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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the review 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. INTRODUCTION

The trade in goods which could be used for (a) capital punishment and (b) torture or other cruel, inhuman or degrading treatment or punishment is regulated by Regulation (EU) 2019/125[1] ('the Regulation'). Adopted in 2005, the Regulation is a reflection of the EU's strong commitment to eradicating torture and the death penalty.

The EU Anti-Torture Regulation has helped close a major gap in human rights-based trade controls. It introduced unprecedented, binding trade restrictions on a range of goods often absent from military, dual-use or other strategic export control lists. The Regulation has been widely praised by the international human rights community: for example, a former UN Special Rapporteur on Torture, Theo van Boven, called the Regulation a milestone in the fight against torture and a model that could be followed by countries in other regions[2].

The Regulation was amended twice in 2011 and 2014 to update and expand the Annexes to the Regulation listing prohibited and regulated goods. In 2016, the Regulation, and in particular its procedural provisions, was amended substantially.

In line with the requirements of Article 32 of the Regulation, this report provides information about the Regulation's implementation and impact between 2017 and 2019 hence since it was last amended in 2016. The report addresses the following areas in particular: amendments to the Regulation through delegated acts; national implementing measures; information requirements as well as an assessment of the activities of the Anti-Torture Coordination Group and of EU nationals abroad.

This report also provides an overview of key data under the Regulation and assesses the Regulation's implementation in relation to the basic principles of relevance, effectiveness, efficiency, coherence and EU added value.

2. REGULATION (EU) 2019/125

2.1 Objective and main provisions of Regulation (EU) 2019/125

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 third countries, on the other. It distinguishes goods according to:

- whether they are inherently abusive and should not be traded at all (Annex II), or
- whether they can have legitimate uses, such as law enforcement equipment (Annex III) as well as certain pharmaceutical chemicals (Annex IV), in which case trade in these goods is subject to certain restrictions.

To that end, the Regulation introduces restrictions on trade with non-EU countries. The Regulation, in particular:

[1] 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, OJ L 30, 31.1.2019, p. 1.

[2] As quoted in the European Council General Secretariat's Implementation of the EU Guidelines on torture and other cruel, inhuman or degrading treatment or punishment – stock taking and new implementation measures, 8407/1/08 REV 1 18 April 2008.

i. prohibits imports, exports and transit into, from or through the EU of goods (listed in Annex II) that have no practical use other than for the purposes of capital punishment or torture. The provision of any technical assistance related to such goods, specifically including training in their use, is also prohibited. In addition, the advertising of such goods on the internet, TV, radio, or at trade fairs is prohibited;

ii. subjects goods (listed in Annex III) that could be used for such purposes but that may also have other legitimate uses (law enforcement) to a prior export authorisation, granted on a case-by-case basis; such authorisation is also required for supplying technical assistance or brokering services related to this category of goods. Annex III does not include: (a) firearms controlled by Regulation (EU) No 258/2012[3]; (b) dual-use items controlled by Regulation (EC) No 428/2009[4]; (c) goods controlled in accordance with Common Position 2008/944/CFSP[5];

iii. regulates the trade in goods – chemicals or pharmaceutical substances (Annex IV) – that could be used for capital punishment (e.g. products which could be used to execute human beings by lethal injection). These goods were added to the list of goods subject to export controls in 2011. A distinct license authorisation ('EU General Export Authorisation') was introduced to control the export of such anaesthetic chemicals and to prevent their transfer for use in lethal injection executions without limiting the trade of such chemicals for medical, veterinary or other legitimate purposes. Where the export of medicinal products requires an export authorisation pursuant to the 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 fulfil the obligations imposed on them by this Regulation and by the relevant convention.

The Regulation includes detailed lists of goods referred to under (i) above with the following headings:

- goods and their components designed for the execution of human beings;
- goods which are not suitable for use by law enforcement authorities to restrain human beings;
- portable devices, as well as certain types of whips, which are not suitable for use by law enforcement authorities for the purpose of riot control or self-protection.

Goods in category (ii) currently fall under the following headings:

- goods designed for restraining human beings;
- weapons and devices designed for the purpose of riot control or self-protection;

[3] 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 export authorisation, and import and transit measures for firearms, their parts and components and ammunition, OJ L 94, 30.3.2012, p. 1.

[4] Council 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.

[5] Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment (CFSP) (2020/C 85/01), OJ, C 85-1, 13.3.2020.

- weapons and equipment disseminating incapacitating or irritating chemical substances for the purpose of riot control or self-protection and certain related substances.

Goods in category (iii) include in particular medicines which are particularly prone to being used in lethal injections. To minimise the regulatory burden placed on companies when exporting life-saving medicines, the Regulation includes a system of global export authorisations[6] that does not require companies to seek individual export authorisations for each shipment of medicines. To be granted a global authorisation, companies must demonstrate that they have appropriate controls in place to prevent the sale of these medicines for use in executions.

The transit (transport within the customs territory of the EU of non-EU goods passing through it and destined for third countries) of Annex II goods is prohibited. The transit of regulated goods listed in Annex III is generally not prohibited but is prohibited if the operator executing the transit of goods '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'.

The Regulation does not control the import into the EU, or the transfer between EU Member States, of law enforcement equipment and related goods that can have legitimate law enforcement purposes but could also be misused for torture and other ill treatment. The Regulation also does not prohibit the intra-EU transfer of inherently abusive or inappropriate goods.

The Regulation is legally binding and directly applicable in all EU Member States; it places obligations upon the 'exporters'. The competent authorities in the Member States are responsible for monitoring compliance with the prohibitions and licensing requirements of the Regulation.

The Regulation requires EU Member States to publish annual activity reports detailing relevant license applications and authorisations. It includes further measures to facilitate transparency and dissuade one EU Member State from circumventing another Member State's export license refusal. It also contains provisions facilitating the regular review and amendment of lists of prohibited and regulated goods, enabling EU Member States to address a duly substantiated request to the Commission for consideration.

2.2 Restrictions on trade: a key instrument to prevent torture and the death penalty

Article 5 of the *Universal Declaration of Human Rights*, Article 7 of the *International Covenant on Civil and Political Rights*, Article 3 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms*, and most notably the *United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* all lay down an unconditional, comprehensive prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

The UN General Assembly (UNGA) called in 2019 upon all States to 'take appropriate effective legislative, administrative, judicial and other measures to prevent and prohibit the

[6] A 'Union general export authorisation' is an authorisation for export that applies to chemicals, which could be used for execution by lethal injection (Annex IV to the Regulation). It is used when those goods/chemicals are exported to countries that have abolished capital punishment for all crimes and confirmed that abolition through an international commitment. For countries that are not members of the Council of Europe, that list comprises the countries that have not only abolished capital punishment for all crimes but also ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights without reservation.

production, trade, export, import and use of equipment that has no practical use other than for the purpose of torture or other cruel, inhuman or degrading treatment or punishment '[7].

The absolute ban on torture enshrined in United Nations human rights conventions is reflected at EU level in the Charter of Fundamental Rights of the European Union (the Charter)[8]. Article 2(2) of the Charter states that no one shall be condemned to the death penalty or executed. Article 4 of the Charter states that no one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Despite States' obligations under international law, acts of torture and other ill treatment continue to occur. In recent years, there has been a growing recognition by the international community of the need to regulate and restrict trade in certain law enforcement equipment to ensure that such goods are not employed for torture or other ill treatment.

Inspired by the EU Regulation, the Alliance for Torture-Free Trade, promoted by the European Union and co-sponsored by Argentina and Mongolia, was launched in 2017. It aims to make trade in goods intended, or with a potential to be used, for capital punishment and torture significantly more difficult at an international level. By joining the Alliance, countries commit, among other things, to taking effective measures through domestic legislation and efficient enforcement to restrict trade in goods used for torture and the death penalty.

In June 2019, the UNGA adopted an important resolution paving the way for future work at UN-level towards establishing common international standards in this field[9]. The resolution, welcomed by the Council of the EU[10], calls on countries to examine the feasibility, scope and parameters for possible common international standards for the trade of relevant goods. The UN Secretary General is expected to submit a report on the implementation of that resolution to the UNGA 74th session. As a second step, and on the basis of that report, a further report will be prepared by a group of governmental experts (nominated within the UN system, in accordance with the criteria laid down in the June 2019 resolution) to be presented to the UNGA 75th session through 2021.

The Council of Europe (CoE), for its part, is also exploring the feasibility of an initiative in this field. On 28 November 2019, the CoE Steering Committee on Human Rights agreed to support a proposal to develop CoE-wide guidelines encouraging or facilitating controls by CoE Member States on trade in goods used for torture, ill treatment and the death penalty. The proposal further encourages all CoE States to join the Global Alliance for Torture-Free Trade and support the UN process to develop international measures in this area. Switzerland, North Macedonia and Montenegro have opted to follow the Regulation model, with the United Kingdom also announcing that it will be retaining the Regulation's provisions after its departure from the EU.

2.3 Scope of this report (Article 32 of the Regulation)

Article 32 of the Regulation requires the Commission to present by 31 July 2020, and every 5 years after that, a comprehensive implementation and impact assessment report to the

[7] UN Resolution adopted by the General Assembly on 18 December 2019, A/RES/74/143. Torture and other cruel, inhuman or degrading treatment or punishment.
[8] OJ C 202, 7.6.2016, p. 389.
[9] A/RES/73/304 adopted by the General Assembly on 28 June 2019.
[10] Council Conclusions on the Guidelines on EU Policy Towards Third Countries on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the Council at its 3712th meeting held on 16 September 2019.

European Parliament and to the Council, which may include proposals for its amendment. The Regulation stipulates that this review will assess the need to include the activities of EU nationals abroad.

Member States are required to provide the Commission with all appropriate information for preparing the report Special sections of the report are to deal with the Anti-Torture Coordination Group set up by the Regulation (Article 31) and with its activities and must provide information on the measures taken by the Member States pursuant to Article 33(1) (penalties).

This report provides information on the Regulation's implementation and impact since it was last amended in 2016 until the end of 2019, thus essentially covering activities in 2017, 2018 and 2019.

The report also assesses the Regulation's implementation in relation to the basic principles of relevance, effectiveness, efficiency, coherence and EU added value. Such assessment focuses on whether the Regulation meets its main objective(s) and whether new concerns and challenges have arisen since 2016. This is to help determine whether further action is needed to address any identified shortcomings.

3. IMPLEMENTATION OF THE REGULATION

3.1 Regulatory framework

The Regulation was initially adopted as 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. It was adopted on 27 June 2005 and entered into force on 30 July 2006[11]. The last substantive amendment was adopted in 2016[12].

The Regulation was codified as 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[13].

3.1.1 Amendments to the Regulation

The Regulation was amended twice through delegated acts, once during the reporting period, and once in 2020.

COMMISSION DELEGATED REGULATION (EU) 2018/181 of 18 October 2017[14] added the Dominican Republic, Sao Tome and Principe and Togo to the list of countries of destination to which the Union general export authorisation (Annex V) applies.

- COMMISSION DELEGATED REGULATION (EU) 2020/621 of 18 February 2020[15] amended Annex I (updating the entries of several competent authorities) and Annex V (adding The Gambia and Madagascar to the list of countries of destination to which the Union general export authorisation applies).

[11] OJ L 200, 30.7.2005, p. 1–19.
[12] 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.
[13] OJ L 30, 31.1.2019, p. 1 – 57.
[14] OJ L 40, 13.2.2018, p. 1.
[15] OJ 144,7.5.2020, p. 1-5.

The Commission is empowered to adopt delegated acts to amend the list of goods either prohibited or controlled, including through an 'urgency procedure' when imperative grounds of urgency so require.

3.1.2 National implementing measures

The Regulation is binding in its entirety and directly applicable in all Member States. The competent authorities in the Member States are responsible for its implementation. Member States have the responsibility to decide, on a case-by-case basis, whether to grant an authorisation to export or dismiss an application for the regulated goods listed in Annex III and IV to the Regulation.

In order to prevent circumvention, the Regulation requires the competent authorities in the Member States to notify all other Member State authorities and the Commission if they are refusing to issue an authorisation or are annulling an existing authorisation. Consequently, any EU Member State considering authorising a transaction 'essentially identical' to one rejected by a Member State in the 3 years following the rejection is to consult the Member State having decided on the rejection. If an authorisation is granted nonetheless, the authorising Member State must provide a detailed explanation of its reasoning to the Commission and all Member States. When assessing an application, the authorities are to take into account considerations about intended end-use and the risk of diversion for illegitimate purposes.

Member States 'shall not grant an authorisation when there are reasonable grounds to believe that the 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, or used for capital punishment in a third country'.

The Regulation lists the following sources of information to guide the authorities' decisions:

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

Other information that the authorities may use when taking decisions include:

- available national court judgements;
- reports by civil society organisations; and
- information on restrictions on exports of goods listed in Annexes II and III applied by the country of destination.

The same criteria apply when deciding on applications related to the supply of brokering services or technical assistance.

Member States notified the Commission of 13 rejections over the reporting period. Details on the export authorisations issued and dismissed over the reporting period are described in Section 3.5.

The competent authorities in the Member States are also requested to register in a Commission database all data concerning refusals of applications for an authorisation to export. The database identifies the relevant EU competent authority, final destination, item concerned, description of the item, and the name of the consignee as well as of the end user.

The Regulation defines a mechanism for adding goods to Annex II, Annex III or Annex IV, enabling an EU Member State to address a duly substantiated request to the Commission for consideration. The Commission has not received any such request over the reporting period.

In addition to the list of goods whose trade is prohibited or regulated, the Regulation also includes provisions allowing EU Member States to autonomously introduce further national measures to regulate trade in certain additional goods.

According to Article 10 of the Regulation, Member States may adopt or maintain national measures restricting transportation, financial services, insurance or re-insurance, and general advertising or promotion for goods listed in Annex II. Notably, the United Kingdom[16] maintains national restrictions on the movement of goods between third countries outside the EU.

Furthermore, according to Article 14 of the Regulation, Member States may adopt or maintain a prohibition on the export and import of leg irons, gang chains and portable electric shock devices. Member States may also impose an authorisation requirement on the export of oversized handcuffs. Based on the information made available to the Commission, Belgium[17], Greece[18], Luxembourg[19], Spain[20] and the United Kingdom[21] have such additional restrictions in place. Hungary and Italy have also related measures in place. Slovakia has informed the Commission that it will be starting a legislative process in 2020 to amend its 2007 act on trade in certain goods, which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment.

The competent Member State authorities inform the Commission of their activities under the Regulation. The Commission's annual report is based on the information provided by the Member States, including through the national reports drawn up pursuant to Article 26(3). During the reporting period, the Commission issued a report on Member States' authorisations in 2017 and 2018 for exports of goods which could be used for torture or for capital punishment[22]. A report on export authorisations in 2019 is expected to be adopted in the second half of 2020.

3.2 Activities of the Anti-Torture Coordination Group

[16] This report covers 2017, 2018 and 2019, i.e. before the United Kingdom's departure from the European Union on 31 January 2020.

[17] The Flemish Arms Trade Law of 15 June 2012 prohibits the import of all portable electric shock devices which can make persons defenseless or which can inflict pain, except for medical or veterinary devices (exceptions apply to allow official use). As for the Walloon Region, according to the Arms Trade Decree of 21 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 are prohibited.

[18] Greece maintains national additional measures for two goods listed in Annex II to the Regulation, namely electric shock devices and cuffs (see Law 2168/1993 as amended).

[19] The export and import of leg irons and gang chains are prohibited under Article 36 (1) of the amended Law of 27 June 2018 on export control. The export and import of portable electric shock devices are prohibited, except when these accompany the user for the purpose of personal protection under Article 36 (1) of the amended Law of 27 June 2018 on export control. Furthermore, an authorisation is required for the export of handcuffs, which have an overall dimension, including chains, measured from the outer edge of one handcuff to the outer edge of the other cuff exceeding 240 mm (Article 36 (2) of the amended Law of 27 June 2018 on export control).

[20] Under Royal Decree 679/2014 of 1 August 2014 'stablishing the control on external trade in defence material, other material and dual-use items and technologies, Spain controls the export of standard handcuffs, requiring prospective exporters to obtain a licence to export these restraints.

[21] Article 9 of the United Kingdom's Export Control Order 2008 requires a licence for the export of goods listed in Article 14(1).

[22] COM (2019) 445 of 1.10.2019.

The Anti-Torture Coordination Group (ATCG) was established following the 2016 amendment to the Regulation[23] and serves to 'examine any questions concerning the application of this Regulation.' The ATCG, chaired by the Commission, serves as a platform for Member States' representatives and the Commission to exchange information on administrative practices. Furthermore, when preparing delegated acts, the Commission consults the ATCG in accordance with the principles laid down in the Inter-institutional Agreement of 13 April 2016 on Better Law-Making[24].

The ATCG held four meetings during the reporting period: on 12 July 2017, 28 June 2018, 29 April 2019 and 17 December 2019.

In line with Article 31(4) of the Regulation, the Commission submits a report to the European Parliament on the activities, examinations and consultations of the Anti-Torture Coordination Group. During the reporting period covered by this report, the Commission adopted a report in October 2019[25] covering 2017 and 2018. A report on the activities of the ATCG in 2019 is expected to be adopted in the second half of 2020.

The ATCG had technical exchanges on the tools available in the Commission's electronic database, a secure and encrypted system created to help the national authorities responsible for export control matters exchange information with the Commission. Article 23(5) of the Regulation requires the competent authorities to use that system to communicate information on cases where a request for an export authorisation was rejected (referred to as 'denials').

The ATCG dicussed the prior authorisation requirement for certain types of technical assistance and brokering services laid down in Articles 15 and 19 of the Regulation. The ATCG also held technical exchanges on the prohibitions laid down in Articles 8 and 9 of the Regulation concerning the inclusion of listed goods in trade fairs and advertising respectively. These prohibitions were introduced by the 2016 amendment to the Regulation. The exchanges covered in particular possible guidance for relevant authorities as well as enforcement modalities. It was noted that there had been reported instances of goods being advertised on the websites of some European suppliers.

In line with recital 48, the ATCG also examined the proposed delegated acts amending the Annexes to the Regulation, which were eventually adopted on 18 October 2017 and 18 February 2020 (see Section 3.1.1 above).

Another aspect that featured in the ATCG's work concerned the reporting requirements of national competent authorities. Further to these dicussions, a broader range of trade data is being gathered for the Commission's annual report for 2019.

Laslty, the ATCG had an exchange of views on the Alliance for Torture-Free Trade and the progress towards possible common international standards in this field.

3.3 Transparency and information

Article 26(3) of the Regulation requires that EU Member States prepare 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 taken on these applications.

[23]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, of 13.12.2016, p.1.
[24] OJ L 123, 12.5.2016, p. 1.
[25] COM (2019) 449 final of 7.10.2019.

Czechia[26], Denmark[27], Germany[28], Romania[29] and the United Kingdom[30] informed the Commission about their public 2019 annual activity reports[31]. To be noted that pursuant to Article 26 (3) of the Regulation, the public reports 'shall not include information the disclosure of which a Member State considers to be contrary to the essential interests of its security'.

A limited number of competent authorities has published information on their government website about the rules and regulations applicable to the goods within the scope of the Regulation in order to inform economic operators about export authorisation procedures and further requirements.

3.4 Export controls enforcement

The competent authorities in the Member States are responsible for enforcing export controls. In accordance with Article 33 of the Regulation, 'Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.' Hence, EU Member States develop national penalties applicable to infringements of the Regulation by persons and entities alike.

These national penalties include both administrative and criminal sanctions, ranging typically from pecuniary fines to imprisonment, including confiscation of the goods.

During the reporting period, the competent authorities did not inform the Commission of any infringements of the Regulation. The Regulation does not oblige the competent authorities to do so.

3.5 Export authorisations: Key data

The Commission gathers data from the competent authorities that enable it to have an overview of the export authorisations granted (or dismissed) in relation to the controlled goods described in Annexes III and IV to the Regulation.

Drawing on the data from the Commission's report[32] for both 2017 and 2018 and on the data being collected for the Commission's 2020 report covering 2019[33], the number of export authorisations granted (or dismissed) for 2017-2019 can be summarised as follows[34]*:* In 2017 a total of 292 authorisations granted by 12 Member States were reported. In 2018, 11

[26]Czechia: https://www.mpo.cz/cz/zahranicni-obchod/licencni-sprava/mucici-nastroje/zprava-ministerstva-prumyslu-a-obchodu-o-plneni-narizeni-rady-es-c--1236-2005-za-rok-2018--54368/

[27] Denmark: https://eksportkontrol.erhvervsstyrelsen.dk/produkter

[28] Germany: https://www.bafa.de/DE/Aussenwirtschaft/Ausfuhrkontrolle/Antragsarten/Anti_Folter_Verordnung/anti_folter_node.html

[29] Romania: http://www.imm.gov.ro/adaugare_fisiere_imm/2019/10/Rapoarte-anuale-comert-tortura-2017-2018.pdf

[30] Under Article 127(6) of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ L 29, 31.1.2020, p. 7), during the transition period provided for by Article 126 of that Agreement, any reference to Member States in the relevant Union law shall be understood as including the United Kingdom.

[31] The UK: https://www.gov.uk/government/collections/strategic-export-controls-licensing-data

[32] Report on export authorisations 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 - COM/2019/445 final.

[33] See Article 26.4 of the Regulation.

[34] Exports pursuant to the Union general export authorisation (Annex V to the Regulation) are not included in the information on the number of authorisations granted by Member States.

Member States reported that they had granted a total of 231 authorisations. In 2019 a total of 281 authorisations granted by 10 Member States were reported[35]. Hence, the total number of authorisations granted over the entire three-year reporting period amounts to 804.

Fifteen Member States informed the Commission that over the reporting period they had not received any applications for authorisations pursuant to Regulation (EU) 2019/125.

The Regulation imposes an export authorisation requirement enabling the competent authorities to check for any indications that the goods, if exported, might be used for torture or other cruel, inhuman or degrading treatment or punishment (Annex III) or for capital punishment (Annex IV). To that end, Article 20(8) of the Regulation provides that the competent authority should receive 'complete information in particular on the end-user, the country of destination and the end-use of the goods'.

During the three-year reporting period, 13 applications for an export authorisation were reported as having been rejected: 4 in 2017, 5 in 2018 and 4 in 2019.

The information available to the Commission, which is based on the data communicated by the competent authorities, enables the Commission to distinguish between end-use for law enforcement, science health care, end-use by security firms, medical end-use (hospitals and veterinary use) of goods listed in Annex IV, industrial use and export to trading firms. Over the three-year period covered by this report, 56 export authorisations were reported to be granted for law enforcement purposes, 52 for science/health care purposes, while the remainder (74) were issued for other purposes, mostly traders and private security firms. It should be noted in this regard that not all Member States provide a complete account and/or information on end-users, and as such, the data on end use do not match the total number of licenses referred to above.

3.6 EU nationals abroad

While not strictly part of the assessment of how the Regulation is implemented, Article 32 of the Regulation envisages that the review will also assess whether it is necessary to include the activities of EU nationals abroad within the scope of the Regulation. This section outlines areas where the activities of EU established companies, EU nationals, or residents of an EU Member State who are acting in third countries could be assessed. This concerns the following activities:

- **Brokering,** i.e. arranging the transfer of equipment between third countries outside the EU, where the items do not enter EU customs territory and where such activities are conducted by EU entities outside the EU:

  The Regulation does not prohibit brokering activities for Annex II goods nor does it control brokering activities for Annex III goods when conducted by EU brokers operating outside the EU.

- **Promotion/marketing** of relevant goods and services by EU entities outside the EU, or the facilitation of such marketing, for example through the organisation of arms, security, and related exhibitions and fairs in third countries:

[35] At the time of finalising this report, three EU Member States had not provided the Commission with the trade data related to 2019.

Article 8 of the Regulation prohibits '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' (emphasis added).

- **Provision of technical assistance** and training in the use of law enforcement equipment or techniques by EU entities to military, security, or police forces or to non-State actors, such as private security companies, in third countries:

  Article 7 of the Regulation prohibits a 'supplier of technical assistance or a broker' from 'supplying or offering to any person, entity or body in a third country, training on the use of goods listed in Annex II'. In addition, under Article 15, Member States are required to specifically authorize the provision of 'technical assistance related' to Annex III goods. The supply of technical assistance including training is only prohibited or controlled when it is directly for equipment covered by the Regulation (Annex II or Annex III). Technical assistance may be delivered independently of the supply of the equipment within the scope of the Regulation.

Two non-governmental organisations (NGOs) dealing with human rights and engaged in the review assessment have drawn attention to the case of EU nationals operating outside the EU who have been involved in providing, for instance, security and law enforcement training services in inappropriate or abusive use of law enforcement equipment. They have also drawn attention to the case of companies organising arms fairs or exhibitions in third countries. In particular, they consider that the current geographical restriction outlined in Article 8 should be removed and that any EU natural or legal person, entity or body should be prohibited from promoting Annex II goods at exhibitions or fairs irrespective of the country in which they are held. In addition, they consider that controls should be introduced (either through the Regulation or through other appropriate measures) to regulate the provision of instruction or training by all relevant educational establishments, so that such provision does not promote or include inappropriate or abusive policies, practices, or techniques that could facilitate or be employed in torture or other ill treatment in third countries.

Addressing the issues highlighted poses difficulties in relation to the territorial reach of EU jurisdiction. In international law, in principle, jurisdiction is territorial and cannot be exercised by a State outside its territory except by virtue of a permissive rule derived from international custom or from a convention. However, there are exceptions to this principle, which are relevant here. For example, international law allows penalising extraterritorial activities of nationals of a State when it comes to criminal offenses committed outside its territory[36]. In the case of particularly serious crimes that have been made subject to universal jurisdiction either by a multilateral treaty[37] or under customary international law such as genocide, war crimes, crimes against humanity and torture, a State may exercise jurisdiction in respect of crimes irrespective of the location of the crime and irrespective of the nationality of the perpetrator or the victim.

Unilateral decisions to exercise jurisdiction beyond the EU territory should be carefully considered in light of international law and practice. Given that whether a State may lawfully exercise extraterritorial jurisdiction is a matter of international law, it is important to

[36]See Art. 5 (1) (b) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 ([adopted 10 December 1984, entered into force 26 June 1987] 1465 UNTS 112; 'CAT').
[37]See the Geneva Conventions I–IV (1949).

vigorously and effectively promote torture-free trade in the appropriate international fora so as to extend the global response to the objectives that the Regulation aims to promote.

Other appropriate measures could also be explored, for instance measures promoting greater transparency and awareness raising or measures promoting effective compliance with the UN Guiding Principles on Business and Human Rights[38]. Indeed, the UN Guiding Principles on Business and Human Rights state that businesses should respect human rights. They should not infringe on the human rights of others and should address adverse human rights impacts. Addressing adverse human rights impacts requires taking appropriate measures for their prevention, mitigation and, where appropriate, remediation.

4. ASSESSING THE REGULATION'S IMPLEMENTATION

4.1 Assessment criteria and data sources

Incorporating the substantive assessment criteria of Article 32 of the Regulation, the Commission has assessed the Regulation's performance in line with its Better Regulation Guidelines,[39] evaluating the following elements:

- *Relevance*: The extent to which the overall objectives of the Regulation, its design and the national implementation measures provided for in the Regulation respond to EU priorities at the time the Regulation was adopted as well as to current EU priorities.
- *Efficiency*: The extent to which the Regulation is delivering efficiently. This covers the efficiency of implementation by Member States and the oversight by the European Commission, while assessing whether there are any gaps or duplications in information requirements, which could undermine the effectiveness or efficient implementation of the Regulation and whether reporting requirements are adequate and proportionate.
- *Effectiveness*: The extent to which the Regulation is delivering on its objectives and EU priorities.
- *Coherence and complementarity*: The extent to which the Regulation facilitates coherence and complementarity with other relevant EU and Member State initiatives.
- *EU added value*: The extent to which the Regulation adds value to individual measures by EU Member States.

The main sources of information for gathering evidence for the assessment were written submissions including a study, surveys[40], interviews and a workshop with key stakeholders.

Over 30 participants took part in the stakeholder workshop. They came from a broad range of organisations, including the competent authorities of the Member States, the European Commission, international organisations such as the UN and the Council of Europe, and NGOs.

[38] "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework" were developed by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. The Human Rights Council endorsed the Guiding Principles in its resolution 17/4 of 16 June 2011.

[39] See https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how/better-regulation-guidelines-and-toolbox_en.

[40] Eleven Member States provided feedback, while 15 respondents contributed to the public survey, of which 8 were from the public, 4 from NGOs, 2 from the private sector and 1 from academia. The Commission has further received submissions outside the public survey.

The assessment of the data and information gathered led to the following findings.

4.2 Relevance

4.2.1 Policy considerations

The Regulation, as initially adopted in 2005, responded to the need for '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 aimed to fill an identified gap in EU human rights-based trade controls and constituted the world's first binding instrument specifically addressing the issue. In order to maintain its relevance, the Regulation was amended in 2011, 2014 and 2016.

In addition to constituting the world's first operational framework to regulate trade in torture-related goods, its current relevance is confirmed by the role it has played as a source of inspiration for work in this area by other countries and organisations. Most notably, it has inspired the decision by the UN to develop common international standards on the trade in tools of torture[41]. The Regulation is also credited with inspiring the development of Council of Europe (CoE) region-wide measures to address the trade in equipment used for torture, ill treatment and the death penalty.

Further reinforcing the perceived relevance of this instrument is the fact that some non-EU Member States have opted to follow the Regulation model, e.g. Switzerland, North Macedonia and Montenegro, with the United Kingdom also announcing it will be retaining the Regulation's provisions following its departure from the EU.

4.2.2 Relevance of goods and services covered

The Regulation currently covers a broad range of goods related to capital punishment and torture.

With regard to the coverage of the Regulation in terms of goods, activities, and persons, Article 25 of the Regulation stipulates that each Member State can address a duly substantiated request to the Commission to add goods to Annex II, Annex III or Annex IV. During the period under review, no such requests were made.

Two human rights NGOs, which have engaged in the review exercise, consider in particular that the Regulation should be able to respond to changes in the international security market where technological and market developments are occurring frequently. In their view, the Regulation should also take account of changes in the nature of use, and misuse, of law enforcement equipment. The particular case of rebranding products to circumvent the scope of the Regulation was also raised as a point of concern, confirming the need for a regular update of the lists of goods covered. According to these NGOs, some of the goods currently listed under Annex III could be moved to Annex II, such as direct contact electric shock weapons (including electric shock batons, shields, and stun guns), and other goods could also usefully be added, such as prison hoods and blindfolds, restraint chairs, boards and beds with straps intended for law enforcement purposes. According to these NGOs, for Annex III, controlled goods that could be added include 'standard handcuffs,' hand-held striking weapons and certain launched kinetic impact weapons.

[41] Resolution A/73/L.94: 'Towards torture-free trade: examining the feasibility, scope and parameters for possible common international standards,' adopted by the UN General Assembly on 28 June 2019.

Riot control agents present a specific issue. In recent years, there has been a surge in their availability and use. Two human rights NGOs, which have engaged in the review assessment, consider that these are not adequately covered by the Regulation, as there is a certain degree of inconsistency with the EU 'common military list'[42]. When developing (and revising) the Regulation, goods already covered by other EU instruments were specifically excluded from the scope of the Regulation. In practice, this exclusion has led to a situation where the Regulation covers the control of some riot control agents, such as pepper spray and OC (*oleoresin capsicum*) but not those that are listed in the common military list. Human rights NGOs engaged in the review exercise indicate that these riot control agents currently not covered by the Regulation are frequently used to facilitate or conduct torture and other ill treatment or internal repression.

In the case of Annex IV goods, the Regulation lists certain chemicals/medicines intended to save and improve the lives and health of patients but which might be sought for use in lethal injection. According to one organisation engaged in preventing the misuse of medicines in lethal injections, the Regulation covers 2 of the 14 drugs currently listed on the US state and federal lethal injection protocols. Unlike the goods listed in Annexes II and III, those types of chemicals and medicines fulfil an essential lifesaving function, and therefore measures that might limit their trade need to be carefully assessed to prevent such trade in legitimate lifesaving medical supplies from being negatively impacted. Of note in this regard is the self-regulation regime adopted by several EU companies, which voluntarily apply various distribution protocols that are considered by various stakeholder groups to be preventing an inappropriate use of drugs exported from the EU.

When assessing the relevance of goods and services covered, consideration could also be given to the introduction of a targeted end-use or catch-all clause to the Regulation. Human rights NGOs engaged in the review exercise and a Member State authority have advocated the introduction of such a clause. In concrete terms, such a clause would allow individual EU Member States to halt a specific transfer of a certain item that is not specifically listed in the Regulation's Annexes II or III. Such an item would have to be found to clearly have no practical use other than capital punishment, torture and other ill treatment. The clause could also cover cases where there is evidence that the potential transfer of the unlisted item would result in its use for such purposes.

With regard to the services included in the scope of the Regulation, i.e. brokering services, technical assistance, training and advertising related to the goods covered by the Regulation, the assessment has not found any indication that an amendment in this regard would be needed. To be noted however that the supply of technical assistance including training is only prohibited or controlled when it is directly for equipment covered by the Regulation (Annex II or Annex III).

4.2.3 Relevance of adding intra-EU trade

During the consultations on the implementation of the Regulation, there have been suggestions to broaden the scope of the Regulation to cover the intra-EU trade of Annex II and Annex III goods as well as the import of Annex III goods to the EU. The Regulation was initially responding to the consideration that it was 'appropriate to lay down Community rules on trade with third countries in goods which could be used for the purpose of capital

[42] Common military list of the European Union, adopted by the Council on 17 February 2020 (equipment covered by Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment) (CFSP) (2020/C 85/01), OJ, C 85-1, 13.3.2020.

punishment and in goods which could be used for the purpose of torture and other cruel, inhuman or degrading treatment or punishment.' This emphasis on relations with third countries was clearly specified in the preamble, which states that '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 non-EU 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 Community 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.'

Two human rights NGOs with expert knowledge about the trade in goods that might be used for torture or ill treatment have advocated that the scope of the Regulation should be expanded to cover the import to the EU or the intra-EU transfer of law enforcement equipment and related goods that have legitimate law enforcement purposes but can be misused.

The Regulation clearly focuses on restricting trade with third countries. Therefore regulating the import of law enforcement equipment to the EU and its intra-EU transfer to address alleged instances of torture and other cruel, inhuman or degrading treatment or punishment within the EU through the Regulation does not appear to be coherent with the Regulation's stated objectives. Other tools and means related to the protection of human rights currently at the disposal of the European Union and its Member States can be considered more appropriate in this regard.

4.3 Efficiency

4.3.1 Authorisations and refusals

Drawing on the data presented in this report and the previous Commission Report on export authorisations in 2017 and 2018[43] (see Section 3.5), it is worth noting that there is a significant number of Member States (15) reporting no authorisations over the three-year period. Additionally, some Member States report significantly more authorisations than others do.

The data presented also show a limited number of refusals of authorisations for goods (13 by 4 Member States over the three-year period), with the services covered by the Regulation not being the subject of any authorisations (or refusals). Implementation is the responsibility of the competent authorities in the Member States. There is currently only limited information available on issues such as national risk assessment procedures and monitoring of the end-use of exported goods and services.

From the information presented above, there appears to be a need for some form of European Union guidance or on best practices on the implementation of the Regulation (e.g. with regard to the definition of goods covered, risk assessments, refusals, notifications etc.) and for more information by the competent authorities on how the Regulation is being applied in practice.

[43] COM/2019/445 final

4.3.2 Reporting

As indicated in Section 3.3, Article 26(3) of the Regulation sets out the reporting requirements of competent authorities. Five Member States confirmed that they publish annual activity reports in line with Article 26(3) of the Regulation. To be noted that pursuant to Article 26(3) of the Regulation, the public reports 'shall not include information the disclosure of which a Member State considers to be contrary to the essential interests of its security'.

The level of detail included in those annual reports may not always allow for an accurate assessment of the Regulation's implementation at national level. Few Member States provide publicly available information on procedures for the risk of goods or on follow-up measures taken to monitor the end-use nor do they indicate the volume and value of related goods or whether penalties were applied for breaches of the Regulation. Similarly, on the notification and consultation mechanism of Article 23, limited information is available.

Article 26(4) requires the Commission to publish an annual activity report. One report was published in October 2019 for Member State export authorisations in 2017 and 2018, while a further report covering 2019 will be adopted in 2020. The reporting form for 2019 requests data on a broader range of issues. Other relevant information that could be usefully incorporated in the overall annual reporting exercise includes information on identified infringements and the penalties applied. Also, to ensure greater transparency, further aspects such as the value and volume of exports could be included as well.

4.4 Effectiveness

The Regulation has met the specific objective of more effectively controlling EU trade with third countries in goods that could be used for capital punishment or torture and other cruel, degrading or inhuman treatment or punishment. According to a Member State authority, the Regulation has made it easier to intercept relevant goods while traders have been dissuaded from trying to export prohibited goods (as is evidenced by the limited extent of such trade overall).

However, more information on the imposition of penalties by EU Member States under Article 33 of the Regulation would be of interest in order to better assess the extent to which breaches of the Regulation are being identified and penalised. While the Commission has a nearly complete picture of the national legislation in place in EU Member States regarding penalties applicable to infringements, it does not have sufficient information as to whether the authorities have applied those penalties in particular instances of infringements.

The broader goal of helping to prevent capital punishment and torture and other cruel, inhuman or degrading treatment or punishment in third countries is more difficult to assess, as there are many other contributing factors. The restriction of trade in these goods and services is only one element in the fight against torture. Furthermore, torture and other ill treatment are not only reliant on sophisticated tools; often the most basic and easily available instruments, e.g. batons, truncheons, standard handcuffs and excessive physical force are used.

4.5 Coherence and complementarity

To ensure complementarity, the Regulation makes specific reference to other related EU instruments or frameworks and expressly excludes the goods they cover from the scope of the

Regulation. The Regulation covers materials not listed in any other legal instrument and, in that respect, is complementary to other European regulatory frameworks. The Regulation avoids targeting goods related to other Regulations and for which an authorisation system is already in place, i.e.:

i. firearms controlled by Regulation (EU) No 258/2012;
ii. dual-use items controlled by Regulation (EC) No 428/2009;
iii. goods controlled in accordance with Common Position 2008/944/CFSP and the associated common military list[44].

While this approach to ensuring complementarity between export control instruments has been largely successful, some inconsistencies have emerged. As indicated above, this is the case for riot control agents. Some, such as pepper spray and Oleoresin Capsicum (OC), are included in the Regulation, while others listed in the common military list, such as common tear gases (CS gas, CR gas and CN gas), are not, even though these are frequently used to facilitate or conduct torture and other ill treatment. It would be appropriate to explore how best to ensure that both instruments are more consistent, that licence approval processes are uniform and that denial notifications are circulated under both control regimes.

Similarly, although the EU has established arms embargoes to explicitly respond to instances of 'internal repression' and for that purpose has developed a list of equipment used for 'internal repression', that list does not include items covered by the Regulation. The possibility of expressly including certain Annex III goods controlled by the Regulation within the scope of embargoes specifically referencing concerns relating to 'internal repression' could be explored.

Regarding its broader EU human rights objective, the Regulation is largely coherent with and complementary to other relevant EU instruments and initiatives. There is, however, room for greater synergies between human rights monitoring work in third countries on the one hand, and controls on the end use of goods and services exported under the Regulation on the other.

There has been a high degree of coherence and complementarity with initiatives on a global and regional level (Alliance for Torture-Free Trade, Council of Europe). Over the last 3 years, the European Union (at both the technical and diplomatic levels) has been at the forefront of initiatives to raise international governmental awareness of the trade in equipment used for torture, ill treatment and the death penalty. The EU has actively helped to develop international measures to combat this trade, notably through its support for the establishment of the Alliance for Torture-Free Trade. This work culminated in the Resolution 'Towards torture-free trade: examining the feasibility, scope and parameters for possible common international standards,' which was adopted by the UNGA on 28 June 2019.

On a regional level, the Regulation has inspired the development of potential Council of Europe region-wide trade control measures in this area.

4.6 EU added value

EU added value looks for changes due to the EU intervention, over and above what could reasonably have been expected from national actions by the Member States.

[44] See common military list of the European Union, adopted by the Council on 17 February 2020 (equipment covered by Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment (CFSP) (2020/C 85/01), OJ, C 85-1, 13.3.2020.

Trade is an area of exclusive EU competence pursuant to Article 207 of the Treaty on the Functioning of the European Union. The Regulation's EU added value is evident, given that the Regulation falls within an area where the EU has exclusive powers and that the objectives of the Regulation can therefore be best achieved at Union level.

Although the Regulation allows Member States to take additional measures, the measures provided for by the Regulation can be considered broadly appropriate. Five Member States have adopted or maintained additional measures pursuant to Article 10 and 14 of the Regulation.

4.7 Anti-Torture Coordination Group (ATCG)

The ATCG has its legal basis in the Regulation itself. Chaired by the Commission, its composition is limited to one representative appointed by each Member State. The ATCG covers a specific, but limited, set of tasks: it can examine questions concerning the Regulation's application, including, the exchange of information on administrative practices. The ATCG can consult, on an *ad hoc* basis, with exporters, brokers, suppliers of technical assistance and other relevant stakeholders concerned by the Regulation. According to recital 48 of the Regulation, the ATCG has a specific role in preparing delegated acts, as Member States are formally consulted through the ATCG on draft delegated acts submitted by the Commission in accordance with the principles laid down in the Inter-institutional Agreement on Better Law-Making.

In light of the findings of this report and in line with its mandate, the ATCG could, for instance, engage in more in-depth discussions on matters such as possible breaches of the Regulation, or potential cases of concern. The analysis of Member States' implementation of Article 23 (notification of decisions to deny, consultation with other Member States and information provision measures) is also an important element that could feature in a regular manner in the work of the ATCG[45].

5. CONCLUSIONS AND WAY FORWARD

The Regulation was adopted to create a European Union instrument on trade with third countries in goods and related services that could be used for capital punishment, torture and other cruel, inhuman or degrading treatment or punishment. It has been instrumental in promoting **respect for human life and fundamental human rights.**

The Regulation fills an identified gap in EU human rights-based trade controls. It has made a **positive contribution** in meeting its main objective of taking effective, concrete measures against torture and other cruel, inhuman or degrading treatment or punishment. As the world's first legally binding regulatory instrument in this area, it has also served as an **example for the development of similar trade measures** by third countries and international organisations.

[45] Article 23 requires States to alert the Commission and all other Member States of their decisions to deny or annul authorisations under the Regulation for the export or transit of goods or the provision of technical assistance or brokering services. It also requires States to inform and consult with relevant Member States if they are considering granting an 'essentially identical' transaction to one denied or annulled by another Member State. Finally, Article 23 requires any State granting authorisation for such 'essentially identical' transactions to inform the Commission and all Member States of its decision and the reasons.

The review has confirmed that, overall, the Regulation is being **implemented satisfactorily** and continues to be fit for purpose. It is deemed to be sufficiently robust, and a fully-fledged legislative update is therefore not deemed necessary at this stage. On the other hand, the review has shown that non-legislative measures in support of a more effective implementation of certain provisions of the Regulation could be further explored.

As for the scope of goods covered by the Regulation, it should **respond to evolving technological and market developments** and take account of changes in the nature of the use, and misuse, of law enforcement equipment. Inconsistencies with other related EU instruments (EU Council Common Position 2008/944/CFSP and arms embargos specifically instituted to address instances of 'internal repression') could also be further examined. Balancing human rights considerations against the need to protect the trade of legitimate **life-saving medical supplies** when assessing the opportunity (or not) to update the scope of chemicals covered should also continue to be carefully assessed.

To help Member States more effectively and consistently/uniformly implement the Regulation in key or challenging areas, there may be a need for **guidance** on the practical application of certain aspects of the Regulation, such as the definition of the goods listed in the annexes, trade fairs and exhibitions protocols, risk assessment, refusals, or notifications. Ways of more closely **monitoring** possible infringements of the Regulation and the **end-use** of exported goods should be further explored. There is also room for greater **synergies,** which could be further explored, between human rights monitoring work in third countries on the one hand and controls on the end-use of goods and services exported under the Regulation on the other.

The need for **greater transparency and accountability** (notably by publishing annual activity reports) is also recognised. Furthermore, the review highlights the need for more **information sharing** about how the Regulation is being implemented, notably as regards risk assessments and the policy on licensing. Additional relevant information could be usefully incorporated in the annual reporting exercise, such as data on infringements and penalties.

A more systematic **interaction with non-governmental organisations, international organisations and other stakeholders** with relevant expertise should be encouraged, including through the submission of reports, briefings or other information relating to the Regulation and its implementation. This would facilitate a more robust monitoring and detection of instances of possible breaches, and help to inform national risk assessment procedures**.**

In order to examine the issues highlighted and gather further evidence and expert opinions, the Commission proposes to establish a **group of experts**. Such group could include among other suitably qualified experts from relevant non-governmental organisations (namely those working in the fields of human rights and arms control), international organizations, academia and industry. The group would provide in a regular manner support to the Commission in exploring avenues to strengthen compliance and make the Regulation and its implementation more effective. Its function would be to provide broad expertise that would be complementary to the role of the ATCG, provide the substantive input to drive the discussion on policy and implementation and enable all stakeholders involved to engage in continuous dialogue.

Furthermore, non-legislative measures could be explored to deter certain inappropriate activities of **EU nationals and EU-based companies operating abroad** (such as promoting or marketing goods and services and providing technical assistance and training for an inappropriate or abusive use of law enforcement equipment). Such measures could include,

for instance, measures for increased transparency and awareness raising or measures to promote effective compliance with the UN Guiding Principles on Business and Human Rights.