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COM(2022) 568 final

**REPORT FROM THE COMMISSION**  
**TO THE EUROPEAN PARLIAMENT**

**on the activities and consultations of the Anti-Torture Coordination Group referred to in Article 31 of Regulation (EU) 2019/125 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment**

## 1. Introduction

Article 31(4) of Regulation (EU) 2019/125 of 16 January 2019 ('the Regulation') concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment<sup>1</sup> requires the Commission to submit an annual report to the European Parliament on the activities, examinations and consultations of the Anti-Torture Coordination Group (ATCG). The report must not undermine the commercial interests of natural or legal persons.

This report provides information on the ATCG's activities in 2021.

## 2. Regulatory framework

The Regulation's objective is to prevent capital punishment, on the one hand, and torture and other cruel, inhuman or degrading treatment or punishment in countries outside the EU, on the other, by restricting trade in certain goods. It distinguishes between:

- goods that are inherently abusive and should not be traded at all (Annex II); and
- goods that can have legitimate uses, such as law enforcement equipment (Annex III) and goods for therapeutic use (Annex IV).

Trade in goods listed in Annex III and Annex IV is subject to certain restrictions. In particular, the Regulation:

- i. prohibits the import into, export from and transit through the EU of goods listed in Annex II, which have no practical use other than for the purposes of capital punishment or torture. It prohibits the provision of any technical assistance relating to such goods, including training in how to use them. It also prohibits advertising such goods in print media, on the internet or on television or radio, and displaying or offering them for sale at an exhibition or trade fair;
- ii. requires prior authorisation, case by case, for exports of goods listed in Annex III, which could be used for the purposes of capital punishment or torture, but may have other legitimate uses (e.g. for law enforcement). A prior export authorisation is also required for supplying technical assistance or brokering services relating to this category of goods. Annex III does not include:
  - a) firearms subject to Regulation (EU) No 258/2012<sup>2</sup>;
  - b) dual-use items subject to Regulation (EU) 2021/821<sup>3</sup>; or
  - c) goods subject to the terms of Council Common Position 2008/944/CFSP<sup>4</sup>; and

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<sup>1</sup> OJ L 30, 31.1.2019, p. 1. Having been amended several times, 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 (OJ L 200, 30.7.2005, p. 1) was subsequently codified as Regulation (EU) 2019/125.

<sup>2</sup> Regulation (EU) No 258/2012 of 14 March 2012 implementing Article 10 of the United Nations Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against Transnational Organised Crime (UN Firearms Protocol), and establishing an export authorisation, and import and transit measures for firearms, their parts and components and ammunition (OJ L 94, 30.3.2012, p. 1).

<sup>3</sup> Regulation (EU) 2021/821 of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (recast) (OJ L 206, 11.6.2021, p. 1).

- iii. regulates trade in chemicals and pharmaceutical substances (Annex IV) that could be used for capital punishment (e.g. through lethal injection). A specific licence authorisation (Union general export authorisation (GEA)) has been introduced to control the export of such anaesthetic chemicals and prevent their transfer for use in lethal injection executions, without limiting trade in them for medical, veterinary or other legitimate purposes.

### **3. Activities of the Anti-Torture Coordination Group**

The ATCG was set up pursuant to Regulation (EU) 2016/2134 of the European Parliament and of the Council<sup>5</sup> to examine questions concerning the application of the Regulation.

The ATCG serves as a platform for Member State experts and the Commission services to exchange information on administrative practices and discuss issues of interpretation of the Regulation, technical issues with the goods listed, developments relating to the Regulation, and any other matters that may arise. The Commission also consults the ATCG when preparing delegated acts, in accordance with the Interinstitutional Agreement of 13 April 2016 on Better Law-Making<sup>6</sup>.

The ATCG met three times in 2021, on 10 March, 10 June and 24 November, in a virtual format, to exchange information on a number of issues (summarised below) concerning the implementation of the Regulation.

#### **3.1 Developments relating to the basic act**

The Commission informed the ATCG of the report adopted on the use of delegation of power conferred on the Commission under the Regulation (EU) 2019/125<sup>7</sup>. Article 29(2) of the Regulation provides that the delegation of power 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. The report proposed to prolong for a further period of five years the delegation of power to adopt delegated acts. There was no opposition to such extension. The extension was deemed necessary in order to, inter alia, respond when new goods are developed or when one or more third countries meet the requirements for the application of the Union general export authorisation, violate an international commitment to abolish capital punishment for all crimes or when the details of the competent Member State authorities change.

No delegated acts amending the Regulation were adopted in 2021.

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<sup>4</sup> Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment (OJ L 335, 13.12.2008, p. 99).

<sup>5</sup> 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, p. 1).

<sup>6</sup> OJ L 123, 12.5.2016, p. 1.

<sup>7</sup> COM(2021) 75 final, 22.02.2021

### **3.2 Trade information: data reporting**

The Commission presented the state of play on the annual report referred to in Article 26(3). In particular, the 2020 data from all the authorities in the Member States as well as from the United Kingdom, constituting the basis for the preparation by the Commission of its annual report to the European Parliament and to the Council, was presented. The Commission furthermore provided information about the trade data in that report once it was adopted<sup>8</sup>.

In this context, the Commission drew the attention of the ATCG to the fact that it is compulsory for competent authorities to notify when denials are issued by means of the Dual-Use Electronic System (DUeS).

### **3.3 Implementation issues related to Regulation (EU) 2019/125**

The Commission held, on request of one Member State, an exchange of views on use of water cannons, and more generally on the use of other goods designed for riot control or self-protection by law enforcement agents, to police assemblies and demonstration, which is becoming a matter of increasing concern. The ATCG acknowledged the challenges concerning water cannons as their use could be diverted from firefighting to abusive use against protestors. In this context, the need to be particularly vigilant in assessing the potential risks in the country of export was noted.

### **3.4 DUes update**

The Commission informed the ATCG of its decision on United Kingdom's access to networks, information systems and data bases (on the basis of Article 13(5) of the Protocol on Ireland/Northern Ireland) and its annex adopted on 16 October 2020<sup>9</sup>. According to that decision, the United Kingdom is granted partial access (write access and read access) to DUes. This access is considered necessary for the United Kingdom to comply with its obligations under the Protocol on Ireland/Northern Ireland. The Commission hence informed of a new notification function in DUeS to support the correct implementation of Article 23(5) of the Regulation to allow the exchange of information between the United Kingdom and the Commission and between the United Kingdom and one Member State.

The Commission furthermore informed the ATCG about the Second Factor Authentication for DUeS users, operational from 3 December 2021, in line with the security policy of the Commission for all information systems managing sensitive information.

### **3.5 Commission's informal group of experts**

The Commission informed the ATCG about the informal group of experts formed in line with the conclusions of its review report<sup>10</sup>. The informal group brings together different perspectives (e.g., advocacy, law enforcement, research, and customs). One Member State (Germany) has nominated a representative to the informal group. The informal group also includes representatives from the Council of Europe and the UN Office of the High Commissioner for Human Rights (OHCHR). Its function is strictly advisory and complementary to the one provided by the Anti-Torture Coordination Group (ATCG).

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<sup>8</sup> COM(2021) 632 final, 14.10.2021.

<sup>9</sup> C(2020) 7126 final, 16.10.2020.

<sup>10</sup> COM(2020) 343 final, 30.7.2020.

The informal group has been providing technical support in an advisory capacity on different aspects, such as the scope of banned or regulated goods towards a more robust implementation of the Regulation. In this regard, the ATCG was debriefed about exchange of views on the trends and challenges concerning weapons and devices designed for the purpose of riot control or self-protection, policing assemblies and demonstrations. Certain riot control goods, currently not covered by the Regulation (such as common tear gases), are frequently used to facilitate or conduct internal repression. Adding standard batons and rubber bullets to the list of controlled goods in the Regulation was raised. The use of acoustic devices or dazzling laser technology in crowd control situations is another area, which was raised as worth examining.

The informal group has been instrumental in enhancing awareness of the Regulation also by building bridges with the work of the United Nations Group of Governmental Experts (UN GGE), thereby providing an important link between the Regulation and international efforts to promote torture-free trade (see point 3.6 below).

### **3.6 Torture-free trade — regional and international developments**

The ATCG served as a platform for exchanging information and raising awareness on regional and international developments in the field of Torture-free trade.

The Commission updated the ATCG delegates on the steps that followed the United Nations Secretary-General's report, 'Towards torture-free trade: examining the feasibility, scope and parameters for possible common international standards'<sup>11</sup>, in particular on the establishment of the UN Group of Governmental Experts (UN GGE) to continue work on basis of that report.

After some delays in the nomination of the experts, the UN GGE was formally established with two experts per regional UN group in October 2021. The Commission briefed the ATCG on the UN consultation process with UN member states, civil society and external experts, which would contribute the preparation of UN GGE report.

Some EU Member States participated in the UN consultative process with the UNGGE.

The UNGGE report, adopted on 30 May 2022, addressed the following topics: (i) feasibility of common international standards; (ii) scope of goods to be considered; and (iii) draft parameters for a range of options to establish common international standards on the matter.

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<sup>11</sup> Report of Secretary General A/74/969 of 28 July 2020.