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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 ('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] 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 2023.

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 could be used for the purpose of torture and other cruel, inhuman, or degrading treatment or punishment (Annex III) or for the purpose of capital punishment (Annex IV) but can also have legitimate uses, such as law enforcement or therapeutic purposes.

Trade in goods listed in Annexes II, III and 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, on a case-by-case basis, for exports of goods listed in Annex III, which could be used for the purposes of 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

[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).

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

iii. regulates trade in goods in Annex IV that can be used for capital punishment (e.g. through lethal injection) but may also to be used for legitimate therapeutic purposes. A specific licence authorisation (Union general export authorisation (GEA)) has been introduced to control the export of such goods 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 Regulation.

The ATCG serves as a platform for Member State experts and the Commission services 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 on two occasions in 2023, on 27 April and on 23 November, in a virtual format, to exchange information on several issues (summarised below) concerning the implementation of the Regulation.

3.1 Developments relating to the basic act

No delegated acts amending the Regulation were adopted in 2023.

3.2 Trade information: data reporting

The Commission presented the state of play on the annual report referred to in Article 26(3) of the Regulation. The Commission presented a new functionality whereby authorities in the Member States are invited to upload the required data for reporting purposes directly in the DUes library, under the module related to the 'Anti-Torture' Regulation. This is intended to streamline and facilitate the aggregation of the data across all Member States. The information gathered includes notably the type of good, the export destination and the end use. Those elements are reflected in the Commission's annual report. The Commission furthermore provided information about the trade data in the report referred to above once it was adopted[7].

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[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).
[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] COM (2023) 689 final, 8.11.2023 and Annexes 1 to 11 as corrected (C (2024) 2491 final, .10.4.2024

3.3 Commission's informal group of experts

The Commission continued to inform the ATCG about the activities of the informal group of experts formed in line with the conclusions of its review report[8]. The informal group brings together different perspectives (e.g. advocacy, law enforcement, research, and customs). Its function is strictly advisory and complementary to the one provided by the ATCG.

Throughout 2023, the ATCG was debriefed about the deliberations within the informal group of experts related to strengthening the Regulation. The informal group of experts has assessed technological developments and new products as well as the use of certain law enforcement equipment used in policing practices, including goods used in instances of non-confinement such as during peaceful assemblies.

In order to strengthen the Regulation, and in line with the conclusions of the Commission's 2020 review report, the Informal Experts Group (IEG) considered moving some goods from one category (Annex III) to another (Annex II) as well as the addition of certain new goods that are not currently listed in any of the annexes to the Regulation. Security sector expertise from the IEG stated that, when considering goods used for law enforcement or in detention, the essential consideration is whether they are 'necessary' and, if so, is their design sufficiently humane.

As regards the control on pharmaceuticals that can be used for lethal injections, key to the effectiveness of these controls has been the partnership with industry and its self-regulation protocols which have proven instrumental in preventing the use of EU pharmaceuticals in executions.

The idea of a blanket prohibition of training in the misuse of any law enforcement equipment that will facilitate torture or ill treatment was also raised. The discussions of the informal group served as inputs for a draft proposal for a delegated act which was presented by the Commission to the ATCG[9].

3.4 Torture-free trade

The Commission updated the ATCG on the content of the UN Special Rapporteur on Torture, Alice Edwards' annual thematic report on "the global trade in weapons, equipment and devices used by law enforcement and other public authorities that are capable of inflicting torture and other cruel, inhuman or degrading treatment or punishment", issued on 24 August 2023.

In the report, the UN Special Rapporteur presents an annual overview of torture-related trends and developments, as well as a thematic study on the global trade in weapons, equipment and devices used by law enforcement and other public authorities that could be used for inflicting torture and other cruel, inhuman, or degrading treatment or punishment.

The Commission noted the relevance of this report in the context of possible strengthening of the EU Regulation.

[8] COM (2020) 343 final, 30.7.2020.
[9] Engagement with experts within the ATCG is in progress.

The report furthermore identifies a list of items regarded as inherently cruel, inhuman, or degrading and that, as such, should be prohibited (non-exhaustive list of 20 types of equipment/weapons). It then recommends a list of goods that ought to be regulated at the national and international levels. While these items have a legitimate use, they can be misused for torture and therefore necessitate a level of oversight.

The report concludes with a recommendation to "develop an international torture-free trade instrument to complement and reinforce existing obligations to prohibit and prevent torture and other cruel, inhuman or degrading treatment or punishment."

The Commission also informed the ATCG about a group of over thirty civil society organisations from all regions that supports the ongoing efforts towards 'Torture-Free Trade.' These organisations have joined forces to call for an international treaty to control the trade in tools of torture used to suppress peaceful protests and abuse detainees around the world. In a declaration signed in London in January 2023, human rights non-governmental organisations called for a treaty to prohibit the manufacture and trade in inherently abusive equipment, as well as the introduction of human rights-based controls on the trade in more standard law enforcement equipment.

3.5 Follow up to the Commission's review report: Strengthening Regulation (EU) 2019/125

The Commission outlined to the ATCG a draft proposal for a delegated act subsequently shared with ATCG experts for their feedback. The draft proposal, designed to strengthen the Regulation (EU) 2019/125, builds upon the Commission's Review report 2020, the work of the informal group of experts, and the Reports of the UN Special Rapporteur torture. The Commission highlighted the October 2023 report of the UN Special Rapporteur on Torture, Dr Alice Jill Edwards, in which she identifies 20 types of law enforcement equipment which are inherently abusive and should be prohibited and a further 17 types of law enforcement equipment that can have a legitimate use but can be misused for torture and whose trade must be strictly controlled. The Commission underlined that its draft proposal was being prepared with the principles of legality, necessity, and proportionality in mind and that it will consult the Anti-Torture Coordination Group.