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REPORT FROM THE COMMISSION

TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the exercise of the power to adopt delegated acts conferred on the Commission pursuant to 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. BACKGROUND

The objective of Regulation (EU) 2019/125[1] is to prevent capital punishment, on the one hand, or torture and other cruel, inhuman or degrading treatment or punishment, on the other hand, in countries outside the EU by either banning or restricting trade in certain goods. It distinguishes between goods that:

- are inherently abusive and should not be traded at all (Annex II), or
- can have legitimate uses, such as law enforcement equipment (Annex III) or goods for therapeutic use (Annex IV).

Trade in such goods is subject to certain restrictions. In particular, the Regulation provides for the following:

i. It prohibits the import into, export from and transit through, the EU of goods, listed in Annex II, that have no practical use other than for the purpose of capital punishment or for the purpose of torture or other cruel, inhuman or degrading treatment or punishment. The provision of any technical assistance related to such goods, specifically including training in how to use them, is also prohibited. The advertising of such goods in print media or on the Internet or advertising time on television or radio, or the display or offer for sale in an exhibition or fair, are also prohibited.

ii. Goods listed in Annex III that could be used for the purpose of torture or other cruel, inhuman or degrading treatment or punishment, but that may also have other legitimate uses (law enforcement), are subject to a prior export authorisation, on a case-by-case basis. A prior export authorisation is also required for supplying technical assistance or brokering services related to this category of goods.

iii. It regulates trade in goods – chemicals or pharmaceutical substances (Annex IV) – that could be used for capital punishment (e.g. products that could be used to execute people by lethal injection).

Annex I to the Regulation lists the authorities in the Member States, which in accordance with Article 20 of the Regulation are entitled to make a decision on an application for an authorisation or to prohibit an exporter from using the Union general export authorisation. The lists of prohibited and controlled goods are set out in Annexes II, III and IV to the Regulation. Annex V refers to the Union general export authorisation (part 1 relates to 'Goods' while part 2 relates to the 'Destinations').

2. LEGAL BASIS

In accordance with Article 29 of Regulation (EU) 2019/125, the Commission is empowered to adopt delegated acts to amend Annexes I, II, III, IV, V, VI VII, VIII and IX to the Regulation[2]. This report is required under Article 29 (2) of Regulation (EU) 2019/125. Pursuant to that Article, the power to adopt delegated acts is conferred on the Commission for a period of five years from 16 December 2016 and the Commission is required to draw up a

[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] Annex VI lists the territories of Member States referred to in article 11(2). Annex VII describes the export or import authorisation form referred to in article 21(1). Annex VIII describes the authorisation form for the supply of brokering services referred to in article 21(1). Annex IX describes the authorisation form for the supply of technical assistance referred to in article 21(1).

report in respect of the delegation of that power not later than nine months before the end of the five-year period.

3. EXERCISE OF THE DELEGATION

Since the delegation of power was conferred on the Commission in 2016[3], the Commission has made use of the power to adopt delegated acts on three occasions, as described below:

a) COMMISSION DELEGATED REGULATION (EU) 2018/181 of 18 October 2017[4] amended Annex V by adding the Dominican Republic, Sao Tome and Principe and Togo to the list of destinations to which the Union general export authorisation[5] applies. It entered into force on 14 February 2018, the day following that of its publication in the Official Journal of the European Union.

b) COMMISSION DELEGATED REGULATION (EU) 2020/621 of 18 February 2020[6] amended Annex I by updating the entries of several competent authorities and Annex V by adding The Gambia and Madagascar to the list of destinations to which the Union general export authorisation applies. It entered into force on the twentieth day (27 May 2020) following its publication in the Official Journal of the European Union.

c) COMMISSION DELEGATED REGULATION (EU) 2021/139 of 4 December 2020[7] amended the reference to the United Kingdom in Annex I to the Regulation. It also amended Annex V by adding the United Kingdom to the list of destinations to which the Union general export authorisation applies. It entered into force on the fifth day (13 February 2021) following its publication in the Official Journal of the European Union.

Prior to the adoption of the above-mentioned delegated acts, the Commission consulted experts designated by each Member State in the Anti-Torture Coordination Group in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[8].

4. CONCLUSION

This report fulfils the reporting requirement under Article 29 (2) of Regulation (EU) 2019/125. The Commission invites the European Parliament and the Council to take note of this report.

[3] 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.
[4] OJ L 40, 13.2.2018, p. 1.
[5] 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.
[6] OJ 144, 7.5.2020, p. 1.
[7] OJ L 43, 8.2.2021, p. 5.
[8] OJ L 123, 12.5.2016, p. 1.

The Commission sees the need to extend, i.e. to prolong for a further period of five years, the delegation of power to adopt the delegated acts described in Articles 24 and 29 of Regulation (EU) 2019/125. This is necessary in order to, inter alia, respond when new goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, are developed, or when one or more third countries meet the requirements for the application of the Union general export authorisation, violate an international commitment to abolish capital punishment for all crimes or when the details of the competent authorities change.

Article 29 (2) of the Regulation provides that the delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.