Regulation (EU) 2019/125 of the European Parliament and of the Council of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (codification)

REGULATION (EU) 2019/125 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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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

(codification)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure[(1)],

Whereas:

(1) Council Regulation (EC) No 1236/2005[(2)] has been substantially amended several times[(3)]. In the interests of clarity and rationality, that Regulation should be codified.

(2) Pursuant to Article 2 of the Treaty on European Union, respect for human rights constitutes one of the values common to the Member States. The European 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 concluded with third countries.

(3) 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 on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[(4)] 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.

(4) Article 2(2) of the Charter of Fundamental Rights of the European Union (Charter) states that no one shall be condemned to the death penalty or executed.

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On 22 April 2013, the Council approved 'EU Guidelines on death penalty' and resolved that the Union would work towards the universal abolition of the death penalty.

(5) Article 4 of the Charter states that no one shall be subjected to torture or to inhuman or degrading treatment or punishment. On 20 March 2012, the Council approved 'Guidelines to EU policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment (An up-date of the Guidelines)'. In accordance with those guidelines, third countries should 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. Moreover, the prohibition of cruel, inhuman or degrading punishment should impose clear limits on the use of the death penalty. Therefore, capital punishment is not to be considered a lawful penalty under any circumstances.

(6) It is therefore appropriate to lay down Union 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 Union 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 and international conventions and treaties.

(7) For the purpose of this Regulation, it is considered appropriate to apply the definition of torture 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. That definition should be interpreted taking into account the case-law on the interpretation of the corresponding term in the European Convention on Human Rights and in relevant texts adopted by the Union or its Member States. The definition of 'other cruel, inhuman or degrading treatment or punishment', which is not found in that Convention, should be in line with the case law of the European Court of Human Rights. The meaning of the term 'lawful penalties' in the definitions of 'torture' and 'other cruel, inhuman or degrading treatment or punishment', should take into account the Union's policy on capital punishment.

(8) It is considered necessary to prohibit exports and imports 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 and to prohibit the supply of technical assistance in respect of such goods.

(9) 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.

(10) 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

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punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment.

(11) It is also 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.

(12) In order to prevent economic operators from deriving benefits from transporting goods which are intended to be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, and which pass through the customs territory of the Union on their way to a third country, it is necessary to prohibit transport within the Union of such goods, if they are listed in Annex II to this Regulation.

(13) It should be possible for Member States to apply measures restricting the supply of certain services in relation 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, in compliance with the applicable Union rules.

(14) This Regulation lays down an export authorisation system designed to prevent certain goods from being used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment.

(15) It is therefore 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.

(16) As regards law enforcement equipment, it should be noted that Article 3 of the Code of Conduct for Law Enforcement Officials[(5)] 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.

(17) 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.

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(18) 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.

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

(20) 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[(6)] provides that instruments of restraint must 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 must 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.

(21) In order to protect staff and other people against spitting, prisoners are sometimes made to wear a so-called spit hood. As such a hood covers the mouth and often also the nose, it presents an inherent risk of asphyxiation. If it is combined with restraints, such as handcuffs, there is also a risk of neck injury. Exports of spit hoods should therefore be controlled.

(22) In addition to portable weapons, the scope of the export controls should include fixed or mountable electric discharge weapons covering a wide area and targeting multiple individuals. Such weapons are often presented as so-called non-lethal weapons but present, at the very least, the same risk of causing severe pain or suffering as portable electric discharge weapons.

(23) As fixed devices for dissemination of irritating chemical substances for use inside a building are being marketed, and indoor use of such substances presents a risk of causing severe pain or suffering not associated with traditional use outdoors, exports of such equipment should be controlled.

(24) Export controls should also be applied to fixed or mountable equipment for the dissemination of incapacitating or irritating substances which covers a wide area, where such equipment is not yet subject to export controls in accordance with Council Common Position 2008/944/CFSP[(7)]. Such equipment is often presented as so-called non-lethal technology but presents at the very least the same risk of causing severe pain or suffering as portable weapons and devices. Although water is not one of the incapacitating or irritating chemical agents, water cannons may be used to disseminate such agents in liquid form and their exports should be controlled.

(25) The export controls concerning oleoresin capsicum (OC) and pelargonic acid vanillylamide (PAVA) should be supplemented by export controls on certain mixtures containing these substances which can be administered as such as incapacitating or irritating agents or used for manufacturing of such agents. Where appropriate, references to incapacitating or irritating chemical agents should be construed as including oleoresin capsicum and the relevant mixtures containing it.

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(26) 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 peacekeeping or crisis management operations.

(27) 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.

(28) 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 this Regulation to prevent the relevant goods from being used for torture or for other cruel, inhuman or degrading treatment or punishment.

(29) In some cases, medicinal products exported to third countries have been diverted and used for capital punishment, notably by administering a lethal overdose by means of injection. The Union disapproves of capital punishment in all circumstances and works towards its universal abolition. The exporters objected to their involuntary association with such use of the products they developed for medical use.

(30) It is therefore necessary to impose controls on exports of certain goods which could be used for capital punishment in order to prevent the use of certain medicinal products for that purpose and to ensure that all Union exporters of medicinal products are subject to uniform conditions in this regard. The relevant medicinal products were developed for, *inter alia*, anaesthesia and sedation.

(31) 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.

(32) 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.

(33) 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 lay down 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