



Strengthening trade rules against goods used for capital punishment and torture

Brussels, 4 October 2016

Strengthening trade rules against goods used for capital punishment and torture

Introduction

The EU is firmly committed to the absolute prohibition of capital punishment, torture or other cruel inhuman or degrading treatment or punishment. The prevention and eradication of all such treatment or punishment worldwide is at the heart of the European Union's human rights policy. The absolute ban on capital punishment and all forms of torture is enshrined in core UN human rights conventions, as well as on the EU level in the EU Charter of Fundamental Rights.

To help to prevent EU involvement in violations of human rights in third countries, the Council of the European Union adopted in June 2005 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 ('Regulation').

The Regulation prohibits exports and imports of goods which have no practical use other than for the purpose of capital punishment or torture. It also imposes 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.

Implementation of the Regulation

Some years ago, the European Commission became aware that certain medicinal products exported to third countries had been diverted and used for capital punishment. Consequently, in December 2011 the European Commission decided to amend the list of goods subject to the export controls to cover sodium thiopental and similar substances used in lethal injections in countries where the death penalty is still applied. In response the European pharmaceutical industry has begun to apply their own measures to ensure that medicinal products, including non-listed ones, will not be used for the death penalty. These measures have made it difficult for the authorities of third countries to procure medicinal products for capital punishment.

In July 2014, the Commission published new lists of goods subject to the trade restrictions. Some descriptions of goods were broadened and new goods were added. As a result exports and imports of e.g. bar fetters, restraint chairs, certain whips and cage and net beds are now prohibited. New export controls were imposed on spit hoods, electric discharge (shock) weapons that cover a wide area and equipment for the dissemination of incapacitating or irritating chemical agents covering a wide area.

Strengthened Regulation

The European Commission started a process to review Regulation (EC) No 1236/2005 in its entirety, responding in particular to a Resolution of the European Parliament of 17 June 2010^[1]. In spring 2012, the European Commission issued a call for applications with a view to establishing a Group of Experts to assist it with this review. From July 2012 to July 2013, the Group of Experts met six times in Brussels with relevant Commission services.

In January 2014, following a comprehensive review exercise led by Service for Foreign Policy Instruments (FPI), the Commission adopted a Proposal for amending the Regulation. This proposal has been discussed in the European Parliament and the Council under the ordinary legislative (co-decision) procedure.

The European Parliament and the Council reached a political agreement on amendments to this proposal in a trilogue meeting on 24 May 2016. Following the vote in the European Parliament, the changes should now be approved by the Council of the European Union and then the text amending the Regulation will be published in the Official Journal of the EU and become Union law.

Concretely, the amendment provides for the following main changes to the Regulation:

- It **adjusts the definition of other cruel, inhuman or degrading treatment or punishment** in the light of case-law of the European Court of Human Rights.

- It provides that exports to countries that are parties to international conventions on capital punishment will be covered by a **general authorisation**. This will apply only if the conditions that the goods are not re-exported to other countries and that the country of destination has abolished the death penalty for all crimes are met.
- It imposes a **ban on the brokering of goods that are subject to an import and export ban**, as listed in Annex II (goods that can only be used for torture or capital punishment), so as to cover transfers of goods that are not located in the EU.
- 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. The supply of technicalIt **prohibits transport of goods in transit** if they are listed in Annex II, III or IIIa. It should be noted that the prohibition concerning goods listed in annex III or IIIa is not absolute but 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 State experts and the European Commission to exchange information on administrative practices. The group will also discuss questions of interpretation, developments and implementation of the Regulation.
- It provides for an **urgency procedure** in case rapid amendment of the Regulation's annexes is necessary, e.g. when new goods enter the market.

[1] Resolution P7_TA(2010)0236, OJ C 236 E, 12.8.2011, p. 107.

MEMO/16/3287

Press contacts:

[Maja KOCIJANCIC](#) (+32 2 298 65 70)

[Adam KAZNOWSKI](#) (+ 32 2 298 93 59)

General public inquiries: [Europe Direct](#) by phone [00 800 67 89 10 11](#) or by [email](#)