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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] ("the Regulation") requires the Commission to submit a report to the European Parliament on the activities, examinations and consultations of the Anti-Torture Coordination Group. It further specifies that the annual report shall be drawn up paying due regard to the need not to undermine the commercial interests of natural or legal persons.

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

2. Regulatory Framework

The Regulation highlights the EU's commitment to the eradication of torture and capital punishment. It prohibits exports and imports of goods specifically designed for capital punishment, for torture or for other cruel, inhuman or degrading treatment or punishment. It also requires that exports of goods which could be used for torture and other cruel, inhuman or degrading treatment or punishment, be subject to a prior export authorization issued by the competent authorities of the EU Member States.

The lists of prohibited and controlled goods are set out in the Annexes II, III and IV to the Regulation.

The Regulation was amended once during the period covered by this report. Commission Delegated Regulation (EU) 2018/181 of 18 October 2017[2] added the Dominican Republic, Sao Tome and Principe and Togo to the list of countries of destination to which the Union General Export Authorisation (currently Annex V) applies[3].

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1 The Regulation concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment was adopted on 30.7.2005 (Regulation (EC) 1236/2005). It has been amended several times. It was last amended by Regulation (EU) 2016/2134 of 23.11.2016 and subsequently codified as Regulation (EU) 2019/125 of 16.1.2019 (OJ L 30, 31.1.2019, p. 1).

2 OJ L 40, 13.2.2018, p. 1.

3 The Union General Export Authorisation applies to exports to countries that have abolished capital punishment for all crimes and confirmed that abolition through an international commitment, if the conditions and requirements for using that authorisation are met. As regards 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.

3. Activities of the Anti-Torture Coordination Group

The Anti-Torture Coordination Group (ATCG) was established by Regulation (EU) 2016/2134 of the European Parliament and of the Council to examine questions concerning the application of the Regulation.

The ATCG serves as a platform for Member States' experts and the Commission to exchange information on administrative practices and to discuss questions of interpretation of the Regulation, technical issues with respect to the goods listed, developments related to the Regulation and any other questions that may arise. Furthermore, when preparing delegated acts, the Commission consults the ATCG in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[4].

The ATCG held two meetings during the reporting period, on 12 July 2017 and 28 June 2018 respectively, to exchange information on a number of topical issues concerning the implementation of the Regulation.

3.1. Notifications concerning denials and prohibited exporters

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

New notification tools were introduced in DUeS to align it with Regulation (EU) 2016/2134 of the European Parliament and of the Council[5]. The tools enable the competent authorities to notify:

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

3.2. Prior authorisation requirement of Articles 15 and 19 concerning technical assistance and brokering services

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

[4] OJ L 123, 12.5.2016, p. 1.
[5] OJ L 338, 13.12.2016, p. 1.

3.3. Enforcement of the prohibitions of Articles 8 and 9 concerning trade fairs and advertising

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

3.4. Global Alliance for Torture-Free Trade

The ATCG was informed of the main developments regarding the Global Alliance for Torture-Free Trade[6]. Promoted by the European Union and co-sponsored by Argentina and Mongolia, the Global Alliance was launched on 18 September 2017 with the adoption by 57 members of a political declaration on its founding principles, including a commitment to take effective measures for restricting trade in goods used for torture and death penalty through domestic legislation and efficient enforcement.

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

6 http://www.torturefreetrade.org/