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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on export authorisation in 2020 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

1. Introduction

The objective 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] is to prevent, in countries outside the EU, capital punishment, on the one hand, and torture and other cruel, inhuman or degrading treatment or punishment, on the other. 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 IV is subject to certain restrictions.

Article 26(3) of the Regulation states that the Member States must draw up a public, annual activity report. The report must provide information on the number of applications received, the goods and countries concerned, and the decisions taken on the applications. Article 26(4) states that the Commission must draw up an annual report comprised of the annual activity reports published by the Member States. It must make the report publicly available.

This Commission report provides information on Member States' authorisation activities concerning exports of goods in 2020[2] that could be used for torture or for capital punishment.

All Member States have reported on the number of export authorisations granted and refused under Articles 11(1) and 16(1) and on the goods and countries of destination in question. In some cases, the competent authorities in the Member States have also reported on the numbers or quantities of goods authorised for export and the category of end-user to whom the goods were supplied.

Authorisations under Regulation (EU) 2019/125

Articles 11(1) and 16(1) of the Regulation require an authorisation for exports[3] of goods listed in Annex III and Annex IV respectively.

Annex III lists certain goods that could be used for torture or other cruel, inhuman or degrading treatment or punishment. Goods in Annex III fall under the following headings: goods designed for restraining human beings; weapons and devices designed for the purpose of riot control or self-protection; and weapons and equipment disseminating incapacitating or irritating chemical substances for the purpose of riot control or self-protection, and certain related substances.

(1) OJ L 30, 31.1.2019, p. 1.

(2) This report does not provide information on exporters' use of the Union General Export Authorisation, pursuant to Annex V to the Regulation, for exports of goods listed in Annex IV.

(3) Article 2(d) of the Regulation defines 'export' as '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 Council'.

Annex IV lists certain chemicals that could be used in lethal injections.

Except where the Union general export authorisation (GEA) set out in Annex V is used for exports of goods listed in Annex IV, the authorisation to export has to be obtained from the competent authorities of the Member State concerned, as listed in Annex I to the Regulation.

Exports to destinations listed in the Union GEA can usually take place without obtaining an individual or global authorisation granted by a Member State. The approach so far has been to include a non-EU country in Annex V if it has ratified a relevant international agreement with a commitment to abolishing the death penalty for all crimes. For countries that are not members of the Council of Europe, that means the country in question must have ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) without reservation.

However, if there is reasonable suspicion about the exporter's ability to comply with the terms of the authorisation or with export control legislation, the competent authority may prohibit the exporter from using the Union General Export Authorisation.

Article 20(2) of Regulation (EU) No 2019/125 states that an export authorisation granted by a Member State can be an individual authorisation (an authorisation for exports to one end-user or consignee in a non-EU country) or a global authorisation (an authorisation for exports to one or more specified end-users or distributors in one or more specified non-EU countries) [4].

Articles 3, 4 and 5 of the Regulation prohibit the export, import and transit, respectively, of the goods listed in Annex II. Competent authorities may grant a derogation from the prohibition, but only if it is demonstrated that the goods concerned will be used exclusively for public display in a museum (either in a non-EU country or, in accordance with Article 4, in a Member State) given their historical significance.

2. Authorisations granted and refused

In 2020, the total number of reported authorisations amounted to 247, with 11 Member States reporting that they had granted authorisations. The remaining Member States informed the Commission that they had not received any applications for authorisations pursuant to the Regulation.

As the definitions of 'individual authorisation' and 'global authorisation' in Article 2 of the Regulation do not include a quantitative component, an indication of the number of authorisations granted does not give an indication of the number or quantity of goods concerned by these authorisations. Nor does the information that Member States provide to the Commission typically distinguish between individual authorisations and global authorisations.

([4]) Article 2(p) fully defines 'individual authorisation'. Article 2(q) fully defines 'global authorisation'.

The Regulation requires the competent authorities to check if an export authorisation has indications that, if exported, the goods in question might be used for torture or other cruel, inhuman or degrading treatment or punishment (Annex III) or for capital punishment (Annex IV). This is why Article 20(8) of the Regulation states 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'.

Member States reported that they had denied 23 applications for an export authorisation in 2020. The reported cases of denial concerned certain intended transactions with customers in Algeria, Andorra, Brazil, Cameroon, Chile, China, Hong Kong, Iraq, Malaysia, Philippines, Saudi Arabia, Thailand, Uganda, the United Arab Emirates and Vietnam. The unauthorised transactions primarily concerned goods listed in Annex III code 3.1[5]. Some concerned goods listed in Annex III codes 1.1[6] (Saudi Arabia), 2.1[7] (Algeria), 3.4[8] (Hong Kong, Thailand) and 3.6[9] (Iraq). The intended export to Malaysia concerned goods listed in Annex IV code 1.1(d) *(pentobarbital sodium salt)*. Another intended export to Hong Kong concerned goods listed in Annex IV code 1.1 *(Other short and intermediate acting barbiturate anaesthetic agents*).

Articles 3, 4 and 5 of the Regulation prohibit the export, import and transit, respectively, of the goods listed in Annex II. The Regulation allows the competent national authorities to grant a derogation from the prohibition, but only if it is demonstrated that the goods concerned will be used exclusively for public display in a museum (either in a non-EU country or, in accordance with Article 4, in a Member State) in view of their historical significance. The competent authorities reported that they had not granted such derogations in 2020.

Annex 1 to this report provides information on the number of export authorisations granted by the national competent authorities in 2020, by category of goods (Annexes III and IV to the Regulation). Exports under the Union General Export Authorisation (Annex V) are not included in the information on the number of authorisations granted.

Annex 2 provides information on the number of reported export authorisations and denials by category of goods (Annexes III and IV).

Annex 3 provides information on the number of applications authorised and denied over the period 2017-2020.

Annex 4 provides information on the number of reported export authorisations issued by Member States.

Annex 5 provides information on the main reported destinations of authorised exports.

([5]) Goods listed in Annex III under code 3.1: portable weapons and equipment for the administration or dissemination of a dose of an incapacitating or irritating chemical substance.
([6]) Goods listed in Annex III under code 1.1: Shackles and gang chains (except ordinary handcuffs).
([7]) Goods listed in Annex III under code 2.1: Electric shock batons.
([8]) Goods listed in Annex III under code 3.4: Mixtures containing at least 0.3% of PAVA by weight or OC and a solvent (pepper spray).
([9]) Goods listed in Annex III under code 3.6: fixed or mountable equipment for the dissemination of incapacitating or irritating agents over a wide area.

Annex 6 summarises the information provided to the Commission on the reported end-use of authorised exports in 2020.

Annexes 7 and 8 provide an overview of the goods authorised for export, their destinations and their reported end-use.