



**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**

**Pr. Dr. Quentin MICHEL,
Lia Caponetti & Giusi Squillaci**

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Please do not hesitate to send any comments, remarks, and questions on the present document to
qmichel@ulg.ac.be

**European Studies - Political Science Department
Faculty of Law, Political Science and Criminology - Liege University - Belgium**



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:

- A transfer prohibition (import, export, transit, technical assistance and advertising) for a limited number of items listed in Annex II.
- A transfer authorisation principle (export, transit, brokering) 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 others 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 (EU) 2015/192 of 9 February 2015 amending Regulation (EC) 174/2005 imposing restrictions on the supply of assistance related to military activities to Côte-d'Ivoire.

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Important Remark: In **June 2010**, the European Parliament has adopted a Resolution on the 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.

The Parliament has decided to put the Commission and Member States under pressure by emphasising 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 1352/2011¹ 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.

In **January 2014**, the Commission has finally proposed to the European Parliament and the Council a Regulation 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.

This proposal intends essentially to:

- review the definition of *torture and other cruel, inhuman or degrading treatment or punishment*;
- prohibit certain brokering transactions and services (including technical assistance);
- define criteria for granting export authorisation;
- introduce a EU General Export Authorisation for certain medicinal products;
- delegate to the Commission the power to amend Annexes.

In **July 2015**, the Opinion of the Committee on Foreign Affairs for the Committee on International Trade ((COM(2014)0001 – C7-0014/2014 – 2014/0005(COD)) was adopted, on the proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No. 1236/2005, which seeks to strengthen the provisions on the ancillary services linked to the transfer of goods, as well as on transit, technical assistance and commercial marketing. It specifically aims at introducing a targeted end-use clause in order for Member States to prohibit or suspend the transfer of security-related items not listed in Annex II and III that clearly have no other practical use other than the purpose of capital punishment, torture or other ill-treatment, or there are reasonable grounds to believe that the transfer of those items

¹ 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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would lead to the facilitation or the commission of judicial execution, torture or other ill-treatment.

Finally, on **23 November 2016**² the Council adopted an amending Regulation concerning goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment. In general terms, the amendments provide for the following main changes to the Regulation:

- the definitions of “torture” and “other cruel, inhuman or degrading treatment or punishment” are strengthened by adding to the definition a sentence stating that “Capital punishment is not deemed a lawful penalty under any circumstances”;
- It facilitates, by adopting a General Export Authorisation, exports to countries that have abolished capital punishment for all crimes and confirmed that abolition through an international commitment;

It prohibits brokering activities of goods located in third countries when those goods are subject to an import and export ban, as listed in Annex II (goods that can only be used for torture or capital punishment);

- It introduces a prior authorisation regime for brokering services and technical assistance related to goods listed in Annex III or IIIa (goods that could be used for torture or capital punishment but which also have legitimate applications);
- It introduces a prior authorisation regime for the supply of technical assistance concerning goods listed in Annex III or IIIa;
- It prohibits transport of goods in transit if they are listed in Annex II, III or IIIa (prohibition concerning goods listed in annex III or IIIa is not absolute, but it applies where the economic operator has some information about their use for torture or capital punishment in the country of destination);
- It prohibits the promotion at exhibitions and trade fairs in the EU and the advertising of goods listed in Annex II;
- It establishes a coordination group, which will serve as a platform for Member States’ experts and the European Commission to exchange information on administrative practices;
- It provides for an urgency procedure in case rapid amendment of the Regulation’s annexes is necessary.

Comment: In order to simplify the recognition of amended articles, we have coloured in **green** provisions added or modified by Regulation (EU) 2016/2134 of the European Parliament and of the Council of 23 November 2016.

² Regulation (EU) 2016/2134 of the European Parliament and of the Council of 23 November 2016 amending Council Regulation (EC) No 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (OJ L 338, 13.12.2016, pp. 1–33).

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 (TFEU) article 133 has been renumbered article 207.

Having regard to the proposal from the Commission,

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 the 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*”.³

(1) Council Regulation (EC) No 1236/2005 was adopted in 2005 and entered into force on 30 July 2006. In response to calls from the European Parliament in 2010 and due to indications that medicinal products exported from the European Union had been used for capital punishment in a third country, the lists of goods in Annexes II and III to that Regulation, whose trade is prohibited or controlled, were amended by means of Commission Implementing Regulation (EU) 1352/2011. The Commission, assisted by a group of experts, reviewed the need for further

³ 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).

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amendments to Regulation (EC) 1236/2005 and its Annexes. In July 2014, Commission Implementing Regulation (EU) 775/2014 amended Annexes II and III accordingly.

Comment: Certain medicinal, in particular sodium thiopental, a sedative that is part of the normal three-drug mixture used by USA for death penalty execution have been supplied indirectly by EU pharmaceuticals industries. To conform the EU principle of an abolition of the death penalty in all circumstances to its trade policy, transfers of those drugs have been submitted to the condition that the supply will not contribute to capital punishment. The condition has to be demonstrated by the supplier.

(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.

(2) The Charter of Fundamental Rights of the European Union (the “Charter”) became legally binding with the entry into force of the Treaty of Lisbon on 1 December 2009. The definition of torture in Regulation (EC) No 1236/2005 was taken over from the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and continues to be valid. The definition of “other cruel, inhuman or degrading treatment or punishment”, which is not found in that Convention, should be amended to align it with the case law of the European Court of Human Rights. It is also appropriate to clarify the meaning of the term “lawful penalties” in the definitions of “torture” and “other cruel, inhuman or degrading treatment or punishment”, taking into account the Union’s policy on capital punishment.

(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 (revised lastly in 2013).

Taking into account human rights policies of international organisations such as the General Assembly of the United Nations, the Council of Europe and the Organisation 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 Penalty⁴ which have the following principal objectives:

⁴ EU Guidelines on the Death Penalty are available on the following website:
http://eeas.europa.eu/human_rights/guidelines/death_penalty/docs/guidelines_death_penalty_st08416_en.pdf

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- To work towards **universal abolition** of the death penalty as a strongly held policy agreed by all EU Member States;
- Where **capital punishment** remains legal:
 - advocate the immediate establishment of a moratorium on the use of the death penalty with a view to abolition;
 - 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;
 - to call for its use to be progressively restricted, including by reductions in the number of offences for which the death penalty will be implemented;
 - to advocate that it be applied respecting the minimum standards as set out in the Guidelines.

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

- **General demarches** consisting in dialogue and consultation with third countries on the death penalty issue, taking into account judicial system of the country, its international obligations as well as 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 therein⁵;
- **Other initiatives**, consisting in encouraging third countries to accede to international agreements such as the Second Optional Protocol to the International Covenant on Civil and Political Rights⁶ and other comparable regional instruments aiming at abolishing 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) The death penalty must not be imposed for non-violent acts such as financial or economic crimes, or because of political offences or rivalries. It shall also not be imposed for drug-related crimes, religious practices or expression of conscience, or for sexual relations between consenting adults, it also being understood that scope should never go beyond the most serious intentional crimes.

ii) Capital punishment must never be provided for in law as a mandatory sentence.

iii) Capital punishment shall not be imposed for a crime for which the death penalty was not 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.

iv) Capital punishment shall not be imposed on:

Persons below 18 years of age at the time of the commission of their crime;

Pregnant women, new mothers and nursing women;

⁵ EU Annual Human Rights Reports are available on the website of the Council:
http://eeas.europa.eu/human_rights/index_en.htm.

⁶ For further information see: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/2ndOPCCPR.aspx>.

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*Persons suffering from any mental illness or having an intellectual disability
The elderly.*

v) Capital punishment shall not be imposed if the guilt of the person charged is not based upon clear and convincing evidence, leaving room for alternative explanation of the facts. In this respect, the use of torture to extract guilty pleas shall be strictly prohibited.

vi) A final judgement rendered by an independent and impartial competent court after legal proceedings, including those before 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 shall be necessary.

vii) When considering whether legal proceedings provide all possible safeguards to ensure a fair trial, due attention shall be given to whether anyone suspected of or charged with a crime for which capital punishment may be imposed has been informed of the right to contact a consular representative.

viii) Military tribunals may not impose death sentences on civilians under any circumstances. ix) Capital punishment may not be carried out in contravention of a state's international commitments.

ix) Anyone sentenced to death shall have an effective right to appeal to a court of higher jurisdiction.

x) Where applicable, anyone sentenced to death shall have the right to submit an Individual complaint under international or regional 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, regional or national level, is pending. 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.

xi) 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; the death sentence will not be carried out while such applications remain under consideration under relevant procedures in a state.

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

xiii) Consideration shall be given to the length of time spent on death row and the conditions of imprisonment after having been sentenced to death, bearing in mind that the conditions of imprisonment of persons on death row should not be inferior to that of other inmates. These elements may constitute forms of torture or inhumane or degrading treatment or punishment

xiv) Where capital punishment occurs notwithstanding the EU's best efforts to prevent it, it shall only be carried out so as to inflict the minimum possible suffering. It may not be carried out in public or in any other manner intended to further degrade the person facing execution. Equally, it must not be practised in secrecy. The family and lawyers of prisoners on death row must be notified of details of their execution.

xv) The death penalty must not be applied or used in a discriminatory manner on any ground including political affiliation, sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

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(3) Regulation (EC) No 1236/2005 established an export authorisation system designed to prevent goods listed in Annex III to that Regulation from being used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment.

(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.

(4) The export authorisation system should not go beyond what is proportionate. It should, therefore, not prevent the export of medicinal products to be used for legitimate therapeutic purposes.

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

(5) Given the differences between capital punishment, on the one hand, and torture and other cruel, inhuman or degrading treatment or punishment on the other, it is appropriate to establish a specific export authorisation system with a view to preventing the use of certain goods for capital punishment. Such a system should take into account the fact that a number of countries have abolished capital punishment for all crimes and have made an international commitment on this issue. As there is a risk of re-export to countries that have not done so, certain conditions and requirements should be imposed when authorising exports to countries that have abolished capital punishment. It is therefore appropriate to grant a general export authorisation for exports to those countries that have abolished capital punishment for all crimes and confirmed that abolition through an international commitment.

(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

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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.

(6) If a country has not abolished capital punishment for all crimes and confirmed that abolition through an international commitment, the competent authorities should, when examining a request for an export authorisation, check whether there is a risk that the end-user in the country of destination would use the exported goods for such punishment. Appropriate conditions and requirements should be imposed to control sales or transfers to third parties by the end-user. If multiple shipments between the same exporter and end-user take place, the competent authorities should be allowed to review the status of the end-user on a periodic basis, for example every six months, rather than every time an export authorisation for a shipment is granted, without prejudice to the right of the competent authorities to annul, suspend, modify or revoke an export authorisation in accordance with Article 9(4) of Regulation (EC) No 1236/2005 where warranted.

Comment: The Regulation indirectly positively discriminate States that have abolished death penalty and States that have not. E.g. only certain countries that have abolished death penalty could import - certain medicinal products (Annex IIIa) under a General EU Authorisation (EUGEA (Annex IIIb)).

(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.

(7) In order to limit the administrative burden for exporters, the competent authorities should be allowed to grant an exporter a global authorisation for all shipments of medicinal products from the exporter to a specific end-user for a fixed period of time, specifying, where necessary, a quantity corresponding to the end-user's normal use of such products. Such authorisation would, in accordance with Article 9(1) of Regulation (EC) No 1236/2005, be valid for between one and three years with a possible extension of up to two years.

(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

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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 Punishment⁷.

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 incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners⁸.”

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 Punishment⁹. 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.

(8) Granting a global authorisation would also be appropriate where a manufacturer intends to export medicinal products falling within the scope of Regulation (EC) No 1236/2005 to a distributor in a country that has not abolished capital punishment, provided the exporter and the

⁷ This Declaration can be consulted at: <http://www.hrweb.org/legal/cat.html>.

⁸ 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>.

⁹ 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://www.ohchr.org/Documents/ProfessionalInterest/cat.pdf>.

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distributor have concluded a legally binding agreement requiring the distributor to apply an appropriate set of measures ensuring that the medicinal products will not be used for capital punishment.

(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.

(9) The list of goods for whose export an authorisation is required with a view to preventing these goods from being used for capital punishment should only include goods that have been used for capital punishment in a third country that has not abolished capital punishment and goods whose use for capital punishment any such third country has approved, without having used them for that purpose yet. It should not include non-lethal goods which are not essential for executing a convicted person, such as standard furniture that may also be found in the execution chamber.

(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.

(10) Medicinal products falling within the scope of Regulation (EC) No 1236/2005 may be subject to controls in accordance with international conventions on narcotic drugs and psychotropic substances, such as the 1971 Convention on Psychotropic Substances. Since such controls are not applied to prevent the relevant medicinal products from being used for capital punishment but to prevent illicit drug trafficking, the export controls of Regulation (EC) 1236/2005 should be applied in addition to the international controls. Member States should, however, be encouraged to use a single procedure in order to apply both control systems.

(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 Officials¹⁰, 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.

(11) In order to limit the administrative burden for exporters, competent authorities should be allowed to grant an exporter a global authorisation in respect of goods listed in Annex III to Regulation (EC) No 1236/2005 to prevent the relevant goods from being used for torture or for other cruel, inhuman or degrading treatment or punishment.

¹⁰ The Basic Principles on the Use on Force and Firearms by Law Enforcement Officials are available on the following website: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>.

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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.

(12) The controls on exports in accordance with Regulation (EC) No 1236/2005 should not apply to goods whose export is controlled in accordance with Council Common Position 2008/944/CFSP, Council Regulation (EC) No 428/2009 and Regulation (EU) No 258/2012 of the European Parliament and of the Council.

Comment:

- Council Common Position 2008/944/CFSP concerns export of military technology and equipment.
- Council Regulation (EC) No 428/2009 concerns dual-use items and technology.
- Regulation (EU) No 258/2012 of the European Parliament and of the Council concerns firearms, their parts and components and ammunition.

(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.

(13) Regulation (EC) No 1236/2005 prohibits the export and import of goods listed in Annex II to that Regulation and the supply of technical assistance in respect of such goods. Where such goods are located in third countries, it is necessary to prohibit brokers in the Union from providing brokering services in relation to such goods as they have no practical use other than for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment. Prohibiting the provision of such brokering services would serve the purposes of protecting public morals and respecting the principles of human dignity which underpin European values, as embodied in the Treaty on European Union and the Charter.

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

(14) The supply of brokering services and the supply of technical assistance in respect of the goods listed in Annex III or in Annex IIIa to Regulation (EC) No 1236/2005 should be subject to prior authorisation in order to prevent the brokering services or the technical assistance contributing to the use of the goods to which they relate for the purpose of capital punishment, torture or other cruel, inhuman or degrading treatment or punishment.

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(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 Prisoners¹¹ 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.

(15) The brokering services and technical assistance which this Regulation subjects to prior authorisation should be those that are supplied from within the Union, that is from within territories within the territorial scope of the Treaties, including airspace and any aircraft or any vessel under the jurisdiction of a Member State.

(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.

(16) When authorising the supply of technical assistance related to goods listed in Annex III to Regulation (EC) No 1236/2005, the competent authorities should endeavour to ensure that the technical assistance and any training on the use of such goods that would be supplied or offered in conjunction with the technical assistance for which the authorisation is requested, are provided in such a way that they promote law enforcement standards that respect human rights and contribute to the prevention of torture and other cruel, inhuman or degrading treatment or punishment.

(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 the following definition of “chemical weapons” and “toxic chemicals”¹²:

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

¹¹ The document is accessible at the following website address:
<http://www.ohchr.org/Documents/ProfessionalInterest/treatmentprisoners.pdf>.

¹² The full text of the CWC is available at the following website:
<http://www.opcw.org/chemical-weapons-convention/>.

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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/CFSP¹³ 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.

(18) As goods listed in Annex II to Regulation (EC) No 1236/2005 have no practical use other than for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, it is appropriate to prohibit brokers and suppliers of technical assistance from providing training on the use of such goods to third countries as well as to prohibit both the promotion of such goods in trade fairs or exhibitions in the Union, and the sale or purchase of advertising space in print media or on the Internet and of advertising time on television or radio in relation to such goods.

(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.

¹³ It should be noted that the “Common Military List of the European Union” have been adopted by Council on 9 February 2015 (OJ C 129/1, 21.4.2015, p. 1) concerning the equipment covered by Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment.

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(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 Punishment¹⁴.

The ultimate goal of 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.

The EU may invoke, where relevant, in its contacts with third countries concerning torture and ill-treatment the following norms and standards and principles:

- 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) and its Optional Protocol;
- UN Convention on the Rights of the Child (CRC) and its two Optional Protocols;
- 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) and its Optional Protocol;
- UN International Convention for the Protection of All Persons from Enforced Disappearance (CPED);
- UN Convention on the Rights of Persons with Disabilities and its Optional Protocol;
- Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols no.6 and 13 as well as the relevant case-law of the European Court on Human Rights;
- Charter of Fundamental Rights of the European Union;
- Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence;
- Council of Europe Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), as well as the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;
- Statute of the International Criminal Court;
- The Four UN Geneva Conventions of 12 August 1949 and their Protocols as well as customary rules of international humanitarian law;
- UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

¹⁴ The Guidelines are accessible at the following website address:
http://eas.europa.eu/human_rights/guidelines/torture/docs/20120626_guidelines_en.pdf.

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- UN Declaration on the Elimination of Violence Against Women;
- UN Convention and Protocol Relating to the Status of Refugees;
- UN Declaration on the Protection of All Persons from Enforced Disappearances;
- UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions;
- UN Standard Minimum Rules for the Treatment of Prisoners;
- UN Basic Principles for the Treatment of Prisoners;
- UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;
- UN Rules for the Protection of Juveniles Deprived of their Liberty;
- UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders;
- UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power;
- UN Basic Principles on the Independence of the Judiciary;
- UN Basic Principles on the Role of Lawyers;
- UN Guidelines of the Role of Prosecutors;
- UN Standard Minimum Rules for Non-Custodial Measures;
- UN Code of Conduct for Law Enforcement Officials;
- UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
- UN Principles on Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment;
- UN Basic Principles and Guidelines on the Right to a Remedy and Reparation;
- Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) annexed to UN Commission on Human Rights resolution 2000/43.

EU actions for combating torture and ill-treatment in relations with non-EU countries consist of the following:

- *Establishing political dialogues with non-EU countries and regional organisations. The guidelines on human rights dialogues establish clear conditions and principles in this area;*
- *Taking political initiatives (démarches) and issuing public statements urging relevant non-EU countries to undertake effective measures against torture and other ill-treatment;*
- *Promoting collaboration with civil society in bilateral and multilateral cooperation, in particular under the EU's action plan on human rights and democracy (2015-2019) which supports NGOs in combating torture;*
- *Observation roles for EU embassy representatives in trials where it is feared that the defendant has been subjected to torture or ill-treatment.*

Under these guidelines, the EU urges non-EU countries to take the following measures:

- *Prevent, prohibit and condemn torture and ill-treatment;*
- adhere to and implement international norms and procedures (e.g. United Nations Convention Against Torture);*
- *Create safeguards and procedures relating to places of detention;*
- *Provide rehabilitation and reparation for victims;*
- *Establish domestic legal guarantees;*
- *Combat impunity;*

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- *Establish groups requiring special attention (e.g. refugees, asylum seekers, or prisoners);*
- *Allow detention-monitoring mechanisms;*
- *Establish national institutions for the prevention of torture;*
- *Strengthen the justice system;*
- *Provide effective training for law enforcement, military and health personnel in dealing with torture and ill-treatment;*
- *Prevent any form of intimidation or reprisal;*
- *Conduct autopsies.*

(19) It is appropriate to clarify that Member States may apply measures restricting the supply of certain services in relation to goods listed in Annex II to Regulation (EC) No 1236/2005, in compliance with the applicable Union's rules.

(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.

(20) While customs authorities should share certain information with other customs authorities using the customs risk management system according to Union's customs legislation, the competent authorities referred to in Article 8 of Regulation (EC) No 1236/2005 should share certain information with other competent authorities in accordance with Article 11 of that Regulation. It is appropriate to require that the competent authorities use a secure and encrypted system for the exchange of information on denials in accordance with Article 11 of Regulation (EC) No 1236/2005. To that end, the Commission should make available a new functionality in the existing system set up pursuant to Article 19(4) of Regulation (EC) No 428/2009.

(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.

(21) It is appropriate to clarify that, to the extent that it concerns personal data, processing and the exchange of information should comply with the applicable rules on processing and the exchange of personal data in accordance with Directive 95/46/EC of the European Parliament and of the Council and Regulation (EC) No 45/2001 of the European Parliament and of the Council.

(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

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to the Member States to impose and enforce the necessary restrictions on the use and production of such equipment.

(22) In order to adopt the provisions necessary for the application of Regulation (EC) No 1236/2005, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of amending the new Annexes IIIa, IIIb, VI and VII to Regulation (EC) No 1236/2005. It is recalled that Regulation (EU) No 37/2014 of the European Parliament and of the Council delegated the power to the Commission to adopt acts in accordance with Article 290 TFEU in respect of amending Annexes I, II, III, IV and V to Regulation (EC) No 1236/2005. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Inter-institutional Agreement of 13 April 2016 on Better Law-Making. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission's expert groups dealing with the preparation of delegated acts.

(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.

(23) In order to allow the Union to respond quickly when new goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, are developed, and where there is a clear and immediate risk that those goods will be used for purposes that entail such human rights abuses, it is appropriate to provide for immediate application of the relevant Commission act, where, in the case of amendment of Annex II or III to Regulation (EC) No 1236/2005, there are imperative grounds of urgency for such amendment. In order to allow the Union to respond quickly when one or more third countries either approve certain goods for use for capital punishment, or accept or violate an international commitment to abolish capital punishment for all crimes, it is appropriate to provide for the immediate application of the relevant Commission act, where, in the case of amendment of Annex IIIa or IIIb to Regulation (EC) No 1236/2005, imperative grounds of urgency so require. Where the urgency procedure is followed, it is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level.

(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.

(24) A coordination group should be established. The group should serve as a platform for Member States' experts and the Commission to exchange information on administrative practices and to discuss questions of interpretation of this Regulation, technical issues with respect to the goods listed, developments related to this Regulation and any other questions that may arise. The group may, in particular, discuss issues related to the nature and the intended effect of goods, the availability of goods in third countries and the question whether goods are specifically designed or modified for capital punishment or for torture or other cruel, inhuman or degrading treatment

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or punishment. If the Commission decides to consult the group when preparing delegated acts, it should do so in accordance with the principles laid down in the Inter-institutional Agreement of 13 April 2016 on Better Law-Making.

(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.

(25) The Commission does not procure equipment for law enforcement purposes, since it is not responsible for maintenance of law and order, proceedings in criminal matters or the enforcement of judicial decisions in criminal matters. Therefore, a procedure should be established to ensure that the Commission receives information on non-listed law enforcement equipment and products marketed in the Union in order to ensure that the lists of goods, whose trade is prohibited or controlled, are updated to take into account the new developments. When addressing its request to the Commission, the requesting Member State should forward its request to add goods to Annex II, to Annex III or to Annex IIIa to Regulation (EC) No 1236/2005 to other Member States.

(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.

(26) In order to give economic operators and the competent authorities some time to apply for and grant the required authorisations, a short transitional period for the application of new controls on brokering services and on technical assistance should be defined,

(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

This Regulation lays down Union rules governing trade with third countries in goods that could be used for the purpose of capital punishment or for the purpose of torture or other cruel, inhuman or degrading treatment or punishment, and rules governing the supply of brokering services, technical assistance, training and advertising related to such goods.

Comment: The scope of this Regulation covers imports, exports technical assistance, brokering, training and advertising of torture-related goods and technology outward or inward the European Union. Certain transit operations are prohibited by articles 4a and 6a. Provisions to rule advertising have no equivalent in other legislations related to other categories of sensitive items, like dual-use items or weapons. Hence, the transfers between Member States are not submitted to authorisation.

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. Capital punishment is not deemed a lawful penalty under any circumstances;

Comment: The definition is largely inspired from the one proposed by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (see Preamble 8). Amendments provided by Regulation 1236/2005 concern the recognition that capital punishment could not be under any circumstances a lawful penalty.

(b) “other cruel, inhuman or degrading treatment or punishment” means any act by which pain or suffering attaining a minimum level of severity, 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. Capital punishment is not deemed a lawful penalty under any circumstances;

Comment: Amendments provided by Regulation 1236/2005 concern the recognition that capital punishment could not be under any circumstances a lawful penalty.

(c) “law enforcement authority” means any authority 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 Union, including the departure of goods that requires a customs declaration and the departure of goods after their storage in a free zone within the meaning of Regulation (EU) No 952/2013 of the European Parliament and of the Council;

Comment:

This Regulation does not establish specific provisions for “temporary export” of items. Temporary exports concern transfers of controlled items for a fair or an exhibition that afterwards would be re-imported to the EU without any changes. Such transfer should normally be submitted to the standard export control rules. Therefore, temporary export of items listed in Annex III could be authorised but for items listed in Annex III, it is prohibited unless it will have

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the exclusive purpose of public display in a museum in view of their historic significance (see article 3.2).

(e) “import” means any entry of goods into the customs territory of the Union, including temporary storage, the placing in a free zone, the placing under a special procedure and the release for free circulation within the meaning of Regulation (EU) No 952/2013;

(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;

(h) “competent authority” means an authority of one of the Member States, as listed in Annex I, which is, in accordance with Article 8, entitled to make a decision on an application for an authorisation or to prohibit an exporter from using the Union general export authorisation;

(i) “Applicant” means:

1. the exporter, in the case of exports referred to in Article 3, 5 or 7b;
2. the natural or legal person, entity or body transporting the goods within the customs territory of the Union, in the case of transit referred to in Article 4a;
3. the supplier of technical assistance, in the case of supplies of technical assistance referred to in Article 3;
4. the museum that will display the goods, in the case of imports and supplies of technical assistance referred to in Article 4; and
5. the supplier of technical assistance or the broker, in the case of supplies of technical assistance referred to in Article 7a or brokering services referred to in Article 7d;

Comment: The term applicant has been adapted to the extension of the scope introduced by Regulation 1236/2016.

(j) “customs territory of the Union” means the territory within the meaning of Article 4 of Regulation (EU) No 952/2013;

Complementary information:

*1. The customs territory of the Union shall comprise the following territories, including their territorial waters, internal waters and airspace:
- the territory of the Kingdom of Belgium,*

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- *the territory of the Republic of Bulgaria,*
- *the territory of the Czech Republic,*
- *the territory of the Kingdom of Denmark, except the Faroe Islands and Greenland,*
- *the territory of the Federal Republic of Germany, except the Island of Heligoland and the territory of Büsingen (Treaty of 23 November 1964 between the Federal Republic of Germany and the Swiss Confederation),*
- *the territory of the Republic of Estonia,*
- *the territory of Ireland,*
- *the territory of the Hellenic Republic,*
- *the territory of the Kingdom of Spain, except Ceuta and Melilla,*
- *the territory of the French Republic, except the French overseas countries and territories to which the provisions of Part Four of the TFEU apply,*
- *the territory of the Republic of Croatia,*
- *the territory of the Italian Republic, except the municipalities of Livigno and Campione d'Italia and the national waters of Lake Lugano which are between the bank and the political frontier of the area between Ponte Tresa and Porto Ceresio,*
- *the territory of the Republic of Cyprus, in accordance with the provisions of the 2003 Act of Accession,*
- *the territory of the Republic of Latvia,*
- *the territory of the Republic of Lithuania,*
- *the territory of the Grand Duchy of Luxembourg,*
- *the territory of Hungary,*
- *the territory of Malta,*
- *the territory of the Kingdom of the Netherlands in Europe,*
- *the territory of the Republic of Austria,*
- *the territory of the Republic of Poland,*
- *the territory of the Portuguese Republic,*
- *the territory of Romania,*
- *the territory of the Republic of Slovenia,*
- *the territory of the Slovak Republic,*
- *the territory of the Republic of Finland,*
- *the territory of the Kingdom of Sweden, and*
- *the territory of the United Kingdom of Great Britain and Northern Ireland and of the Channel Islands and the Isle of Man.*

2. *The following territories, including their territorial waters, internal waters and airspace, situated outside the territory of the Member States shall, taking into account the conventions and treaties applicable to them, be considered to be part of the customs territory of the Union:*

(a) FRANCE

The territory of Monaco as defined in the Customs Convention signed in Paris on 18 May 1963 (Journal officiel de la République française (Official Journal of the French Republic) of 27 September 1963, p. 8679);

(b) CYPRUS

The territory of the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia as defined in the Treaty concerning the Establishment of the Republic of Cyprus, signed in Nicosia on 16 August 1960 (United Kingdom Treaty Series No 4 (1961) Cmnd. 1252).

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(k) “brokering services” means:

- (1) the negotiation or arrangement of transactions for the purchase, sale or supply of relevant goods from a third country to any other third country, or
- (2) the selling or buying of relevant goods that are located in a third country for their transfer to another third country.

For the purposes of this Regulation the sole provision of ancillary services is excluded from this definition. Ancillary services are transportation, financial services, insurance or re-insurance, or general advertising or promotion;

Comment:

Generally speaking, the exclusion of ancillary services from the scope of brokering services can be considered as a loophole in the Regulation. As concerns EU law, ancillary services are regularly covered by Council decisions implementing resolutions of the UN Security Council on restrictive measures against third countries. These provisions do not explicitly include nor exclude brokering activities related to ancillary services. The Council uses more vague wording and refers to “direct or indirect” supply of controlled items. As long as brokering activities consist in an indirect supply of items including transport and financial services, brokering of ancillary services could be considered as covered by these specific Council decisions as it is, for example, the case for the Council Decision 2011/273/CFSP of 9 May 2011 concerning restrictive measures against Syria¹⁵, Article 1.2:

“it shall not apply to:

a) Provide, directly or indirectly, technical assistance, brokering services or other services related to the items referred to in paragraph 1 or related to the provision, manufacture, maintenance and use of such items, to any natural or legal person, entity or body in, or for use in, Syria;

b) Provide, directly or indirectly, financing or financial assistance related to the items referred to in paragraph 1, including in particular grants, loans and export credit insurance, for any sale, supply, transfer or export of such items, or for the provision of related technical assistance, brokering services or other services to any natural or legal person, entity or body in, or for use in, Syria;

c) Participate, knowingly and intentionally, in activities, the object or effect of which is to circumvent the prohibitions referred to in points (a) or (b).”

Finally, Member States have the possibility to adopt unilaterally or maintain national measures restricting ancillary services (transportation, financial services, insurance or re-insurance, or general advertising or promotion) of certain items (see article 4f).

¹⁵ Council Decision 2011/273/CFSP of 9 May 2011 concerning restrictive measures against Syria (OJ, L 121, 10.05.2011, p. 11).

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Comment:

Brokering services carried out by a EU broker (established in or resident of the EU) when he or she is travelling outside of the EU and if the transaction is not accounted in the EU will not be ruled by this Regulation.

(l) “broker” means any natural or legal person, entity or body, including a partnership, resident or established in a Member State that supplies services defined under point (k) from within the Union; any natural person having the nationality of a Member State, wherever resident, who supplies such services from within the Union; and any legal person, entity or body incorporated or constituted under the law of a Member State, wherever established, that supplies such services from within the Union;

(m) “supplier of technical assistance” means any natural or legal person, entity or body, including a partnership, resident or established in a Member State that supplies technical assistance defined under point (f) from within the Union; any natural person having the nationality of a Member State, wherever resident, who supplies such assistance from within the Union; and any legal person, entity or body incorporated or constituted under the law of a Member State, wherever established that supplies such assistance from within the Union;

(n) “exporter” means any natural or legal person entity or body, including a partnership, on whose behalf an export declaration is made, that is to say the person, entity or body, who, at the time when the export declaration is accepted, holds a contract with the consignee in the third country concerned and has the necessary power for determining the sending of the goods out of the customs territory of the Union. If no such contract has been concluded or if the holder of that contract does not act on its own behalf, the exporter means the person, entity or body who has the necessary power for determining the sending of the goods out of the customs territory of the Union. Where the benefit of a right to dispose of the goods belongs to a person, entity or body resident or established outside the Union pursuant to that contract, the exporter shall be considered to be the contracting party resident or established in the Union;

(o) “Union General Export Authorisation” means an authorisation, for exports as defined under point (d) to certain countries, which is available to all exporters who respect conditions and requirements for its use as listed in Annex IIIb;

(p) “individual authorisation” means an authorisation granted to:

1. one specific exporter for exports as defined under point (d) to one end-user or consignee in a third country and covering one or more goods;
2. one specific broker for the supply of brokering services as defined under point (k) to one end-user or consignee in a third country and covering one or more goods; or
3. a natural or legal person, entity or body transporting goods within the customs territory of the Union for transit as defined under point (s);

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Comment:

The supply of technical assistance doesn't seem to fall under the scope of individual authorisation as defined by this provision. However, article 7d submits to authorisation the supply of technical assistance. If the category of authorisation is not mentioned, the wording used by the article clearly referred to individual authorisation.

(q) "global authorisation" means an authorisation granted to one specific exporter or broker in respect of a type of goods listed in Annex III or in Annex IIIa, which may be valid for:

1. exports as defined under point (d) to one or more specified end-users in one or more specified third countries;
2. exports as defined under point (d) to one or more specified distributors in one or more specified third countries, where the exporter is a manufacturer of goods included in point 3.2 or 3.3. of Annex III or in Section 1 of Annex IIIa;
3. the supply of brokering services related to transfers of goods which are located in a third country, to one or more specified end-users in one or more specified third countries;
4. the supply of brokering services related to transfers of goods which are located in a third country, to one or more specified distributors in one or more specified third countries, where the broker is a manufacturer of goods included in point 3.2 or 3.3. of Annex III or in Section 1 of Annex IIIa;

Comment:

The supply of technical assistance and transit operations does not seem to fall under the scope of individual authorisation as defined by this provision. Therefore, the granting of a global authorisation for such transactions seems not possible.

(r) "distributor" means an economic operator performing wholesale activities in relation to goods listed in point 3.2 or 3.3 of Annex III or in section 1 of Annex IIIa, such as procuring such goods from manufacturers or holding, supplying or exporting such goods; wholesale activities of such goods do not include procurement by either a hospital, a pharmacist or a medical professional for the sole purpose of supplying such goods to the public;

(s) "transit" means a transport within the customs territory of the Union of non-Union goods which pass through the customs territory of the Union with a destination outside the customs territory of the Union.

Comment: The Regulation does not make the difference between transit and transshipment. Therefore both operations are included and potentially submitted to authorisation.

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	Goods listed in Annex II Supply of technical assistance related to goods listed in Annex II. Derogation if demonstrated that goods will be used for the exclusive purpose of public display in a museum in view of their historic significance.	Regulation Article 3
Import Prohibition	Goods listed in Annex II. Acceptance of technical assistance related to goods listed in Annex II. 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.	Regulation Article 4
Transit Prohibition	Goods listed in Annex II. 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.	Regulation Article 4a
Prohibition of Brokering Services	To any person, entity or body in a third country of goods listed in Annex II.	Regulation Article 4b
Prohibition of Training	Training related to goods listed in Annex II.	Regulation Article 4c
Prohibition of Trade Fairs in the EU	Display or offer for sale any of the goods listed in Annex II, unless it is demonstrated that, given the nature of the exhibition or fair, such display or offering for sale is neither instrumental in nor promotes the sale or supply of the relevant goods to any person, entity or body in a third country	Regulation Article 4d
Prohibition of Advertising	Buying selling in third country advertising space in print media or on the Internet or advertising time on television or radio in relation to goods listed in Annex II.	Regulation Article 4e

Article 3 Export prohibition

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

Annex II shall comprise 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.

A supplier of technical assistance shall be prohibited from supplying technical assistance related to goods listed in Annex II to any person, entity or body in a third country, whether for consideration or not.

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;">YES</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;">NO</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;">YES</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 authorization shall submit to the Ministry of Economy an application and the following documents:</p> <ol style="list-style-type: none"> 1. Filled in form model - Annex V of Regulation 1236/2005; 2. Copy of the document certifying the technical and the functional characteristics of the product; 3. Import authorization and/or a document by the end user certifying the final end use of the goods; 4. Copy of the document confirming the foreign trade relations between the transaction's parties. <p>So far the Ministry of Economy has received six applications for export of such goods (2009-2015). Export licenses are issued for repair/replacement.</p>
Croatia	<p style="text-align: center;">YES</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>

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	If the Ministry of Culture does not submit a confirmation within 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	NO
Denmark	NO
Estonia	NO 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	YES Throughout an inter ministerial consultation by Ministry of Internal Affairs, Ministry of Foreign Affairs and Ministry of Defence.
Germany	YES The criteria are the same that the one defined by Article 6 of this Council Regulation.
Greece	NO Import license of the competent authority of the country of destination is required. No specific criteria defined. Case by case examination and decision.
Hungary	NO Hungary does not apply derogation (Art 3.2) in its national Legislation to the general export prohibition.
Ireland	NO The Department of Jobs, Enterprise and Innovation has not received an application for authorization to export goods in Annex II or to supply related technical assistance. Should such an application be received in the future it will be reviewed on a case-by-case basis in consultation with other relevant Government Departments and Bodies.

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Italy	<p>In granting such a kind of license, Italy carefully considers if the above-mentioned condition for the item of being displayed in a museum will be respected.</p> <p>An End User Statement from the relevant museum is required.</p>
Latvia	<p style="text-align: center;">YES</p> <p>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 Authorizations for Goods, Which Could be Used for Capital Punishment, Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment</i> (adopted on 11.11.2008). 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 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	<p>According to the paragraph 7.5 of the Order No 5-V-203 confirmed on March 29th, 2006 by Police Commissioner General of Lithuania it is required to present document proving that goods will be used for the exclusive purpose of public display in a museum in view of their historic significance.</p> <p>According to the paragraph 14 of the Order No 5-V-203 confirmed on March 29th, 2006 by Police Commissioner General</p>

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	<p>of Lithuania the Authorization is not issued, if</p> <ol style="list-style-type: none"> 1) it is not presented all necessary documents; 2) it is danger to state, society or human security or it is required by international agreements 3) applicant is unable to ensure the appropriate condition for goods storage or transportation; 4) presented data are incorrect or it is not informed of data changes.
Luxembourg	NO
Netherlands	<p style="text-align: center;">NO</p> <p>In addition to the criteria mentioned in Article 6 of the Regulation, no criteria have 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;">YES</p> <p>Goods 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"> - a name of the final destination’s country; - an end-user’s name and address; - an description, quantity and value of exported commodity; - end-uses’ declaration; - list of intermediary customer and purchasers. <p>Regarding export of goods to the third county, an and-user declaration shall be approved by Poland-based competent diplomatic mission or consular post of particular third country. To the application for a permit on export of goods, besides listed above documents, applicant shall attached:</p> <ol style="list-style-type: none"> 1) One of the following documents: <ol style="list-style-type: none"> a) The copy of a agreement with third-country customer, to whom the goods shall be exported;

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	<p>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;</p> <p>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;</p> <p>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;</p> <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>Technical assistance 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> <p>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;</p> <p>2) An authenticated by a notary or competent authority certified true copy of an agreement with museum on provision of technical assistance.</p> <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>
Portugal	NO
Slovakia	YES Criteria are defined by Articles 3, 4 and 5 of Act 474/2007.

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Slovenia	<p style="text-align: center;">NO</p> <p>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.</p>
Sweden	?

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 Union 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.

Countries	Criteria considered by Member States to grant or not the import authorisation (Art. 4. 2)
Austria	NO
Belgium	
Bulgaria	NO
Croatia	NO
Cyprus	
Czech Republic	
Denmark	
Estonia	
Finland	
France	
Germany	
Greece	
Hungary	
Ireland	
Italy	
Latvia	Not defined by the Regulation of Cabinet of Ministers of the Republic of Latvia No 927 <i>Procedures for the Issuance of Export and Import Authorizations for Goods, Which Could be Used for Capital Punishment, Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment</i> (adopted on 11.11.2008). It can be directly applied.
Lithuania	YES

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	According to the paragraph 8.5 and 10.5 of the Order No 5-V-203 confirmed on March 29th, 2006 by Police Commissioner General of Lithuania it is required to present in advance document proving that goods or technical assistance will be used for the exclusive purpose of public display in a museum in view of their historic significance.
Luxembourg	NO
Malta	
Netherlands	
Poland	
Portugal	
Romania	
Slovakia	
Slovenia	
Spain	
Sweden	NO
United Kingdom	

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.

Article 4a Prohibition of transit

1. Any transit of goods listed in Annex II shall be prohibited.
2. By way of derogation from paragraph 1, the competent authority may authorise a transit of goods listed in Annex II, if it is demonstrated that, in the country of destination, such goods will be used for the exclusive purpose of public display in a museum in view of their historic significance.

Article 4b Prohibition of brokering services

A broker shall be prohibited from supplying to any person, entity or body in a third country brokering services in relation to goods listed in Annex II, irrespective of the origin of such goods.

Article 4c Prohibition of training

A supplier of technical assistance or a broker shall be prohibited from supplying or offering to any person, entity or body in a third country training on the use of goods listed in Annex II.

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Comment: it was rather unclear why an article has been dedicated to training. It was our understanding that such activity is a subcategory of technical assistance and therefore will be prohibited under article 3.

Most of international trade control regimes have a similar understanding of the term. E.g. the Nuclear Suppliers Group in the Annex of its Guidelines 254/Part 2 defined “technical assistance” as *forms such as: instruction, skills, training, working knowledge, consulting services*.

Moreover, The EU shares this international understanding. E.g. EU Council Regulation 428/2009 of May 5 2009, definition of terms used in this Annex.

Article 4d Trade fairs

It shall be prohibited for any natural or legal person, entity or body, including a partnership, whether resident or established in a Member State or not, to display or offer for sale any of the goods listed in Annex II in an exhibition or fair taking place in the Union, unless it is demonstrated that, given the nature of the exhibition or fair, such display or offering for sale is neither instrumental in nor promotes the sale or supply of the relevant goods to any person, entity or body in a third country.

Article 4e Advertising

It shall be prohibited for any natural or legal person, entity or body, including a partnership, resident or established in a Member State that sells or purchases advertising space or advertising time from within the Union, for any natural person having the nationality of a Member State that sells or purchases advertising space or advertising time from within the Union, and for any legal person, entity or body incorporated or constituted under the law of a Member State, that sells or purchases advertising space or advertising time from within the Union, to sell to or purchase from any person, entity or body in a third country advertising space in print media or on the Internet or advertising time on television or radio in relation to goods listed in Annex II.

Comment: The provision has almost no equivalent in other area of strategic trade control. It may be due to the specificity of the scope. With nuclear, chemical and biological weapons (WMD), death penalty related items are categories that include a general trade prohibition for certain items. However if the use and trade of WMD are prohibited by almost universal international treaties (NPT, CWC, BWC), the death penalty is still, in numerous countries, sentenced and executed. Therefore, advertising in those countries is possible. To conform its international trade policy to its death penalty universal abolition principle, it was necessary to include this provision in the EU Regulation.

Article 4f National measures

Article 4

1. Without prejudice to the applicable Union rules, including the prohibition of discrimination on grounds of nationality, Member States may adopt or maintain national measures restricting transportation, financial services, insurance or re-insurance, or general advertising or promotion in relation to goods listed in Annex II.

2. Member States shall notify the Commission of any measures adopted pursuant to paragraph 1. Existing measures shall be notified by 17 February 2017. New measures, amendments and repeals shall be notified before they enter into force.

Countries	National measures adopted by Member States (Art. 4f)
Austria	NO
Belgium	
Bulgaria	NO
Croatia	NO
Cyprus	
Czech Republic	
Denmark	
Estonia	
Finland	
France	
Germany	
Greece	
Hungary	
Ireland	
Italy	
Latvia	NO
Lithuania	NO
Luxembourg	NO
Malta	
Netherlands	
Poland	
Portugal	
Romania	
Slovakia	
Slovenia	
Spain	
Sweden	NO
United Kingdom	

Comment: The possibility to adopt national measures is not confined to one category of operations (export, import, ...). Existing measures have not been published by the EU yet.

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

Type of Control	Content	Reference
Export	Authorisation required for: <ul style="list-style-type: none"> - Goods listed in Annex III; - Goods listed in Annex IIIa (could be used for the purpose of capital punishment and have been approved or actually used for capital punishment by one or more third countries that have not abolished capital punishment). 	Regulation Article 5, 7b
Export EUGEA	Union General Export Authorisation available for goods listed in Annex IIIb.	Regulation article 8
Import Prohibition	Goods listed in Annex II. Acceptance of technical assistance related to goods listed in Annex II. 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.	Regulation Article 4
Transit	Not submitted to authorisation for goods which only pass through the customs territory of the Union, namely those which are not assigned a customs approved treatment or use other than the external transit procedure under Article 226 of Regulation (EU) No 952/2013, including storage of non-Union goods in a free zone. Exception for Annex IIIa and if transiter knows that any part of a shipment of such goods is intended to be used for capital punishment in a third country.	Regulation Article 3, 7b, 7d
Brokering Services	Brokering services related to goods listed in Annex III and IIIa, irrespective of the origin of such goods.	Regulation Article 7a, 7e
Technical assistance	Technical assistance related to goods listed in Annex III and IIIa, irrespective of the origin of such goods.	Regulation Article 7a, 7e

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Export		Regulation Article 7b
National measures	Member State may adopt or maintain a authorisation 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.	Regulation Article 7.2
National measures	Member State may adopt or maintain a prohibition on the export and import of leg irons, gang chains and portable electric shock devices.	Regulation Article 7.1

Article 5 Export authorisation requirement

1. For any export of goods 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 Union, namely those which are not assigned a customs approved treatment or use other than the external transit procedure under Article 226 of Regulation (EU) No 952/2013, including storage of non-Union goods in a free zone.

Annex III shall only comprise the following goods that could be used for the purpose of torture or other cruel, inhuman or degrading treatment or punishment:

- (a) goods which are primarily used for law enforcement purposes; and
- (b) goods which, taking into account their design and technical features, present a material risk of use for torture or other cruel, inhuman or degrading treatment or punishment.

Annex III shall not include:

- (a) firearms controlled by Regulation (EU) No 258/2012 of the European Parliament and of the Council;
- (b) dual-use items controlled by Council Regulation (EC) No 428/2009; and
- (c) goods controlled in accordance with Council Common Position 2008/944/CFSP.

Comment: categories of items that could be included in Annex III have been precisely detailed compared to the previous version of the Regulation. It could be an indirect consequence of the empowerment of the Commission to amend the list of goods detailed in Annex III (see article 12). Council and Parliament intend to strictly circumvent the action of the Commission to goods which are primarily used for law enforcement purposes and goods which, taking into account their design and technical features, present a material risk of use for torture or other cruel, inhuman or degrading treatment or punishment.

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

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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 the 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 authorisations in respect of the export of goods listed in Annex III shall be taken by the competent authorities, taking into account all relevant considerations, including in particular whether an application in respect of an essentially identical export has been dismissed by another Member State in the preceding three years and considerations about intended end-use and the risk of diversion.

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 products¹⁶. It aims at helping Member States’ authorities to *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*

¹⁶ Commission Staff working document SEC(2011) 1624 final (20 December 2011).

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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.

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 the 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 Punishment¹⁷. 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.

¹⁷ 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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Experts in various fields are the members of the CPT. They precede though 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 of their liberty¹⁸. In addition, every year the CPT publishes an Annual General Report¹⁹ 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.

Comment: Some Member States have extended the application of the criteria established by the Council Common Position 2008/944/CFSP of 8 December 2008²⁰ defining common rules governing control of exports of military technology and equipment to the trade of goods listed in Annex III.

3. The following rules shall apply to the verification of the intended end-use and the risk of diversion:

3.1. If the manufacturer of goods listed in point 3.2 or 3.3 of Annex III requests an authorisation for exporting such goods to a distributor, the competent authority shall make an assessment of the contractual arrangements made by the manufacturer and the distributor and of the measures that they are taking to ensure that these goods and, if applicable, the products in which they will be incorporated will not be used for torture or other cruel, inhuman or degrading treatment or punishment.

3.2. If an authorisation is requested for exporting goods listed in point 3.2 or 3.3 of Annex III to an end-user, the competent authority may, when assessing the risk of diversion, take into account the contractual arrangements that apply and the end-use statement signed by the end-user, if such a statement is provided. If no end-use statement is provided, it shall be up to the exporter to demonstrate who will be the end-user and what use will be made of the goods. If the exporter fails to provide sufficient information on the end-user and the end-use, the competent authority

¹⁸ Particularly, the CPT carries out specific visits to single states and after it publishes a report concerned the situation observed. The document is normally followed by the national response of the country considered. For instance, the last report was about Ukraine, on 29 April 2015, referred to the September 2014 visit and followed by the Ukrainian response on 28 July 2015. The aforementioned information and documents are available at the following website: <http://www.cpt.coe.int/en/whatsnew.htm>.

¹⁹ The last, the **24th General Report on the CPT's Activities (2013-2014)**, includes sections on the phenomena of intimidation and reprisals and on juveniles deprived of their liberty under criminal legislation. It is available at the following website: <http://www.cpt.coe.int/en/annual/CPT-Report-2013-2014.pdf>.

²⁰ OJ L 335, 13.12.2008, p. 99.

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shall be deemed to have reasonable grounds to believe that the goods might be used for torture or other cruel, inhuman or degrading treatment or punishment.

Comment: Products listed under 3.2 and 3.3 of Annex III are the two main medicinal products that are used to execute death penalty:

3.2. Pelargonic acid vanillylamide (PAVA) (CAS RN 2444-46-4) (CN code ex2924 29 98);

3.3. Oleoresin capsicum (OC) (CAS RN 8023-77-6) (CN code ex 3301 90 30).

4. In addition to the criteria set out in paragraph 1, when assessing an application for a global authorisation, the competent authority shall take into consideration the application by the exporter of proportionate and adequate means and procedures to ensure compliance with the provisions and objectives of this Regulation and with the terms and conditions of the authorisation.

Comment: The objective of this paragraph is to encourage Member States to require from exporters an implementation of an effective internal compliance programme (ICP) before granting a global authorisation. An ICP guide for operators has been developed by the Flemish Export Control Authority. This document is available on its website: <http://www.vlaanderen.be/int/sites/iv.devlh.vlaanderen.be.int/files/documenten/ICP%20BROCHURE%20EN.pdf>

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 detention²¹.

According to the CPT, the EDW varies 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”²². Even if the CPT agrees that the EDW could be useful for 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**”²³ and should be limited to situations “where there is a **real and immediate threat to life or risk of serious injury**”²⁴.

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.

²¹ See 20th General Report on the CPT’s Activities (2009-2010), available at: <http://www.cpt.coe.int/en/docsannual.htm>.

²² See point 65 of the 20th General Report on the CPT’s Activities (2009-2010).

²³ See point 69 of the 20th General Report on the CPT’s Activities (2009-2010).

²⁴ See point 70 of the 20th 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 emphasises 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 hospital²⁵.

Countries	Prohibition on the export and/or import of leg iron, gang chains and portable electric shock devices (Art. 7.1)
Austria	NO
Belgium	<p style="text-align: center;">YES</p> <p>The Flemish Arms Trade Law of 15th 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).</p> <p>For the Walloon Region, according to the Arms Trade Decree of 21st 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	NO
Croatia	NO
Cyprus	NO
Denmark	NO
Estonia	<p style="text-align: center;">NO</p> <p>Under national Weapons Act, the domestic use of electric shock weapons for civilian purposes is prohibited. The import and export of leg irons, gang chains and portable electric shock devices is not prohibited.</p>

²⁵ See point 81 of the 20th General Report on the CPT's Activities (2009-2010).

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France	YES A prohibition has been maintained under the weapon control regime for the import of electric shock devices.
Germany	NO
Greece	YES A prohibition has been maintained for the export (and authorisation for the import) of handcuffs exceeding 24mm, portable electric choc devises and portable equipment for the dissemination of incapacitating chemical substances under National Law 2168/1993 for small arms.
Hungary	NO 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.
Ireland	NO
Italy	NO
Latvia	NO 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 been deleted.
Lithuania	NO
Luxembourg	Currently applicable law does not foresee national measures for this point. Such measures, based on Articles 7.1. and 7.2. of Reg. 1236/2005, are however foreseen in draft law 6708, currently under examination in Luxembourg Parliament.
Netherlands	NO
Poland	NO

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Portugal	NO
Slovakia	YES 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.
Slovenia	NO
Sweden	NO

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.

Comment: See comment under paragraph 3 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: Before the recast of the Regulation, some Member States have extended the scope of control to items not listed in Annexe 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). Since the recast of the Regulation has entered into force, some of those goods are presently controlled by all EU Member States.

Article 7a Authorisation requirement for certain services

1. An authorisation shall be required for any supply, by a supplier of technical assistance or a broker, respectively, of one of the following services to any person, entity or body in a third country, whether for consideration or not:

- (a) technical assistance related to goods listed in Annex III, irrespective of the origin of such goods; and
- (b) brokering services related to goods listed in Annex III, irrespective of the origin of such goods.

2. When deciding on applications for an authorisation for the supply of brokering services concerning goods listed in Annex III, Article 6 shall apply *mutatis mutandis*.

When deciding on applications for an authorisation for the supply of technical assistance related to goods listed in Annex III, the criteria set out in Article 6 shall be taken into account to assess:

- (a) whether the technical assistance would be supplied to a person, entity or body that might use the goods to which the technical assistance relates for torture or other cruel, inhuman or degrading treatment or punishment; and
- (b) whether the technical assistance would be used to repair, develop, manufacture, test, maintain or assemble goods listed in Annex III for, or supply technical assistance to, a person, entity or body that might use the goods to which the technical assistance relates for torture or other cruel, inhuman or degrading treatment or punishment.

Comment: Criteria defined by article 6 are:

- Denials of another Member State for an essentially identical transaction;
- Grounds to believe that goods listed in Annex III might be used for torture;
- Available international court judgements;
- Findings of the competent bodies of the UN, the Council of Europe and the other international and regional organisations;
- Other relevant information, including available national court judgements, reports or other information prepared by civil society organisations and information on restrictions on exports.

3. Paragraph 1 shall not apply to the supply of technical assistance, if

- (a) the technical assistance is supplied to a law enforcement authority of a Member State or to military or civil personnel of a Member State as described in the first sentence of Article 5(3);

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(b) the technical assistance consists of providing information that is in the public domain;

Comment:

- “**In the public domain**” should be understood as information, which has been made available without restrictions upon its further dissemination (copyright restrictions do not remove information from being in the public domain).

or

(c) the technical assistance is the minimum necessary for the installation, operation, maintenance or repair of those goods listed in Annex III whose export has been authorised by a competent authority in accordance with this Regulation.

4. Notwithstanding paragraph 1, a Member State may maintain a prohibition on the supply of brokering services related to leg irons, gang chains and portable electric shock devices. Where a Member State maintains such a prohibition, it shall notify the measures it has adopted to the Commission by 17 February 2017 and inform the Commission if those measures are amended or repealed.

CHAPTER IIIa Goods that could be used for the purpose of capital punishment

Article 7b Export authorisation requirement

1. For any export of goods listed in Annex IIIa, 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 Union, namely those which are not assigned a customs approved treatment or use other than the external transit procedure under Article 226 of Regulation (EU) No 952/2013, including storage of non-Union goods in a free zone.

Annex IIIa shall only comprise goods that could be used for the purpose of capital punishment and have been approved or actually used for capital punishment by one or more third countries that have not abolished capital punishment. It shall not include:

- (a) firearms controlled by Regulation (EU) No 258/2012;
- (b) dual-use items controlled by Regulation (EC) No 428/2009 and
- (c) goods controlled in accordance with Common Position 2008/944/CFSP.

2. Where the export of medicinal products requires an export authorisation pursuant to this Regulation and the export is also subject to authorisation requirements in accordance with international conventions controlling narcotic drugs and psychotropic substances, such as the 1971 Convention on Psychotropic Substances, Member States may use a single procedure to carry out the obligations imposed on them by this Regulation and by the relevant convention.

Countries	The use in the single procedure in Member States (Article 7b.2)
Austria	NO
Belgium	
Bulgaria	YES So far the Ministry of Economy has not received any applications for export of medicinal products. In case of submission of application for issuing the export license Bulgarian competent authority will take into account the provisions of par. 2 of Article 7b.

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Croatia	No such case so far. A single procedure would be used.
Cyprus	
Czech Republic	
Denmark	
Estonia	
Finland	
France	
Germany	
Greece	
Hungary	
Ireland	
Italy	
Latvia	<p style="text-align: center;">YES</p> <p>Not defined in the Regulation of Cabinet of Ministers of the Republic of Latvia No 927 <i>Procedures for the Issuance of Export and Import Authorizations for Goods, Which Could be Used for Capital Punishment, Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment</i> (adopted on 11.11.2008). It can be directly applied.</p>

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Lithuania	YES
Luxembourg	NO
Malta	
Netherlands	
Poland	
Portugal	
Romania	
Slovakia	
Slovenia	
Spain	
Sweden	NO
United Kingdom	

Article 7c Criteria for granting export authorisations

1. Decisions on applications for authorisations in respect of the export of goods listed in Annex IIIa shall be taken by the competent authorities, taking into account all relevant considerations, including in particular whether an application in respect of an essentially identical export has been dismissed by another Member State in the preceding three years and considerations about intended end-use and the risk of diversion.
2. The competent authority shall not grant any authorisation when there are reasonable grounds to believe that the goods listed in Annex IIIa might be used for capital punishment in a third country.
3. The following rules shall apply to the verification of the intended end-use and the risk of diversion:
 - 3.1. If the manufacturer of goods listed in section 1 of Annex IIIa requests an authorisation for exporting such products to a distributor, the competent authority shall make an assessment of the contractual arrangements made by the manufacturer and the distributor and of the measures that they are taking to ensure that the goods will not be used for capital punishment.
 - 3.2. If an authorisation is requested for exporting goods listed in section 1 of Annex IIIa to an end-user, the competent authority may, when assessing the risk of diversion, take into account the contractual arrangements that apply and the end-use statement signed by the end-user, if such a statement is provided. If no end-use statement is provided, it shall be up to the exporter to demonstrate who will be the end-user and what use will be made of the goods. If the exporter fails to provide sufficient information on the end-user and the end-use, the competent authority shall be deemed to have reasonable grounds to believe that the goods might be used for capital punishment.
 - 3.3. The Commission, in cooperation with competent authorities of the Member States, may adopt best practice guidelines on the assessment of end-use and assessing the purpose for which technical assistance would be used.
4. In addition to the criteria set out in paragraph 1, when assessing an application for a global authorisation the competent authority shall take into consideration the application by the exporter of proportionate and adequate means and procedures to ensure compliance with the provisions and objectives of this Regulation and with the terms and conditions of the authorisation.

Comment: The objective of this paragraph is to encourage Member States to require from exporters an implementation of an effective internal compliance programme (ICP) before granting a global authorisation. An ICP guide for operator has been developed by the Flemish Export Control Authority. This document is available on its website: <http://www.vlaanderen.be/int/sites/iv.devlh.vlaanderen.be.int/files/documenten/ICP%20BROCHURE%20EN.pdf>

Article 7d Prohibition of transit

A natural or legal person, entity or body, including a partnership, whether resident or established in a Member State or not, shall be prohibited from executing the transit of goods listed in Annex IIIa, if he, she or it knows that any part of a shipment of such goods is intended to be used for capital punishment in a third country.

Comment: This paragraph is drafted like a catch-all clause. In principle, all goods listed in Annex IIIa transiting by the EU territory are not submitted to authorisation unless the operator knows that these will be used for capital punishment. The mechanism is regularly used by other strategic trade control regulations like the one dedicated to dual-use goods. The difficulty lays in the exact understanding of the term “knows”. If its scope might vary lightly between Member States, it usually refers to information received by the operator on usual end-user, end-use, route, carrier, destination for these goods. Operators have to assess the risk and refrain to transit if they consider that such situation is encountered. The paragraph does not establish an authorisation mechanism allowing to report the final decision on export control authorities.

Article 7e Authorisation requirement for certain services

1. An authorisation shall be required for any supply, by a supplier of technical assistance or a broker, respectively, of one of the following services to any person, entity or body in a third country whether for consideration or not:

- (a) technical assistance related to goods listed in Annex IIIa, irrespective of the origin of such goods; and
- (b) brokering services related to goods listed in Annex IIIa, irrespective of the origin of such goods.

2. When deciding on applications for an authorisation for the supply of brokering services concerning goods listed in Annex IIIa Article 7c shall apply *mutatis mutandis*.

When deciding on applications for an authorisation for the supply of technical assistance related to goods listed in Annex IIIa the criteria set out in Article 7c shall be taken into account to assess:

- (a) whether the technical assistance would be supplied to a person, entity or body that might use the goods to which the technical assistance relates for capital punishment; and
- (b) whether the technical assistance would be used to repair, develop, manufacture, test, maintain or assemble goods listed in Annex IIIa for, or supply technical assistance to, a person, entity or body that might use the goods to which the technical assistance relates for capital punishment.

3. Paragraph 1 shall not apply to the supply of technical assistance, if

- (a) the technical assistance consists of providing information that is in the public domain; or
- (b) the technical assistance is the minimum necessary for the installation, operation, maintenance or repair of those goods listed in Annex IIIa whose export has been authorised by a competent authority in accordance with this Regulation.

CHAPTER IV Authorisation procedures

Article 8 Applications for authorisations

1. A Union General Export Authorisation for certain exports as set out in Annex IIIb is established by this Regulation.

Comment:

The European Union General Export Authorisation (EU GEA) is one of the essential elements of this Regulation. It constitutes a unique authorisation granted directly at the EU level. It is important to note that, normally, no complementary national authorisation will be necessary.

It is valid:

- for all **goods** listed in Annex III;
- for **export**;
- for **technical assistance** necessary for the good exported is provided by the same exporter;
- for the following **destination**:

Danish territories not included in the customs territory (Faroe Islands, Greenland), French territories not included in the customs territory (French Polynesia, French Southern and Antarctic Territories, New Caledonia and Dependencies, Saint-Barthélemy, Saint Pierre and Miquelon, Wallis and Futuna Islands), Dutch territories not included in the customs territory (Aruba, Bonaire, Curaçao, Saba, Sint Eustatius, Sint Maarten) relevant British territories not included in the customs territory (Anguilla, Bermuda, Falkland Islands, Gibraltar, Montserrat, Saint Helena and Dependencies, South Georgia and the South Sandwich Islands, Turks and Caicos Islands), Albania, Andorra, Argentina, Australia, Benin, Bolivia, Bosnia and Herzegovina, Canada, Cape Verde, Colombia, Costa Rica, Djibouti, Ecuador, Former Yugoslav Republic of Macedonia, Gabon, Georgia, Guinea-Bissau, Honduras, Iceland, Kyrgyzstan, Liberia, Liechtenstein, Mexico, Moldova, Mongolia, Montenegro, Mozambique, Namibia, Nepal, New Zealand, Nicaragua, Norway, Panama, Paraguay, Philippines, Rwanda, San Marino, Serbia, Seychelles, South Africa, Switzerland (including Büsingen and Campione d'Italia), Timor-Leste, Turkey, Turkmenistan, Ukraine, Uruguay, Uzbekistan, Venezuela.

The use of the EUGEA is **prohibited** if:

- Exporter has been prohibited from using this general export authorisation due to reasonable suspicion about the exporter's **ability to comply** with the terms of this authorisation or with a provision of the export control legislation;
- Exporter **has been informed or knows** that the goods in question are or may be intended, in their entirety or in part, either for re-export to a third country or to be used for the purpose of capital punishment in a third country;
- Goods are exported to a **customs free zone or free warehouse** which is located in a destination covered by this general export authorisation;
- Exporter is the manufacturer of the medicinal products in question and has **not made a legally binding agreement** with the distributor requiring the latter to make all supplies and transfers subject to the conclusion of a legally binding agreement requiring the customer not to use, not

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- to supply if there is a risk that the goods will be intended to be used for the purpose of capital punishment and requiring the same conditions to any third party;
- Exporter is **not the manufacturer** of the medicinal products in question and has not obtained a signed **end-user declaration** from the end-user in the country of destination;
 - Exporter of medicinal products has not concluded a **legally binding agreement with the distributor** or end-user requiring to obtain **prior authorisation** from the exporter for any transfer or supply of any part of the shipment to:
 - a law enforcement authority in a country or territory that has not abolished capital punishment;
 - a natural or legal person, entity or body procuring relevant goods for or providing services involving use of such goods to such a law enforcement authority, and
 - any re-export or transfer of any part of the shipment to a country or territory that has not abolished capital punishment;
 - the exporter of goods other than medicinal **products** has not concluded a legally binding agreement as defined above with the end-user.

Exporters that use this general export authorisation EU GEA 1236/2005 shall **notify** the competent authorities of the Member State where they are resident or established of their first use of this general export authorisation no later than 30 days after the date when the first export took place. Member State may require exporters resident or established in that Member State to **register prior** to the first use of this general export authorisation. Registration shall be automatic and acknowledged by the competent authorities to the exporter without delay and in any case within ten working days of receipt.

Reporting requirements attached to the use of this general export authorisation and any additional information are defined by Member States.

Countries	Prior registration procedure for EU GEA in Member States (Article 8)
Austria	According to Art. 59 of the Austrian Foreign Economy Act, General Export Authorisations may only be claimed by persons or organisations who/which are registered to the competent authority (Authority as listed in Annex I of Council Regulation (EC) 1236/2005 of 27 June 2005; in Austria: Federal Ministry of Science, Research and Economy, Unit for Foreign Trade Administration).
Belgium	
Bulgaria	The prior registration for exporters resident or established in Bulgaria will be considered.

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Croatia	Croatia did not establish registration requirement prior to first use.
Cyprus	
Czech Republic	
Denmark	
Estonia	
Finland	
France	
Germany	
Greece	
Hungary	
Ireland	
Italy	
Latvia	The Ministry of Foreign Affairs, Division of Export Control of Strategic Goods.
Lithuania	In the Member State established and licensed legal entities which plan to ask for registration for exporters are obliged to possess the Licence for the activity of pharmacy and the Licence to engage in wholesale, import and export of psychotropic substances of Schedule III. Licences are granted by the State Medicines Control Agency under the Ministry of Health following the Law on Pharmacy and following the Law of the

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	Republic of Lithuania on Control of Narcotic and Psychotropic Substances.
Luxembourg	This issue will be dealt with the coming into force of draft law 6708, currently under examination in Luxembourg Parliament.
Malta	
Netherlands	
Poland	
Portugal	
Romania	
Slovakia	
Slovenia	
Spain	
Sweden	The provisions on general export authorisations are new and according to the Regulation a Member State may require exporters to register prior to the first use. Currently there is no prior registration in Sweden.
United Kingdom	

The competent authority of the Member State where the exporter is resident or established can prohibit the exporter from using this authorisation, if there is reasonable suspicion about the

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exporter's ability to comply with the terms of this authorisation or with a provision of the export control legislation.

The competent authorities of the Member States shall exchange information on all exporters deprived of the right to use the Union General Export Authorisation, unless they determine that a specific exporter will not attempt to export goods listed in Annex IIIa through another Member State. A secure and encrypted system for exchange of information shall be used for this purpose.

2. An authorisation for exports other than those referred to in paragraph 1 for which an authorisation is required under this Regulation shall be granted by the competent authority of the Member State where the exporter is resident or established, as listed in Annex I. Such authorisation may be an individual or a global authorisation, if it concerns goods listed in Annex III or in Annex IIIa. An authorisation concerning goods listed in Annex II shall be an individual authorisation.

3. An authorisation for transit of goods listed in Annex II shall be granted by the competent authority of the Member State where the natural or legal person, entity or body transporting the goods within the customs territory of the Union is resident or established, as listed in Annex I. If that person, entity or body is not resident or established in a Member State, an authorisation shall be granted by the competent authority of the Member State in which the entry of goods into the customs territory of the Union takes place. Such an authorisation shall be an individual authorisation.

4. An authorisation for imports for which an authorisation is required under this Regulation shall be granted by the competent authority of the Member State where the museum is established, as listed in Annex I. An authorisation concerning goods listed in Annex II shall be an individual authorisation.

Comment: Annex II concerns 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.

5. An authorisation for the supply of technical assistance related to goods listed in Annex II shall be granted by:

- (a) the competent authority of the Member State where the supplier of technical assistance is resident or established, as listed in Annex I, or, if there is no such Member State, the competent authority of the Member State of which the supplier of technical assistance is a national or under whose law it has been incorporated or constituted, if the assistance is to be supplied to a museum in a third country; or
- (b) the competent authority of the Member State where the museum is established, as listed in Annex I, if the assistance is to be supplied to a museum in the Union.

6. An authorisation for the supply of technical assistance related to goods listed in Annex III or in Annex IIIa shall be granted by the competent authority of the Member State where the supplier of technical assistance is resident or established, as listed in Annex I, or, if there is no such Member State, the competent authority of the Member State of which the supplier of technical assistance is a national or under whose law it has been incorporated or constituted.

Comment: Paragraphs 5 and 6 on the supply of technical assistance concern import in the EU and export out of the EU.

7. An authorisation for the supply of brokering services related to goods listed in Annex III or in Annex IIIa shall be granted by the competent authority of the Member State where the broker is resident or established, as listed in Annex I, or, if there is no such Member State, the competent authority of the Member State of which the broker is a national or under whose law it has been incorporated or constituted. Such an authorisation shall be granted for a set quantity of specific goods moving between two or more third countries. The location of the goods in the originating third country, the end-user and its exact location shall be clearly identified.

8. Applicants shall supply the competent authority with all relevant information required for their applications for an individual or global authorisation for exports or for brokering services, for an authorisation for technical assistance, for an individual import authorisation or for an individual authorisation for transit.

As regards exports the competent authorities shall receive complete information in particular on the end-user, the country of destination and the end-use of the goods.

As regards brokering services the competent authorities shall in particular receive details of the location of the goods in the originating third country, a clear description of the goods and the quantity involved, third parties involved in the transaction, the third country of destination, the end-user in that country and its exact location.

The granting of an authorisation may be subject to an end-use statement, if appropriate.

Comment:

End-use statement usually takes the form of an end-user certificate, which is a document issued by the recipient Government or by the recipient company. It contains information on the items transferred, on the exporter, on the consignee if involved, on the end-user, on the application authorised and finally a commitment of the recipient to not export or re-export the items without a prior consent of the initial exporting country. It should be noted that there is no official legally binding model for an end-user certificate. However, some international agreements, notably the Wassenaar Arrangement, give a common understanding of the information to be included in this document.²⁶

An EU example could be found for dual-use items with the best practice recommendations for elements of a Community end-use certificate adopted the Council Working Party on Dual-Use Goods in 2008. These non-legally binding recommendations were published in the C series of the *Official Journal of the European Union*; they contain information on the parties, the items and the commitments to be certified by the foreign consignee who might act as an end-user or as a trader, whole or re-seller²⁷.

²⁶ The Wassenaar Guidelines concerning End-User certificate as updated on December 2005 can be found on the following website: http://www.wassenaar.org/publicdocuments/docs/End-user_assurances_as_updated_at_the_December_2005_PLM.pdf.

²⁷ OJ C 11, 16.1.2009, p. 1. This document can be found on the following website: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:011:0001:0003:EN:PDF>.

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9. By way of derogation from paragraph 8, where a manufacturer or a manufacturer's representative is to export or to sell and transfer goods included in point 3.2 or 3.3 of Annex III or in section 1 of Annex IIIa to a distributor in a third country, the manufacturer shall provide information on the arrangements made and the measures taken to prevent the goods included in point 3.2 or 3.3 of Annex III from being used for torture or other cruel, inhuman or degrading treatment or punishment or to prevent the goods included in section 1 of Annex IIIa from being used for capital punishment, on the country of destination and, if it is available, information on the end-use and the end-users of the goods.

10. Upon request of a national preventive mechanism established under the Optional Protocol to the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the competent authorities may decide to make the information they have received from an applicant on the country of destination, the consignee, the end-use and the end-users or, where relevant, the distributor and the arrangements and measures referred to in paragraph 9, available to the requesting national preventive mechanism. The competent authorities shall hear the applicant before the information is made available and may impose restrictions on the use that can be made of the information. The competent authorities shall make their decisions in accordance with national laws and practice.

Comment: national preventive mechanisms or the prevention of torture at the domestic level are established by each State Party to the Protocol. They shall be granted at a minimum the power:

- (a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;*
- (b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;*
- (c) To submit proposals and observations concerning existing or draft legislation²⁸.*

11. Member States shall process requests for individual or global authorisations within a period of time to be determined by national law or practice.

²⁸ Article 18 of the Protocol.

Article 9 Authorisations

1. Authorisations for export, import or transit shall be issued on a form consistent with the model set out in Annex V. Authorisations concerning brokering services shall be issued on a form consistent with the model set out in Annex VI. Authorisations concerning technical assistance shall be issued on a form consistent with the model set out in Annex VII. Such authorisations shall be valid throughout the Union. The period of validity of an authorisation shall be from three to twelve months with a possible extension of up to 12 months. The period of validity of a global authorisation shall be from one year to three years with a possible extension of up to two years.

2. An authorisation for export granted in accordance with Article 6 or with Article 7c implies an authorisation for the exporter to supply technical assistance to the end-user to the extent that such assistance is necessary for the installation, operation, maintenance or repair of those goods whose export is authorised.

3. The authorisations 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.

4. Authorisations for export, import, transit, the supply of technical assistance or the supply of brokering services shall be subject to any requirements and conditions the competent authority deems appropriate.

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

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

Countries	Authorisation delivered by electronics means (Art. 9.2)
Austria	YES 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	NO
Bulgaria	NO At present, authorisations are issued only in paper form. The specific procedures of the authorisation by electronics means is

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	now under development.
Croatia	NO
Cyprus	NO
Denmark	Neither the Danish Business Authority nor the Danish Ministry of Justice have issued any authorisations according to the Regulation.
Estonia	NO
France	NO
Germany	YES Authorisations are issued in paper form and by electronic means.
Greece	NO
Hungary	The specific procedures of the authorisation by electronics means are now under development (under process).
Ireland	NO The Department of Jobs, Enterprise and Innovation has not received an application for authorisation to export or import goods covered by the Regulation. Should an application be received in the future it is likely it would be issued using a paper based system and would not be by electronic means.
Italy	NO
Latvia	The Ministry of Foreign Affairs of the Republic of Latvia Division of export control of strategic goods is issuing all licences electronically signed via e-mails.
Lithuania	NO
Luxembourg	NO
Netherlands	NO
Poland	NO
Portugal	NO
Slovakia	NO
Slovenia	NO

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Sweden	NO
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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>YES</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>NO</p> <p>The FPS Economy has not received any application for import or export of such goods.</p>
Bulgaria	<p>YES</p>
Croatia	<p>NO</p> <p>Only if it is necessary. If the state authorities (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 Ministry of Foreign and European Affairs, which shall then extend the request to the applicant.</p>
Cyprus	<p>NO</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>NO</p> <p>Not on a general basis. If necessary, conditions may apply on a case-by-case basis.</p>
France	

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	YES According to Ministerial Decree of 26 th June 2012 any exporter, importer or supplier established in France shall submit a request the Directorate General of Customs and Excise.
Germany	NO Only in individual cases.
Greece	NO No specific requirements or conditions except proof of the use at destination for which the export or import authorisation is required (according to Art. 5). Ministerial Decision No.146845/E3/26845/4-8-06 (Minister of Economy and Finance).
Hungary	YES 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 (i.e. contract, EUC, IIC, etc.) and prescribe specific conditions it deems necessary Articles 15.5 and 15.9 of Gov. Decree 160/2011.
Ireland	NO The Department of Jobs, Enterprise and Innovation has not received an application for authorisation to export or import goods covered by the Regulation. Should such an application be received in the future it will be reviewed on a case-by-case basis.
Italy	Any granted license - those for items under the authority of Reg. EC 1236/2005 included – may be subject to special conditions indicated in the license form itself. These conditions shall be fulfilled both by the end-user and the national exporter. In the case of Reg. EC 1236/2005 licensed items, they may be: a statement by the end-user attesting that he took charge of the licensed items, a half-yearly report sent to Italian National Authorities by the national exporter for two years, attesting that the said goods dwell in the licensed final destination country and that they are used for the licensed end use, etc.

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	The national law reference is Legislative Decree No. 96 of 9 April 2003.
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 11.11.2008).
Lithuania	<p style="text-align: center;">YES</p> <p>All requirements for issuing authorisations are set at the Order No 5-V-203 of Police Commissioner General of Lithuania (on March 29th, 2006): https://www.e-tar.lt/portal/lt/legalAct/TAR.79BD48D39CE2,</p> <p>- changed by Order 5-V-275 (on March 30th, 2012) https://www.e-tar.lt/portal/lt/legalAct/TAR.CE399D9B9D41,</p> <p>- by Order 5-V-552 (on June 12th, 2015) https://www.e-tar.lt/portal/lt/legalAct/13049ca0135711e58569be21ff080a8c,</p> <p>- and at the Order No 409 of the Minister of Health of the Republic of Lithuania (on July 25th, 2001) https://www.e-tar.lt/portal/lt/legalAct/TAR.4720B278D094,</p> <p>- changed by Order No V-1015 (on October 31, 2013) https://www.e-tar.lt/portal/lt/legalAct/TAR.1201FF0C5411.</p>
Luxembourg	NO
Netherlands	NO Specific conditions will be prescribed if necessary.
Poland	<p style="text-align: center;">YES</p> <p>Goods Ordinance of the Minister of Economy of 7th 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);</p> <p>Technical assistance: Ordinance of the Minister of Economy of 7th 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).</p>

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Portugal	YES The penalties applicable are laid down on General Regime of Taxes Infractions, Article 97.º-A, that foresees a prison sentence from 1 to 5 years and, in the case of legal entities, a monetary fine
Slovakia	YES All authorisations meet the requirements set by the 1236/2005 and NR SR n. 474/2007.
Slovenia	NO
Sweden	NO

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 Annex II, III or IIIa 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 shall make the exporter or importer aware of the possibility to apply for an authorisation pursuant to this Regulation. If no application for an authorisation is made within six months of 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 law.

Article 11 Notification and consultation requirement

1. A Member State shall notify the other Member States and the Commission if its competent authorities, as listed in Annex I, take a decision dismissing an application for an authorisation under this Regulation or if they annul an authorisation they have granted. Such notification shall be made not later than 30 days following the date of the decision or annulment.

2. The competent authority shall, through diplomatic channels where required or appropriate, consult the authority or authorities which, in the preceding three years, dismissed an application for authorisation of an export, a transit, the supply of technical assistance to a person, entity or body in a third country or the supply of brokering services under this Regulation, if it receives an application concerning an export, a transit, the supply of technical assistance to a person, entity or body in a third country or the supply of brokering services involving an essentially identical transaction referred to in such earlier application and considers that an authorisation should, nevertheless, be granted.

3. If, after the consultations referred to in paragraph 2, the competent authority decides to grant an authorisation, the relevant Member State shall immediately inform the other Member States and the Commission of its decision and explain the reasons for its decision, submitting supporting information as appropriate.

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

5. All notifications required under this Article shall be made via a secure and encrypted system for exchange of information.

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) and 7a(4) concerning an export, import and brokering services 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) and 7a(4) 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 Amendments of Annexes

The Commission is empowered to adopt delegated acts in accordance with Article 15a, to amend Annexes I, II, III, IIIa, IIIb, IV, V, VI and VII. The data in Annex I regarding competent authorities of the Member States shall be amended on the basis of information supplied by the Member States.

Where, in the case of amendment of Annex II, III, IIIa or IIIb, imperative grounds of urgency so require, the procedure provided for in Article 15b shall apply to delegated acts adopted pursuant to this Article

Comment: The delegated act allowing the Commission to amend Annexes defining list of goods is granted under conditions:

Annex II could be amended only with 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.

Annex III could be amended only with goods that could be used for the purpose of torture or other cruel, inhuman or degrading treatment or punishment (goods which are primarily used for law enforcement purposes and goods which, taking into account their design and technical features, present a material risk of use for torture or other cruel, inhuman or degrading treatment or punishment).

Annex IIIa shall only comprise goods that could be used for the purpose of capital punishment and have been approved or actually used for capital punishment by one or more third countries that have not abolished capital punishment.

Article 12a Requests for adding goods to one of the lists of goods

1. Each Member State may address a duly substantiated request to the Commission to add goods designed or marketed for law enforcement to Annex II, Annex III or Annex IIIa. Such a request shall include information on:

- (a) the design and characteristics of the goods;
- (b) all the purposes for which they can be used; and
- (c) the international or domestic rules that would be broken if the goods were to be used for law enforcement.

When addressing its request to the Commission, the requesting Member State shall also forward that request to the other Member States.

2. The Commission may, within three months of the receipt of the request ask the requesting Member State to provide supplementary information, if it considers that the request fails to address one or more relevant points or that additional information on one or more relevant points is necessary. It shall communicate the points on which supplementary information needs to be provided. The Commission shall forward its questions to the other Member States. The other Member States may also provide the Commission with further information for the assessment of the request.

3. If it considers that there is no need to ask for supplementary information or, where applicable, upon receipt of the supplementary information it has requested, the Commission shall within twenty weeks of the receipt of the request or the receipt of supplementary information, respectively, commence the procedure for the adoption of the requested amendment or inform the requesting Member State of the reasons for not doing so.

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 authorizations granted and refused.
2. Relevant information on authorizations 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 considered. 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), (none in 2012 and one in 2013).

3a. The Commission shall prepare an annual report comprised of the annual activity reports referred to in paragraph 3. That annual report shall be made publicly available.

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 authorization 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

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application for an authorization 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) and 7a(4) 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) and 7a(4) may not be communicated to the Commission and national authorities of other Member States, as listed in Annex I of this Regulation.

Article 13a Processing of personal data

Personal data shall be processed and exchanged in accordance with the rules laid down in Directive 95/46/EC of the European Parliament and of the Council and Regulation (EC) 45/2001 of the European Parliament and of the Council.

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.

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. The fourth and last meeting of this Committee took place in Brussels on 30 October 2013. Agenda and certain documents considered by the Committee are available on the Comitology Register.²⁹ However, this committee has been abolished since 24 April 2015.

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.

²⁹ The dossier of the meeting is available at the following address:
<http://ec.europa.eu/transparency/regcomitology/index.cfm?do=search.dossierdetail&QHajP4ypVBOF4c22iB1rfzvysEeJM1SIbmWI94gBSlsgRhLJX/HPj4gwIuGyS1X>.

Article 15a Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 12 shall be conferred on the Commission for a period of five years from 16 December 2016. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Article 12 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Inter-institutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 12 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 15b Urgency procedure

1. Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.

2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 15a(6). In such a case, the Commission shall repeal the act immediately following the notification of the decision to object by the European Parliament or by the Council.

Article 15c Anti-Torture Coordination Group

1. An Anti-Torture Coordination Group chaired by a representative of the Commission shall be established. Each Member State shall appoint a representative to this group.
2. The group shall examine any questions concerning the application of this Regulation, including, without limitation, the exchange of information on administrative practices and any questions which may be raised either by the chair or by a representative of a Member State.
3. The Anti-Torture Coordination Group may, whenever it considers it to be necessary, consult exporters, brokers, suppliers of technical assistance and other relevant stakeholders concerned by this Regulation.
4. The Commission shall submit an annual report in writing to the European Parliament on the activities, examinations and consultations of the Anti-Torture Coordination Group. The annual report shall be drawn up paying due regard to the need not to undermine the commercial interests of natural or legal persons. The discussions in the group shall be kept confidential.

Article 15d Review

1. By 31 July 2020, and every five years thereafter, the Commission shall review the implementation of this Regulation and present a comprehensive implementation and impact assessment report to the European Parliament and to the Council, which may include proposals for its amendment. The review will assess the need to include the activities of EU nationals abroad. Member States shall provide to the Commission all appropriate information for the preparation of the report.

2. Special sections of the report shall deal with:

- (a) the Anti-Torture Coordination Group and its activities. The report shall be drawn up paying due regard to the need not to undermine the commercial interests of natural or legal persons. The discussions in the group shall be kept confidential; and
- (b) information on the measures taken by the Member States pursuant to Article 17(1) and notified to the Commission pursuant to Article 17(2).

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.

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;">YES</p> <p>The sanctions are imposed by Law of 11th September 1962 (confiscation, fines, imprisonment).</p>
Bulgaria	<p style="text-align: center;">YES</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> 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"> 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; 2. a property sanction amounting from BGN 500 to BGN 1,000 (250 to 500 Euro) - for legal and natural persons; 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. <p><u>Article. 12</u> 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"> 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; 2. a property sanction amounting from BGN 1,000 to BGN 5,000 (500 to 2,500 Euro) - for legal and natural persons; 3. fine or penalty amounting of BGN 2,000 to BGN 10,000 (1,000 to 5,000 Euro) - for a repeated violation.

	<p><u>Article. 13</u> Persons who fail to fulfil their obligations under Art. 9 shall be sanctioned with:</p> <ol style="list-style-type: none"> 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; 2. a property sanction amounting ranging from BGN 500 to BGN 2,000 (250 to 1,000 Euro) - for legal and natural persons; 3. fine or penalty amounting of BGN 1,000 to BGN 10,000 (500 to 5,000 Euro) - for a repeated violation.
<p>Croatia</p>	<p style="text-align: center;">YES</p> <p>All penalties are covered under the Criminal law under the following articles:</p> <p><u>Criminal law (OG 125/11, 144/12, 56/15, 61/15)</u></p> <p>Illicit Trade Article 264</p> <p>(1) Whoever, without authorisation, buys, sells, transfers or exchanges items or goods whose distribution is forbidden or limited, and who has not committed another offense which carries a heavier penalty, shall be punished by imprisonment of up to one year.</p> <p>(2) Items and goods which are illicitly traded shall be confiscated.</p> <p>But the Law also mentions that there is a possibility to replace the imprisonment punishment with a fine.</p> <p>Types of Punishment Article 40.</p> <p>(1) The penalties are fines, imprisonment and long-term imprisonment.</p> <p>(2) A fine may be imposed as a principal and as an accessory punishment.</p> <p>(3) Prison and long-term imprisonment may be imposed only as principal punishment.</p> <p>(4) When the law for a criminal offense punished with a term of imprisonment up to three years, the court may impose a fine as a principal punishment.</p> <p>(5) For criminal offenses motivated by greed, a fine as an</p>

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	<p>accessory can be ordered and when it is not required by law or when the law prescribes that the perpetrator is punished by imprisonment or a fine, and the court as the principal punishment imposes imprisonment.</p> <p>(6) Community service shall be imposed as an alternative to imprisonment or a fine.</p>
Cyprus	<p style="text-align: center;">YES</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 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;">YES</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;">YES</p> <p>The sanctions are imposed by art. 414 of National Customs Code.</p>
Germany	<p style="text-align: center;">YES</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"> 1. Exporting the specified goods contrary to Article 3 Para. 1 sentence 1, 2. Providing technical assistance related to the specified goods contrary to Article 3 Para. 1 sentence 2, 3. Importing the specified goods contrary to Article 4 Para. 1 sentence 1,

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	<p>4. Accepting technical assistance related to the specified goods contrary to Article 4 Para. 1 sentence 2, or</p> <p>5. Exporting the goods referred to in Article 5 Para. 1 sentence 1 without a licence.</p> <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>
Greece	<p>Administrative. fine of up to the value of the goods to be exported (Law 936/1979 on external trade).</p> <p>The National Customs Code (N. 2960/2001, OJ no 265A/22-11-2001) Art. 155 par. 2, (b) and Art. 160 Para. 1, stipulates:</p> <ul style="list-style-type: none"> -The export of controlled items without authorization is assimilated to smuggling and provides for administrative penalties. -In addition, as smuggling is a criminal offense, an unauthorized import or export may be punished with imprisonment, subject to court's judgment. <p>For the items referred to in art. 7.1 of the Reg. 1236/2005 (Q.4 above), penalties provided by National Law 2168/1993 for small arms apply.</p>
Hungary	<p style="text-align: center;">YES</p> <p>The sanctions regulated by Gov. Decree No. 160 and Penalty Code No. 100 of 2012 are:</p> <ul style="list-style-type: none"> - 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 conditions specified in the licence or violates the commercial legislative provisions. - Gov. Decree No.160. 25§ (1) b). - 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). - 2 to 8 year imprisonment: Activity without license - Penalty Code, 329§.

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	- 5 to 10 years imprisonment in aggravating circumstances.
Ireland	<p style="text-align: center;">YES</p> <p>The European Communities (Control of Trade in Goods that may be used for Torture) Regulations 2006 provides that a person guilty of an offence under this Regulation shall be liable on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 6 months or both.</p>
Italy	Penalties - fines and/or prison, according to the seriousness of a crime - are provided for in Art. 16 of the Legislative Decree No. 96 of 9 April 2003.
Latvia	<p style="text-align: center;">YES</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 201¹⁰ 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 190¹ 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 201¹² 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 Latvia³⁰.</p>

³⁰ Actually, the Ministry of Foreign Affairs of the Republic of Latvia, Division of export control of strategic goods, precises that this law is separated from 1236.

Lithuania	<p style="text-align: center;">YES</p> <p>Penal sanctions are provided in Article 199 (1) of the Penal Code of the Republic of Lithuania. Administrative sanctions are provided in Article 208 of the Code Administrative Offences.</p>
Luxembourg	<p>Currently applicable law (Law of 5 August 1963, as amended) foresees fines of an amount up to twice the value of goods. According to draft law 6708 (article 48(1)5.), currently under examination in Luxembourg Parliament, sanctions of violation of Regulation 1236/2005 and the national prohibition measures based on Art. 7 of Regulation 1236/2005 will consist of an imprisonment of 5 to 10 years, and/or a fine of 25.000 to 1.000.000 euros.</p>
Netherlands	<p style="text-align: center;">YES</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>
Poland	<p style="text-align: center;">YES</p> <p>With reference to penalties applicable to infringements of EU provisions concerning banning the import to and export from the Community, there are the provisions of the “Fiscal Penal Code” (hereinafter referred to as “FPC”) of 10 September 1999 currently applicable in Poland (Journal of Laws of 2007, No 111, item 765, with further amendments). As regards penalties applicable to infringements of Regulation No 1236/2005 the key articles are the following Art. 86, Art. 87 and Art. 91 of FPC. Taking into account the above provisions, the penalties are levied</p>

	<p>in case of:</p> <ol style="list-style-type: none"> 1. smuggling (import or export without customs declaration – Art. 86 of FPC), <ul style="list-style-type: none"> – pecuniary penalty or imprisonment, or both of them simultaneously, – in case of low value of merchandise – pecuniary penalty, 2. fraud (misleading of a competent customs control authority - Art. 87 FPC), <ul style="list-style-type: none"> – pecuniary penalty or imprisonment, or both of them simultaneously, – in case of low value of merchandise – pecuniary penalty, 3. handling (purchasing, storage, transportation, dispatch, transmission, selling off, receiving or concealing), <ul style="list-style-type: none"> – pecuniary penalty or penalty of up to 3 years of imprisonment, or both of them simultaneously, – in other forms of crime or offence – pecuniary penalty or pecuniary penalty against fiscal offence. <p>Moreover, depending on the case, the court adjudicates on forfeiture of goods descended directly from crime, tools or goods that were to be used or were used in a crime, or goods which production, possession, trade, storage, transportation or transmission is prohibited. In some cases the court may also adjudicates on forfeiture of packaging or the goods combined with the good directly descended from crime, which is to take place in case the goods combined cannot be separated from the goods in question without damage. Furthermore, in some cases the court can also adjudicate the prohibition on running a business activity.</p>
<p>Slovenia</p>	<p style="text-align: center;">YES</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"> - 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. - Any legal person, entrepreneur or individual who pursues his/her activity as a self-employed person and

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	<p>commits an offence as referred to in the previous paragraph, shall be fined from EUR 15,000 to EUR 100,000.</p> <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> <p>- 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.</p> <p>- 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.</p> <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;">YES</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;">YES</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 have the same territorial scope of application as the Treaties, except for the first subparagraph of Article 3(1), the first subparagraph of Article 4(1), Articles 4a, 5, 6a, 7, 7b and 7d, Article 8(1) to (4) and Article 10, which shall apply to:

- the customs territory of the Union,
- the Spanish territories of 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, II, III, IIIa

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

Comment: Annex I has been lately amended by the Commission Delegated Regulation (EU) 2015/1113, L 182/10, of 6 May 2015. This Regulation updates the list of competent authorities responsible for implementation of the Torture Regulation.

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

Comment: Annex II has been lately amended by the Regulation 2016/2134 of the European Parliament and of the Council of 23 November 2016

ANNEX III LIST OF GOODS REFERRED TO IN ARTICLE 5.

ANNEX IIIa GOODS THAT COULD BE USED FOR THE PURPOSE OF CAPITAL PUNISHMENT REFERRED TO IN ARTICLE 7b

ANNEX IIIb
UNION GENERAL EXPORT AUTHORISATION EU GEA 1236/2005

Part 1 Goods

This general export authorisation covers the goods listed in any entry in Annex IIIa to Council Regulation (EC) No 1236/2005.

It also covers supplies of technical assistance to the end-user to the extent that such assistance is necessary for the installation, operation, maintenance or repair of those goods whose export is authorised, if such assistance is provided by the exporter.

Part 2 Destinations

An export authorisation under Regulation (EC) No 1236/2005 is not required for supplies to a country or territory that is part of the customs territory of the Union, which for the purpose of this Regulation includes Ceuta, Helgoland and Melilla (Article 18(2)).

This general export authorisation is valid throughout the Union for exports to the following destinations:

Danish territories not included in the customs territory (Faroe Islands, Greenland), French territories not included in the customs territory (French Polynesia, French Southern and Antarctic Territories, New Caledonia and Dependencies, Saint-Barthélemy, Saint Pierre and Miquelon, Wallis and Futuna Islands), Dutch territories not included in the customs territory (Aruba, Bonaire, Curaçao, Saba, Sint Eustatius, Sint Maarten) relevant British territories not included in the customs territory (Anguilla, Bermuda, Falkland Islands, Gibraltar, Montserrat, Saint Helena and Dependencies, South Georgia and the South Sandwich Islands, Turks and Caicos Islands), Albania, Andorra, Argentina, Australia, Benin, Bolivia, Bosnia and Herzegovina, Canada, Cape Verde, Colombia, Costa Rica, Djibouti, Ecuador, Former Yugoslav Republic of Macedonia, Gabon, Georgia, Guinea-Bissau, Honduras, Iceland, Kyrgyzstan, Liberia, Liechtenstein, Mexico, Moldova, Mongolia, Montenegro, Mozambique, Namibia, Nepal, New Zealand, Nicaragua, Norway, Panama, Paraguay, Philippines, Rwanda, San Marino, Serbia, Seychelles, South Africa, Switzerland (including Büsingen and Campione d'Italia), Timor-Leste, Turkey, Turkmenistan, Ukraine, Uruguay, Uzbekistan, Venezuela

Part 3 Conditions and requirements for using this general export authorisation

- (1) This general export authorisation may not be used if:
 - (a) the exporter has been prohibited from using this general export authorisation in accordance with Article 8(1) of Regulation (EC) No 1236/2005;
 - (b) the competent authorities of the Member State in which the exporter is resident or established, have informed the exporter that the goods in question are or may be intended, in their entirety or in part, either for re-export to a third country or to be used for the purpose of capital punishment in a third country;
 - (c) the exporter knows or has reasonable grounds to believe that the goods in question are intended, in their entirety or in part, either for re-export to a third country or to be used for the purpose of capital punishment in a third country;
 - (d) the relevant goods are exported to a customs free zone or free warehouse which is located in a destination covered by this general export authorisation;

- (e) the exporter is the manufacturer of the medicinal products in question and has not made a legally binding agreement with the distributor requiring the latter to make all supplies and transfers subject to the conclusion of a legally binding agreement requiring, preferably subject to a dissuasive contractual penalty, the customer:
 - (i) not to use any of the goods received from the distributor for capital punishment;
 - (ii) not to supply or transfer any of these goods to a third party, if the customer knows or has reasonable grounds to believe that the goods are intended to be used for the purpose of capital punishment; and
 - (iii) to impose the same requirements on any third party to which the customer might supply or transfer any of these goods;
- (f) the exporter is not the manufacturer of the medicinal products in question and has not obtained a signed end-user declaration from the end-user in the country of destination;
- (g) the exporter of medicinal products has not concluded a legally binding agreement with the distributor or end-user requiring, preferably subject to a dissuasive contractual penalty, the distributor or, if the agreement was concluded by the end-user, the end-user to obtain prior authorisation from the exporter for:
 - (i) any transfer or supply of any part of the shipment to a law enforcement authority in a country or territory that has not abolished capital punishment;
 - (ii) any transfer or supply of any part of the shipment to a natural or legal person, entity or body procuring relevant goods for or providing services involving use of such goods to such a law enforcement authority; and
 - (iii) any re-export or transfer of any part of the shipment to a country or territory that has not abolished capital punishment; or
- (h) the exporter of goods other than medicinal products has not concluded a legally binding agreement referred to in point (g), with the end-user.

(2) Exporters that use this general export authorisation EU GEA 1236/2005 shall notify the competent authorities of the Member State where they are resident or established of their first use of this general export authorisation no later than 30 days after the date when the first export took place.

Exporters shall also report in the customs declaration the fact that they are using this general export authorisation EU GEA 1236/2005 by indicating in box 44 the relevant code found in the TARIC database.

(3) Reporting requirements attached to the use of this general export authorisation and any additional information that the Member State from which the export is made might require on items exported under this general export authorisation are defined by Member States.

A Member State may require exporters resident or established in that Member State to register prior to the first use of this general export authorisation. Without prejudice to Article 8(1) of Regulation (EC) No 1236/2005, registration shall be automatic and acknowledged by the competent authorities to the exporter without delay and in any case within ten working days of receipt.

Annex IV, V, VI, VII

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)

ANNEX VI

AUTHORISATION FORM FOR THE SUPPLY OF BROKERING SERVICES REFERRED
TO IN ARTICLE 9(1)

ANNEX VII

AUTHORISATION FORM FOR THE SUPPLY OF TECHNICAL ASSISTANCE
REFERRED TO IN ARTICLE 9(1)