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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 2022.

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 2022, on 12 May and on 1 December, 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 2022.

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. In particular, the 2021 data from all the authorities in the Member States as well as from the United Kingdom[7], constituting the basis for the preparation by the Commission of its annual report to the European Parliament and to the Council, was presented. The Commission furthermore provided information about the trade data in that report once it was adopted[8].

[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] Regulation (EU) 2019/125 is included in Annex 2 to the Protocol on Northern Ireland (Point 47 Other), OJ L 29, 31.1.2020.
[8] COM (2022) 567 final, 31.10.2022.

In this context, the Commission drew the attention of the ATCG to the fact that it is compulsory for competent authorities to notify when denials are issued by means of the Dual-Use Electronic System (DUeS).

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[9]. 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 2022, the ATCG was debriefed about the deliberations within the informal group of experts related to the United Nations (UN) process towards 'Torture Free Trade' (see point 3.4 below). In particular, the Commission informed the ATCG about the submissions in the context of the UN Group of Governmental Experts (UN GGE) consultation and about possible international standards in that field. Some of the main aspects considered by the informal group were: consideration of the trade in goods designed for the death penalty within the overall process, examples of Treaties and/or Framework conventions on which some parallelisms could be established, need for building in a degree of flexibility to ensure broader consensus on core essential principles/requirements, preference for avenues entailing legally binding obligations as well as the need for further engagement with a wide group of countries.

3.4 Torture-free trade — regional and international developments

The ATCG served as a platform for exchanging information and raising awareness on regional and international developments in the field of torture-free trade.

The Commission updated the ATCG delegates on the submission of the UN Group of Governmental Experts' (UN GGE)[10] final report adopted on 30 May 2022. The UN GGE report addressed the following topics: (i) feasibility of common international standards; (ii) scope of goods to be considered; and (iii) draft parameters for a range of options to establish common international standards on the matter.

The UN GGE made concrete proposals on the categories of goods that could be covered and the forms that international standards could take. The report essentially discussed the possibility of developing standards in relation to four categories of goods, namely:

i. goods that have no other practical use than for the purpose of torture and ill-treatment,
ii. goods that could be used for torture and ill-treatment,
iii. goods that have no other practical use than for the purpose of capital punishment and
iv. goods that could be used for the purpose of capital punishment.

Recognising the absence of consensus among the UN governmental experts as regards trade in goods used for capital punishment, the report suggests treating them separately through an "opt-in" mechanism. The report furthermore makes a compelling argument for the UN

[9] COM (2020) 343 final, 30.7.2020.
[10] Governmental experts from the following 10 States were appointed by the Secretary-General in July 2021: Cameroon, Côte d'Ivoire, Cyprus, Denmark, Ecuador, Estonia, Germany, Russian Federation, Singapore and Uruguay.

General Assembly to set up a working group to prepare international standards on torture-free trade.

The ATCG also received a presentation from invited experts from Amnesty International and the Omega Research Foundation to present their research and advocacy work to support the establishment of a Torture-Free Trade Treaty within the context of the civil society campaign '*Protect the protest'.* It includes outreach efforts to engage States to develop regional and international controls and to support the UN process which is being supported by a network of civil society organisations. The invited experts presented: (1) trends observed in recent years of extra-custodial torture and ill-treatment, in the context of the repression of peaceful protests, that is combined with restrictive legislation, arbitrary detention, criminalisation of protests, unlawful mass and targeted surveillance and unlawful use of and trade in less lethal equipment, and (2) their views of the essential elements of any Torture-Free Trade Treaty to help prevent torture and other ill-treatment through setting strong international standards.

3.5 Other matters

The ATCG was furthermore seized of the following matters:

- Russian war of aggression against Ukraine

Given Russia's war of aggression against Ukraine and increased internal repression of opponents to the war, the ATCG noted the need for extra caution when it comes to authorising possible requests to export to Russia or Belarus goods listed in the Regulation, notably goods for law enforcement and/or riot control. In that regard, the ATCG was informed that the list of restricted items which may contribute to Russia's military and technological enhancement or the development of its defence and security sector has been extended. The list includes certain electronic components, additional chemicals and goods that can be used for capital punishment, torture or other cruel, inhuman, or degrading treatment.

- Iran

Noting the alarming increase in unlawful killings and other human rights violations (since protests erupted in mid-September 2022, with credible reports of unlawful deployment of lethal force, but also resort to the death penalty as a tool of intimidation and political repression) in Iran, the Commission underlined the need for extra caution when it comes to granting possible requests to export to Iran goods listed in the Regulation, notably goods for law enforcement and/or riot control.