

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goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (repealed)

COUNCIL REGULATION (EC) No 1236/2005
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concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (repealed)

THE COUNCIL OF THE EUROPEAN UNION,

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

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.
- (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⁽¹⁾ and the 1984 United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, place an obligation on States to prevent torture.
- (3) Article 2(2) of the Charter of Fundamental Rights of the European Union⁽²⁾ 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.
- (4) Article 4 of the said Charter states that no one shall be subjected to torture or to inhuman or degrading treatment or punishment. On 9 April 2001, the Council approved 'Guidelines to the EU policy toward third countries, on torture and other cruel, inhuman or degrading treatment or punishment'. These guidelines refer to both the adoption of the EU Code of Conduct on Arms Exports in 1998 and the ongoing work to introduce EU-wide controls on the exports of paramilitary equipment as examples of measures to work effectively towards the prevention of torture and other cruel, inhuman or

degrading treatment or punishment within the Common Foreign and Security Policy. These guidelines also provide for third countries to be urged to prevent the use and production of, and trade in, equipment which is designed to inflict torture or other cruel, inhuman or degrading treatment or punishment and prevent the abuse of any other equipment to these ends. They also make the point that the prohibition of cruel, inhuman or degrading punishment imposes clear limits on the use of the death penalty. Therefore and in line with these texts, capital punishment is not to be considered a lawful penalty under any circumstances.

- (5) In its Resolution on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 25 April 2001 and supported by the EU Member States, the United Nations Commission on Human Rights called upon United Nations Members to take appropriate steps, including legislative measures, to prevent and prohibit, *inter alia*, the export of equipment which is specifically designed to inflict torture or other cruel, inhuman or degrading treatment or punishment. This point was confirmed by Resolutions adopted on 16 April 2002, 23 April 2003, 19 April 2004 and 19 April 2005.
- (6) On 3 October 2001, the European Parliament adopted a Resolution⁽³⁾ on the Council's second Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports, urging the Commission to act swiftly to bring forward an appropriate Community instrument banning the promotion, trade and export of police and security equipment the use of which is inherently cruel, inhuman or degrading, and to ensure that that Community instrument would suspend the transfer of police and security equipment the medical effects of which are not fully known, and of such equipment where its use in practice has revealed a substantial risk of abuse or unwarranted injury.
- (7) It is therefore appropriate to lay down Community rules on trade with third countries in goods which could be used for the purpose of capital punishment and in goods which could be used for the purpose of torture and other cruel, inhuman or degrading treatment or punishment. These rules are instrumental in promoting respect for human life and for fundamental human rights and thus serve the purpose of protecting public morals. Such rules should ensure that Community economic operators do not derive any benefits from trade which either promotes or otherwise facilitates the implementation of policies on capital punishment or on torture and other cruel, inhuman or degrading treatment or punishment, which are not compatible with the relevant EU Guidelines, the Charter of Fundamental Rights of the European Union and international conventions and treaties.
- (8) For the purpose of this Regulation, it is considered appropriate to apply the definitions of torture and other cruel, inhuman or degrading treatment or punishment laid down in the 1984 United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and in Resolution 3452 (XXX) of the General Assembly of the United Nations. These definitions should be interpreted taking into account the case law on the interpretation of the corresponding terms in the European Convention on Human Rights and in relevant texts adopted by the EU or its Member States.

- (9) It is considered necessary to prohibit exports and imports of equipment which has no practical use other than for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment.
- (10) It is also necessary to impose controls on exports of certain goods which could be used not only for the purpose of torture and other cruel, inhuman or degrading treatment or punishment, but also for legitimate purposes. These controls should apply to goods that are primarily used for law enforcement purposes and, unless such controls prove disproportionate, to any other equipment or product that could be abused for the purpose of torture and other cruel, inhuman or degrading treatment or punishment, taking into account its design and technical features.
- (11) As regards law enforcement equipment, it should be noted that Article 3 of the Code of Conduct for Law Enforcement Officials⁽⁴⁾ provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1990, provide that, in carrying out their duty, law enforcement officials should, as far as possible, apply non-violent means before resorting to the use of force and firearms.
- (12) In view of this, the Basic Principles advocate the development of non-lethal incapacitating weapons for use in appropriate situations, while admitting that the use of such weapons should be carefully controlled. In this context, certain equipment traditionally used by the police for self-defence and riot-control purposes has been modified in such a way that it can be used to apply electric shocks and chemical substances to incapacitate persons. There are indications that, in several countries, such weapons are abused for the purpose of torture and other cruel, inhuman or degrading treatment or punishment.
- (13) The Basic Principles stress that law enforcement officials should be equipped with equipment for self-defence. Therefore, this Regulation should not apply to trade in traditional equipment for self-defence, such as shields.
- (14) This Regulation should also apply to trade in some specific chemical substances used to incapacitate persons.
- (15) As regards leg-irons, gang-chains and shackles and cuffs, it should be noted that Article 33 of the United Nations Standard Minimum Rules for the Treatment of Prisoners⁽⁵⁾ provides that instruments of restraint shall never be applied as a punishment. Furthermore, chains and irons are not to be used as restraints. It should also be noted that the United Nations Standard Minimum Rules for the Treatment of Prisoners provide that other instruments of restraint shall not be used except as a precaution against escape during a transfer, on medical grounds as directed by a medical officer, or, if other methods of control fail, in order to prevent a prisoner from injuring himself or others, or from damaging property.
- (16) Taking into account the fact that some Member States have already prohibited exports and imports of such goods, it is appropriate to grant Member States the right to prohibit

exports and imports of leg-irons, gang-chains and portable electric shock devices other than electric shock belts. Member States should also be empowered to apply export controls on handcuffs having an overall dimension, including chain, exceeding 240 mm when locked, if they so wish.

- (17) This Regulation shall be construed as not affecting the existing rules on export of tear gases and riot control agents⁽⁶⁾, of firearms, of chemical weapons and of toxic chemicals.
- (18) It is appropriate to provide for specific exemptions from the export controls in order not to impede the functioning of the police forces of the Member States and the execution of peace keeping or crisis management operations and, subject to review at a later stage, in order to allow transit of foreign goods.
- (19) The Guidelines to the EU Policy toward third countries on torture and other cruel, inhuman or degrading treatment or punishment provide, *inter alia*, that the Heads of Mission in third countries will include in their periodic reports an analysis of the occurrence of torture and other cruel, inhuman or degrading treatment or punishment in the State of their accreditation, and the measures taken to combat it. It is appropriate for the competent authorities to take these and similar reports made by relevant international and civil society organisations into account when deciding on requests for authorisations. Such reports should also describe any equipment used in third countries for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment.
- (20) In order to contribute to the abolition of the death penalty in third countries and to the prevention of torture and other cruel, inhuman or degrading treatment or punishment, it is considered necessary to prohibit the supply to third countries of technical assistance related to goods which have no practical use other than for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment.
- (21) The measures of this Regulation are intended to prevent both capital punishment and torture and other cruel, inhuman or degrading treatment or punishment in third countries. They comprise restrictions on trade with third countries in goods that could be used for the purpose of capital punishment or for the purpose of torture and other cruel, degrading or inhuman treatment or punishment. It is not considered necessary to establish similar controls on transactions within the Community as, in the Member States, capital punishment does not exist and Member States will have adopted appropriate measures to outlaw and prevent torture and other cruel, inhuman or degrading treatment or punishment.
- (22) The aforementioned Guidelines state that, in order to meet the objective of taking effective measures against torture and other cruel, inhuman or degrading treatment or punishment, measures should be taken to prevent the use, production and trade of equipment which is designed to inflict torture or other cruel, inhuman or degrading treatment or punishment. It is up to the Member States to impose and enforce the necessary restrictions on the use and production of such equipment.

- (23) In order to take into account new data and technological developments, the lists of goods covered by this Regulation should be kept under review and provision should be made for a specific procedure to amend these lists.
- (24) The Commission and the Member States should inform each other of the measures taken under this Regulation and of other relevant information at their disposal in connection with this Regulation.
- (25) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽⁷⁾.
- (26) Member States should lay down rules on penalties applicable to infringements of the provisions of this Regulation and ensure that they are implemented. Those penalties should be effective, proportionate and dissuasive.
- (27) Nothing in this Regulation constrains any powers under and pursuant to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code⁽⁸⁾ and its implementing provisions, as laid down in Commission Regulation (EEC) No 2454/93⁽⁹⁾.
- (28) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union,

HAS ADOPTED THIS REGULATION:

CHAPTER I

Subject matter, scope and definitions

Article 1

Subject matter and scope

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

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

Article 2

Definitions

For the purposes of this Regulation:

- (a) ‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from that person or from a third person information or a confession, punishing that person for an act that either that person or a third person has committed or is suspected of having committed,

or intimidating or coercing that person or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted either by or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity. It does not, however, include pain or suffering arising only from, inherent in or incidental to, lawful penalties;

- (b) ‘other cruel, inhuman or degrading treatment or punishment’ means any act by which significant pain or suffering, whether physical or mental, is inflicted on a person, when such pain or suffering is inflicted either by or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity. It does not, however, include pain or suffering arising only from, inherent in or incidental to, lawful penalties;
- (c) ‘law enforcement authority’ means any authority in a third country responsible for preventing, detecting, investigating, combating and punishing criminal offences, including, but not limited to, the police, any prosecutor, any judicial authority, any public or private prison authority and, where appropriate, any of the state security forces and military authorities;
- (d) ‘export’ means any departure of goods from the customs territory of the Community, including the departure of goods that requires a customs declaration and the departure of goods after their storage in a free zone of control type I or free warehouse within the meaning of Regulation (EEC) No 2913/92;
- (e) ‘import’ means any entry of goods into the customs territory of the Community, including temporary storage, the placing in a free zone or free warehouse, the placing under a suspensive procedure and the release for free circulation within the meaning of Regulation (EEC) No 2913/92;
- (f) ‘technical assistance’ means any technical support related to repairs, development, manufacture, testing, maintenance, assembly or any other technical service, and may take forms such as instruction, advice, training, transmission of working knowledge or skills or consulting services. Technical assistance includes verbal forms of assistance and assistance provided by electronic means;
- (g) ‘museum’ means a non-profit making, permanent institution in the service of society and of its development, and open to the public, which acquires, conserves, researches, communicates and exhibits, for purposes of study, education and enjoyment, material evidence of people and their environment;
- (h) ‘competent authority’ means an authority of one of the Member States, as listed in Annex I, which in accordance with Article 8(1) is entitled to make a decision on an application for an authorisation;
- (i) ‘applicant’ means
 - 1. in the case of exports referred to in Article 3 or 5, any natural or legal person that holds a contract with a consignee in a country to which the goods will be exported and that has the power for determining the sending of goods controlled by this Regulation out of the customs territory of the Community at the time when the customs declaration is accepted. If no export contract has been concluded or if the holder of the contract does not act on its own behalf, the power for determining the sending of the item out of the customs territory of the Community shall be decisive;

2. where, in the case of such exports, the benefit of a right to dispose of the goods belongs to a person established outside the Community pursuant to the contract on which the exports are based, the contracting party established in the Community;
3. in the case of supplies of technical assistance referred to in Article 3, the natural or legal person that will supply the service; and
4. in the case of imports and supplies of technical assistance referred to in Article 4, the museum that will display the goods.

CHAPTER II

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

Article 3

Export prohibition

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

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

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.

Article 4

Import prohibition

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

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

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

CHAPTER III

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

Article 5

Export authorisation requirement

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

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

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

Article 6

Criteria for granting export authorisations

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

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.

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.

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.

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.

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.

CHAPTER IV

Authorisation procedures

Article 8

Applications for authorisations

1 An authorisation for export and import and for the supply of technical assistance shall be granted only by the competent authority of the Member State listed in Annex I where the applicant is established.

2 Applicants shall supply the competent authority with all relevant information on the activities for which an authorisation is required.

Article 9

Authorisations

1 Authorisations for export and import shall be issued on a form consistent with the model set out in Annex V and shall be valid throughout the Community. The period of validity of an authorisation shall be from three to twelve months with a possible extension of up to 12 months.

2 The authorisation may be issued by electronic means. The specific procedures shall be established on a national basis. Member States availing themselves of this option shall inform the Commission.

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

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

Article 10

Customs formalities

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

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

Article 11

Notification and consultation requirement

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

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

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

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

CHAPTER V

General and final provisions

Article 12

Amendment of Annexes

1 The Commission shall be empowered to amend Annex I. The data regarding competent authorities of the Member States shall be amended on the basis of information supplied by the Member States.

2 In accordance with the procedure referred to in Article 15(2), the Commission shall be empowered to amend Annexes II, III, IV and V.

Article 13

Exchange of information between Member States' authorities and the Commission

1 Without prejudice to Article 11, the Commission and the Member States shall, upon request, inform each other of the measures taken under this Regulation and supply each other with any relevant information at their disposal in connection with this Regulation, in particular information on authorisations granted and refused.

2 Relevant information on authorisations granted and refused shall comprise at least the type of decision, the grounds for the decision or a summary thereof, the names of the consignees and, if they are not the same, of the end-users as well as the goods concerned.

3 Member States, if possible in cooperation with the Commission, shall make a public, annual activity report, providing information on the number of applications received, on the goods and countries concerned by these applications, and on the decisions they have taken on these applications. This report shall not include information the disclosure of which a Member State considers to be contrary to the essential interests of its security.

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

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

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⁽¹⁰⁾ 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⁽¹⁾.

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

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

3 The Committee shall adopt its rules of procedure.

Article 16

Implementation

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

Article 17

Penalties

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

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

Article 18

Territorial scope

1 This Regulation shall apply to:

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

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

Article 19

Entry into force

This Regulation shall enter into force on 30 July 2006.

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

Done at Luxembourg, 27 June 2005.

For the Council

The President

L. LUX

ANNEX I

LIST OF AUTHORITIES REFERRED TO IN ARTICLES 8 AND 11

A. Authorities of the Member States

BELGIUM

Ministerie van Economie, Energie, Handel en Wetenschapsbeleid

Directoraat E4: Economisch Potentieel, Markttoegangsbeleid, Tarifaire en Non-tarifaire Maatregelen

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Annex III, No 2 and 3

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Annex II and Annex III, No 1

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Ministério das Finanças

Direcção-Geral das Alfândegas e dos Impostos Especiais de Consumo

Direcção de Serviços de Licenciamento

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B. Address for notifications to the Commission:

COMMISSION OF THE EUROPEAN COMMUNITIES

Directorate-General for External Relations

Directorate A: Common Foreign and Security Policy (CFSP) and European Security and Defence Policy (ESDP): Commission Coordination and contribution

Unit A 2: Legal and institutional matters, CFSP Joint Actions, Sanctions, Kimberley Process

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ANNEX II

LIST OF GOODS REFERRED TO IN ARTICLES 3 AND 4

Note: this list does not cover medical-technical goods

CN code	Description
1. Goods designed for the execution of human beings, as follows:	
ex 4421 90 98 ex 8208 90 00	1.1. Gallows and guillotines
ex 8543 89 95 ex 9401 79 00 ex 9401 80 00 ex 9402 10 00 ex 9402 90 00	1.2. Electric chairs for the purpose of execution of human beings
ex 9406 00 38 ex 9406 00 80	1.3. Air-tight vaults, made of e.g. steel and glass, designed for the purpose of execution of human beings by the administration of a lethal gas or substance
ex 8413 81 90 ex 9018 90 50 ex 9018 90 60	1.4. Automatic drug injection systems designed for the purpose of

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Note: this list does not cover medical-technical goods

ex 9018 90 85	execution of human beings by the administration of a lethal chemical substance
---------------	--

2. Goods designed for restraining human beings, as follows:

ex 8543 89 95	2.1. Electric-shock belts designed for restraining human beings by the administration of electric shocks having a no-load voltage exceeding 10 000 V
---------------	--

ANNEX III

LIST OF GOODS REFERRED TO IN ARTICLE 5

CN code	Description
1. Goods designed for restraining human beings, as follows:	
ex 9401 61 00 ex 9401 69 00 ex 9401 71 00 ex 9401 79 00 ex 9402 90 00 ex 9403 20 91 ex 9403 20 99 ex 9403 50 00 ex 9403 70 90 ex 9403 80 00	1.1. Restraint chairs and shackle boards Note: This item does not control restraint chairs designed for disabled persons.
ex 7326 90 98 ex 8301 50 00 ex 3926 90 99	1.2. Leg-irons, gang-chains, shackles and individual cuffs or shackle bracelets Note: This item does not control 'ordinary handcuffs'. Ordinary handcuffs are handcuffs which have an overall dimension including chain, measured from the outer edge of one cuff to the outer edge of the other cuff, between 150 and 280 mm when locked and have not been modified to cause physical pain or suffering.
ex 7326 90 98 ex 8301 50 00 ex 3926 90 99	1.3. Thumb-cuffs and thumb-screws, including serrated thumb-cuffs

2. Portable devices designed for the purpose of riot control or self-protection, as follows:

ex 8543 89 95 ex 9304 00 00	<p>2.1. Portable electric shock devices, including but not limited to, electric shock batons, electric shock shields, stun guns and electric shock dart guns having a no-load voltage exceeding 10 000 V</p> <p>Notes:</p> <p>1. This item does not control electric shock belts as described in item 2.1 of Annex II.</p> <p>2. This item does not control individual electronic shock devices when accompanying their user for the user's own personal protection.</p>
--------------------------------	--

3. Substances for the purpose of riot control or self-protection and related portable dissemination equipment, as follows:

ex 8424 20 00 ex 9304 00 00	<p>3.1. Portable devices for the purpose of riot control or self-protection by the administration or dissemination of an incapacitating chemical substance</p> <p>Note: This item does not control individual portable devices, even if containing a chemical substance, when accompanying their user for the user's own personal protection.</p>
ex 2924 29 95	3.2. Pelargonic acid vanillylamide (PAVA) (CAS 2444-46-4)
ex 2939 99 00	3.3. Oleoresin capsicum (OC) (CAS 8023-77-6)

ANNEX IV

List of territories of Member States referred to in Article 5(2)

DENMARK:

— Greenland

FRANCE:

— New Caledonia and Dependencies,

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- French Polynesia,
 - French Southern and Antarctic Territories,
 - Wallis and Futuna Islands,
 - Mayotte,
 - St Pierre and Miquelon.
- GERMANY:
- Büsingen

ANNEX V

Export or import authorisation form referred to in Article 9(1)

Technical specification:

The following form shall measure 210×297 mm with a maximum tolerance of 5 mm less and 8 mm more. The boxes are based on a unit of measurement of one tenth of an inch horizontally and one sixth of an inch vertically. The subdivisions are based on a unit of measurement of one tenth of an inch horizontally.

EUROPEAN COMMUNITY

1 Applicant (full name, address, customs number) Type: <input type="checkbox"/> <input type="checkbox"/>		AUTHORISATION FOR EXPORT OR IMPORT OF GOODS THAT COULD BE USED FOR TORTURE (REGULATION (EC) No 1236/2005)	
2 Consignee (full name and address)		3 Authorisation No <input type="checkbox"/> Export <input type="checkbox"/> Import	
		4 Expiry date <input type="text"/>	
5 Agent/Representative (if different from applicant)		6 Country where the goods are located Code	
		7 Country of destination Code	
		8 Member State where a Customs procedure will take place	
9 End-user (full name and address)		Issuing authority	
10 Description of Item		11 Item No 1	12 CN code
			13 Quantity
14 Specific requirements and conditions			
10 Description of item		11 Item No 2	12 CN code
			13 Quantity
14 Specific requirements and conditions			
10 Description of item		11 Item No 3	12 CN code
			13 Quantity
14 Specific requirements and conditions			
15 The undersigned certifies that, pursuant to Article 9(1) of Regulation 1236/2005 and subject to the requirements, conditions and procedures set out in this form and the attachment(s) to which it refers, the competent authority has authorised [an export] [an import] (delete as not appropriate) concerning the goods described in box 10.			
16 Number of attachments			
Done at (place, date)			
Name (typed or capitals)			
Signature:		(Stamp of issuing authority)	

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<i>Note:</i> In part of column 17, write the quantity still available and in part 2 of column 17, write the quantity deducted on this occasion			
3 Authorisation No			
11 Item No	17 Net quantity (Net mass/ other unit with indication of unit)	18 Customs Document (Type and number) and date of deduction	19 Member State, name and signature, stamp of deduction
	1.		
	2.		
	1.		
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Explanatory Authorisation for export or import of goods that could be used for torture (Regulation notes to (EC) No 1236/2005), the form

This authorisation form shall be used to issue an authorisation for an export or import of goods in accordance with 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. It should not be used to authorise the supply of technical assistance.

Issuing authority is the authority defined in Article 2(h) of Council Regulation No 1236/2005 which is set out in Annex I to this Regulation.

Authorisations shall be issued on this single page form, which should be printed on both sides. The competent customs office deducts the exported quantities from the total quantity available. It has to make sure that the different items subject to the authorisation are clearly separated for this purpose.

Where national procedures of the Member States require additional copies of the form (as for example for the application) this authorisation form may be included in a form set containing the necessary copies following the national rules applicable. In the box above box 3 of each specimen and in the margin on the left it should be clearly indicated for which purpose (e.g. application, copy for applicant) the relevant copies are intended. One specimen only shall be the authorisation form set out in Annex V to Regulation (EC) No 1236/2005.

Box 1:	<i>Applicant:</i>	Please indicate the applicant's name and the full address. The applicant's customs number may also be indicated (optional in most cases). The type of applicant should be indicated (optional) in the relevant box, using the numbers 1, 2 or 4 referring to the points set out in the definition in Article 2(i) of Regulation (EC) No 1236/2005.
Box 3:	<i>Authorisation No:</i>	Please fill out the number and tick either the export or the import box. See Article 2(d) and 2(e) and Article 17 of the Regulation for the definitions of the terms 'export' and 'import'.
Box 4:	<i>Expiry date:</i>	Please state day (two digits), month (two digits) and year (four digits).
Box 5:	<i>Agent/representative:</i>	Please indicate the name of a duly authorised representative or (customs) agent acting on behalf of the applicant, if the application is not presented by the applicant. See also Article 5 of Council Regulation (EEC) No 2913/92.
Box 6:	<i>Country where the goods are located:</i>	Please state both the name of the country concerned and the relevant country code taken from the codes

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		established pursuant to Council Regulation (EC) No 1172/95 (OJ L 118, 25.5.1995, p. 10). See Commission Regulation (EC) No 1779/2002 (OJ L 296, 5.10.2002, p. 6).
Box 7:	<i>Country of destination:</i>	Please state both the name of the country concerned and the relevant country code taken from the codes established pursuant to Council Regulation (EC) No 1172/95, (OJ L 118, 25.5.1995, p. 10). See Commission Regulation (EC) No 1779/2002, OJ L 296, 5.10.2002, p. 6.
Box 10:	<i>Description of item:</i>	Please consider including data on packaging of the goods concerned. Note that the value of the goods may also be indicated in box 10. If there is not sufficient space in box 10, please continue on an attached blank sheet, mentioning the authorisation number. Please indicate the number of attachments in box 16. This form is designed for use for up to three different types of goods (see Annexes II and III to the Regulation). If it is necessary to authorise the export or import of more than three types of goods, please grant two authorisations.
Box 11	<i>Item No.:</i>	This box needs to be completed on the back of the form only. Please ensure that the Item No corresponds to the printed item number in Box 11 found next to the description of the relevant item on the view side.
Box 14:	<i>Specific requirements and conditions:</i>	If there is not sufficient space in box 14, please continue on an attached blank sheet, mentioning the authorisation number. Please indicate the

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		number of attachments in box 16.
Box 16:	<i>Number of attachments:</i>	Please indicate the number of attachments, if any (see explanations to boxes 10 and 14).

- (1) Resolution 3452 (XXX) of 9.12.1975 of the General Assembly of the United Nations.
- (2) [OJ C 364, 18.12.2000, p. 1.](#)
- (3) [OJ C 87 E, 11.4.2002, p. 136.](#)
- (4) Resolution 34/169 of 17.12.1979 of the General Assembly of the United Nations.
- (5) Approved by Resolutions 663 C (XXIV) of 31.7.1957 and 2076 (LXII) of 13.5.1977 of the Economic and Social Council of the United Nations.
- (6) See item ML 7(c) of the Common Military List of the European Union, [OJ C 127, 25.5.2005, p. 1.](#)
- (7) [OJ L 184, 17.7.1999, p. 23.](#)
- (8) [OJ L 302, 19.10.1992, p. 1.](#) Regulation as last amended by (EC) No 648/2005 of the European Parliament and of the Council ([OJ L 117, 4.5.2005, p. 13.](#))
- (9) [OJ L 253, 11.10.1993, p. 1.](#) Regulation as last amended by Regulation (EC) No 883/2005 ([OJ L 148, 11.6.2005, p. 5.](#))
- (10) [OJ L 145, 31.5.2001, p. 43.](#)
- (11) [OJ L 324, 27.12.1969, p. 25.](#) Regulation as last amended by Regulation (EEC) No 3918/91 ([OJ L 372, 31.12.1991, p. 31.](#))