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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

1. Introduction

Article 31(4) of Regulation (EU) 2019/125 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[(1)] requires the Commission to submit an annual report to the European Parliament on the activities, examinations and consultations of the Anti-Torture Coordination Group (ATCG). The report must not undermine the commercial interests of natural or legal persons.

This report provides information on the ATCG's activities in 2020.

2. Regulatory framework

The Regulation's objective is to prevent capital punishment, on the one hand, and torture and other cruel, inhuman or degrading treatment or punishment in countries outside the EU, on the other, by restricting trade in certain goods. It distinguishes between:

- goods that are inherently abusive and should not be traded at all (Annex II); and
- goods that can have legitimate uses, such as law enforcement equipment (Annex III) and goods for therapeutic use (Annex IV).

Trade in goods listed in Annex III and Annex IV is subject to certain restrictions. In particular, the Regulation:

i. prohibits the import into, export from and transit through the EU of goods listed in Annex II, which have no practical use other than for the purposes of capital punishment or torture. It prohibits the provision of any technical assistance relating to such goods, including training in how to use them. It also prohibits advertising such goods in print media, on the internet or on television or radio, and displaying or offering them for sale at an exhibition or trade fair;

ii. requires prior authorisation, case by case, for exports of goods listed in Annex III, which could be used for the purposes of capital punishment or torture, but may have other legitimate uses (e.g. for law enforcement). A prior export authorisation is also required for supplying technical assistance or brokering services relating to this category of goods. Annex III does not include:

   (a) firearms subject to Regulation (EU) No 258/2012[(2)];

   (b) dual-use items subject to Regulation (EU) 2021/821[(3)]; or

   (c) goods subject to the terms of Council Common Position 2008/944/CFSP[(4)]; and

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(1) OJ L 30, 31.1.2019, p. 1. Having been amended several times, 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) was subsequently codified as Regulation (EU) 2019/125.

(2) Regulation (EU) No 258/2012 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 an export authorisation, and import and transit measures for firearms, their parts and components and ammunition (OJ L 94, 30.3.2012, p. 1).

(3) Regulation (EU) 2021/821 of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (recast) (OJ L 206, 11.6.2021, p. 1).

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

iii. regulates trade in chemicals and pharmaceutical substances (Annex IV) that could be used for capital punishment (e.g. through lethal injection). A specific licence authorisation (Union general export authorisation (GEA)) has been introduced to control the export of such anaesthetic chemicals and prevent their transfer for use in lethal injection executions, without limiting trade in them for medical, veterinary or other legitimate purposes.

3. Activities of the Anti-Torture Coordination Group

The ATCG was set up pursuant to Regulation (EU) 2016/2134 of the European Parliament and of the Council[5] to examine questions concerning the application of the Anti-Torture Regulation.

The ATCG serves as a platform for Member State experts and the Commission to exchange information on administrative practices and discuss issues of interpretation of the Regulation, technical issues with the goods listed, developments relating to the Regulation, and any other matters that may arise. The Commission also consults the ATCG when preparing delegated acts, in accordance with the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[6].

The ATCG met once in 2020, on 12 October, in a virtual format, to exchange information on a number of issues (summarised below) concerning the implementation of the Regulation.

3.1. Developments relating to the basic act

The Commission informed the ATCG of plans for, and subsequently consulted it on, a draft delegated act amending the Regulation – Annex I (competent authorities of the Member States) and Annex V, part 2 (destinations to which the Union GEA applies) – to take account of the withdrawal of the United Kingdom from the EU[7].

3.2. Trade information: data reporting

The Commission presented the state of play on the annual report referred to in Article 26(3), in particular the data that it intended to use. It also informed the ATCG of its intention to update the reporting form in order to gather a broader range of data, in preparation for the subsequent reporting exercise.

3.3. Review of Regulation (EU) 2019/125

The Commission presented a report on its review of Regulation (EU) 2019/125, with its main findings and conclusions[8]. The report provides a comprehensive assessment of the Regulation, evaluating its impact, influence at global level, challenges and opportunities. The

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[5] 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).

[6] OJ L 123, 12.5.2016, p. 1.

[7] The provisions of the Regulation apply to and in the UK in respect of Northern Ireland, in accordance with Article 5(4) of the Protocol on Ireland/Northern Ireland to the Withdrawal Agreement, read in conjunction with point 47 of Annex 2 to that Protocol.

[8] COM(2020) 343 final, 30.7.2020.

report outlines further action to make the Regulation more effective, and to ensure that it continues to make an important contribution to the fight against torture and the death penalty.

The Commission had involved the Member States' competent authorities in the review process, in particular through evaluation questions and a virtual workshop (14 May 2020). The purpose of the workshop was to gather direct feedback and listen to stakeholders' views and ideas on how to enhance the effectiveness of the Regulation. There were balanced and lively exchanges of views on the various topics that had been proposed to facilitate the discussion. Representatives from 16 EU competent authorities, civil society organisations and international organisations took part, along with other experts.

3.4. Torture-free trade — regional and international developments

The ATCG served as a platform for exchanging information and raising awareness on regional and international developments, with particular reference to the United Nations Secretary-General's report, *Towards torture-free trade: examining the feasibility, scope and parameters for possible common international standards*[(9)], which recognises that common international standards could lead to more effective regulation in this area. As a next step, the UN will be setting up a group of governmental experts to continue work on basis of the report.

The ATCG was also informed about the work on a Council of Europe (CoE) Recommendation[(10)] to establish a framework enabling the CoE member states to regulate more effectively the trade in goods that could be used for capital punishment, torture or other cruel, inhuman or degrading treatment.

(9) Report of Secretary General A/74/969 of 28 July 2020.

(10) Recommendation CM/Rec(2021)2 of the Committee of Ministers to member States on measures against the trade in goods used for the death penalty, torture and other cruel, inhuman or degrading treatment or punishment (adopted on 31 March 2021 at the 1 400th meeting of the Ministers' Deputies).