

Finally, Member States have the possibility to adopt unilaterally or maintain national measures restricting ancillary services (transportation, financial services, insurance or re-insurance, or general advertising or promotion) of certain items (see article 10).

³²Council Decision 2011/273/CFSP of 9 May 2011 concerning restrictive measures against Syria (OJ, L 121, 10.05.2011, p. 11).

Article 2

Comment:

Brokering services carried out by an EU broker (established in or resident of the EU) when he or she is travelling outside of the EU and if the transaction is not accounted in the EU will not be ruled by this Regulation.

(l) “broker” means any natural or legal person, entity or body, including a partnership, resident or established in a Member State that supplies services defined under point (k) from within the Union; any natural person having the nationality of a Member State, wherever resident, who supplies such services from within the Union; and any legal person, entity or body incorporated or constituted under the law of a Member State, wherever established, that supplies such services from within the Union;

(m) “supplier of technical assistance” means any natural or legal person, entity or body, including a partnership, resident or established in a Member State that supplies technical assistance defined under point (f) from within the Union; any natural person having the nationality of a Member State, wherever resident, who supplies such assistance from within the Union; and any legal person, entity or body incorporated or constituted under the law of a Member State, wherever established that supplies such assistance from within the Union;

(n) “exporter” means any natural or legal person entity or body, including a partnership, on whose behalf an export declaration is made, that is to say the person, entity or body, who, at the time when the export declaration is accepted, holds a contract with the consignee in the third country concerned and has the necessary power for determining the sending of the goods out of the customs territory of the Union. If no such contract has been concluded or if the holder of that contract does not act on its own behalf, the exporter means the person, entity or body who has the necessary power for determining the sending of the goods out of the customs territory of the Union. Where the benefit of a right to dispose of the goods belongs to a person, entity or body resident or established outside the Union pursuant to that contract, the exporter shall be considered to be the contracting party resident or established in the Union;

(o) “Union General Export Authorisation” means an authorisation for exports as defined under point (d) to certain countries which is available to all exporters who respect conditions and requirements for its use as listed in Annex V;

(p) “individual authorisation” means an authorisation granted to:

1. one specific exporter for exports as defined under point (d) to one end-user or consignee in a third country and covering one or more goods;
2. one specific broker for the supply of brokering services as defined under point (k) to one end-user or consignee in a third country and covering one or more goods; or
3. a natural or legal person, entity or body transporting goods within the customs territory of the Union for transit as defined under point (s);

Article 2

Comment:

The supply of technical assistance does not seem to fall under the scope of individual authorisation as defined by this provision. However, article 19 submits to authorisation the supply of technical assistance. If the category of authorisation is not mentioned, the wording used by the article clearly refers to individual authorisation.

(q) “global authorisation” means an authorisation granted to one specific exporter or broker in respect of a type of goods listed in Annex III or in Annex IV, which may be valid for:

1. exports as defined under point (d) to one or more specified end-users in one or more specified third countries;
2. exports as defined under point (d) to one or more specified distributors in one or more specified third countries, where the exporter is a manufacturer of goods included in point 3.2 or 3.3. of Annex III or in Section 1 of Annex IV;
3. the supply of brokering services related to transfers of goods which are located in a third country, to one or more specified end-users in one or more specified third countries;
4. the supply of brokering services related to transfers of goods which are located in a third country, to one or more specified distributors in one or more specified third countries, where the broker is a manufacturer of goods included in point 3.2 or 3.3. of Annex III or in Section 1 of Annex IV;

Comment:

The supply of technical assistance and transit operations does not seem to fall under the scope of individual authorisation as defined by this provision. Therefore, the granting of a global authorisation for such transactions seems not possible.

(r) “distributor” means an economic operator performing wholesale activities in relation to goods listed in point 3.2 or 3.3 of Annex III or in section 1 of Annex IV, such as procuring such goods from manufacturers or holding, supplying or exporting such goods; wholesale activities of such goods do not include procurement by either a hospital, a pharmacist or a medical professional for the sole purpose of supplying such goods to the public;

(s) “transit” means a transport within the customs territory of the Union of non-Union goods which pass through the customs territory of the Union with a destination outside the customs territory of the Union.

Comment:

The Regulation does not make the difference between transit and transshipment. Therefore, both operations are included and potentially submitted to authorisation.

Article 3

CHAPTER II: Goods which have no practical use other than for the purposes of capital punishment, torture and other cruel, inhuman or degrading treatment or punishment

Type of Control	Content	Reference
Export Prohibition	<p>Goods listed in Annex II</p> <p>Supply of technical assistance related to goods listed in Annex II.</p> <p>Derogation if demonstrated that goods will be used for the exclusive purpose of public display in a museum in view of their historic significance.</p>	Regulation Article 3
Import Prohibition	<p>Goods listed in Annex II.</p> <p>Acceptance of technical assistance related to goods listed in Annex II.</p> <p>Derogation if demonstrated that the goods will be used for the exclusive purpose of public display in a museum in view of their historic significance.</p>	Regulation Article 4
Transit Prohibition	<p>Goods listed in Annex II.</p> <p>Derogation if demonstrated that the goods will be used for the exclusive purpose of public display in a museum in view of their historic significance.</p>	Regulation Article 5
Prohibition of Brokering Services	<p>To any person, entity or body in a third country of goods listed in Annex II.</p>	Regulation Article 6
Prohibition of Training	<p>Training related to goods listed in Annex II.</p>	Regulation Article 7
Prohibition of Trade Fairs in the EU	<p>Display or offer for sale any of the goods listed in Annex II, unless it is demonstrated that, given the nature of the exhibition or fair, such display or offering for sale is neither instrumental in nor promotes the sale or supply of the relevant goods to any person, entity or body in a third country</p>	Regulation Article 8
Prohibition of Advertising	<p>Buying selling in third country advertising space in print media or on the Internet or advertising time on television or radio in relation to goods listed in Annex II.</p>	Regulation Article 9

Article 3

Article 3 Export prohibition

1. Any export of goods listed in Annex II, shall be prohibited, irrespective of the origin of such goods.

Annex II shall comprise goods which have no practical use other than for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment.

A supplier of technical assistance shall be prohibited from supplying technical assistance related to goods listed in Annex II to any person, entity or body in a third country, whether for consideration or not.

2. By way of derogation from paragraph 1, the competent authority may authorise an export of goods listed in Annex II, and the supply of related technical assistance, if it is demonstrated that, in the country to which the goods will be exported, such goods will be used for the exclusive purpose of public display in a museum in view of their historic significance.

Article 3

Countries	Criteria considered by Member States to grant or not the export authorisation (Art. 3. 2)
Austria	<p style="text-align: center;">YES</p> <p>The criteria of Art. 3 through 12 of the Austrian Foreign Economy Act are applicable including the criterion concerning human rights (no use for internal repression or serious human rights violations) and the criterion concerning a deviation for the purposes of human rights violations.</p>
Belgium	<p style="text-align: center;">NO</p> <p>No formal criteria. However, the FPS Economy has not received any application for export of such goods.</p>
Bulgaria	<p style="text-align: center;">YES</p> <p>According to Art. 3, par. 1 of the Act of implementation of Council Resolution No 1236/2005, the persons applying for issuing an authorization shall submit to the Ministry of Economy an application and the following documents:</p> <ol style="list-style-type: none"> 1. Filled in form model - Annex V of Regulation 1236/2005; 2. Copy of the document certifying the technical and the functional characteristics of the product; 3. Import authorization and/or a document by the end user certifying the final end use of the goods; 4. Copy of the document confirming the foreign trade relations between the transaction's parties. <p>So far the Ministry of Economy has not received any application for export of such goods.</p>
Croatia	<p style="text-align: center;">YES</p> <p>In the process of issuing export or import license for goods listed in Annex II. Regulation (EC) 1236/2005 State office will request a confirmation from the Ministry of Culture that the export of the goods in accordance with Article 3 paragraph 2, and imports of goods in accordance with Article 4 paragraph 2 of the Council Resolution (EC) No 1236/2005.</p> <p>If the Ministry of Culture does not submit a confirmation within 15 days from receipt of the request for confirmation and does not request an extension of this</p>

Article 3

	time period, it shall be deemed that the export of the goods is in accordance with Article 3 paragraph 2, and imports of goods in accordance with Article 4 paragraph 2 of the Council Resolution (EC) No 1236/2005.
Cyprus	NO
Denmark	NO
Estonia	NO No defined criteria. As the regulation stipulates, the exporter must prove that these goods will be used for the exclusive purpose of public display in a museum in view of their historic significance.
France	YES Throughout an inter-ministerial consultation by Ministry of Internal Affairs, Ministry of Foreign Affairs and Ministry of Defence.
Germany	YES The criteria are the same that the one defined by Article 6 of this Council Regulation.
Greece	NO Import license of the competent authority of the country of destination is required. No specific criteria defined. Case by case examination and decision.
Hungary	NO Hungary does not apply derogation (Art 3.2) in its national Legislation to the general export prohibition.
Ireland	NO The Department of Jobs, Enterprise and Innovation has not received an application for authorization to export goods in Annex II or to supply related technical assistance. Should such an application be received in the future it will be reviewed on a case-by-case basis in consultation with other relevant Government Departments and Bodies.
Italy	In granting such a kind of license, Italy carefully considers if the above-mentioned condition for the item of being displayed in a museum will be respected. An End User Statement from the relevant museum is required.

Article 3

Latvia	<p style="text-align: center;">YES</p> <p>Additional criteria is defined by the Regulation of Cabinet of Ministers of the Republic of Latvia No 927 <i>Procedures for the Issuance of Export and Import Authorizations for Goods, Which Could be Used for Capital Punishment, Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment</i> (adopted on 11.11.2008). According to Article 5 of Council Regulation No. 1236/2005, an applicant (legal or natural person) must provide: an export transaction contract or its copy, a confirmation of the end-use – if the goods are going to be exhibited in a museum and a confirmation that the goods will be used for the declared purposes only and will not be utilised for torture. Contents of a confirmation of the end-use is further explained in Article 6 of the Regulation, where, apart from personal and contact information of end user of the goods and the state of end-use, also a reference to the contract by and between the exporter of goods and the end user of the goods and a confirmation that the goods will be used for the declared purposes only and will not be utilised for torture, is required. Also an official agreement between museums of Latvia and destination country (according to the Article 91 of the Regulation of Cabinet of Ministers of the Republic of Latvia No 956 (adopted on 21.11.2006) <i>Regulations Regarding the National Holdings of Museums</i> may provide basis for permitting an export as a confirmation of end-use of goods.</p>
Lithuania	<p>According to the paragraph 7.5 of the Order No 5-V-203 confirmed on March 29th, 2006 by Police Commissioner General of Lithuania it is required to present document proving that goods will be used for the exclusive purpose of public display in a museum in view of their historic significance.</p>
Luxembourg	NO
Netherlands	<p style="text-align: center;">NO</p> <p>In addition to the criteria mentioned in Article 6 of the Regulation, no criteria have been predefined in national legislation. Authorities do consider several ‘relevant considerations’ when deciding upon a license application. These considerations concern end-user, type of end-use, risk of diversion, considerations of national foreign and security policy and international obligations and commitments.</p>

Article 3

Poland	<p style="text-align: center;">YES</p> <p>Goods Ordinance of the Minister of Economy of 7 June 2006 on import licenses from or to a third country of certain goods which could be used for punishment or torture (Journal of Laws of 2006 No.118, poz.806). The application for a permit on export of goods listed in Annex II of Council Resolution No 1236/2005 must be accompanied by the end-user's declaration containing:</p> <ul style="list-style-type: none">- a name of the final destination's country;- an end-user's name and address;- an description, quantity and value of exported commodity;- end-uses' declaration;- list of intermediary customer and purchasers. <p>Regarding export of goods to the third county, an and-user declaration shall be approved by Poland-based competent diplomatic mission or consular post of particular third country.</p> <p>To the application for a permit on export of goods, besides listed above documents, applicant shall attach:</p> <p>1) One of the following documents:</p> <ul style="list-style-type: none">a) The copy of a agreement with third-country customer, to whom the goods shall be exported;b) The copy of the legal right to dispose of a commodity for export, provided that the applicant is entitled to dispose of this commodity;c) The copy of concluded agreement with a person who is entitled to dispose of this commodity, authorizing its export, along with a copy of document corroborating the legal right of this person to dispose of a commodity which is the subject of the application;d) A power of attorney issued by a person who has the legal right to dispose of this commodity, along with a document corroborating the legal right to dispose of this commodity by a principal; <p>2) Concerning an application for export of goods, a statement of a person having the right to make a declaration of intent on behalf of museum, that exported goods, in the view of their historic significance, are for museum purposes only, is also required.</p> <p>Technical assistance Ordinance of the Minister of Economy of 7 June 2006 on licenses delivering or receiving technical assistance of certain goods which could be used for punishment or torture (Journal of Laws of 2006 No.118, poz.807). For the application for an export authorisation of goods the following documents must be attached:</p> <ul style="list-style-type: none">1) A statement of a person having the right to make a declaration of intent on behalf of museum, that exported goods in the view of their historic significance are for museum purposes only;2) An authenticated by a notary or competent authority certified true copy of an agreement with museum on provision of technical assistance.
--------	---

Article 3

	Provided that the technical assistance would be provided to the third country from the customs territory of Community, the statement must be approved by Poland-based competent diplomatic mission or consular post of this country.
Portugal	NO
Slovakia	YES Criteria are defined by Articles 3, 4 and 5 of Act 474/2007.
Slovenia	NO In the case of derogation from paragraph 1 Article 3 or paragraph 1 Article 4 of Council Regulation 1236/2005/EC, the criteria for issuing an authorisation are the same as the one defined in Article 6 of Council Regulation 1236/2005/EC and fulfilment of conditions set in paragraph 2 of Article 3 and paragraph 2 of Article 4 of Council Regulation 1236/2005/EC.
Sweden	NO

Article 4

Article 4 Import prohibition

1. Any import of goods listed in Annex II, shall be prohibited, irrespective of the origin of such goods.

The acceptance by a person, entity or body in the Union of technical assistance related to goods listed in Annex II, supplied from a third country, whether for consideration or not, by any person, entity or body shall be prohibited.

2. By way of derogation from paragraph 1, the competent authority may authorise an import of goods listed in Annex II, and the supply of related technical assistance, if it is demonstrated that, in the Member State of destination, such goods will be used for the exclusive purpose of public display in a museum in view of its historic significance.

Comment:

As defined by Article 2(d) and (e), the export and import prohibition concerns only transfers outward and inward the European Union. Hence, the transfers between Member States are not subjected to such prohibition.

Article 5

Article 5 Prohibition of transit

1. Any transit of goods listed in Annex II shall be prohibited.
2. By way of derogation from paragraph 1, the competent authority may authorise a transit of goods listed in Annex II, if it is demonstrated that, in the country of destination, such goods will be used for the exclusive purpose of public display in a museum in view of their historic significance.

Article 6

Article 6 Prohibition of brokering services

A broker shall be prohibited from supplying to any person, entity or body in a third country brokering services in relation to goods listed in Annex II, irrespective of the origin of such goods.

Article 7

Article 7 Prohibition of training

A supplier of technical assistance or a broker shall be prohibited from supplying or offering to any person, entity or body in a third country training on the use of goods listed in Annex II.

Comment:

It was rather unclear why an article has been dedicated to training. It was our understanding that such activity is a subcategory of technical assistance and therefore will be prohibited under article 3.

Most of international Trade Control Regime have a similar understanding of the term. E.g. the Nuclear Suppliers Group in the Annex of its Guidelines 254/Part 2 defined Technical assistance has *forms such as: instruction, skills, training, working knowledge, consulting services.*

Moreover, The EU shares this international understanding. E.g. EU Council Regulation 428/2009 of May 5 2009, Definition of terms used in this Annex.

Article 8

Article 8 Trade fairs

It shall be prohibited for any natural or legal person, entity or body, including a partnership, whether resident or established in a Member State or not, to display or offer for sale any of the goods listed in Annex II in an exhibition or fair taking place in the Union, unless it is demonstrated that, given the nature of the exhibition or fair, such display or offering for sale is neither instrumental in nor promotes the sale or supply of the relevant goods to any person, entity or body in a third country.

Comment:

It shall be noted that this article refers to trade fairs taking place in the EU. In fact, trade fairs taking place outside the EU are covered by the general export prohibition principle.

Article 9

Article 9 Advertising

It shall be prohibited for any natural or legal person, entity or body, including a partnership, resident or established in a Member State that sells or purchases advertising space or advertising time from within the Union, for any natural person having the nationality of a Member State that sells or purchases advertising space or advertising time from within the Union, and for any legal person, entity or body incorporated or constituted under the law of a Member State, that sells or purchases advertising space or advertising time from within the Union, to sell to or purchase from any person, entity or body in a third country advertising space in print media or on the Internet or advertising time on television or radio in relation to goods listed in Annex II.

Comment:

The provision has almost no equivalent in other area of strategic trade control. It may be due to the specificity of the scope. With nuclear, chemical and biological weapons (WMD), death penalty related items are categories that includes a general trade prohibition for certain items. However, if the use and trade of WMD are prohibited by almost universal international treaties (NPT, CWC, BWC), the death penalty is still in numerous countries sentenced and executed. Therefore, advertising in those countries is possible. To conform its international trade policy to its death penalty universal abolition principle, it was necessary to include this provision in the EU Regulation.

Article 10

Article 10 National measures

1. Without prejudice to the applicable Union rules, including the prohibition of discrimination on grounds of nationality, Member States may adopt or maintain national measures restricting transportation, financial services, insurance or re-insurance, or general advertising or promotion in relation to goods listed in Annex II.
2. Member States shall notify the Commission of any measures adopted pursuant to paragraph 1, or amendments and repeals thereof, before they enter into force.

Comment:

The possibility to adopt national measures is not confined to one category of operations (export, import, ...).

Existing measures have not yet been published by the EU.

Article 11

CHAPTER III: Goods that could be used for the purpose of torture or other cruel, inhuman or degrading treatment or punishment

Type of Control	Content	Reference
Export	<p>Authorisation required for</p> <ul style="list-style-type: none"> - Goods listed in Annex III - Goods listed in Annex IIIa (could be used for the purpose of capital punishment and have been approved or actually used for capital punishment by one or more third countries that have not abolished capital punishment) 	Regulation Article 11, 16
Export EUGEA	Union General Export Authorisation available for goods listed in Annex V.	Regulation article 20
Import Prohibition	<p>Goods listed in Annex II.</p> <p>Acceptance of technical assistance related to goods listed in Annex II.</p> <p>Derogation if demonstrated that the goods will be used for the exclusive purpose of public display in a museum in view of their historic significance.</p>	Regulation Article 4
Transit	<p>Not submitted to authorisation for goods which only pass through the customs territory of the Union, namely those which are not assigned a customs approved treatment or use other than the external transit procedure under Article 226 of Regulation (EU) No 952/2013, including storage of non-Union goods in a free zone</p> <p>Exception for Annex IV and if transiter knows that any part of a shipment of such goods is intended to be used for capital punishment in a third country</p>	Regulation Article 3, 16, 18
Brokering Services	Brokering services related to goods listed in Annex III and IV, irrespective of the origin of such goods.	Regulation Article 15, 19
Technical assistance	Technical assistance related to goods listed in Annex III and IV, irrespective of the origin of such goods	Regulation Article 15, 19

Article 11

Export		Regulation Article 16
National measures	Member State may adopt or maintain a authorisation on the export of handcuffs which have an overall dimension including chains, measured from the outer edge of one cuff to the outer edge of the other cuff, exceeding 240 mm when locked	Regulation Article 14.2
National measures	Member State may adopt or maintain a prohibition on the export and import of leg irons, gang chains and portable electric shock devices	Regulation Article 14.1

Article 11 Export authorisation requirement

1. For any export of goods listed in Annex III, an authorisation shall be required, irrespective of the origin of such goods. However, no authorisation shall be required for goods which only pass through the customs territory of the Union, namely those which are not assigned a customs approved treatment or use other than the external transit procedure under Article 226 of Regulation (EU) No 952/2013, including storage of non-Union goods in a free zone.

Annex III shall only comprise the following goods that could be used for the purpose of torture or other cruel, inhuman or degrading treatment or punishment:

- (a) goods which are primarily used for law enforcement purposes; and
- (b) goods which, taking into account their design and technical features, present a material risk of use for torture or other cruel, inhuman or degrading treatment or punishment.

Annex III shall not include:

- (a) firearms controlled by Regulation (EU) No 258/2012;
- (b) dual-use items controlled by Regulation (EC) No 428/2009;
- (c) goods controlled in accordance with Common Position 2008/944/CFSP.

Comment:

Categories of items that could be included in Annex III have been precisely detailed compared to the previous version of the Regulation. It could be an indirect consequence of the empower of the Commission to amend the list of goods detailed in Annex III (see article 24). Council and Parliament intend to strictly circumvent the action of the Commission to goods which are primarily used for law enforcement purposes and goods which, taking into account their design and technical features, present a material risk of use for torture or other cruel, inhuman or degrading treatment or punishment.

2. Paragraph 1 shall not apply to exports to those territories of Member States which are both listed in Annex VI and are not part of the customs territory of the Union, provided that the goods

Article 11

are used by an authority in charge of law enforcement in both the country or territory of destination and the metropolitan part of the Member State to which that territory belongs. Customs or other relevant authorities shall have the right to verify whether this condition is met and may decide that, pending such verification, the export shall not take place.

Comment:

Territories listed in Annex VI are following:

- **Denmark:** Greenland;
- **France:** New Caledonia and dependencies, French Polynesia, French Southern and Antarctic Territories, Wallis and Futuna Islands, St Pierre and Miquelon;
- **Germany:** Büsingen.

3. Paragraph 1 shall not apply to exports to third countries, provided that the goods are used by military or civil personnel of a Member State, if such personnel is taking part in an EU or UN peace keeping or crisis management operation in the third country concerned or in an operation based on agreements between Member States and third countries in the field of defence. Customs and other relevant authorities shall have the right to verify whether this condition is met. Pending such verification, the export shall not take place.

Comment:

For example, COUNCIL REGULATION (EC) No 765/2006 of 18 May 2006 concerning restrictive measures in respect of Belarus³³ (lastly amended by Council Decision (CFSP) 2020/214 of 17 February 2020³⁴) establishes a prohibition *to sell, supply, transfer or export, directly or indirectly, equipment which might be used for internal repression as listed in Annex III, whether or not originating in the Union, to any person, entity or body in Belarus or for use in Belarus;* (article 1a). However, this prohibition does not apply if competent authorities of Member States determine that such equipment is intended solely for humanitarian or protective use.

See article below:

Article 1a

1. It shall be prohibited:

- (a) to sell, supply, transfer or export, directly or indirectly, equipment which might be used for internal repression as listed in Annex III, whether or not originating in the Union, to any person, entity or body in Belarus or for use in Belarus;
- (b) to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibitions referred to in point (a).

³³ COUNCIL REGULATION (EC) No 765/2006 of 18 May 2006 concerning restrictive measures in respect of Belarus, OJ L 134 20.5.2006, p. 1, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02006R0765-20190709&from=EN>.

³⁴ Council Decision (CFSP) 2020/214 of 17 February 2020 extends the application of Council regulation (EC) No 765/2006 until 28 February 2021.

Article 11

2. Paragraph 1 shall not apply to protective clothing, including flak jackets and helmets, temporarily exported to Belarus by United Nations (UN) personnel, personnel of the Union or its Member States, representatives of the media or humanitarian and development workers and associated persons exclusively for their personal use.

3. By way of derogation from paragraph 1, the competent authorities in the Member States as listed in Annex II may authorise the sale, supply, transfer or export of equipment which might be used for internal repression, under such conditions as they deem appropriate, if they determine that such equipment is intended solely for humanitarian or protective use.

Article 12

Article 12 Criteria for granting export authorisations

1. Decisions on applications for authorisations in respect of the export of goods listed in Annex III shall be taken by the competent authorities, taking into account all relevant considerations, including in particular whether an application in respect of an essentially identical export has been dismissed by another Member State in the preceding three years and considerations about intended end-use and the risk of diversion.

Comment:

The term “**essentially identical**” is defined by Article 13(5) of the Dual-Use Regulation. For this Regulation an essentially identical transaction means a transaction of an item with essentially identical parameters or technical characteristics to the same end-user or consignee.

2. The competent authority shall not grant any authorisation when there are reasonable grounds to believe that goods listed in Annex III might be used for torture or other cruel, inhuman or degrading treatment or punishment, including judicial corporal punishment, by a law enforcement authority or any natural or legal person in a third country.

Comment:

The Commission has drafted a proposal for Guidance for application of articles 11 and 12 regarding the export of certain medicinal products³⁵. It aims at helping Member States’ authorities to *decide on an application for export authorisation for listed barbiturates, taking into account that certain countries and territories represent a higher risk of use for capital punishment than other countries and territories, and that normal medical use of these products does not amount to torture or cruel, inhuman or degrading treatment*. The document is not legally binding for Member States’ authorities.

It classified end-use countries into three groups (“low”, “medium” and “high risk” countries) and established a set of different conditions/criteria to authorise or not the export.

High risk countries are countries *that retains capital punishment in law as a criminal sanction and which is known to allow or use lethal injections as a method of execution*. For this group the authorisation should be denied *unless it is satisfied that adequate measures have been taken to avoid diversion to law enforcement authorities and use for capital punishment of the medicinal products*.

Low risk countries are countries *that have abolished capital punishment in law (de jure) for all crimes*. The export authorisation may be granted *after assessing the risk that the medicinal products would be transferred or supplied to a country or territory that presents a high or medium risk of use for capital punishment*.

Medium risk countries are countries *that have not abolished capital punishment in law for all crimes but which is not known to allow or use lethal injection as a method of execution*. The export authorisation may be granted *after assessing the risk that the medicinal products would be used for capital punishment in the country or territory of destination and the risk that they would be*

³⁵Commission Staff working document SEC(2011) 1624 final (20 December 2011).

Article 12

transferred or supplied to a law enforcement authority in another country or territory that presents a medium or high risk of use for capital punishment.

The competent authority shall take into account:

- (a) Available international court judgements,
- (b) Findings of the competent bodies of the UN, the Council of Europe and the EU, and reports of the Council of Europe's European Committee for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment and of the UN Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment.

Other relevant information, including available national court judgements, reports or other information prepared by civil society organisations and information on restrictions on exports of goods listed in Annexes II and III applied by the country of destination, may be taken into account.

Complementary information:

Competent UN Bodies involved in the elaboration of human rights policies can be classified according to the document that constitutes a legal base of creation thereof. These bodies benefit from a secretariat support of the Human Rights Council and Treaties Division of the Office of the High Commissioner for Human Rights.

Charter-based bodies created under the provisions of UN Charter include:

- UN Human Rights Council;
- Universal Periodic Review;
- Commission on Human Rights (replaced by the Human Rights Council);
- Special Procedures of the Human Rights Council.

Treaty-based bodies created under the international human rights treaties are represented by:

- Human Rights Committee (CCPR);
- Committee on Economic, Social and Cultural Rights (CESCR);
- Committee on the Elimination of Racial Discrimination (CERD);
- Committee on the Elimination of Discrimination against Women (CEDAW);
- Committee Against Torture (CAT) & Optional Protocol to the Convention against Torture (OPCAT) - Subcommittee on Prevention of Torture ;
- Committee on the Rights of the Child (CRC);
- Committee on Migrant Workers (CMW);
- Committee on the Rights of Persons with Disabilities (CRPD).

The **European Committee for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment (CPT)** was established by the Article 1 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment³⁶. It constitutes one of the main instruments of the Council of Europe, which seeks to guarantee the respect for and observance of human rights and the prevention of violations.

³⁶ European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment is available at: <http://www.cpt.coe.int/en/documents/ecpt.htm>.

Article 12

Experts in various fields are the members of the CPT. They precede though visits of places of detention to which they have, in principle, an unlimited access. One of the main achievements of CPT activities is the elaboration of set of standards relating to the treatment of persons deprived of their liberty. In addition, every year the CPT publishes an Annual General Report on its activities, those reports are available at: <https://www.coe.int/en/web/cpt/annual-reports>.

The UN Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment is an expert with a 3-year mandate, appointed by the United Nations Commission on Human Rights. The mandate of a Rapporteur includes following activities:

- transmitting appeals to States concerning persons suspected of being at risk of torture and communications on past cases of torture;
- undertaking country visits; and
- submitting annual reports on activities to the Human Rights Council and the General Assembly.

These reports are available at: http://ap.ohchr.org/documents/dpage_e.aspx?m=103.

Comment:

Some Member States have extended the application of the criteria established by the Council Common Position 2008/944/CFSP of 8 December 2008³⁷ defining common rules governing control of exports of military technology and equipment to the trade of goods listed in Annex III.

3. The rules laid down in the second and third subparagraphs shall apply to the verification of the intended end-use and the risk of diversion.

If the manufacturer of goods listed in point 3.2 or 3.3 of Annex III requests an authorisation for exporting such goods to a distributor, the competent authority shall make an assessment of the contractual arrangements made by the manufacturer and the distributor and of the measures that they are taking to ensure that these goods and, if applicable, the products in which they will be incorporated will not be used for torture or other cruel, inhuman or degrading treatment or punishment.

If an authorisation is requested for exporting goods listed in point 3.2 or 3.3 of Annex III to an end-user, the competent authority may, when assessing the risk of diversion, take into account the contractual arrangements that apply and the end-use statement signed by the end-user, if such a statement is provided. If no end-use statement is provided, it shall be up to the exporter to demonstrate who will be the end-user and what use will be made of the goods. If the exporter fails to provide sufficient information on the end-user and the end-use, the competent authority shall be deemed to have reasonable grounds to believe that the goods might be used for torture or other cruel, inhuman or degrading treatment or punishment.

³⁷OJ L 335, 13.12.2008, p. 99.

Article 12

Comment:

Products listed under 3.2 and 3.3 of Annex III are the two main medicinal products that are used to execute death penalty:

3.2. Pelargonic acid vanillylamide (PAVA) (CAS RN 2444-46-4) (CN code ex2924 29 98) ;

3.3. Oleoresin capsicum (OC) (CAS RN 8023-77-6) (CN code ex 3301 90 30).

4. In addition to the criteria set out in paragraph 1, when assessing an application for a global authorisation, the competent authority shall take into consideration the application by the exporter of proportionate and adequate means and procedures to ensure compliance with the provisions and objectives of this Regulation and with the terms and conditions of the authorisation.

Comment:

The objective of this paragraph is to encourage Member States to require from exporters an implementation of an effective internal compliance programme (ICP) before granting a global authorisation.

Article 13

Article 13 Prohibition of transit

A natural or legal person, entity or body, including a partnership, whether resident or established in a Member State or not, shall be prohibited from executing the transit of goods listed in Annex III, if he, she or it knows that any part of a shipment of such goods is intended to be used for torture or other cruel, inhuman or degrading treatment or punishment in a third country.

Comment:

It shall be recalled that this article refers to transit as defined in article 2: *a transport within the customs territory of the Union of non-Union goods which pass through the customs territory of the Union with a destination outside the customs territory of the Union.*

Article 14

Article 14 National measures

1. Notwithstanding the provisions in Articles 5 and 6, a Member State may adopt or maintain a prohibition on the export and import of leg irons, gang chains and portable electric shock devices.

Comment:

Several Member States have decided to implement this disposition in their national legislations, thereby prohibiting, fully or partly, the export and import of leg-irons, gang-chains and portable electric shock devices other than electric shock belts. With amendments of Annex II and III adopted by the Commission implementing Regulation in December 2011 some of those items have been included and are presently controlled by the 27 Member States.

It should be noted that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has also examined an issue of use of electrical discharge weapons (EDW) by the police law enforcement official and the presence of such devices in the places of detention³⁸.

According to the CPT, the EDW varies from electric shock batons to other handheld weapons “requiring direct contact with the person who is the intended target to weapons capable of delivering dart-like projectiles which administer an electric shock to a person located at some distance”³⁹. Even if the CPT agrees that the EDW could be useful for giving a more graduated response to dangerous situations, as well as for reducing recourse to firearms, these devices might also cause pain and be used in an abusive fashion.

Therefore, the use of electric discharge weapons should be “subject to the principles of **necessity, subsidiarity, proportionality, advance warning** (where feasible) and **precaution**”⁴⁰ and should be limited to situations “where there is a **real and immediate threat to life or risk of serious injury**”⁴¹.

However, the CPT comes out clearly against:

- the issuing of EDW to services responsible for deportation operations vis-à-vis immigration detainees;
- the use of electric discharge weapons in prison/closed psychiatric settings, except very exceptional circumstances.

Where electrical discharge weapons are to be used when effecting arrests, their resort must be strictly circumscribed. Consequently, the Committee emphasizes that the services, which will have such weapons at their disposal, should have received detailed instructions and appropriate training. Moreover, the CPT considers that anyone against whom an EDW has been used should, in all cases, be seen by a doctor and, where necessary, taken to hospital⁴².

³⁸ See 20th General Report on the CPT’s Activities (2009-2010), available at: <http://www.cpt.coe.int/en/docsannual.htm>.

³⁹ See point 65 of the 20th General Report on the CPT’s Activities (2009-2010).

⁴⁰ See point 69 of the 20th General Report on the CPT’s Activities (2009-2010).

⁴¹ See point 70 of the 20th General Report on the CPT’s Activities (2009-2010).

⁴² See point 81 of the 20th General Report on the CPT’s Activities (2009-2010).

Article 14

Countries	Prohibition on the export and/or import of leg iron, gang chains and portable electric shock devices (Art. 14)
Austria	NO
Belgium	<p style="text-align: center;">YES</p> <p>The Flemish Arms Trade Law of 15th June 2012 prohibits the import of all portable electric shock devices which can make persons defenceless or which can inflict pain, except for medical or veterinary devices (exceptions apply to allow official use). For the Walloon Region, according to the Arms Trade Decree of 21st June 2012, the import, export and transit of any type of portable electric shock devices, except for medical or veterinary tools, that might disable persons or inflict pain upon them, is prohibited.</p>
Bulgaria	NO
Croatia	NO
Cyprus	NO
Denmark	NO
Estonia	<p style="text-align: center;">NO</p> <p>Under national Weapons Act, the domestic use of electric shock weapons for civilian purposes is prohibited. The import and export of leg irons, gang chains and portable electric shock devices is not prohibited.</p>
France	<p style="text-align: center;">YES</p> <p>A prohibition has been maintained under the weapon control regime for the import of electric shock devices.</p>
Germany	NO
Greece	<p style="text-align: center;">YES</p> <p>A prohibition has been maintained for the export (and authorization for the import) of handcuffs exceeding 24mm, portable electric choc devises and portable equipment for the dissemination of</p>

Article 14

	incapacitating chemical substances under National Law 2168/1993 for small arms.
Hungary	NO Same licensing principles and criteria apply as in case of military equipment (as it is listed in Government Decree No. 160/2011 in ML Chapter 25) Foreign trade with these goods will only be approved to law enforcement agencies and/or to penal institutions.
Ireland	NO
Italy	NO
Latvia	NO Latvia currently has no prohibition on the export and/or import of leg iron, gang chains portable electric shock devices in the national legislation. There have been provisions on prohibition of the export of handcuffs and leg-irons, which were adopted by decision of the Control Committee of Strategic Goods of Latvia in 1996. However, since adoption of the <i>Law On the Circulation of Goods of Strategic Significance</i> in 19.07.2007, such provisions have been deleted.
Lithuania	NO
Luxembourg	Not in the present legislation, but a new legislation is in process, where Luxembourg has foreseen to adopt a prohibition of such devices.
Netherlands	NO
Poland	NO
Portugal	NO
Slovakia	YES The export or import of leg irons, gang chains, and portable electric shock devices is only allowed with permission from the Slovak Republic in the form of a license from the Ministry of Economy of the Slovak Republic.
Slovenia	NO
Sweden	NO

Article 14

2. A Member State may impose an authorisation requirement on the export of handcuffs which have an overall dimension including chains, measured from the outer edge of one cuff to the outer edge of the other cuff, exceeding 240 mm when locked. The Member State concerned shall apply Chapter III and IV to such handcuffs.

3. Member States shall notify the Commission of any measures adopted pursuant to paragraphs 1 and 2 before they enter into force.

Article 15

Article 15 Authorisation requirement for certain services

1. An authorisation shall be required for any supply, by a supplier of technical assistance or a broker, respectively, of one of the following services to any person, entity or body in a third country, whether for consideration or not:

- (a) technical assistance related to goods listed in Annex III, irrespective of the origin of such goods; and
- (b) brokering services related to goods listed in Annex III, irrespective of the origin of such goods.

2. When deciding on applications for an authorisation for the supply of brokering services concerning goods listed in Annex III, Article 12 shall apply *mutatis mutandis*.

When deciding on applications for an authorisation for the supply of technical assistance related to goods listed in Annex III, the criteria set out in Article 12 shall be taken into account to assess:

- (a) whether the technical assistance would be supplied to a person, entity or body that might use the goods to which the technical assistance relates for torture or other cruel, inhuman or degrading treatment or punishment; and
- (b) whether the technical assistance would be used to repair, develop, manufacture, test, maintain or assemble goods listed in Annex III for, or supply technical assistance to, a person, entity or body that might use the goods to which the technical assistance relates for torture or other cruel, inhuman or degrading treatment or punishment.

Comment:

Criteria defined by article 12 are:

- Denials of another Member State for an essentially identical transaction;
- Grounds to believe that goods listed in Annex III might be used for torture;
- Available international court judgements;
- Findings of the competent bodies of the UN, the Council of Europe and the other international and regional organisations;
- Other relevant information, including available national court judgements, reports or other information prepared by civil society organisations and information on restrictions on exports.

3. Paragraph 1 shall not apply to the supply of technical assistance, if

- (a) the technical assistance is supplied to a law enforcement authority of a Member State or to military or civil personnel of a Member State as described in the first sentence of Article 11(3);
- (b) the technical assistance consists of providing information that is in the public domain;

Article 15

Comment:

- “**In the public domain**” should be understood as information, which has been made available without restrictions upon its further dissemination (copyright restrictions do not remove information from being in the public domain).

or

(c) the technical assistance is the minimum necessary for the installation, operation, maintenance or repair of those goods listed in Annex III whose export has been authorised by a competent authority in accordance with this Regulation.

4. Notwithstanding paragraph 1, a Member State may maintain a prohibition on the supply of brokering services related to leg irons, gang chains and portable electric shock devices. Where a Member State maintains such a prohibition, it shall inform the Commission if measures previously adopted and notified in accordance with Article 7a(4) of Regulation (EC) No 1236/2005 are amended or repealed.

Article 16

CHAPTER IV Goods that could be used for the purpose of capital punishment

Article 16 Export authorisation requirement

1. For any export of goods listed in Annex IV, an authorisation shall be required irrespective of the origin of such goods. However, no authorisation shall be required for goods which only pass through the customs territory of the Union, namely those which are not assigned a customs approved treatment or use other than the external transit procedure under Article 226 of Regulation (EU) No 952/2013, including storage of non-Union goods in a free zone.

Annex IV shall only comprise goods that could be used for the purpose of capital punishment and have been approved or actually used for capital punishment by one or more third countries that have not abolished capital punishment. It shall not include:

- (a) firearms controlled by Regulation (EU) No 258/2012;
- (b) dual-use items controlled by Regulation (EC) No 428/2009 and
- (c) goods controlled in accordance with Common Position 2008/944/CFSP.

2. Where the export of medicinal products requires an export authorisation pursuant to this Regulation and the export is also subject to authorisation requirements in accordance with international conventions controlling narcotic drugs and psychotropic substances, such as the 1971 Convention on Psychotropic Substances, Member States may use a single procedure to carry out the obligations imposed on them by this Regulation and by the relevant convention.

Article 17

Article 17 Criteria for granting export authorisations

1. Decisions on applications for authorisations in respect of the export of goods listed in Annex IV shall be taken by the competent authorities, taking into account all relevant considerations, including in particular whether an application in respect of an essentially identical export has been dismissed by another Member State in the preceding three years and considerations about intended end-use and the risk of diversion.
2. The competent authority shall not grant any authorisation when there are reasonable grounds to believe that the goods listed in Annex IV might be used for capital punishment in a third country.
3. The rules in the second, third and fourth subparagraphs shall apply to the verification of the intended end-use and the risk of diversion.

If the manufacturer of goods listed in section 1 of Annex IV requests an authorisation for exporting such products to a distributor, the competent authority shall make an assessment of the contractual arrangements made by the manufacturer and the distributor and of the measures that they are taking to ensure that the goods will not be used for capital punishment.

If an authorisation is requested for exporting goods listed in section 1 of Annex IV to an end user the competent authority may, when assessing the risk of diversion, take into account the contractual arrangements that apply and the end-use statement signed by the end-user, if such a statement is provided. If no end-use statement is provided, it shall be up to the exporter to demonstrate who will be the end-user and what use will be made of the goods. If the exporter fails to provide sufficient information on the end-user and the end-use, the competent authority shall be deemed to have reasonable grounds to believe that the goods might be used for capital punishment.

The Commission, in cooperation with competent authorities of the Member States, may adopt best practice guidelines on the assessment of end-use and assessing the purpose for which technical assistance would be used.

4. In addition to the criteria set out in paragraph 1, when assessing an application for a global authorisation the competent authority shall take into consideration the application by the exporter of proportionate and adequate means and procedures to ensure compliance with the provisions and objectives of this Regulation and with the terms and conditions of the authorisation.

Comment:

The objective of this paragraph is to encourage Member States to require from exporters an implementation of an effective internal compliance programme (ICP) before granting a global authorisation.

Article 18

Article 18 Prohibition of transit

A natural or legal person, entity or body, including a partnership, whether resident or established in a Member State or not, shall be prohibited from executing the transit of goods listed in Annex IV, if he, she or it knows that any part of a shipment of such goods is intended to be used for capital punishment in a third country.

Comment:

This paragraph is drafted like a catch-all clause. In principle, all goods listed in Annex IIIa transiting by the EU territory are not submitted to authorisation unless the operator knows that it will be used for capital punishment. The mechanism is regularly used by other strategic trade control regulations like the one dedicated to dual-use goods. The difficulty lays in the exact understanding of the term “knows”. If its scope might vary lightly between Member States, it usually refers to information received by the operator on usual end-user, end-use, route, carrier, destination for these goods. Operators have to assess the risk and refrain to transit if they consider that such situation is encountered. The paragraph does not establish an authorisation mechanism allowing to report the final decision on export control authorities.

Article 19

Article 19 Authorisation requirement for certain services

1. An authorisation shall be required for any supply, by a supplier of technical assistance or a broker, respectively, of one of the following services to any person, entity or body in a third country whether for consideration or not:

- (a) technical assistance related to goods listed in Annex IV, irrespective of the origin of such goods; and
- (b) brokering services related to goods listed in Annex IV, irrespective of the origin of such goods.

Comment:

It shall be noted that this paragraph refers to the export of technical assistance to third countries. The supply of technical assistance within the EU is not prohibited even if it does not include any EU participants, unless it concerns the prohibition covered by article 7.

2. When deciding on applications for an authorisation for the supply of brokering services concerning goods listed in Annex IV Article 17 shall apply mutatis mutandis.

When deciding on applications for an authorisation for the supply of technical assistance related to goods listed in Annex IV the criteria set out in Article 17 shall be taken into account to assess:

- (a) whether the technical assistance would be supplied to a person, entity or body that might use the goods to which the technical assistance relates for capital punishment; and
- (b) whether the technical assistance would be used to repair, develop, manufacture, test, maintain or assemble goods listed in Annex IV for, or supply technical assistance to, a person, entity or body that might use the goods to which the technical assistance relates for capital punishment.

3. Paragraph 1 shall not apply to the supply of technical assistance, if

- (a) the technical assistance consists of providing information that is in the public domain; or
- (b) the technical assistance is the minimum necessary for the installation, operation, maintenance or repair of those goods listed in Annex IIIa whose export has been authorised by a competent authority in accordance with this Regulation.

Article 20

CHAPTER V Authorisation procedures

Article 20 Types of authorisations and issuing authorities

1. A Union General Export Authorisation for certain exports as set out in Annex V is established by this Regulation.

Comment:

The European Union General Export Authorisation (EU GEA) is one of the essential elements of this Regulation. It constitutes a unique authorisation granted directly at the EU level. It is important to note that normally no complementary national authorisation will be necessary.

It is valid:

- for all **goods** listed in Annex III
- for **export**
- for **technical assistance** necessary for the good exported is provided by the same exporter
- for the following **destination**:

Danish territories not included in the customs territory (Faroe Islands, Greenland), French territories not included in the customs territory (French Polynesia, French Southern and Antarctic Territories, New Caledonia and Dependencies, Saint-Barthélemy, Saint Pierre and Miquelon, Wallis and Futuna Islands), Dutch territories not included in the customs territory (Aruba, Bonaire, Curaçao, Saba, Sint Eustatius, Sint Maarten) relevant British territories not included in the customs territory (Anguilla, Bermuda, Falkland Islands, Gibraltar, Montserrat, Saint Helena and Dependencies, South Georgia and the South Sandwich Islands, Turks and Caicos Islands), Albania, Andorra, Argentina, Australia, Benin, Bolivia, Bosnia and Herzegovina, Canada, Cape Verde, Colombia, Costa Rica, Djibouti, Ecuador, Former Yugoslav Republic of Macedonia, Gabon, Georgia, Guinea-Bissau, Honduras, Iceland, Kyrgyzstan, Liberia, Liechtenstein, Mexico, Moldova, Mongolia, Montenegro, Mozambique, Namibia, Nepal, New Zealand, Nicaragua, Norway, Panama, Paraguay, Philippines, Rwanda, San Marino, Serbia, Seychelles, South Africa, Switzerland (including Büsingen and Campione d'Italia), Timor-Leste, Turkey, Turkmenistan, Ukraine, Uruguay, Uzbekistan, Venezuela

The use of the EUGEA is **prohibited** if:

- Exporter has been prohibited from using this general export authorisation due to reasonable suspicion about the exporter's **ability to comply** with the terms of this authorisation or with a provision of the export control legislation;
- Exporter **has been informed or knows** that the goods in question are or may be intended, in their entirety or in part, either for re-export to a third country or to be used for the purpose of capital punishment in a third country;
- Goods are exported to a **customs free zone or free warehouse** which is located in a destination covered by this general export authorisation;
- Exporter is the manufacturer of the medicinal products in question and has **not made a legally binding agreement** with the distributor requiring the latter to make all supplies and transfers subject to the conclusion of a legally binding agreement requiring the customer not to use, not

Article 20

- to supply if there is a risk that the goods will be intended to be used for the purpose of capital punishment and requiring the same conditions to any third party;
- Exporter is **not the manufacturer** of the medicinal products in question and has not obtained a signed **end-user declaration** from the end-user in the country of destination;
 - Exporter of medicinal products has not concluded a **legally binding agreement with the distributor** or end-user requiring to obtain **prior authorisation** from the exporter for any transfer or supply of any part of the shipment to:
 - a law enforcement authority in a country or territory that has not abolished capital punishment;
 - a natural or legal person, entity or body procuring relevant goods for or providing services involving use of such goods to such a law enforcement authority, and
 - any re-export or transfer of any part of the shipment to a country or territory that has not abolished capital punishment;
 - the exporter of goods other than medicinal **products** has not concluded a legally binding agreement as defined above with the end-user.

Exporters that use this general export authorisation EU GEA 1236/2005 shall **notify** the competent authorities of the Member State where they are resident or established of their first use of this general export authorisation no later than 30 days after the date when the first export took place. Member State may require exporters resident or established in that Member State to **register prior** to the first use of this general export authorisation. Registration shall be automatic and acknowledged by the competent authorities to the exporter without delay and in any case within ten working days of receipt.

Reporting requirements attached to the use of this general export authorisation and any additional information are defined by Member States.

The competent authority of the Member State where the exporter is resident or established can prohibit the exporter from using this authorisation, if there is reasonable suspicion about the exporter's ability to comply with the terms of this authorisation or with a provision of the export control legislation.

The competent authorities of the Member States shall exchange information on all exporters deprived of the right to use the Union General Export Authorisation, unless they determine that a specific exporter will not attempt to export goods listed in Annex IV through another Member State. A secure and encrypted system for exchange of information shall be used for this purpose.

2. An authorisation for exports other than those referred to in paragraph 1 for which an authorisation is required under this Regulation shall be granted by the competent authority of the Member State where the exporter is resident or established, as listed in Annex I. Such authorisation may be an individual or a global authorisation, if it concerns goods listed in Annex III or in Annex IV. An authorisation concerning goods listed in Annex II shall be an individual authorisation.

3. An authorisation for transit of goods listed in Annex II shall be granted by the competent authority of the Member State where the natural or legal person, entity or body transporting the goods within the customs territory of the Union is resident or established, as listed in Annex I. If that person, entity or body is not resident or established in a Member State, an authorisation shall

Article 20

be granted by the competent authority of the Member State in which the entry of goods into the customs territory of the Union takes place. Such an authorisation shall be an individual authorisation.

4. An authorisation for imports for which an authorisation is required under this Regulation shall be granted by the competent authority of the Member State where the museum is established, as listed in Annex I. An authorisation concerning goods listed in Annex II shall be an individual authorisation.

Comment:

Annex II concerns goods which have no practical use other than for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment.

5. An authorisation for the supply of technical assistance related to goods listed in Annex II shall be granted by:

(a) the competent authority of the Member State where the supplier of technical assistance is resident or established, as listed in Annex I, or, if there is no such Member State, the competent authority of the Member State of which the supplier of technical assistance is a national or under whose law it has been incorporated or constituted, if the assistance is to be supplied to a museum in a third country; or

(b) the competent authority of the Member State where the museum is established, as listed in Annex I, if the assistance is to be supplied to a museum in the Union.

6. An authorisation for the supply of technical assistance related to goods listed in Annex III or in Annex IV shall be granted by the competent authority of the Member State where the supplier of technical assistance is resident or established, as listed in Annex I, or, if there is no such Member State, the competent authority of the Member State of which the supplier of technical assistance is a national or under whose law it has been incorporated or constituted.

Comment:

Paragraphs 5 and 6 on the supply of technical assistance concern import in the EU and export out of the EU.

7. An authorisation for the supply of brokering services related to goods listed in Annex III or in Annex IV shall be granted by the competent authority of the Member State where the broker is resident or established, as listed in Annex I, or, if there is no such Member State, the competent authority of the Member State of which the broker is a national or under whose law it has been incorporated or constituted. Such an authorisation shall be granted for a set quantity of specific goods moving between two or more third countries. The location of the goods in the originating third country, the end-user and its exact location shall be clearly identified.

8. Applicants shall supply the competent authority with all relevant information required for their applications for an individual or global authorisation for exports or for brokering services, for an

Article 20

authorisation for technical assistance, for an individual import authorisation or for an individual authorisation for transit.

As regards exports the competent authorities shall receive complete information in particular on the end-user, the country of destination and the end-use of the goods.

As regards brokering services the competent authorities shall in particular receive details of the location of the goods in the originating third country, a clear description of the goods and the quantity involved, third parties involved in the transaction, the third country of destination, the end-user in that country and its exact location.

The granting of an authorisation may be subject to an end-use statement, if appropriate.

Comment:

End-use statement usually takes the form of an end-user certificate, which is a document issued by the recipient Government or by the recipient company. It contains information on the items transferred, on the exporter, on the consignee if involved, on the end-user, on the application authorised and finally a commitment of the recipient to not export or re-export the items without a prior consent of the initial exporting country. It should be noted that there is no official legally binding model for an end-user certificate. However, some international agreements, notably the Wassenaar Arrangement, give a common understanding of the information to be included in this document.⁴³

An EU example could be found for dual-use items with the best practice recommendations for elements of a Community end-use certificate adopted the Council Working Party on Dual-Use Goods in 2008. These non-legally binding recommendations were published in the C series of the *Official Journal of the European Union*; they contain information on the parties, the items and the commitments to be certified by the foreign consignee who might act as an end-user or as a trader, whole or re-seller⁴⁴.

9. By way of derogation from paragraph 8, where a manufacturer or a manufacturer's representative is to export or to sell and transfer goods included in point 3.2 or 3.3 of Annex III or in section 1 of Annex IV to a distributor in a third country, the manufacturer shall provide information on the arrangements made and the measures taken to prevent the goods included in point 3.2 or 3.3 of Annex III from being used for torture or other cruel, inhuman or degrading treatment or punishment or to prevent the goods included in section 1 of Annex IV from being used for capital punishment, on the country of destination and, if it is available, information on the end-use and the end-users of the goods.

10. Upon request of a national preventive mechanism established under the Optional Protocol to the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or

⁴³ The Wassenaar Guidelines concerning End-Use and End-User Controls can be found at: <https://www.wassenaar.org/best-practices/>.

⁴⁴ OJ C 11, 16.1.2009, p. 1. This document can be found at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32009H0116%2801%29>.

Article 20

Punishment, the competent authorities may decide to make the information they have received from an applicant on the country of destination, the consignee, the end-use and the end-users or, where relevant, the distributor and the arrangements and measures referred to in paragraph 9, available to the requesting national preventive mechanism. The competent authorities shall hear the applicant before the information is made available and may impose restrictions on the use that can be made of the information. The competent authorities shall make their decisions in accordance with national laws and practice.

Comment:

National preventive mechanisms or the prevention of torture at the domestic level are established by each State party to the Protocol. They shall be granted at a minimum the power:

(a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;

(b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;

(c) To submit proposals and observations concerning existing or draft legislation⁴⁵.

11. Member States shall process requests for individual or global authorisations within a period of time to be determined by national law or practice.

⁴⁵ Article 18 of the Protocol.

Article 21

Article 21 Authorisations

1. Authorisations for export, import or transit shall be issued on a form consistent with the model set out in Annex VII. Authorisations concerning brokering services shall be issued on a form consistent with the model set out in Annex VIII. Authorisations concerning technical assistance shall be issued on a form consistent with the model set out in Annex IX. Such authorisations shall be valid throughout the Union. The period of validity of an authorisation shall be from three to twelve months with a possible extension of up to twelve months. The period of validity of a global authorisation shall be from one year to three years with a possible extension of up to two years.

2. An authorisation for export granted in accordance with Article 12 or with Article 17 implies an authorisation for the exporter to supply technical assistance to the end-user to the extent that such assistance is necessary for the installation, operation, maintenance or repair of those goods whose export is authorised.

3. The authorisations may be issued by electronic means. The specific procedures shall be established on a national basis. Member States availing themselves of this option shall inform the Commission.

4. Authorisations for export, import, transit, the supply of technical assistance or the supply of brokering services shall be subject to any requirements and conditions the competent authority deems appropriate.

5. The competent authorities, acting in accordance with this Regulation, may refuse to grant an authorisation and may annul, suspend, modify or revoke an authorisation which they have already granted.

Comment:

Several Member States have established electronic application form for export licenses.

Countries	Authorisation delivered by electronics means (Art. 21.3)
Austria	YES According to Art. 53 of the Austrian Foreign Economy Act Applications and notifications shall be filed via electronic media, as long as doing so is reasonable and the technical conditions for doing so are present and functional with the applicant as well as with the authority.
Belgium	NO
Bulgaria	NO

Article 21

	At present, authorizations are issued only in paper form. The specific procedures of the authorization by electronics means is now under development.
Croatia	NO
Cyprus	NO
Denmark	Neither the Danish Business Authority nor the Danish Ministry of Justice have issued any authorizations according to the Regulation.
Estonia	NO
France	NO
Germany	YES Authorizations are issued in paper form and by electronic means.
Greece	NO
Hungary	The specific procedures of the authorization by electronics means are now under development (under process).
Ireland	NO The Department of Jobs, Enterprise and Innovation has not received an application for authorization to export or import goods covered by the Regulation. Should an application be received in the future it is likely it would be issued using a paper based system and would not be by electronic means.
Italy	NO
Latvia	The Ministry of Foreign Affairs of the Republic of Latvia Division of export control of strategic goods is issuing all licences electronically signed via e-mails.
Lithuania	NO
Luxembourg	NO
Netherlands	NO
Poland	NO
Portugal	NO
Slovakia	NO

Article 21

Slovenia	NO
Sweden	NO

Article 21

Countries	Specific requirements or conditions to grant export or import authorisations (Art. 21.4)
Austria	YES According to Art. 54 of the Austrian Foreign Economy Act, specific conditions or requirements have to be attached to an authorization if they are necessary to fully meet the criteria under Art. 3 through 12 of this Act.
Belgium	NO The FPS Economy has not received any application for import or export of such goods.
Bulgaria	YES
Croatia	NO Only if it is necessary. If the state authorities (Ministry of Foreign and European Affairs, Ministry of Interior, Ministry of Justice, Ministry of Finance - Customs Administration, the Security Intelligence Agency, and depending on the type of goods, the Ministry of Health) under Article 4 paragraph 1(of the National Regulation), require additional documentation, for issuance of the recommendation, it shall notify the State Office for Trade Policy, which shall then extend the request to the applicant.
Cyprus	NO
Denmark	The Danish Ministry of Justice has not received any applications according to the Regulation. The Danish Business Authority has not received any applications regarding import authorization according to the Regulation
Estonia	NO Not on a general basis. If necessary, conditions may apply on a case-by-case basis.
France	YES

Article 21

	According to Ministerial Decree of 26 th June 2012 any exporter, importer or supplier established in France shall submit a request to the Directorate General of Customs and Excise.
Germany	NO Only in individual cases.
Greece	NO No specific requirements or conditions except proof of the use at destination for which the export or import authorization is required (according to Art. 5). Ministerial Decision No.146845/E3/26845/4-8-06 (Minister of Economy and Finance).
Hungary	YES Same licensing principles apply as in case of military equipment listed in Government Decree No.160/2011, which entails that all international obligations are carefully taken into consideration. Hungarian Trade Licensing Office (HTLO) may require further documentation (i.e. contract, EUC, IIC, etc.) and prescribe specific conditions it deems necessary Articles 15.5 and 15.9 of Gov. Decree 160/2011.
Ireland	NO The Department of Jobs, Enterprise and Innovation has not received an application for authorization to export or import goods covered by the Regulation. Should such an application be received in the future it will be reviewed on a case-by-case basis.
Italy	Any granted license - those for items under the authority of Reg. EC 1236/2005 included – may be subject to special conditions indicated in the license form itself. These conditions shall be fulfilled both by the end-user and the national exporter. In the case of Reg. EC 1236/2005 licensed items, they may be: a statement by the end-user attesting that he took charge of the licensed items, a half-yearly report sent to Italian National Authorities by the national exporter for two years, attesting that the said goods dwell in the licensed final destination country and that they are used for the licensed end use, etc.

Article 21

	The national law reference is Legislative Decree No. 96 of 9 April 2003.
Latvia	Requirements for granting export or import authorizations are listed in the Regulation of the cabinet of Ministers of the Republic of Latvia No 927 (adopted on 11.11.2008).
Lithuania	<p style="text-align: center;">YES</p> <p>All requirements for issuing authorizations are set at the Order No 5-V-203 of Police Commissioner General of Lithuania (on March 29th, 2006): https://www.e-tar.lt/portal/lt/legalAct/TAR.79BD48D39CE2,</p> <p>- changed by Order 5-V-275 (on March 30th, 2012) https://www.e-tar.lt/portal/lt/legalAct/TAR.CE399D9B9D41,</p> <p>- by Order 5-V-552 (on June 12th, 2015) https://www.e-tar.lt/portal/lt/legalAct/13049ca0135711e58569be21ff080a8c</p> <p>- and at the Order No 409 of the Minister of Health of the Republic of Lithuania (on July 25th, 2001) https://www.e-tar.lt/portal/lt/legalAct/TAR.4720B278D094,</p> <p>- changed by Order No V-1015 (on October 31, 2013) https://www.e-tar.lt/portal/lt/legalAct/TAR.1201FF0C5411.</p>
Luxembourg	NO
Netherlands	NO Specific conditions will be prescribed if necessary.
Poland	<p style="text-align: center;">YES</p> <p>Goods Ordinance of the Minister of Economy of 7th June 2006 on import licenses from or to a third country of certain goods which could be used for punishment or torture (Journal of Laws of 2006 No. 118, poz.806);</p> <p>Technical assistance: Ordinance of the Minister of Economy of 7th June 2006 on licenses for delivering or receiving technical assistance of certain goods which could be used for punishment or torture (Journal of Laws of 2006 No. 118, poz.807).</p>

Article 21

Portugal	YES The penalties applicable are laid down on General Regime of Taxes Infractions, Article 97.º-A, that foresees a prison sentence from 1 to 5 years and, in the case of legal entities, a monetary fine
Slovakia	YES All authorizations meet the requirements set by the 1236/2005 and NR SR n. 474/2007.
Slovenia	NO
Sweden	NO

Article 22

Article 22 Customs formalities

1. When completing customs formalities, the exporter or importer shall submit the duly completed form set out in Annex VII as proof that the necessary authorisation for the export or import concerned has been obtained. If the document is not filled out in an official language of the Member State where the customs formalities are being completed, the exporter or importer may be required to provide a translation into such official language.

2. If a customs declaration is made concerning goods listed in Annex II, III or IV and it is confirmed that no authorisation has been granted pursuant to this Regulation for the intended export or import, the customs authorities shall detain the goods declared and shall make the exporter or importer aware of the possibility to apply for an authorisation pursuant to this Regulation. If no application for an authorisation is made within six months of the detention, or if the competent authority dismisses such an application, the customs authorities shall dispose of the detained goods in accordance with applicable national law.

Article 23

Article 23 Notification and consultation requirement

1. A Member State shall notify the other Member States and the Commission if its competent authorities, as listed in Annex I, take a decision dismissing an application for an authorisation under this Regulation or if they annul an authorisation they have granted. Such notification shall be made not later than 30 days following the date of the decision or annulment.

2. The competent authority shall, through diplomatic channels where required or appropriate, consult the authority or authorities which, in the preceding three years, dismissed an application for authorisation of an export, a transit, the supply of technical assistance to a person, entity or body in a third country or the supply of brokering services under this Regulation, if it receives an application concerning an export, a transit, the supply of technical assistance to a person, entity or body in a third country or the supply of brokering services involving an essentially identical transaction referred to in such earlier application and considers that an authorisation should, nevertheless, be granted.

3. If, after the consultations referred to in paragraph 2, the competent authority decides to grant an authorisation, the relevant Member State shall immediately inform the other Member States and the Commission of its decision and explain the reasons for its decision, submitting supporting information as appropriate.

4. Where a refusal to grant an authorisation is based on a national prohibition in accordance with Article 14(1) or Article 15(4), it shall not constitute a decision dismissing an application within the meaning of paragraph 1 of this Article.

5. All notifications required under this Article shall be made via a secure and encrypted system for exchange of information.

Comment:

Even if this article establishes a procedure of consultation between Member States as regards granting import and export authorizations, it should be emphasised that sole consultation and notification of the decision of Member State national authorities is compulsory. Therefore, after having undertaken all required consultations Member State remains unrestricted as concerns the final decision on issue of authorisation.

In addition, the prohibition imposed by Member States on the basis of Article 14(1) and 15(4) concerning an export, import and brokering services of leg irons, gang chains and portable electric shock devices is not covered by this article. In other words, denials issued and based on prohibition prescribed under Article 14(1) and 15(4) shall not be notified to the Commission and national authorities of other Member States, as listed in Annex I of this Regulation.

Article 24

CHAPTER VII General and final provisions

Article 24 Amendments of Annexes

The Commission is empowered to adopt delegated acts in accordance with Article 29, to amend Annexes I, II, III, III, IV, V, VI, VII, VIII and IX. The data in Annex I regarding competent authorities of the Member States shall be amended on the basis of information supplied by the Member States.

Where, in the case of amendment of Annex II, III, IV or V, imperative grounds of urgency so require, the procedure provided for in Article 30 shall apply to delegated acts adopted pursuant to this Article.

Comment:

The delegated act allowing the Commission to amend Annexes defining list of goods is granted under conditions:

Annex II could be amended only with goods which have no practical use other than for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment.

Annex III could be amended only with goods that could be used for the purpose of torture or other cruel, inhuman or degrading treatment or punishment (goods which are primarily used for law enforcement purposes and goods which, taking into account their design and technical features, present a material risk of use for torture or other cruel, inhuman or degrading treatment or punishment).

Annex IV shall only comprise goods that could be used for the purpose of capital punishment and have been approved or actually used for capital punishment by one or more third countries that have not abolished capital punishment.

Article 25

Article 25 Requests for adding goods to one of the lists of goods

1. Each Member State may address a duly substantiated request to the Commission to add goods designed or marketed for law enforcement to Annex II, Annex III or Annex IV. Such a request shall include information on:

- (a) the design and characteristics of the goods;
- (b) all the purposes for which they can be used; and
- (c) the international or domestic rules that would be broken if the goods were to be used for law enforcement.

When addressing its request to the Commission, the requesting Member State shall also forward that request to the other Member States.

2. The Commission may, within three months of the receipt of the request, ask the requesting Member State to provide supplementary information, if it considers that the request fails to address one or more relevant points or that additional information on one or more relevant points is necessary. It shall communicate the points on which supplementary information needs to be provided. The Commission shall forward its questions to the other Member States. The other Member States may also provide the Commission with further information for the assessment of the request.

3. If it considers that there is no need to ask for supplementary information or, where applicable, upon receipt of the supplementary information it has requested, the Commission shall within 20 weeks of the receipt of the request or the receipt of supplementary information, respectively, commence the procedure for the adoption of the requested amendment or inform the requesting Member State of the reasons for not doing so.

Article 26 Exchange of information between Member States' authorities and the Commission

1. Without prejudice to Article 23, the Commission and the Member States shall, upon request, inform each other of the measures taken under this Regulation and supply each other with any relevant information at their disposal in connection with this Regulation, in particular information on authorizations granted and refused.
2. Relevant information on authorisations granted and refused shall comprise at least the type of decision, the grounds for the decision or a summary thereof, the names of the consignees and, if they are not the same, of the end-users as well as the goods concerned.
3. Member States, if possible in cooperation with the Commission, shall make a public, annual activity report, providing information on the number of applications received, on the goods and countries concerned by these applications, and on the decisions they have taken on these applications. This report shall not include information the disclosure of which a Member State considers to be contrary to the essential interests of its security.

Comment:

On 1 October 2019, the European Commission published the Report from the Commission to the European Parliament and the Council on export authorisation in 2017 and 2018⁴⁶.

This first report provides information on Member States' authorisation activities concerning exports of goods which could be used for torture or for capital punishment, in 2017 and 2018⁴⁷. According to the report *All 28 Member States reported on the number of export authorisations that were granted and refused under Articles 11(1) and 16(1) and on the goods and countries of destination concerned by them. Except for one Member State, they also reported the numbers or quantities of goods authorized for export and the category of end-user to which those goods would be supplied.*

Annex 1 to the report displays the number of reported export authorisations granted by Member States pursuant to Article 20(2) of Regulation (EU) 2019/125 (see table below).

Annex 2 and Annex 3 displays respectively reported end-use of authorized exports to third countries in 2017 and in 2018, by product category.

Annex 4 and Annex 5 displays respectively reported destinations of authorized exports in 2017 and in 2018, by product category.

⁴⁶ Report from the Commission to the European Parliament and the Council on export authorisation in 2017 and 2018 pursuant to the Regulation concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, European Commission, Brussels, 1/10/2019, COM(2019) 445 final, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1586846349516&uri=CELEX:52019DC0445>.

⁴⁷ This report does not provide information on exporters' use of the Union General Export Authorisation for export of goods listed in Annex IV (Annex V to Regulation (EU) 2019/125).

Number of reported export authorisations granted by Member States 1 pursuant to Article 20(2) of Regulation (EU) 2019/125 (from the Commission Report, Annex 1)

	2017	2018
EU	292	231
Austria	6	6
Czech Republic	11	17
Denmark	1	1
France	8	5
Germany	187	142
Italy	5	2
Netherlands	46	37
Poland	3	0
Portugal	3	1
Slovenia	1	0
Spain	1	3
Sweden	0	2
United Kingdom	23	12
Other Member States	0	0

4. The Commission shall prepare an annual report comprised of the annual activity reports referred to in paragraph 3. That annual report shall be made publicly available.

5. Except for the supply of information mentioned in paragraph 2 to the authorities of the other Member State and to the Commission, this Article shall be without prejudice to applicable national rules concerning confidentiality and professional secrecy.

6. The refusal to grant an authorisation, if it is based on a national prohibition adopted in accordance with Article 14(1), shall not constitute an authorisation refused within the meaning of paragraphs 1, 2 and 3 of this Article.

Comment:

The main purpose of this Article is to encourage the exchange of information between the authorities of Member States and the Commission. This information exchange shall not be confused with the notification mechanism established by Article 23 of this Regulation. Notification procedure consists in Member States' obligation to notify the authorities of other Member States, as listed in Annex I of this Regulation, and the Commission, if they dismiss an application for an authorisation under this Regulation or if they annul an authorisation they have granted.

In addition, the prohibition imposed by Member States on the basis of Article 14(1) and 15(4) concerning an export and import of leg irons, gang chains and portable electric shock devices is not covered by this Article. In other words, an authorisation denial issued under a prohibition established under Article 14(1) and 15(4) may not be communicated to the Commission and national authorities of other Member States, as listed in Annex I of this Regulation.

Article 27

Article 27 Processing of personal data

Personal data shall be processed and exchanged in accordance with the rules laid down in Regulation (EU) 2016/679 and Regulation (EU) 2018/1725.

Article 28

Article 28 Use of information

Without prejudice to Regulation (EC) No 1049/2001 of the European Parliament and of the Council⁴⁸ and national legislation on public access to documents, information received pursuant to this Regulation shall be used only for the purpose for which it was requested.

⁴⁸ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

Article 29

Article 29 Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 24 shall be conferred on the Commission for a period of five years from 16 December 2016. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Article 24 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 24 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 30

Article 30 Urgency procedure

1. Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.

2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 29(6). In such a case, the Commission shall repeal the act immediately following the notification of the decision to object by the European Parliament or by the Council.

Article 31

Article 31 Anti-Torture Coordination Group

1. An Anti-Torture Coordination Group chaired by a representative of the Commission shall be established. Each Member State shall appoint a representative to that group.
2. The Anti-Torture Coordination Group shall examine any questions concerning the application of this Regulation, including, without limitation, the exchange of information on administrative practices and any questions which may be raised either by the chair or by a representative of a Member State.
3. The Anti-Torture Coordination Group may, whenever it considers it to be necessary, consult exporters, brokers, suppliers of technical assistance and other relevant stakeholders concerned by this Regulation.
4. The Commission shall submit an annual report in writing to the European Parliament on the activities, examinations and consultations of the Anti-Torture Coordination Group. The annual report shall be drawn up paying due regard to the need not to undermine the commercial interests of natural or legal persons. The discussions in the Anti-Torture Coordination Group shall be kept confidential.

Comment:

On 7 October 2019, the European Commission published a report “Report from the Commission to the European Parliament on the activities and consultations of the Anti-Torture Coordination Group referred to in Article 31 of Regulation (EU) 2019/125 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment⁴⁹.”

The report provides information on the activities of the Anti-Torture Coordination Group (ATCG) in 2017 and 2018, hence the period from the entry into force of the Regulation (EU) 2016/2134 of 23 November 2016, which established the group.

The ATCG held two meetings during the reporting period, on 12 July 2017 and 28 June 2018 respectively.

The ATCG held technical exchanges of information regarding the tools available in the Dual-Use electronic system (DUeS), a secure and encrypted system created by the Commission for the exchange of certain information between competent authorities. Article 23(5) of Regulation requires that the competent authorities in the European Union Member States use DUeS to communicate information on cases where a request for an export authorisation has been rejected (so-called denials).

⁴⁹ Report from the Commission to the European Parliament on the activities and consultations of the Anti-Torture Coordination Group referred to in Article 31 of Regulation (EU) 2019/125 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, European Commission, Brussels, 7/10/2019, COM(2019) 449 final, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1586846349516&uri=CELEX:52019DC0449>.

Article 31

New notification tools were introduced in DUeS to align it with Regulation (EU) 2016/2134 of the European Parliament and of the Council. The tools enable the competent authorities to notify:

- i) data on exporters who have been prohibited from using the Union General Export Authorisation (Article 20(1));
- ii) data concerning technical assistance for which an authorisation has not been granted (Articles 15(1)(a) and 19(1)(a));
- iii) data concerning brokering services for which an authorisation has not been granted (Articles 15(1)(b) and 19(1)(b)).

As regards the prior authorisation requirement for certain technical assistance and brokering services laid down in Articles 15 and 19 of the Regulation, Members of the ATCG were requested to share any guidance they may have developed on these issues, including on the definition of certain terms, such as ‘broker’ and ‘supplier of technical assistance’.

The ATCG held technical exchanges of information regarding the prohibitions laid down in Articles 8 and 9 of the Regulation concerning trade fairs and advertising, respectively. These prohibitions were introduced in the 2016 amendment to the Regulation. They entered into force on 16 December 2016. The exchanges touched in particular upon possible guidance for relevant authorities as well as enforcement modalities. It was noted that there had been reported instances of goods being advertised on some European suppliers’ websites, which could suggest that the scope of the prohibition as laid down in the Regulation may be insufficient.

The ATCG was informed of the main developments regarding the Global Alliance for Torture-Free Trade⁵⁰. Promoted by the European Union and co-sponsored by Argentina and Mongolia, the Global Alliance was launched on 18 September 2017 with the adoption by 57 members of a political declaration on its founding principles, including a commitment to take effective measures for restricting trade in goods used for torture and death penalty through domestic legislation and efficient enforcement.

This initiative aims to draw attention to the EU Regulation and encourage other countries to take similar trade measures in order to stop or restrict global trade in goods used for death penalty and torture. All EU Member States along with over thirty countries have joined the Global Alliance.

⁵⁰ <http://www.torturefreetrade.org/>.

Article 32

Article 32 Review

1. By 31 July 2020, and every five years thereafter, the Commission shall review the implementation of this Regulation and present a comprehensive implementation and impact assessment report to the European Parliament and to the Council, which may include proposals for its amendment. The review will assess the need to include the activities of EU nationals abroad. Member States shall provide to the Commission all appropriate information for the preparation of the report.

2. Special sections of the report shall deal with:

- (a) the Anti-Torture Coordination Group and its activities. The report shall be drawn up paying due regard to the need not to undermine the commercial interests of natural or legal persons. The discussions in the group shall be kept confidential;
- (b) information on the measures taken by the Member States pursuant to Article 33(1) and notified to the Commission pursuant to Article 33(2).

Article 33

Article 33 Penalties

1. Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.
2. Member States shall notify the Commission without delay of any amendment affecting rules on penalties notified in accordance with Article 17(2) of Regulation (EC) No 1236/2005.

Article 33

Countries	Penalties (Art.33)
Austria	<p>Art. 79 of the Austrian Foreign Economy Act provides for penalties in case of an infringement of the Torture Regulation (esp. violations of prohibitions or authorization requirements or conditions or requirements attached to authorizations and actions to circumvent such prohibitions or authorization requirements). The penalties are up to five years of imprisonment.</p>
Belgium	<p style="text-align: center;">YES</p> <p>The sanctions are imposed by Law of 11thSeptember 1962 (confiscation, fines, imprisonment).</p>
Bulgaria	<p style="text-align: center;">YES</p> <p>The sanctions are imposed by Art. 11, 12 and 13 of the Act of implementation of Council Resolution No 1236/2005.</p> <p><u>Article 11</u> Persons who carry out import and export of goods listed in Annex II and Annex III of Regulation 1236/2005, or provide technical assistance related to such goods, without proper authorization shall be sanctioned with:</p> <ol style="list-style-type: none"> 1. a fine of BGN 500 to BGN 1,000 (250 to 500 Euro) - for natural persons as well as for officials of commercial companies in case the deed is not a crime; 2. a property sanction amounting from BGN 500 to BGN 1,000 (250 to 500 Euro) - for legal and natural persons; 3. fine or penalty in the amount of BGN 2,000 to BGN 10,000 (1,000 to 5,000 Euro) - for a repeated violation. <p><u>Article. 12</u> Persons who operate in violation of the scope and terms of the an authorization issued or provide documents, data, information and reports or obstruct and / or deny access to a public official in the exercise of control functions under this Act shall be sanctioned with:</p> <ol style="list-style-type: none"> 1. a fine of BGN 500 to BGN 1,000 (250 to 500 Euro) - for natural persons as well as for officials of commercial companies in case the deed is not a crime; 2. a property sanction amounting from BGN 1,000 to BGN 5,000 (500 to 2,500 Euro) - for legal and natural persons; 3. fine or penalty amounting of BGN 2,000 to BGN 10,000 (1,000 to 5,000 Euro) - for a repeated violation.

Article 33

	<p><u>Article. 13</u> Persons who fail to fulfil their obligations under Art. 9 shall be sanctioned with:</p> <ol style="list-style-type: none">1. a fine of BGN 200 to BGN 1,000 (100 to 500 Euro) - for natural persons as well as for officials of commercial companies in case the deed is not a crime;2. a property sanction amounting ranging from BGN 500 to BGN 2,000 (250 to 1,000 Euro) - for legal and natural persons;3. fine or penalty amounting of BGN 1,000 to BGN 10,000 (500 to 5,000 Euro) - for a repeated violation.
Croatia	<p style="text-align: center;">YES</p> <p>All penalties are covered under the Criminal law under the following articles:</p> <p><u>Criminal law (OG 125/11, 144/12, 56/15, 61/15)</u></p> <p>Illicit Trade Article 264</p> <p>(1) Whoever, without authorization, buys, sells, transfers or exchanges items or goods whose distribution is forbidden or limited, and who has not committed another offense which carries a heavier penalty, shall be punished by imprisonment of up to one year.</p> <p>(2) Items and goods which are illicitly traded shall be confiscated.</p> <p>But the Law also mentions that there is a possibility to replace the imprisonment punishment with a fine.</p> <p>Types of Punishment Article 40.</p> <p>(1) The penalties are fines, imprisonment and long-term imprisonment.</p> <p>(2) A fine may be imposed as a principal and as an accessory punishment.</p> <p>(3) Prison and long-term imprisonment may be imposed only as principal punishment.</p> <p>(4) When the law for a criminal offense punished with a term of imprisonment up to three years, the court may impose a fine as a principal punishment.</p> <p>(5) For criminal offenses motivated by greed, a fine as an accessory can be ordered and when it is not required by law or when the law prescribes that the perpetrator is punished by</p>

Article 33

	<p>imprisonment or a fine, and the court as the principal punishment imposes imprisonment.</p> <p>(6) Community service shall be imposed as an alternative to imprisonment or a fine.</p>
Cyprus	<p style="text-align: center;">YES</p> <p>The illegal import or export of controlled goods is punished by two years imprisonment maximum and/or a fine of 17 000 Euro. In case of repeated offences the penalties increase to a maximum of four years imprisonment and/or 34 000 Euro fine.</p>
Denmark	<p>Denmark has laid down rules on penalties applicable to infringements of Regulation 1236/2005 in Section 2(3) of the Ministry of Economics and Business Affairs Consolidating Act No 635 of 9 June 2011 on the application of certain European Union Acts on economic relations to third countries (Enabling Act).</p> <p>The Consolidating Act is available only in Danish.</p>
Estonia	<p style="text-align: center;">YES</p> <p>According to Penal Code § 392: fine and imprisonment up to 5 years, 10 years when committed by a group or by official.</p>
France	<p style="text-align: center;">YES</p> <p>The sanctions are imposed by art. 414 of National Customs Code.</p>
Germany	<p style="text-align: center;">YES</p> <p>According to § 18 section 4 AWG (revised version) a prison sentence up to five years could be imposed to anyone who violates Council Regulation (EC) No. 1236/2005 of 27 June 2005 (intentionally) by</p> <ol style="list-style-type: none"> 1. Exporting the specified goods contrary to Article 3 Para. 1 sentence 1, 2. Providing technical assistance related to the specified goods contrary to Article 3 Para. 1 sentence 2, 3. Importing the specified goods contrary to Article 4 Para. 1 sentence 1,

Article 33

	<p>4. Accepting technical assistance related to the specified goods contrary to Article 4 Para. 1 sentence 2, or</p> <p>5. Exporting the goods referred to in Article 5 Para. 1 sentence 1 without a licence.</p> <p>According to § 19 section 1 AWG (revised version) a regulatory offence is deemed to be committed by anyone who violates Council Regulation (EC) No. 1236/2005 of 27 June 2005 negligently in the above mentioned manner.</p>
Greece	<p>Administrative. fine of up to the value of the goods to be exported (Law 936/1979 on external trade).</p> <p>The National Customs Code (N. 2960/2001, OJ no 265A/22-11-2001) Art. 155 par. 2, (b) and Art. 160 Para. 1, stipulates:</p> <ul style="list-style-type: none"> -The export of controlled items without authorization is assimilated to smuggling and provides for administrative penalties. -In addition, as smuggling is a criminal offense, an unauthorized import or export may be punished with imprisonment, subject to court's judgment. <p>For the items referred to in art. 7.1 of the Reg. 1236/2005 (Q.4 above), penalties provided by National Law 2168/1993 for small arms apply.</p>
Hungary	<p style="text-align: center;">YES</p> <p>The sanctions regulated by Gov. Decree No. 160 and Penalty Code No. 100 of 2012 are:</p> <ul style="list-style-type: none"> - Revocation of licence: The Authority shall withdraw a licence if changes take place following its issuing on the basis of which the application should be rejected. The Authority may withdraw a licence if an undertaking breaches the requirements laid down in the Decree or infringes the conditions specified in the licence or violates the commercial legislative provisions. - Gov. Decree No.160. 25§ (1) b). - Penalties: Range from five million to ten million forints in the event of a breach of the provisions of Council Regulation (EC) No 1236/2005 dated 27 June 2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment. Gov. Decree No.160, 8§ (2). - 2 to 8 year imprisonment: Activity without license- Penalty Code, 329§. - 5 to 10 years imprisonment in aggravating circumstances.

Article 33

Ireland	<p style="text-align: center;">YES</p> <p>The European Communities (Control of Trade in Goods that may be used for Torture) Regulations 2006 provides that a person guilty of an offence under this Regulation shall be liable on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 6 months or both.</p>
Italy	<p>Penalties - fines and/or prison, according to the seriousness of a crime -are provided for in Art. 16 of the above mentioned Legislative Decree No. 96 of 9 April 2003.</p>
Latvia	<p style="text-align: center;">YES</p> <p>Rules on penalties applicable to infringements of the provisions of this Regulation are laid down by the laws and regulations of the Republic of Latvia depending on a criminal or administrative nature of violation.</p> <p>According to the Article 201¹⁰ of <i>The Latvian Administrative Violations code</i>, there are penalties in form of fine for violation of the rules of customs regime.</p> <p>According to the Article 190¹ of <i>the Criminal Code of Latvia</i> there are penalties in form of fine, community work or imprisonment for illegal movement of the goods that are banned or require a special regulation.</p> <p>According to the Article 201¹² of the <i>Latvian Administrative Violations code</i> as well as the Article 190 of <i>The Criminal Law</i> (regarding smuggling) there are penalties applicable to infringements of the Regulation.</p> <p>According to the Article 18 of <i>the Law On the Circulation of Goods of Strategic Significance</i>, penalties for the violation of the law are applied according to the civil, administrative or criminal responsibilities set by the relevant legislation of the Republic of Latvia⁵¹.</p>

⁵¹The Ministry of Foreign Affairs of the Republic of Latvia, Division of export control of strategic goods, precises that this law is separate from 1236.

Article 33

Lithuania	<p style="text-align: center;">YES</p> <p>Penal sanctions are provided in Article 199 (1) of the Penal Code of the Republic of Lithuania.</p> <p>Administrative sanctions are provided in Article 210 of the Code Administrative Offences.</p>
Luxembourg	<p>In the present national legislation, penalties are foreseen under Article 9 of the Law dated 5 August 1963 as amended, which foresees fines of an amount up to twice the value of the goods.</p> <p>A new legislation is in preparation; it will introduce additional criminal sanctions.</p>
Netherlands	<p style="text-align: center;">YES</p> <p>Penalties are laid down in the Economic Offences Act (Wet Economische Delicten). Those who violate the provisions of the regulation may face a jail sentence of maximum six years, a fine up to 78.000 Euros, or a work assignment (maximum 480 hours). Furthermore the Economic Offences Act offers additional possibilities for penal sanctions such as a temporary or even permanent ban to perform related economic activities, and/ or confiscation of the goods in question and the profits gained by the illegal transaction. Finally, the Court may order the destruction of commodities that present a threat to the public order of public safety.</p> <p>The penalty is decided upon on a case-by-case basis. It is dependent upon the type, number and the seriousness of the infringements (e.g. intentional or unintentional offences, first time offence or repeat offence, voluntary self-disclosure etc.).</p>
Poland	<p style="text-align: center;">YES</p> <p>With reference to penalties applicable to infringements of EU provisions concerning banning the import to and export from the Community, there are the provisions of the “Fiscal Penal Code” (hereinafter referred to as “FPC”) of 10 September 1999 currently applicable in Poland (Journal of Laws of 2007, No 111, item 765, with further amendments). As regards penalties applicable to infringements of Regulation No 1236/2005 the key articles are the following Art. 86, Art. 87 and Art. 91 of FPC. Taking into account the above provisions, the penalties are levied in case of:</p> <ol style="list-style-type: none"> 1. smuggling (import or export without customs declaration – Art. 86 of FPC),

Article 33

	<ul style="list-style-type: none"> – pecuniary penalty or imprisonment, or both of them simultaneously, – in case of low value of merchandise – pecuniary penalty, <p>2. fraud (misleading of a competent customs control authority - Art. 87 FPC),</p> <ul style="list-style-type: none"> – pecuniary penalty or imprisonment, or both of them simultaneously, – in case of low value of merchandise – pecuniary penalty, <p>3. handling (purchasing, storage, transportation, dispatch, transmission, selling off, receiving or concealing),</p> <ul style="list-style-type: none"> – pecuniary penalty or penalty of up to 3 years of imprisonment, or both of them simultaneously, – in other forms of crime or offence – pecuniary penalty or pecuniary penalty against fiscal offence. <p>Moreover, depending on the case, the court adjudicates on forfeiture of goods descended directly from crime, tools or goods that were to be used or were used in a crime, or goods which production, possession, trade, storage, transportation or transmission is prohibited. In some cases the court may also adjudicates on forfeiture of packaging or the goods combined with the good directly descended from crime, which is to take place in case the goods combined cannot be separated from the goods in question without damage. Furthermore, in some cases the court can also adjudicate the prohibition on running a business activity.</p>
Slovenia	<p style="text-align: center;">YES</p> <p>Administrative penalties Articles 9 and 10 of Decree on trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (Uradni list RS No 60/2006):</p> <ul style="list-style-type: none"> - Any individual who imports or exports goods referred to in Annex II of the Regulation 1236/2005/EC without an authorisation shall be fined from EUR 150 to EUR 1,000. - Any legal person, entrepreneur or individual who pursues his/her activity as a self-employed person and commits an offence as referred to in the previous paragraph, shall be fined from EUR 15,000 to EUR 100,000. <p>A fine from EUR 500 to EUR 3,800 shall also be imposed upon the responsible person of a legal entity or the responsible person of an entrepreneur or an individual who</p>

Article 33

	<p>pursues his/her activity as a self-employed person if he/she commits an offence referred to in the first paragraph of this Article.</p> <ul style="list-style-type: none"> - Any individual who exports goods referred to in Annex III of the Regulation 1236/2005/EC without an authorisation shall be fined from EUR 100 to EUR 800. - Any legal person, entrepreneur or individual who pursues his/her activity as a self-employed person and commits an offence as referred to in the previous paragraph, shall be fined from EUR 10,000 to EUR 80,000. A fine from EUR 400 to EUR 3,200 shall also be imposed upon the responsible person of a legal entity or the responsible person of an entrepreneur or an individual who pursues his/her activity as a self-employed person if he/she commits an offence referred to in the first paragraph of this Article. <p>Penalties are also provided in the Criminal Code imposing a prison sentence up to five years.</p>
Slovakia	<p>YES</p> <p>The penalties applicable to the infringements of the provisions are described in Article 12 of Act 474/2007.</p>
Sweden	<p>YES</p> <p>The Law (2006:1329) concerning trade in certain goods which could be used for capital punishment or torture, defined different penalties depending of the seriousness of the offense. It could be fines or imprisonment not exceeding two years, but if the offense is considered serious, it could be to imprisonment for at least six months but not exceeding six years.</p>

Article 34

Article 34 Territorial scope

1. This Regulation shall have the same territorial scope of application as the Treaties, except for the first subparagraph of Article 3(1), the first subparagraph of Article 4(1), Articles 5, 11, 13, 14, 16 and 18, Article 20(1) to (4) and Article 22, which shall apply to:

- the customs territory of the Union;
- the Spanish territories of Ceuta and Melilla;
- the German territory of Helgoland.

2. For the purpose of this Regulation Ceuta, Helgoland and Melilla shall be treated as part of the customs territory of the Union.

Article 35

Article 35 Repeal

Regulation (EC) No 1236/2005 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex XI.

Article 36

Article 36 Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 16 January 2019.

For the European Parliament

The President
A. TAJANI

For the Council

The President
G. CIAMBA

LIST OF ANNEXES

Comment: All Annexes are available on the Official Journal of the European Union (OJ L 30/21, 31/1/2019, available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0125&from=en>)

ANNEX I

LIST OF AUTHORITIES REFERRED TO IN ARTICLES 20 AND 23, AND ADDRESS FOR NOTIFICATIONS TO THE EUROPEAN COMMISSION

ANNEX II

LIST OF GOODS REFERRED TO IN ARTICLE 3 AND 4

ANNEX III

LIST OF GOODS REFERRED TO IN ARTICLE 11

ANNEX IV

GOODS THAT COULD BE USED FOR THE PURPOSE OF CAPITAL PUNISHMENT REFERRED TO IN ARTICLE 16

ANNEX V

UNION GENERAL EXPORT AUTHORISATION EU GEA 2019/125

ANNEX VI

LIST OF TERRITORIES OF MEMBER STATES REFERRED TO IN ARTICLE 11(2)

ANNEX VII

EXPORT OR IMPORT AUTHORISATION FORM REFERRED TO IN ARTICLE 21(1)

ANNEX VIII

AUTHORISATION FORM FOR THE SUPPLY OF BROKERING SERVICES REFERRED TO IN ARTICLE 21(1)

ANNEX IX

AUTHORISATION FORM FOR THE SUPPLY OF TECHNICAL ASSISTANCE REFERRED TO IN ARTICLE 21(1)

ANNEX X

REPEALED REGULATION WITH LIST OF ITS SUCCESSIVE AMENDMENTS

ANNEX XI

CORRELATION TABLE

