



**The European Union Trade Control Regime of  
items which could be used for capital punishment,  
torture or other cruel, inhuman or degrading  
treatment or punishment  
Comment of the Legislation: article-by-article**

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Non-proliferation

**Basic principles:** The EU trade control regime of items which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment is organised according to two essential principles:

- An export and import prohibition for a limited number of items listed in Annex II.
- An export and import authorisation principle for the transfer outside of the European Union of items listed in Annex III.

Transfers within the European Union are not submitted to authorisation and can, in principle, be transferred without restrictions between Member States.

It should be noted that the trade of those items could be also controlled by other EU legal instruments in particular embargoes decisions.

See for example:

- Council Regulation 154/2009 of February 2009 amending Regulation 1859/2005 imposing certain restrictive measures in respect of Uzbekistan.
- Council Regulation 1032/2010 of 15 November 2010 amending Regulation 174/2005 imposing restrictions on the supply of assistance related to military activities to Côte-d'Ivoire

**Important Remark:** In June 2010, the European Parliament has adopted a Resolution on implementation of 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 (2011/C 236 E/17).

The Resolution “urges the Commission to come forward with a proposal” which should:

- review and update the list of items controlled by the Regulation (i.e. Annex II, III); and
- insert into the Regulation a number of relevant provisions such as a catch-all clause, a prohibition of brokering transactions, transit restrictions, etc.

For the time being (October 2013) it is still not clear when and how the Commission will consider this request. Nevertheless the Parliament has decided to put the Commission and the Member States under pressure by emphasizing that the commitments required by the Regulation have not been accurately implemented by the 27 (see paragraph F to G of the Resolution).

In December 2011 the Commission adopted the Implementing Regulation (EU) No 1352/2011<sup>1</sup> which amends Annex II and III of the Council Regulation. It concerns:

- Medicinal products which could be used for capital punishment;
- Electric shock belts;
- Spiked batons.

## **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.**

*Official Journal L 200, 30/07/2005 P. 0001 - 0019*

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

**Comment:** Since the entry into force of the Treaty on the Functioning of the European Union (TFUE) article 133 has been renumbered article 207.

Having regard to the proposal from the Commission,

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<sup>1</sup> Commission Implementing Regulation (EU) No 1352/2011 of 20 December 2011 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 L338, 21.12.2011, p. 31).

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Whereas:

(1) Pursuant to Article 6 of the Treaty on European Union, respect for human rights and fundamental freedoms constitutes one of the principles common to the Member States. In view of this, the Community resolved in 1995 to make respect for human rights and fundamental freedoms an essential element of its relations with third countries. It was decided to insert a clause to that end in any new trade, cooperation and association agreement of a general nature that it concludes with third countries.

**Comment:** the human right clause is usually included in the part dedicated to the general objectives and principles of the trade cooperation agreement. It states, like in EU South African Agreement that the *“respect for democratic principles and fundamental human rights as laid down in the Universal Declaration on Human Rights, as well as for the principles of the rule of law underpins the internal and international policies of the Community and of South Africa and constitutes an essential element of this Agreement”*<sup>2</sup>

(2) Article 5 of the Universal Declaration of Human Rights, Article 7 of the International Covenant on Civil and Political Rights and Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms all lay down an unconditional, comprehensive prohibition on torture and other cruel, inhuman or degrading treatment or punishment. Other provisions, in particular the United Nations Declaration Against Torture and the 1984 United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, place an obligation on States to prevent torture.

(3) Article 2(2) of the Charter of Fundamental Rights of the European Union states that no one shall be condemned to the death penalty or executed. On 29 June 1998, the Council approved "Guidelines on EU policy towards third countries on the death penalty" and resolved that the European Union would work towards the universal abolition of the death penalty.

**Complementary information: Guidelines on EU policy towards third countries on the death penalty.**

Taking into account human rights policies of international organisations such as the General Assembly of the United Nations, the Council of Europe and the Organization for Security and Cooperation in Europe (OSCE), EU Member States have decided to elaborate a common framework in order to progress in the universal abolition of capital punishment. It should be noted that all Member States implemented the abolition of death penalty in their national legislations. 29 June 1998 marks the adoption by the Council of EU Guidelines on the Death Penalty<sup>3</sup> which have following principal aims:

- to aspire to the abolition of the death penalty, where necessary by establishing a moratorium for the purpose of abolition thereof;

<sup>2</sup> Article 2 of Agreement on Trade, Development and Cooperation between the European Community and its Member States, of the one part, and the Republic of South Africa, of the other part (Official Journal of the European Communities, L 311/3, 4.12.1999).

<sup>3</sup> EU Guidelines on the Death Penalty are available on the following website:  
<http://www.eurunion.org/eu/images/stories/dpguidelines.pdf>.

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- where capital punishment remains legal, to call for the reduction of use of death penalty as well as to force the realisation thereof according to minimum standards with maximum transparency.

According to these Guidelines Member States can act through following mechanisms:

- **General demarches** consisting in constant dialogue and consultation with third countries on the death penalty issue, taking into account judicial system of the country, its international obligations as well the transparency in its use of death penalty;
- **Individual cases**, consisting in specific demarches where the EU becomes aware of the death penalty cases violating the EU minimum standards established by these Guidelines;
- **Human rights reporting**, consisting in analysis of the application and use of capital punishment as well as the effectiveness of EU action therein<sup>4</sup>;
- **Other initiatives**, consisting in encouragement of third countries to accede to the international agreements such as the Second Optional Protocol to the International Covenant on Civil and Political Rights<sup>5</sup> and other comparable regional instruments aiming at abolishing of the death penalty;
- **Action in multilateral fora**, consisting in promotion of multilateral and bilateral conventions with third countries introducing a moratorium of the use of death penalty aiming in the long run at abolition thereof.

In addition these Guidelines elaborate and impose the **set of minimum standards** to the States maintaining the death penalty:

*“i) Capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences. The death penalty should not be imposed for non-violent acts such as financial crimes, religious practice or expression of conscience and sexual relations between consenting adults nor as a mandatory sentence.*

*ii) Capital punishment may be imposed only for a crime for which the death penalty was prescribed at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.*

*iii) Capital punishment may not be imposed on:*

- *Persons below 18 years of age at the time of the commission of their crime;*
- *Pregnant women or new mothers;*
- *Persons who have become insane.*

*iv) Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for alternative explanation of the facts.*

*v) Capital punishment must only be carried out pursuant to a final judgement rendered by an independent and impartial competent court after legal proceedings, including those before*

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<sup>4</sup> EU Annual Human Rights Reports are available on the website of the Council:  
[http://eeas.europa.eu/human\\_rights/index\\_en.htm](http://eeas.europa.eu/human_rights/index_en.htm).

<sup>5</sup> For further information see <http://www.ohchr.org/EN/ProfessionalInterest/Pages/2ndOPCCPR.aspx>.

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*special tribunals or jurisdictions, which gives all possible safeguards to ensure a fair trial, at least equal to those contained in Article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings, and where appropriate, the right to contact a consular representative.*

*vi) Anyone sentenced to death shall have an effective right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals become mandatory.*

*vii) Where applicable, anyone sentenced to death shall have the right to submit an Individual complaint under International procedures; the death sentence will not be carried out while the complaint remains under consideration under those procedures; the death penalty will not be carried out as long as any related legal or formal procedure, at the international or at the national level, is pending.*

*viii) Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases of capital punishment.*

*ix) Capital punishment may not be carried out in contravention of a state's international commitments.*

*x) The length of time spent after having been sentenced to death may also be a factor.*

*xi) Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering. It may not be carried out in public or in any other degrading manner.*

*xii) The death penalty should not be imposed as an act of political revenge in contravention of the minimum standards, e.g., against coup plotters.”*

(4) Article 4 of the said Charter states that no one shall be subjected to torture or to inhuman or degrading treatment or punishment. On 9 April 2001, the Council approved "Guidelines to the EU policy toward third countries, on torture and other cruel, inhuman or degrading treatment or punishment". These guidelines refer to both the adoption of the EU Code of Conduct on Arms Exports in 1998 and the ongoing work to introduce EU-wide controls on the exports of paramilitary equipment as examples of measures to work effectively towards the prevention of torture and other cruel, inhuman or degrading treatment or punishment within the Common Foreign and Security Policy. These guidelines also provide for third countries to be urged to prevent the use and production of, and trade in, equipment which is designed to inflict torture or other cruel, inhuman or degrading treatment or punishment and prevent the abuse of any other equipment to these ends. They also make the point that the prohibition of cruel, inhuman or degrading punishment imposes clear limits on the use of the death penalty. Therefore and in line with these texts, capital punishment is not to be considered a lawful penalty under any circumstances.

(5) In its Resolution on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 25 April 2001 and supported by the EU Member States, the United

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Nations Commission on Human Rights called upon United Nations Members to take appropriate steps, including legislative measures, to prevent and prohibit, inter alia, the export of equipment which is specifically designed to inflict torture or other cruel, inhuman or degrading treatment or punishment. This point was confirmed by Resolutions adopted on 16 April 2002, 23 April 2003, 19 April 2004 and 19 April 2005.

(6) On 3 October 2001, the European Parliament adopted a Resolution on the Council's second Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports, urging the Commission to act swiftly to bring forward an appropriate Community instrument banning the promotion, trade and export of police and security equipment the use of which is inherently cruel, inhuman or degrading, and to ensure that that Community instrument would suspend the transfer of police and security equipment the medical effects of which are not fully known, and of such equipment where its use in practice has revealed a substantial risk of abuse or unwarranted injury.

(7) It is therefore appropriate to lay down Community rules on trade with third countries in goods which could be used for the purpose of capital punishment and in goods which could be used for the purpose of torture and other cruel, inhuman or degrading treatment or punishment. These rules are instrumental in promoting respect for human life and for fundamental human rights and thus serve the purpose of protecting public morals. Such rules should ensure that Community economic operators do not derive any benefits from trade which either promotes or otherwise facilitates the implementation of policies on capital punishment or on torture and other cruel, inhuman or degrading treatment or punishment, which are not compatible with the relevant EU Guidelines, the Charter of Fundamental Rights of the European Union and international conventions and treaties.

(8) For the purpose of this Regulation, it is considered appropriate to apply the definitions of torture and other cruel, inhuman or degrading treatment or punishment laid down in the 1984 United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and in Resolution 3452 of the General Assembly of the United Nations. These definitions should be interpreted taking into account the case law on the interpretation of the corresponding terms in the European Convention on Human Rights and in relevant texts adopted by the EU or its Member States.

**Comment:** The term “**torture**” was defined by two international instruments.

On one hand, by the General Assembly Resolution 3452 comprising the Declaration on the Protection of All Persons from Being Subjected of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>6</sup>.

Article 1 of this Declaration gives a following definition of torture:

*“For the purpose of this Declaration, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidation him or other persons. It does not include pain or suffering arising only from, inherent in or*

<sup>6</sup> This Declaration can be consulted at: <http://www.hrweb.org/legal/cat.html>

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*incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners*<sup>7</sup>.

*Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment”.*

On the other hand, by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>8</sup>. Article 1 thereof is drafted as follows:

*“For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”*

Even though abovementioned definitions are rather similar, the one proposed by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was implemented in Article 2(a) of this Regulation.

(9) It is considered necessary to prohibit exports and imports of equipment which has no practical use other than for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment.

(10) It is also necessary to impose controls on exports of certain goods which could be used not only for the purpose of torture and other cruel, inhuman or degrading treatment or punishment, but also for legitimate purposes. These controls should apply to goods that are primarily used for law enforcement purposes and, unless such controls prove disproportionate, to any other equipment or product that could be abused for the purpose of torture and other cruel, inhuman or degrading treatment or punishment, taking into account its design and technical features.

(11) As regards law enforcement equipment, it should be noted that Article 3 of the Code of Conduct for Law Enforcement Officials provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1990, provide that, in carrying out their duty, law enforcement officials should, as far as possible, apply non-violent means before resorting to the use of force and firearms.

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<sup>7</sup> Standard Minimum Rules for the Treatment of Prisoners adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977. This integral text can be found at: <http://www.ohchr.org/Documents/ProfessionalInterest/treatmentprisoners.pdf>.

<sup>8</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984 entry into force 26 June 1987, in accordance with article 27 (1). The integral text can be found at : [http://untreaty.un.org/cod/avl/pdf/ha/catcidtp/catcidtp\\_e.pdf](http://untreaty.un.org/cod/avl/pdf/ha/catcidtp/catcidtp_e.pdf).



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(12) In view of this, the Basic Principles advocate the development of non-lethal incapacitating weapons for use in appropriate situations, while admitting that the use of such weapons should be carefully controlled. In this context, certain equipment traditionally used by the police for self-defence and riot-control purposes has been modified in such a way that it can be used to apply electric shocks and chemical substances to incapacitate persons. There are indications that, in several countries, such weapons are abused for the purpose of torture and other cruel, inhuman or degrading treatment or punishment.

(13) The Basic Principles stress that law enforcement officials should be equipped with equipment for self-defence. Therefore, this Regulation should not apply to trade in traditional equipment for self-defence, such as shields.

(14) This Regulation should also apply to trade in some specific chemical substances used to incapacitate persons.

(15) As regards leg-irons, gang-chains and shackles and cuffs, it should be noted that Article 33 of the United Nations Standard Minimum Rules for the Treatment of Prisoners provides that instruments of restraint shall never be applied as a punishment. Furthermore, chains and irons are not to be used as restraints. It should also be noted that the United Nations Standard Minimum Rules for the Treatment of Prisoners provide that other instruments of restraint shall not be used except as a precaution against escape during a transfer, on medical grounds as directed by a medical officer, or, if other methods of control fail, in order to prevent a prisoner from injuring himself or others, or from damaging property.

(16) Taking into account the fact that some Member States have already prohibited exports and imports of such goods, it is appropriate to grant Member States the right to prohibit exports and imports of leg-irons, gang-chains and portable electric shock devices other than electric shock belts. Member States should also be empowered to apply export controls on handcuffs having an overall dimension, including chain, exceeding 240 mm when locked, if they so wish.

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(17) This Regulation shall be construed as not affecting the existing rules on export of tear gases and riot control agents, of firearms, of chemical weapons and of toxic chemicals.

**Comment: As concerns chemical weapons and toxic chemicals**, these items can be considered as dual-use goods, thereby the exports thereof are controlled by the Regulation (EC) No 428/2009; or as military items, therefore such exports would be controlled by the Council Common Position 2008/944/CFSP.

It shall be noted that the Chemical Weapons Convention (CWC), which entered into force on 29 April 1997, gives a following definition of “chemical weapons” and “toxic chemicals”<sup>9</sup>:

**Chemical Weapons** means the following, together or separately:

- (a) Toxic chemicals and their precursors, except where intended for purposes not prohibited under this Convention, as long as the types and quantities are consistent with such purposes;
- (b) Munitions and devices, specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in subparagraph (a), which would be released as a result of the employment of such munitions and devices;
- (c) Any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in subparagraph (b).

**Toxic Chemical** means:

Any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. This includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere.

(For the purpose of implementing this Convention, toxic chemicals which have been identified for the application of verification measures are listed in Schedules contained in the Annex on Chemicals.)

**Tear gases and riot control agents**, which are not assimilated either to chemical weapons or to toxic chemicals, are considered as dual-use goods, therefore the exports thereof are controlled by the Dual-Use Regulation No 428/2009 (see Part I of the present document). Indeed, Annex I of Dual-Use Regulation defines “**riot control agent**” as “*substances which, under the expected conditions of use for riot control purposes, produce rapidly in humans sensory irritation or disabling physical effects which disappear within a short time following termination of exposure*”. It should be noted that the Dual-Use Regulation considers tear gases as a subset of riot control agents.

Moreover, the Dual-Use Regulation rates riot control agents among Category 1 “Special materials and related equipment” of Annex I. Therefore, according to Article 3 of the Dual-Use Regulation an authorisation shall be required for the export of the dual-use items listed in Annex I, in particular of the riot control agents.

**As concerns firearms**, as those items are being part of SALW goods, exports thereof are controlled by Council Common Position 2008/944/CFSP and Council Common Position 2003/468/CFSP. In addition, the possession and acquisition of aforementioned goods by individuals are governed by Directive 2008/51/EC.

<sup>9</sup> The full text of the CWC is available at the following website: <http://www.opcw.org/chemical-weapons-convention/>.

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(18) It is appropriate to provide for specific exemptions from the export controls in order not to impede the functioning of the police forces of the Member States and the execution of peace keeping or crisis management operations and, subject to review at a later stage, in order to allow transit of foreign goods.

(19) The Guidelines to the EU Policy toward third countries on torture and other cruel, inhuman or degrading treatment or punishment provide, inter alia, that the Heads of Mission in third countries will include in their periodic reports an analysis of the occurrence of torture and other cruel, inhuman or degrading treatment or punishment in the State of their accreditation, and the measures taken to combat it. It is appropriate for the competent authorities to take these and similar reports made by relevant international and civil society organisations into account when deciding on requests for authorisations. Such reports should also describe any equipment used in third countries for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment.

### **Complementary information: Guidelines to EU Policy Towards Third Countries on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>10</sup>.**

The principal these Guidelines is to develop an efficient tool of communication with third countries aiming at strengthening of common efforts towards prevention and eradication of all forms of torture and ill-treatment within the EU and all over the world.

It should be noted that EU human rights policy is guided by following international instruments:

- Universal Declaration of Human Rights;
- UN International Covenant on Civil and Political Rights (ICCPR) and its two Optional Protocols;
- UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);
- UN Convention on the Rights of the Child (CRC);
- UN International Convention on the Elimination of All Forms of Racial Discrimination (CERD);
- UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);
- European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocol no.6 as well as the relevant case-law of the European Court on Human Rights;
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT);
- Statute of the International Criminal Court;
- Statute of the International Tribunal for the Former Yugoslavia;
- Statute of the International Tribunal for Rwanda;
- Geneva Conventions on the Protection of Victims of War and its Protocols as well as customary rules of humanitarian law applicable in armed conflict.

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<sup>10</sup> The Guidelines are accessible at the following website address:  
<http://www.consilium.europa.eu/uedocs/cmsUpload/TortureGuidelines.pdf>

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In addition, Annex I of these Guidelines contains other relevant norms and standards and principles which may be invoked within the bounds of EU policies.

These Guidelines identify a set of efficient means of work towards the prevention of torture and ill-treatment within the CFSP:

- **Monitoring and reporting** consisting in periodic reports of EU Heads of Mission containing an analysis of occurrence of torture and ill-treatment and the measures taken to combat it as well the evaluation of the EU actions;

- **Assessment** consisting in the identification of the situations where EU actions are necessary by the Council Working Group on Human Rights (COHOM) and the relevant Geographic Working Groups.

- **EU actions in relations with third countries** consisting in promotion among third countries of adoption of the effective measures against torture and ill-treatment. Abovementioned measures include adhesion to and implementation of relevant international norms and standards. In order to achieve those objectives the EU can act through a political dialogue, various demarches and public statements as well as bilateral and multilateral co-operation. EU might induce third countries to take following measures: prohibit and condemn torture and ill-treatment, adhere to international norms and procedures, adopt and implement safeguards and procedures relating to places of detention, establish domestic legal guarantees, combat impunity, concern about groups requiring special protection, allow domestic procedures for complaints and reports of torture and ill-treatment, provide reparation and rehabilitation for victims, allow domestic visiting mechanisms, establish national institutions, provide effective training, support the work of medical professionals, conduct autopsies.

- **Other initiatives** consisting, inter alia, in continuation of rising of the issue of torture and ill-treatment in international multilateral organisations; in support of relevant international and regional mechanisms; in supporting of the UN Voluntary Fund for the Victims of Torture; on offering co-operation on the prevention of torture and ill-treatment; in supporting of public education and awareness-raising campaigns against torture and ill-treatment; in supporting of relevant national and international NGOs; in funding projects aimed at improvement of training of personnel and conditions in places of detention.

(20) In order to contribute to the abolition of the death penalty in third countries and to the prevention of torture and other cruel, inhuman or degrading treatment or punishment, it is considered necessary to prohibit the supply to third countries of technical assistance related to goods which have no practical use other than for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment.

(21) The measures of this Regulation are intended to prevent both capital punishment and torture and other cruel, inhuman or degrading treatment or punishment in third countries. They comprise restrictions on trade with third countries in goods that could be used for the purpose of capital punishment or for the purpose of torture and other cruel, degrading or inhuman treatment or punishment. It is not considered necessary to establish similar controls on transactions within the Community as, in the Member States, capital punishment does not exist and Member States will have adopted appropriate measures to outlaw and prevent torture and other cruel, inhuman or degrading treatment or punishment.

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(22) The aforementioned Guidelines state that, in order to meet the objective of taking effective measures against torture and other cruel, inhuman or degrading treatment or punishment, measures should be taken to prevent the use, production and trade of equipment which is designed to inflict torture or other cruel, inhuman or degrading treatment or punishment. It is up to the Member States to impose and enforce the necessary restrictions on the use and production of such equipment.

(23) In order to take into account new data and technological developments, the lists of goods covered by this Regulation should be kept under review and provision should be made for a specific procedure to amend these lists.

(24) The Commission and the Member States should inform each other of the measures taken under this Regulation and of other relevant information at their disposal in connection with this Regulation.

(25) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.

(26) Member States should lay down rules on penalties applicable to infringements of the provisions of this Regulation and ensure that they are implemented. Those penalties should be effective, proportionate and dissuasive.

(27) Nothing in this Regulation constrains any powers under and pursuant to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code and its implementing provisions, as laid down in Commission Regulation (EEC) No 2454/93.

(28) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union,

HAS ADOPTED THIS REGULATION:

## CHAPTER I: Subject matter, scope and definitions

### Article 1 Subject matter and scope

1. This Regulation lays down Community rules governing trade with third countries in goods that could be used for the purpose of capital punishment or for the purpose of torture and other cruel, degrading or inhuman treatment or punishment, and in related technical assistance.

**Comment:** The scope of this Regulation covers exports and imports of torture-related goods and technology outward or inward the European Union. Hence, the transfers between Member States are not submitted to authorisation.

2. This Regulation does not apply to the supply of related technical assistance if that supply involves cross-border movement of natural persons.

**Comment:** Contrary to the Dual-use Regulation, this Regulation has not been completed by a Council Joint Action dedicated specifically to the export control of technical assistance. Nevertheless, the supplies of technical assistance through tangible (*i.e.* instruction manual) or intangible means (*i.e.* instructions send by email or fax) are covered by this Regulation. Only transmission by oral forms through the cross-border movement of natural persons is not covered by this Regulation (*i.e.* a technician sent outside the EU without carrying any controlled information in a tangible form).

Countries	Controls related to technical assistance that involve cross-border movements of natural persons (Art. 1, co. 2)
Austria	<b>NO</b>
Belgium	<b>YES</b> According to the Ministerial Decree of 26 <sup>th</sup> April 2007, granting or receiving technical assistance related to the goods mentioned in the annexes, is prohibited
Bulgaria	<b>NO</b> There is no particular mechanism of control over technical assistance that involves cross-border movement of natural persons regarding items which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment.

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Croatia	<b>NO</b>
Cyprus	<b>NO</b>
Denmark	<b>NO</b>
Estonia	<b>NO</b> Nevertheless, Estonian national legislation does not make a distinction on the way of transfer of technical assistance.
France	<b>NO</b>
Germany	<b>NO</b>
Hungary	<b>YES</b> Hungary applies controls to related technical assistance. However licenses may only be issued to legal persons and not to natural persons. Article 1.15 of Government Decree 160/2011 (VIII.18.) on licensing the export, import, transfer and transit of military equipment, military services and certification of undertakings provides for a definition of related technical assistance. The same procedural rules apply as in case of military items falling under the Gov. Decree.
Latvia	<b>NO</b> There is no particular mechanism of control over technical assistance that involves cross-border movement of natural persons regarding items which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment. Transmission of technical assistance by oral forms (without presence of any information in a tangible form), for items which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, is not restricted by any particular law or regulation. Only when technical assistance provided by natural person in oral form is regarded as a matter of public safety, national or international security, Latvia's security services may apply restrictions on movement natural person
Lithuania	<b>NO</b>
Netherlands	<b>NO</b>

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Poland	<b>NO</b>
Slovakia	<b>YES</b> Article 9 of Act 474/2007. Customs administration carries out the controls as stated in article 10 of Act 474/2007.
Slovenia	<b>NO</b>
Sweden	<b>NO</b>



### Article 2 Definitions

For the purposes of this Regulation:

(a) "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from that person or from a third person information or a confession, punishing that person for an act that either that person or a third person has committed or is suspected of having committed, or intimidating or coercing that person or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted either by or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity. It does not, however, include pain or suffering arising only from, inherent in or incidental to, lawful penalties;

(b) "other cruel, inhuman or degrading treatment or punishment" means any act by which significant pain or suffering, whether physical or mental, is inflicted on a person, when such pain or suffering is inflicted either by or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity. It does not, however, include pain or suffering arising only from, inherent in or incidental to, lawful penalties;

(c) "law enforcement authority" means any authority in a third country responsible for preventing, detecting, investigating, combating and punishing criminal offences, including, but not limited to, the police, any prosecutor, any judicial authority, any public or private prison authority and, where appropriate, any of the state security forces and military authorities;

(d) "export" means any departure of goods from the customs territory of the Community, including the departure of goods that requires a customs declaration and the departure of goods after their storage in a free zone of control type I or free warehouse within the meaning of Regulation (EEC) No 2913/92;

(e) "import" means any entry of goods into the customs territory of the Community, including temporary storage, the placing in a free zone or free warehouse, the placing under a suspensive procedure and the release for free circulation within the meaning of Regulation (EEC) No 2913/92;

(f) "technical assistance" means any technical support related to repairs, development, manufacture, testing, maintenance, assembly or any other technical service, and may take forms such as instruction, advice, training, transmission of working knowledge or skills or consulting services. Technical assistance includes verbal forms of assistance and assistance provided by electronic means;

(g) "museum" means a non-profit making, permanent institution in the service of society and of its development, and open to the public, which acquires, conserves, researches, communicates and exhibits, for purposes of study, education and enjoyment, material evidence of people and their environment;

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(h) "competent authority" means an authority of one of the Member States, as listed in Annex I, which in accordance with Article 8(1) is entitled to make a decision on an application for an authorisation;

(i) "applicant" means

1. in the case of exports referred to in Article 3 or 5, any natural or legal person that holds a contract with a consignee in a country to which the goods will be exported and that has the power for determining the sending of goods controlled by this Regulation out of the customs territory of the Community at the time when the customs declaration is accepted. If no export contract has been concluded or if the holder of the contract does not act on its own behalf, the power for determining the sending of the item out of the customs territory of the Community shall be decisive;
2. where, in the case of such exports, the benefit of a right to dispose of the goods belongs to a person established outside the Community pursuant to the contract on which the exports are based, the contracting party established in the Community;

**Comment:** It should be noted that paragraphs 1 and 2 of Article 2(i) of this Regulation are cumulative. In addition, the definition of the term "**applicant**" for this Regulation is rather similar to the one of "**exporter**" established by the Article 2(3) of the Dual-Use Regulation 428/2009.

3. in the case of supplies of technical assistance referred to in Article 3, the natural or legal person that will supply the service; and
4. in the case of imports and supplies of technical assistance referred to in Article 4, the museum that will display the goods.

**CHAPTER II Goods which have no practical use other than for the purposes of capital punishment, torture and other cruel, inhuman or degrading treatment or punishment**

Type of Control	Content	Reference
Export Prohibition	<p>Goods listed in Annex II which have no practical use other than for the purpose of capital punishment, torture and other cruel, inhuman or degrading treatment or punishment;</p> <p>Supply of technical assistance related to goods listed in Annex II;</p> <p>Derogation if demonstrated that goods will be used for the exclusive purpose of public display in a museum in view of their historic significance.</p>	Regulation Article 3
Import Prohibition	<p>Goods listed in Annex II which have no practical use other than for the purpose of capital punishment, torture and other cruel, inhuman or degrading treatment or punishment;</p> <p>Supply of technical assistance related to goods listed in Annex II;</p> <p>Derogation if demonstrated that the goods will be used for the exclusive purpose of public display in a museum in view of their historic significance.</p>	Regulation Article 4
Authorisation Requirement	<p>Goods listed in Annex III that could be used for the purpose of torture and other cruel, inhuman or degrading treatment or punishment;</p> <p>No authorisation required for goods exclusively passing Community customs territory;</p> <p>Derogation for territories listed in Annex IV, provided that the goods are used by an authority in charge of law enforcement;</p> <p>Derogation for third countries, provided that the goods are used by military/civil personnel of a Member State involved in:</p> <ul style="list-style-type: none"> <li>- EU or UN peace keeping operation in the third country concerned,</li> <li>- EU or UN crisis management operation in the third country concerned,</li> <li>- Operation based on agreements between Member States and third countries in the field of defence.</li> </ul>	Article 5 Regulation

### Article 3 Export prohibition

1. Any export of goods which have no practical use other than for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment, listed in Annex II, shall be prohibited, irrespective of the origin of such equipment.

The supply of technical assistance related to goods listed in Annex II, whether for consideration or not, from the customs territory of the Community, to any person, entity or body in a third country shall be prohibited.

**Comment:** As stated by Article 1.2 the supply of technical assistance involving cross-border movement of natural persons is, in principle, not covered by this prohibition. Nevertheless it can be prohibited by Member States' legislations.

2. By way of derogation from paragraph 1, the competent authority may authorise an export of goods listed in Annex II, and the supply of related technical assistance, if it is demonstrated that, in the country to which the goods will be exported, such goods will be used for the exclusive purpose of public display in a museum in view of their historic significance.

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Countries	Criteria considered by Member States to grant or not the export authorisation (Art. 3. 2)
Austria	<p style="text-align: center;"><b>YES</b></p> <p>The criteria of Art. 3 through 12 of the Austrian Foreign Economy Act are applicable including the criterion concerning human rights (no use for internal repression or serious human rights violations) and the criterion concerning a deviation for the purposes of human rights violations.</p>
Belgium	<p style="text-align: center;"><b>NO</b></p> <p>No formal criteria. However, the FPS Economy has not received any application for export of such goods.</p>
Bulgaria	<p style="text-align: center;"><b>YES</b></p> <p>According to Art. 3, par. 1 of the Act of implementation of Council Resolution No 1236/2005 the persons applying for issuing an authorisation shall submit to the Ministry of Economy and Energy an application and the following documents:</p> <ol style="list-style-type: none"> <li>1. Filled in form model - Annex V of Regulation 1236/2005;</li> <li>2. Copy of the document certifying the technical and the functional characteristics of the product;</li> <li>3. Import authorisation and/or a document by the end user certifying the final end use of the goods;</li> <li>4. Copy of the document confirming the foreign trade relations between the transaction's parties.</li> </ol> <p>So far the Ministry of Economy and Energy has not received any application for export of such goods.</p>
Croatia	<p style="text-align: center;"><b>YES</b></p> <p>In the process of issuing export or import license for goods listed in Annex II. Regulation (EC) 1236/2005 State office will request a confirmation from the Ministry of Culture that the export of the goods in accordance with Article 3 paragraph 2, and imports of goods in accordance with Article 4 paragraph 2 of the Council Resolution (EC) No 1236/2005.</p> <p>If the Ministry of Culture does not submit a confirmation within</p>

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	15 days from receipt of the request for confirmation, and does not request an extension of this time period, it shall be deemed that the export of the goods is in accordance with Article 3 paragraph 2, and imports of goods in accordance with Article 4 paragraph 2 of the Council Resolution (EC) No 1236/2005
Cyprus	<b>NO</b>
Denmark	<b>NO</b>
Estonia	<b>NO</b> No defined criteria. As the regulation stipulates, the exporter must prove that these goods will be used for the exclusive purpose of public display in a museum in view of their historic significance
France	<b>YES</b> Throughout an inter ministerial consultation by Ministry of Internal Affairs, Ministry of Foreign Affairs and Ministry of Defense.
Germany	<b>YES</b> The criteria are the same that the one defined by Article 6 of this Council Regulation
Hungary	<b>NO</b> Hungary does not apply derogation (Art 3.2) in its national legislation to the general export prohibition.
Latvia	<b>YES</b> Additional criteria is defined by the Regulation of Cabinet of Ministers of the Republic of Latvia No 927 <i>Procedures for the Issuance of Export and Import Authorisations for Goods, Which Could be Used for Capital Punishment, Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment</i> (adopted on 14.11.2008). According to Article 5 of Council Regulation No. 1236/2005, an applicant (legal or natural person) must provide: an export transaction contract or its copy, a confirmation of the end-use – if the goods are going to be exhibited in a museum and a confirmation that the goods will be used for the declared purposes only and will not be utilised for torture. Contents of a

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	<p>confirmation of the end-use is further explained in Article 6 of the Regulation, where, apart from personal and contact information of end user of the goods and the state of end-use, also a reference to the contract by and between the exporter of goods and the end user of the goods and a confirmation that the goods will be used for the declared purposes only and will not be utilised for torture, is required. Also an official agreement between museums of Latvia and destination country (according to the Article 91 of the Regulation of Cabinet of Ministers of the Republic of Latvia No 956 (adopted on 21.11.2006) <i>Regulations Regarding the National Holdings of Museums</i> may provide basis for permitting an export as a confirmation of end-use of goods.</p>
Lithuania	<b>NO</b>
Netherlands	<p style="text-align: center;"><b>NO</b></p> <p>In addition to the criteria mentioned in Article 6 of the Regulation No criteria has been predefined in national legislation. Authorities do consider several ‘relevant considerations’ when deciding upon a license application. These considerations concern end-user, type of end-use, risk of diversion, considerations of national foreign and security policy and international obligations and commitments.</p>
Poland	<p style="text-align: center;"><b>YES</b></p> <p><b>Goods</b> Ordinance of the Minister of Economy of 7 June 2006 on import licenses from or to a third country of certain goods which could be used for punishment or torture (Journal of Laws of 2006 No. 118, poz.806). The application for a permit on export of goods listed in Annex II of Council Resolution No 1236/2005 must be accompanied by the end-user’s declaration containing:</p> <ul style="list-style-type: none"> <li>- a name of the final destination’s country</li> <li>- an end-user’s name and address</li> <li>- an description, quantity and value of exported commodity</li> <li>- end-uses’ declaration</li> <li>- list of intermediary customer and purchasers</li> </ul> <p>Regarding export of goods to the third country, an end-user declaration shall be approved by Poland-based competent diplomatic mission or consular post of particular third country.</p>

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	<p>To the application for a permit on export of goods, besides listed above documents, applicant shall attached:</p> <p>1) one of the following documents:</p> <ul style="list-style-type: none"><li>a) the copy of a agreement with third-country customer, to whom the goods shall be exported</li><li>b) the copy of the legal right to dispose of a commodity for export, provided that the applicant is entitled to dispose of this commodity</li><li>c) the copy of concluded agreement with a person who is entitled to dispose of this commodity, authorizing its export, along with a copy of document corroborating the legal right of this person to dispose of a commodity which is the subject of the application.</li><li>d) a power of attorney issued by a person who has the legal right to dispose of this commodity, along with a document corroborating the legal right to dispose of this commodity by a principal</li></ul> <p>2) concerning an application for export of goods, a statement of a person having the right to make a declaration of intent on behalf of museum, that exported goods, in the view of their historic significance, are for museum purposes only, is also required.</p> <p><b>Technical assistance</b> Ordinance of the Minister of Economy of 7 June 2006 on licenses delivering or receiving technical assistance of certain goods which could be used for punishment or torture (Journal of Laws of 2006 No. 118, poz.807). For the application for an export authorisation of goods the following documents must be attached:</p> <ul style="list-style-type: none"><li>1) a statement of a person having the right to make a declaration of intent on behalf of museum, that exported goods in the view of their historic significance are for museum purposes only</li><li>2) a authenticated by a notary or competent authority certified true copy of an agreement with museum on provision of technical assistance.</li></ul> <p>Provided that the technical assistance would be provided to the third country form the customs territory of Community the statement must be approved by Poland-based competent diplomatic mission or consular post of this country</p>
Slovakia	<p style="text-align: center;"><b>YES</b></p> <p>Criteria are defined by Articles 3, 4 and 5 of Act 474/2007</p>



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Slovenia	<b>NO</b> In the case of derogation from paragraph 1 Article 3 or paragraph 1 Article 4 of Council Regulation 1236/2005/EC the criteria for issuing an authorisation are the same as the one defined in Article 6 of Council Regulation 1236/2005/EC and fulfilment of conditions set in paragraph 2 of Article 3 and paragraph 2 of Article 4 of Council Regulation 1236/2005/EC.
Sweden	<b>NO</b>

### Article 4 Import prohibition

1. Any import of goods listed in Annex II shall be prohibited, irrespective of the origin of such goods.

The acceptance by a person, entity or body in the customs territory of the Community of technical assistance related to goods listed in Annex II, supplied from a third country, whether for consideration or not, by any person, entity or body shall be prohibited.

2. By way of derogation from paragraph 1, the competent authority may authorise an import of goods listed in Annex II, and the supply of related technical assistance, if it is demonstrated that, in the Member State of destination, such goods will be used for the exclusive purpose of public display in a museum in view of its historic significance.

**Comment:** As defined by Article 2(d) and (e) the export and import prohibition concerns only transfers outward and inward the European Union. Hence, the transfers between Member States are not subjected to such prohibition.

## CHAPTER III Goods that could be used for the purpose of torture or other cruel, inhuman or degrading treatment or punishment

### Article 5 Export authorisation requirement

1. For any export of goods that could be used for the purpose of torture and other cruel, inhuman or degrading treatment or punishment, listed in Annex III, an authorisation shall be required, irrespective of the origin of such goods. However no authorisation shall be required for goods which only pass through the customs territory of the Community, namely those which are not assigned a customs-approved treatment or use other than the external transit procedure within Article 91 of Regulation (EEC) No 2913/92, including storage of non-Community goods in a free zone of control type I or a free warehouse.

**Comment:** External transit is not submitted to authorisation by the Regulation but Member States could adopt or maintain national provisions controlling such transactions. The UK applies the same rules to items in transit through its ports or airports as well as to exports from its territory (Export Control Order 2008 article 17). See also comment under article 7.

Countries	Member States provisions controlling items only passing through the customs territory of the Community (Art. 5. 1)
Austria	<p><b>YES</b></p> <p>The pass-through may be controlled (subjected to an authorisation requirement <i>ex officio</i> under Art. 20 of the Austrian Foreign Economy Act) if there are reasons to believe that this transaction might violate any of the criteria in Art. 3 through 12 of this Act.</p>
Belgium	<b>NO</b>
Bulgaria	<b>NO</b>
Croatia	<b>NO</b>
Cyprus	<b>NO</b>
Denmark	<p><b>NO</b></p> <p>The Danish Business Authority notes, that it has adopted no such national provisions as far as Annex III, No. 1 and 4 are concerned.</p> <p>The Danish Customs and Tax Administration notes, that the controlling of the transactions in question is an integrated part of the usual customs clearance</p>
Estonia	<b>NO</b>

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France	<b>NO</b>
Germany	<b>NO</b>
Hungary	<b>YES</b> According to the Government Decree No. 160/2011, a transit licence is required for goods which only pass through the territory of Hungary. The same procedural rules apply as in case of export licenses.
Latvia	<b>YES</b> Transit is controlled using either a transit license or the export license of the exporting country together with an end-user certificate or import license from the importing country. Customs procedure for control over transit of goods includes also declaration of transit goods and measures of assurance on goods being delivered to the destination country. However there is a different procedure applied in case of transit of goods of strategic purpose that is regulated by the <i>Law On the Circulation of Goods of Strategic Significance</i> (adopted on 19.07.2007)
Lithuania	<b>NO</b>
Netherlands	<b>NO</b>
Poland	<b>NO</b>
Slovakia	<b>YES</b> Under article 10 of Act 474/2007
Slovenia	<b>NO</b>
Sweden	<b>NO</b>

2. Paragraph 1 shall not apply to exports to those territories of Member States which are both listed in Annex IV and are not part of the customs territory of the Community, provided that the goods are used by an authority in charge of law enforcement in both the country or territory of destination and the metropolitan part of the Member State to which that territory belongs. Customs or other relevant authorities shall have the right to verify whether this condition is met and may decide that, pending such verification, the export shall not take place.

**Comment:** Territories listed in Annex IV are following:  
 - Denmark: Greenland;  
 - France: New Caledonia and dependencies, French Polynesia, French Southern and Antarctic Territories, Wallis and Futuna Islands, Mayotte, St Pierre and Miquelon;

- Germany: Büsingen.

3. Paragraph 1 shall not apply to exports to third countries, provided that the goods are used by military or civil personnel of a Member State, if such personnel is taking part in an EU or UN peace keeping or crisis management operation in the third country concerned or in an operation based on agreements between Member States and third countries in the field of defence. Customs and other relevant authorities shall have the right to verify whether this condition is met. Pending such verification, the export shall not take place.

## Article 6 Criteria for granting export authorisations

1. Decisions on applications for authorisation for the export of goods listed in Annex III shall be taken by the competent authority on a case by case basis, taking into account all relevant considerations, including in particular, whether an application for authorisation of an essentially identical export has been dismissed by another Member State in the preceding three years.

**Comment:** The term “**essentially identical**” is defined by Article 13(5) of the Dual-Use Regulation. For this Regulation an essentially identical transaction means a transaction of an item with essentially identical parameters or technical characteristics to the same end-user or consignee.

2. The competent authority shall not grant any authorisation when there are reasonable grounds to believe that goods listed in Annex III might be used for torture or other cruel, inhuman or degrading treatment or punishment, including judicial corporal punishment, by a law enforcement authority or any natural or legal person in a third country.

**Comment:** The Commission has drafted a proposal for Guidance for application of articles 5 and 6 regarding the export of certain medicinal products<sup>11</sup>. It aims at helping Member States’ authorities *decide on an application for export authorisation for listed barbiturates, taking into account that certain countries and territories represent a higher risk of use for capital punishment than other countries and territories, and that normal medical use of these products does not amount to torture or cruel, inhuman or degrading treatment.* The document is not legally binding for Member States’ authorities.

It classified end-use countries into three groups (“low”, “medium” and “high risk” countries) and established a set of different conditions/criteria to authorise or not the export.

**High risk countries** are countries *that retains capital punishment in law as a criminal sanction and which is known to allow or use lethal injections as a method of execution.* For this group the authorisation should be denied *unless it is satisfied that adequate measures have been taken to avoid diversion to law enforcement authorities and use for capital punishment of the medicinal products.*

**Low risk countries** are countries *that have abolished capital punishment in law (de jure) for all crimes.* The export authorisation may be granted *after assessing the risk that the medicinal products would be transferred or supplied to a country or territory that presents a high or medium risk of use for capital punishment.*

**Medium risk countries** are countries *that have not abolished capital punishment in law for all crimes but which is not known to allow or use lethal injection as a method of execution.* The export authorisation may be granted *after assessing the risk that the medicinal products would be used for capital punishment in the country or territory of destination and the risk that they would be transferred or supplied to a law enforcement authority in another country or territory that presents a medium or high risk of use for capital punishment.*

<sup>11</sup> Commission Staff working document SEC(2011) 1624 final (20 December 2011)

## Article 6

The competent authority shall take into account:

- Available international court judgements,
- Findings of the competent bodies of the UN, the Council of Europe and the EU, and reports of the Council of Europe's European Committee for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment and of the UN Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment.

Other relevant information, including available national court judgements, reports or other information prepared by civil society organisations and information on restrictions on exports of goods listed in Annexes II and III applied by the country of destination, may be taken into account.

### **Complementary information:**

**Competent UN Bodies** involved in the elaboration of human rights policies can be classified according to the document that constitutes a legal base of creation thereof. These bodies benefit from a secretariat support of the Human Rights Council and Treaties Division of the Office of the High Commissioner for Human Rights.

Charter-based bodies created under the provisions of UN Charter include:

- UN Human Rights Council;
- Universal Periodic Review;
- Commission on Human Rights (replaced by the Human Rights Council);
- Special Procedures of the Human Rights Council.

Treaty-based bodies created under the international human rights treaties are represented by:

- Human Rights Committee (CCPR);
- Committee on Economic, Social and Cultural Rights (CESCR);
- Committee on the Elimination of Racial Discrimination (CERD);
- Committee on the Elimination of Discrimination against Women (CEDAW);
- Committee Against Torture (CAT) & Optional Protocol to the Convention against Torture (OPCAT) - Subcommittee on Prevention of Torture ;
- Committee on the Rights of the Child (CRC);
- Committee on Migrant Workers (CMW);
- Committee on the Rights of Persons with Disabilities (CRPD).

The **European Committee for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment (CPT)** was established by the Article 1 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment<sup>12</sup>. It constitutes one of the main instruments of the Council of Europe, which seeks to guarantee the respect for and observance of human rights and the prevention of violations.

Experts in various fields are the members of the CPT. They proceed through visits of places of detention to which they have, in principle, an unlimited access. One of the main achievements of CPT activities is the elaboration of set of standards relating to the treatment of persons deprived

<sup>12</sup> European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment is available at following website: <http://www.cpt.coe.int/en/documents/ecpt.htm>.

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of their liberty. In addition, every year the CPT publishes an Annual General Report on its activities, those reports are available at: <http://www.cpt.coe.int/en/docsannual.htm>.

The **UN Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment** is an expert with a 3-year mandate, appointed by the United Nations Commission on Human Rights. The mandate of a Rapporteur includes following activities:

- transmitting appeals to States concerning persons suspected of being at risk of torture and communications on past cases of torture;
- undertaking country visits; and
- submitting annual reports on activities to the Human Rights Council and the General Assembly. These reports are available at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=103](http://ap.ohchr.org/documents/dpage_e.aspx?m=103).

**Comment:** Some Member States have extended the application of the criteria established by the Council Common Position 2008/944/CFSP of 8 December 2008<sup>13</sup> defining common rules governing control of exports of military technology and equipment to the trade of goods listed in Annex III.

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<sup>13</sup> OJ L 335, 13.12.2008, p. 99.

## Article 7 National measures

1. Notwithstanding the provisions in Articles 5 and 6, a Member State may adopt or maintain a prohibition on the export and import of leg irons, gang chains and portable electric shock devices.

**Comment:** several Member States have decided to implement this disposition in their national legislations, thereby prohibiting fully or partly an export and import of leg-irons, gang-chains and portable electric shock devices other than electric shock belts. With amendments of Annex II and III adopted by the Commission implementing Regulation in December 2011 some of those items have been included and are presently controlled by the 28 Member States.

**Estonia** considers thumb-screws and serrated thumb-cuffs as goods suited for accomplishment of human rights violations; therefore an import, export and transit thereof are banned.

**Spain** has confined itself to a political statement emphasising the pressing necessity of prohibition of trade of leg-irons and shackles, however no legally binding provisions have been implemented so far.

**United Kingdom** has banned for export leg-irons, stun guns, and stun batons.

**Swedish** legislation has outlawed the high voltage electro-shock stun batons.

It should be noted that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has also examined an issue of use of electrical discharge weapons (EDW) by the police law enforcement official and the presence of such devices in the places of detention<sup>14</sup>.

According to the CPT, the EDW vary from electric shock batons to other handheld weapons “requiring direct contact with the person who is the intended target to weapons capable of delivering dart-like projectiles which administer an electric shock to a person located at some distance”<sup>15</sup>. Even if the CPT agrees that the EDW could be useful for a giving a more graduated response to dangerous situations as well as for reducing recourse to firearms, these devices might also cause pain and be used in an abusive fashion.

Therefore, the use of electric discharge weapons should be “subject to the principles of **necessity, subsidiarity, proportionality, advance warning** (where feasible) and **precaution**”<sup>16</sup> and should be limited to situations “where there is a **real and immediate threat to life or risk of serious injury**”<sup>17</sup>.

However, the CPT comes out clearly against:

- the issuing of EDW to services responsible for deportation operations vis-à-vis immigration detainees;
- the use of electric discharge weapons in prison/closed psychiatric settings, except very exceptional circumstances.

<sup>14</sup> See 20<sup>th</sup> General Report on the CPT’s Activities (2009-2010), available at: <http://www.cpt.coe.int/en/annual/rep-20.pdf>.

<sup>15</sup> See point 65 of the 20<sup>th</sup> General Report on the CPT’s Activities (2009-2010).

<sup>16</sup> See point 69 of the 20<sup>th</sup> General Report on the CPT’s Activities (2009-2010).

<sup>17</sup> See point 70 of the 20<sup>th</sup> General Report on the CPT’s Activities (2009-2010).



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Where electrical discharge weapons are to be used when effecting arrests, their resort must be strictly circumscribed. Consequently, the Committee emphasizes that the services, which will have such weapons at their disposal, should have received detailed instructions and appropriate training. Moreover, the CPT considers that anyone against whom an EDW has been used should, in all cases, be seen by a doctor and, where necessary, taken to hospital<sup>18</sup>.

Countries	Prohibition on the export and/or import of leg iron, gang chains and portable electric shock devices (Art. 7.1)
Austria	<b>NO</b>
Belgium	<p style="text-align: center;"><b>YES</b></p> <p>The Flemish Arms Trade Law of 15<sup>th</sup> June 2012 prohibits the import of all portable electric shock devices which can make persons defenceless or which can inflict pain, except for medical or veterinary devices (exceptions apply to allow official use). For the Walloon Region, according to the Arms Trade Decree of 21<sup>st</sup> June 2012, the import, export and transit of any type of portable electric shock devices, except for medical or veterinary tools, that might disable persons or inflict pain upon them, is prohibited.</p>
Bulgaria	<b>NO</b>
Croatia	<b>NO</b>
Cyprus	<b>NO</b>
Denmark	<b>NO</b>
Estonia	<p style="text-align: center;"><b>NO</b></p> <p>Under national Weapons Act, the domestic use of electric shock weapons for civilian purposes is prohibited. The import and import of leg irons, gang chains and portable electric shock devices is not prohibited.</p>

<sup>18</sup> See point 81 of the 20<sup>th</sup> General Report on the CPT's Activities (2009-2010).

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France	<p style="text-align: center;"><b>YES</b></p> <p>A prohibition has been maintained under the weapon control regime for the import of electric shock devices.</p>
Germany	<b>NO</b>
Hungary	<p style="text-align: center;"><b>NO</b></p> <p>Same licensing principles and criteria apply as in case of military equipment (as it is listed in Government Decree No. 160/2011 in ML Chapter 25) Foreign trade with these goods will only be approved to law enforcement agencies and/or to penal institutions.</p>
Latvia	<p style="text-align: center;"><b>NO</b></p> <p>Latvia currently has no prohibition on the export and/or import of leg iron, gang chains portable electric shock devices in the national legislation. There have been provisions on prohibition of the export of handcuffs and leg-irons, which were adopted by decision of the Control Committee of Strategic Goods of Latvia in 1996. However, since adoption of the <i>Law On the Circulation of Goods of Strategic Significance</i> in 19.07.2007, such provisions have deleted</p>
Lithuania	<b>NO</b>
Netherlands	<b>NO</b>
Poland	<b>NO</b>
Slovakia	<p style="text-align: center;"><b>YES</b></p> <p>The export or import of leg irons, gang chains, and portable electric shock devices is only allowed with permission from the Slovak Republic in the form of a license from the Ministry of Economy of the Slovak Republic</p>
Slovenia	<b>NO</b>
Sweden	<b>NO</b>

2. A Member State may impose an authorisation requirement on the export of handcuffs which have an overall dimension including chains, measured from the outer edge of one cuff to the outer edge of the other cuff, exceeding 240 mm when locked. The Member State concerned shall apply Chapter III and IV to such handcuffs.

## Article 7

**Comment:** See comment under paragraph to know which Member States have extended the control to those handcuffs.

3. Member States shall notify the Commission of any measures adopted pursuant to paragraphs 1 and 2. Existing measures shall be notified by 30 July 2006. Subsequent measures shall be notified before they enter into force.

**Comment:** Some Member States have extended the scope of control to items not listed in Annex II and III. The United Kingdom has amended the Export Control Order 2008 in March 2012 to prohibit the export of human and veterinary medicinal products containing pancuronium bromide. The prohibition only applies to the export of these products where they are in a form suitable for injection or for preparation of an injection and the final destination is the United States of America (Export Control (Amendment) Order 2012).

## CHAPTER IV Authorisation procedures

### Article 8 Applications for authorisations

1. An authorisation for export and import and for the supply of technical assistance shall be granted only by the competent authority of the Member State listed in Annex I where the applicant is established.
2. Applicants shall supply the competent authority with all relevant information on the activities for which an authorisation is required.

### Article 9 Authorisations

1. Authorisations for export and import shall be issued on a form consistent with the model set out in Annex V and shall be valid throughout the Community. The period of validity of an authorisation shall be from three to twelve months with a possible extension of up to 12 months.
2. The authorisation may be issued by electronic means. The specific procedures shall be established on a national basis. Member States availing themselves of this option shall inform the Commission.

**Comment:** Several Member States have established electronic application form for export licenses.

Countries	Authorisation delivered by electronics means (Art. 9.2)
Austria	<b>YES</b> According to Art. 53 of the Austrian Foreign Economy Act Applications and notifications shall be filed via electronic media, as long as doing so is reasonable and the technical conditions for doing so are present and functional with the applicant as well as with the authority
Belgium	<b>NO</b>
Bulgaria	<b>NO</b> At present authorisations are issued only in paper form. The specific procedures of the authorisation by electronics means is now under development
Croatia	<b>NO</b>

## Article 9

Cyprus	<b>NO</b>
Denmark	Neither the Danish Business Authority nor the Danish Ministry of Justice have issued any authorisations according to the Regulation
Estonia	<b>NO</b>
France	<b>NO</b>
Germany	<b>YES</b> Authorisations are issued in paper form and by electronic means.
Hungary	The specific procedures of the authorisation by electronics means is now under development (under process)
Latvia	Due to a small number of applications and no applications for authorisations since 2007, an electronic system for issuing authorisations by electronics means has not yet been used. Practice for issuing authorisations by electronic means is applied for Dual-use goods (managed by Ministry of Foreign Affairs of Latvia) and such practice could also be use for items listed under Council Resolution No 1236/2005
Lithuania	<b>NO</b>
Netherlands	<b>NO</b>
Poland	<b>NO</b>
Slovakia	<b>NO</b>
Slovenia	<b>NO</b>
Sweden	<b>NO</b>

## Article 9

3. Authorisations for export and import shall be subject to any requirements and conditions the competent authority deems appropriate.

Countries	Specific requirements or conditions to grant export or import authorisations (Art. 9.3)
Austria	<p style="text-align: center;"><b>YES</b></p> <p>According to Art. 54 of the Austrian Foreign Economy Act specific conditions or requirements have to be attached to an authorisation if they are necessary to fully meet the criteria under Art. 3 through 12 of this Act.</p>
Belgium	<p style="text-align: center;"><b>NO</b></p> <p>The FPS Economy has not received any application for import or export of such goods</p>
Bulgaria	<p style="text-align: center;"><b>YES</b></p>
Croatia	<p style="text-align: center;"><b>NO</b></p> <p>Only if it is necessary. If the state authorities (Ministry of Foreign and European Affairs, Ministry of Interior, Ministry of Justice, Ministry of Finance - Customs Administration, the Security Intelligence Agency, and depending on the type of goods, the Ministry of Health) under Article 4 paragraph 1 (of the National Regulation), require additional documentation, for issuance of the recommendation, it shall notify the State Office for Trade Policy, which shall then extend the request to the applicant.</p>
Cyprus	<p style="text-align: center;"><b>NO</b></p>
Denmark	<p>The Danish Ministry of Justice has not received any applications according to the Regulation.</p> <p>The Danish Business Authority has not received any applications regarding import authorisation according to the Regulation</p>
Estonia	<p style="text-align: center;"><b>NO</b></p> <p>Not on a general basis. If necessary, conditions may apply on a case-by-case basis</p>

## Article 9

France	<b>YES</b> According to Ministerial Decree of 26 <sup>th</sup> June 2012 any exporter, importer or supplier established in France shall submit a request the Directorate General of Customs and Excise
Germany	<b>NO</b> Only in individual cases.
Hungary	<b>YES</b> Same licensing principles apply as in case of military equipment listed in Government Decree No.160/2011, which entails that all international obligations are carefully taken into consideration. Hungarian Trade Licensing Office (HTLO) may require further documentation (ie. contract, EUC, IIC, etc) and prescribe specific conditions it deems necessary Articles 15.5 and 15.9 of Gov Decree 160/2011
Latvia	Requirements for granting export or import authorisations are listed in the Regulation of the cabinet of Ministers of the Republic of Latvia No 927 (adopted on 14.11.2008)
Lithuania	<b>YES</b> All requirements for issuing authorisations are set at the Order No 5-V-203 (on March 29 <sup>th</sup> , 2006) changed by Order 5-V-275 (on March 30 <sup>th</sup> , 2012) by Police Commissioner General of Lithuania
Netherlands	<b>NO</b> Specific conditions will be prescribed if necessary
Poland	<b>YES</b> <b>Goods</b> Ordinance of the Minister of Economy of 7 <sup>th</sup> June 2006 on import licenses from or to a third country of certain goods which could be used for punishment or torture (Journal of Laws of 2006 No. 118, poz.806); <b>Technical assistance:</b> Ordinance of the Minister of Economy of 7 <sup>th</sup> June 2006 on licenses for delivering or receiving technical assistance of certain goods which could be used for punishment or torture (Journal of Laws of 2006 No. 118, poz.807)

## Article 9

Slovakia	<b>YES</b> All authorisations meet the requirements set by the 1236/2005 and NR SR n. 474/2007
Slovenia	<b>NO</b>
Sweden	<b>NO</b>

4. The competent authorities, acting in accordance with this Regulation, may refuse to grant an export authorisation and may annul, suspend, modify or revoke an export authorisation which they have already granted.



## Article 10 Customs formalities

1. When completing customs formalities, the exporter or importer shall submit the duly completed form set out in Annex V as proof that the necessary authorisation for the export or import concerned has been obtained. If the document is not filled out in an official language of the Member State where the customs formalities are being completed, the exporter or importer may be required to provide a translation into such official language.

2. If a customs declaration is made concerning goods listed in Annexes II or III, and it is confirmed that no authorisation has been granted pursuant to this Regulation for the intended export or import, the customs authorities shall detain the goods declared and draw attention to the possibility to apply for an authorisation pursuant to this Regulation. If no application for an authorisation is made within six months of time after the detention, or if the competent authority dismisses such an application, the customs authorities shall dispose of the detained goods in accordance with applicable national legislation.

## Article 11 Notification and consultation requirement

1. The authorities of the Member States, as listed in Annex I, shall notify all other authorities of the Member States and the Commission, as listed in that Annex, if they take a decision dismissing an application for an authorisation under this Regulation and if they annul an authorisation they have granted. The notification shall be made not later than 30 days of the date of the decision.

**Comment:** It should be noted that the term “**authorisation**” refers not only to an authorisation for export but also to that for import of goods covered by this Regulation.

2. The competent authority shall consult the authority or authorities which, in the preceding three years, dismissed an application for authorisation of an import or export or the supply of technical assistance under this Regulation, if it receives an application concerning an import or export or the supply of technical assistance involving an essentially identical transaction referred to in such earlier application and considers that an authorisation should, nevertheless, be granted.

3. If, after such consultations, the competent authority decides to grant an authorisation, it shall immediately inform all the authorities listed in Annex I of its decision and explain the reasons for its decision, submitting supporting information as appropriate.

## Article 11

4. The refusal to grant an authorisation, if it is based on a national prohibition in accordance with Article 7(1), shall not constitute a decision dismissing an application within the meaning of paragraph 1.

**Comment:** Even if this Article establishes a procedure of consultation between Member States as regards granting import and export authorisations, it should be emphasised that sole consultation and notification of the decision of Member State national authorities is compulsory. Therefore, after having undertaken all required consultations Member State remains unrestricted as concerns the final decision on issue of authorisation.

In addition, the prohibition imposed by Member States on the basis of Article 7(1) concerning an export and import of leg irons, gang chains and portable electric shock devices is not covered by this Article. In other words, denials issued and based on prohibition prescribed under Article 7(1) shall not be notified to the Commission and national authorities of other Member States, as listed in Annex I of this Regulation.

## CHAPTER V General and final provisions

### Article 12 Amendment of Annexes

1. The Commission shall be empowered to amend Annex I. The data regarding competent authorities of the Member States shall be amended on the basis of information supplied by the Member States.
2. In accordance with the procedure referred to in Article 15(2), the Commission shall be empowered to amend Annexes II, III, IV and V.

### Article 13 Exchange of information between Member States' authorities and the Commission

1. Without prejudice to Article 11, the Commission and the Member States shall, upon request, inform each other of the measures taken under this Regulation and supply each other with any relevant information at their disposal in connection with this Regulation, in particular information on authorisations granted and refused.
2. Relevant information on authorisations granted and refused shall comprise at least the type of decision, the grounds for the decision or a summary thereof, the names of the consignees and, if they are not the same, of the end-users as well as the goods concerned.
3. Member States, if possible in cooperation with the Commission, shall make a public, annual activity report, providing information on the number of applications received, on the goods and countries concerned by these applications, and on the decisions they have taken on these applications. This report shall not include information the disclosure of which a Member State considers to be contrary to the essential interests of its security.

**Comment:** It shall be noted that no such report has been published so far. Therefore the Committee on common rules for exports of products (see comment relative to Article 15) during its meeting of 14 January 2009 urged Member States to publish their activity reports (since July 2006 and on an annual basis) and asked to send them also to the Commission. In addition, national activity reports were required, even if no application for an authorisation had been received.

Nevertheless, several Member States publish their statistics as concerns transactions under Torture Regulation. As regards the United Kingdom, such information concerning issued, refused or revoked export licences is available on the following website:

<http://www.berr.gov.uk/whatwedo/europeandtrade/strategic-export-control/statistics/index.html>.

Bulgarian Export Control Authority published its report for 2011 only two licences for repair have been issued under article 5(1)<sup>19</sup>.

<sup>19</sup> [http://www.exportcontrol.bg/docs/Annual\\_report\\_Regulation\\_1236\\_2011.pdf](http://www.exportcontrol.bg/docs/Annual_report_Regulation_1236_2011.pdf).

## Articles 13 and 14

4. Except for the supply of information mentioned in paragraph 2 to the authorities of the other Member State and to the Commission, this Article shall be without prejudice to applicable national rules concerning confidentiality and professional secrecy.

5. The refusal to grant an authorisation, if it is based on a national prohibition adopted in accordance with Article 7(1), shall not constitute an authorisation refused within the meaning of paragraphs 1, 2 and 3 of this Article.

**Comment:** The main purpose of this Article is to encourage the exchange of information between the authorities of Member States and the Commission. This information exchange shall not be confused with the notification mechanism established by Article 11 of this Regulation. Notification procedure consists in Member States' obligation to notify the authorities of other Member States, as listed in Annex I of this Regulation, and the Commission, if they dismiss an application for an authorisation under this Regulation or if they annul an authorisation they have granted.

In addition, the prohibition imposed by Member States on the basis of Article 7(1) concerning an export and import of leg irons, gang chains and portable electric shock devices is not covered by this Article. In other words, an authorisation denial issued under a prohibition established under Article 7(1) may not be communicated to the Commission and national authorities of other Member States, as listed in Annex I of this Regulation.

### **Article 14 Use of information**

Without prejudice to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents and national legislation on public access to documents, information received pursuant to this Regulation shall be used only for the purpose for which it was requested.

# Articles 15, 16 and 17

## Article 15 Committee procedure

1. The Commission shall be assisted by the committee on common rules for exports of products, set up by Article 4(1) of Regulation (EEC) No 2603/69.

**Comment:** This Committee was established within the Trade Service, reference thereof is (C22400) Committee on common rules for exports of products. Last and second meeting of this Committee took place in Brussels on 16 November 2011. Agenda and certain documents considered by the Committee are available on the Comitology Register<sup>20</sup>

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at two months.

3. The Committee shall adopt its rules of procedure.

## Article 16 Implementation

The Committee referred to in Article 15 shall examine any question concerning the implementation of this Regulation raised by its chairman either on his or her own initiative or at the request of a representative of a Member State.

## Article 17 Penalties

1. Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

2. Member States shall notify the Commission of those rules by 29 August 2006 and shall notify it without delay of any subsequent amendment affecting them.

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<sup>20</sup> <http://ec.europa.eu/transparency/regcomitology/index.cfm?do=List.list>.

Countries	Penalties (Art.17)
Austria	<p>Art. 79 of the Austrian Foreign Economy Act provides for penalties in case of an infringement of the Torture Regulation (esp. violations of prohibitions or authorisation requirements or conditions or requirements attached to authorisations and actions to circumvent such prohibitions or authorisation requirements). The penalties are up to five years of imprisonment.</p>
Belgium	<p style="text-align: center;"><b>YES</b></p> <p>The sanctions are imposed by Law of 11<sup>th</sup> September 1962 (confiscation, fines, imprisonment)</p>
Bulgaria	<p style="text-align: center;"><b>YES</b></p> <p>The sanctions are imposed by Art. 11, 12 and 13 of the Act of implementation of Council Resolution No 1236/2005.</p> <p><u>Article 11</u></p> <p>Persons who carry out import and export of goods listed in Annex II and Annex III of Regulation 1236/2005, or provide technical assistance related to such goods, without proper authorisation shall be sanctioned with:</p> <ol style="list-style-type: none"> <li>1. a fine of BGN 500 to BGN 1,000 (250 to 500 Euro) - for natural persons as well as for officials of commercial companies in case the deed is not a crime;</li> <li>2. a property sanction amounting from BGN 500 to BGN 1,000 (250 to 500 Euro) - for legal and natural persons;</li> <li>3. fine or penalty in the amount of BGN 2,000 to BGN 10,000 (1,000 to 5,000 Euro) - for a repeated violation.</li> </ol> <p><u>Article. 12</u></p> <p>Persons who operate in violation of the scope and terms of the an authorisation issued or provide documents, data, information and reports or obstruct and / or deny access to a public official in the exercise of control functions under this Act shall be sanctioned with:</p> <ol style="list-style-type: none"> <li>1. a fine of BGN 500 to BGN 1,000 (250 to 500 Euro) - for natural persons as well as for officials of commercial companies in case the deed is not a crime;</li> <li>2. a property sanction amounting from BGN 1,000 to BGN 5,000 (500 to 2,500 Euro) - for legal and natural persons;</li> <li>3. fine or penalty amounting of BGN 2,000 to BGN 10,000 (1,000 to 5,000 Euro) - for a repeated violation.</li> </ol> <p><u>Article. 13</u></p>

## Article 17

	<p>Persons who fail to fulfill their obligations under Art. 9 shall be sanctioned with:</p> <ol style="list-style-type: none"> <li>1. a fine of BGN 200 to BGN 1,000 (100 to 500 Euro) - for natural persons as well as for officials of commercial companies in case the deed is not a crime;</li> <li>2. a property sanction amounting ranging from BGN 500 to BGN 2,000 (250 to 1,000 Euro) - for legal and natural persons;</li> <li>3. fine or penalty amounting of BGN 1,000 to BGN 10,000 (500 to 5,000 Euro) - for a repeated violation.</li> </ol>
Croatia	<p style="text-align: center;"><b>YES</b></p> <p>Penalties are defined by the Trade Act (OG 68/2013):</p> <p>Article 71.c</p> <ol style="list-style-type: none"> <li>(1) A fine between 50,000.00 to 500,000.00 HRK shall be imposed to legal entity or natural person for exports or imports of goods listed in Annex II of the Regulation 1236/2005/EC.</li> <li>(2) For the offenses referred point 1 of this article, the fine imposed to the responsible person of legal entity could from 5,000.00 to 15,000.00 HRK.</li> <li>(3) For the offenses referred in the point 1 of this article, the fine imposed to natural person could be from 1,000.00 to 5,000.00 HRK..</li> </ol> <p>Article 71.d</p> <ol style="list-style-type: none"> <li>(1) A fine between 30,000.00 to 300,000.00 HRK shall be imposed on a legal or natural person when a he exports without authorisation goods listed in Annex III of Regulation 1236/2005/EC.</li> <li>(2) For the offenses referred to point 1 of this article, the fine imposed on the responsible person in the legal entity could be from 3,000.00 to 10,000.00 HRK.</li> <li>(3) For the offenses referred to point 1 of this article, a fine imposed on a natural person - a citizen could be from 500.00 to 3,000.00 HRK.</li> </ol>
Cyprus	<p style="text-align: center;"><b>YES</b></p> <p>The illegal import or export of controlled goods is punished by two years imprisonment maximum and/or a fine of 17 000 Euro. In case of repeated offences the penalties increase to a maximum of four years imprisonment and/or 34 000 Euro fine.</p>
Denmark	<p>Denmark has laid down rules on penalties applicable to infringements of Regulation 1236/2005 in Section 2(3) of the</p>

## Article 17

	<p>Ministry of Economics and Business Affairs Consolidating Act No 635 of 9 June 2011 on the application of certain European Union Acts on economic relations to third countries (Enabling Act).</p> <p>The Consolidating Act is available only in Danish.</p>
Estonia	<p style="text-align: center;"><b>YES</b></p> <p>According to Penal Code § 392 : fine and imprisonment up to 5 years, 10 years when committed by a group or by official</p>
France	<p style="text-align: center;"><b>YES</b></p> <p>The sanctions are imposed by art. 414 of National Customs Code</p>
Germany	<p style="text-align: center;"><b>YES</b></p> <p>According to § 18 section 4 AWG (revised version) a prison sentence up to five years could be imposed to anyone who violates Council Regulation (EC) No. 1236/2005 of 27 June 2005 (intentionally) by</p> <ol style="list-style-type: none"> <li>1. exporting the specified goods contrary to Article 3 para. 1 sentence 1,</li> <li>2. providing technical assistance related to the specified goods contrary to Article 3 para. 1 sentence 2,</li> <li>3. importing the specified goods contrary to Article 4 para. 1 sentence 1,</li> <li>4. accepting technical assistance related to the specified goods contrary to Article 4 para. 1 sentence 2, or</li> <li>5. exporting the goods referred to in Article 5 para. 1 sentence 1 without a licence.</li> </ol> <p>According to § 19 section 1 AWG (revised version) a regulatory offence is deemed to be committed by anyone who violates Council Regulation (EC) No. 1236/2005 of 27 June 2005 negligently in the above mentioned manner.</p>
Hungary	<p style="text-align: center;"><b>YES</b></p> <p>The sanctions regulated by Gov. Decree No. 160 and Penalty Code No. 100 of 2012 are:</p> <p>- Revocation of licence: The Authority shall withdraw a licence if changes take place following its issuing on the basis of which the application should be rejected. The Authority may withdraw a licence if an undertaking breaches the requirements laid down in the Decree or infringes the</p>



## Article17

	<p>conditions specified in the licence or violates the commercial legislative provisions. - Gov. Decree No.160. 25§ (1) b).</p> <p>- Penalties: Range from five million to ten million forints in the event of a breach of the provisions of Council Regulation (EC) No 1236/2005 dated 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. Gov. Decree No.160, 8§ (2).</p> <p>- 2 to 8 year imprisonment: Activity without license.- Penalty Code , 329§.</p> <p>- 5 to 10 years imprisonment in aggravating circumstances</p>
Latvia	<p style="text-align: center;"><b>YES</b></p> <p>Rules on penalties applicable to infringements of the provisions of this Regulation are laid down by the laws and regulations of the Republic of Latvia depending on a criminal or administrative nature of violation.</p> <p>According to the Article 201<sup>10</sup> of <i>The Latvian Administrative Violations code</i>, there are penalties in form of fine for violation of the rules of customs regime.</p> <p>According to the Article 190<sup>1</sup> of <i>the Criminal Code of Latvia</i> there are penalties in form of fine, community work or imprisonment for illegal movement of the goods that are banned or require a special regulation.</p> <p>According to the Article 201<sup>12</sup> of the <i>Latvian Administrative Violations code</i> as well as the Article 190 of <i>The Criminal Law</i> (regarding smuggling) there are penalties applicable to infringements of the Regulation.</p> <p>According to the Article 18 of <i>the Law On the Circulation of Goods of Strategic Significance</i>, penalties for the violation of the law are applied according to the civil, administrative or criminal responsibilities set by the relevant legislation of the Republic of Latvia</p>
Lithuania	<p style="text-align: center;"><b>YES</b></p> <p><b>Penal sanctions</b> are provided in Article 199 (1) of the Penal Code of the Republic of Lithuania.</p> <p><b>Administrative sanctions</b> are provided in Article 210 of the Code Administrative Offences</p>

<p>Netherlands</p>	<p style="text-align: center;"><b>YES</b></p> <p>Penalties are laid down in the Economic Offences Act (Wet Economische Delicten). Those who violate the provisions of the regulation may face a jail sentence of maximum six years, a fine up to 78.000 Euros, or a work assignment (maximum 480 hours). Furthermore the Economic Offences Act offers additional possibilities for penal sanctions such as a temporary or even permanent ban to perform related economic activities, and/ or confiscation of the goods in question and the profits gained by the illegal transaction. Finally, the Court may order the destruction of commodities that present a threat to the public order of public safety.</p> <p>The penalty is decided upon on a case by case basis. It is dependent upon the type, number and the seriousness of the infringements (e.g. intentional or unintentional offences, first time offence or repeat offence, voluntary self-disclosure etc.).</p>
<p>Poland</p>	<p style="text-align: center;"><b>YES</b></p> <p>The are the provisions of the Fiscal Penal Code of 10 September 1999 :</p> <ul style="list-style-type: none"> <li>- <b>Smuggling</b> (import or export without customs declaration – Art. 86 of FPC);</li> <li>- <b>Fraud</b> (misleading of a competent customs control authority - Art. 87 FPC);</li> <li>- <b>Handling</b> (purchasing, storage, transportation, dispatch, transmission, selling off, receiving or concealing - Art. 1 FPC).</li> </ul>
<p>Slovenia</p>	<p style="text-align: center;"><b>YES</b></p> <p>Administrative penalties Articles 9 and 10 of Decree on trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (Uradni list RS No 60/2006):</p> <ul style="list-style-type: none"> <li>- Any individual who imports or exports goods referred to in Annex II of the Regulation 1236/2005/EC without an authorisation shall be fined from EUR 150 to EUR 1,000.</li> <li>- Any legal person, entrepreneur or individual who pursues his/her activity as a self-employed person and commits an offence as referred to in the previous paragraph, shall be fined from EUR 15,000 to EUR 100,000.</li> </ul>

## Article17

	<p>A fine from EUR 500 to EUR 3,800 shall also be imposed upon the responsible person of a legal entity or the responsible person of an entrepreneur or an individual who pursues his/her activity as a self-employed person if he/she commits an offence referred to in the first paragraph of this Article.</p> <ul style="list-style-type: none"> <li>- Any individual who exports goods referred to in Annex III of the Regulation 1236/2005/EC without an authorisation shall be fined from EUR 100 to EUR 800.</li> <li>- Any legal person, entrepreneur or individual who pursues his/her activity as a self-employed person and commits an offence as referred to in the previous paragraph, shall be fined from EUR 10,000 to EUR 80,000.</li> </ul> <p>A fine from EUR 400 to EUR 3,200 shall also be imposed upon the responsible person of a legal entity or the responsible person of an entrepreneur or an individual who pursues his/her activity as a self-employed person if he/she commits an offence referred to in the first paragraph of this Article.</p> <p>Penalties are also provided in the Criminal Code imposing a prison sentence up to five years</p>
Slovakia	<p style="text-align: center;"><b>YES</b></p> <p>The penalties applicable to the infringements of the provisions are described in Article 12 of Act 474/2007</p>
Sweden	<p style="text-align: center;"><b>YES</b></p> <p>The Law (2006:1329) concerning trade in certain goods which could be used for capital punishment or torture, defined different penalties depending of the seriousness of the offense. It could be fines or imprisonment not exceeding two years, but if the offense is considered serious, it could be to imprisonment for at least six months but not exceeding six years.</p>

# Articles 18 and 19

## **Article 18 Territorial scope**

1. This Regulation shall apply to:

- the customs territory of the Community, as defined in Regulation (EEC) No 2913/92,
- the Spanish territories Ceuta and Melilla,
- the German territory of Helgoland.

2. For the purpose of this Regulation Ceuta, Helgoland and Melilla shall be treated as part of the customs territory of the Community.

## **Article 19 Entry into force**

This Regulation shall enter into force on 30 July 2006.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Luxembourg, 27 June 2005.

*For the Council*

*The President*

L. LUX

ANNEX I  
LIST OF AUTHORITIES REFERRED TO IN ARTICLES 8 AND 11

**Comment:** Annex I has been lately amended by the Commission Regulation (EC) No 1266/2010 of 20 December 2010<sup>21</sup>. This Regulation updates the list of competent authorities responsible for implementation of the Torture Regulation.

**A. Authorities of the Member States**

**BELGIUM**

Ministerie van Economie, Energie, Handel en  
Wetenschapsbeleid  
Directoraat E4: Economisch Potentieel, Markttoegangs-  
beleid, Tarifaire en Non-tarifaire Maatregelen  
Vooruitgangsstraat 50c  
B-1210 Brussel  
Tel. (32-2) 277 51 11  
Fax (32-2) 277 53 03  
E-mail: [Charles.godart@mineco.fgvov.be](mailto:Charles.godart@mineco.fgvov.be)  
Ministère de l'économie, de l'énergie, du commerce et de  
la politique scientifique  
Directorat, E4: potentiel économique, politique d'accès  
aux marchés, mesures tarifaires et non-tarifaires  
Rue du Progrès 50c  
B-1210 Bruxelles  
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Annex III, No 2 and 3  
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Slotsholmsgade 10  
DK-1216 København K  
Denmark  
Telephone: (45) 33 92 33 40  
Telefax: (45) 33 93 35 10  
E-mail: [jm@jm.dk](mailto:jm@jm.dk)

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<sup>21</sup> OJ L 336, 21.12.2010, p. 13.

Annex II and Annex III, No 1  
Økonomi- og Erhvervsministeriet  
Erhvervs- og Byggestyrelsen  
Eksportkontroladministrationen  
Langelinie Allé 17  
DK-2100 København Ø  
Denmark  
Telephone: (45) 35 46 60 00  
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**ΕΛΛΑΔΑ**

**GREECE**

Υπουργείο Οικονομίας και Οικονομικών  
Γενική Διεύθυνση Σχεδιασμού και Διαχείρισης Πολιτικής  
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Φαξ (30-210) 328 60 94  
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F-75436 PARIS CEDEX 09  
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Courrier électronique: [dg-setice@douane.finances.gouv.fr](mailto:dg-setice@douane.finances.gouv.fr)

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Licensing Unit  
Department of Enterprise, Trade and Employment  
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**LUXEMBOURG**

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**AUSTRIA**

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**PORTUGAL**

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E-post: [registrator@kommers.se](mailto:registrator@kommers.se)

**UNITED KINGDOM**

*Import of goods listed in Annex II:*  
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Import Licensing Branch  
Queensway House  
West Precinct  
Billingham TS23 2NF  
United Kingdom  
Tel. (44-1642) 36 43 33  
Fax (44-1642) 36 42 69  
E-mail: [enquiries.ilb@dti.gsi.gov.uk](mailto:enquiries.ilb@dti.gsi.gov.uk)

*Export of goods listed in Annex II or III, and supply of technical assistance related to goods listed in Annex II as referred Articles 3(1) and 4(1):*

Department of Trade and Industry  
Export Control Organisation  
Kingsgate House  
66-74 Victoria Street  
London SW1E 6SW  
United Kingdom  
Tel. (44-20) 72 15 80 70  
Fax (44-20) 72 15 05 31  
E-mail: [lu3.eca@dti.gsi.gov.uk](mailto:lu3.eca@dti.gsi.gov.uk)

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## Annex II, III, IV and V

### ANNEX II LIST OF GOODS REFERRED TO IN ARTICLE 3 AND 4.

**Comment:** It should be noted that Annex II (prohibition of export and import) and III (authorisation requirement) have been lately amended by the Commission Implementing Regulation (EC) No 1352/2011 of 20 December 2011<sup>22</sup>.

### ANNEX III LIST OF GOODS REFERRED TO IN ARTICLE 5.

**Comment:** It should be noted that Annex II (prohibition of export and import) and III (authorisation requirement) have been lately amended by the Commission Implementing Regulation (EC) No 1352/2011 of 20 December 2011.

### ANNEX IV LIST OF TERRITORIES OF MEMBER STATES REFERRED TO IN ARTICLE 5(2)

### ANNEX V EXPORT OR IMPORT AUTHORISATION FORM REFERRED TO IN ARTICLE 9(1)

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<sup>22</sup> The document is available at the following link : <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:338:0031:0034:EN:PDF>.