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INFORMATION NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a Regulation of the European Parliament and of the Council 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 – Outcome of European Parliament proceedings (Strasbourg, 26 to 29 October 2015)

I. INTRODUCTION

The rapporteur, Ms Marietje SCHAAKE (ALDE, NL), presented a report on the abovementioned proposal, on behalf of the Committee on International Trade. The report contained 38 amendments (amendments 1 - 38).

In addition, two other amendments (amendments 39 and 40) had been tabled by the EFDD political group.

II. DEBATE

The debate on the proposal took place on 26 October 2015. The rapporteur, Ms Marietje SCHAAKE (ALDE, NL) opened the debate and:

- pointed out that the issue on the table demonstrated that trade policy is an integral part of the EU's foreign policy and that is was vital to continue to develop value-based trade policies. The overhaul of the existing EU controls of trade in torture instruments was long overdue but also complicated by the absence of a multilateral export controls regime;

- supported the Commission's approach to strengthen the controls of torture goods to include certain medical substances and to broaden the scope to include brokering but without creating unnecessary burdens for legitimate trade;

- stated that work in the Committee had focused on:

  - updates needed to close the loopholes in the current EU regime, with the right mix of instruments;

  - despite the absence of a multilateral export controls regime, seeking coherence of the EU's export controls, including military, dual use, firearms and torture goods lists, without subjecting items to duplicate controls and making things more complicated;

  - ensuring that policies and systems were future–proof and flexible, so as to be able to adjust to changing technologies or changing realities elsewhere in the world;

  - providing an effective set of enforcement measures, including in relation to the marketing and financial services that do take place and are related to this industry;

  - improved reporting and exchange of information between Member States, inter alia to help states coordinate;

  - industry's own responsibility to make sure that the EU does not trade, broker, transfer or otherwise get involved with goods or services that are used for the death penalty or torture;

  - information and due involvement of the Parliament;

- welcomed the broad support in the Parliament to the goals of ending the death penalty and torture.

Commissioner MALMSTRÖM:

- agreed that although the elements dealt with in the proposal were highly technical, the underlying issue was highly political and sensitive - ending the death penalty, torture and ill-treatment, which were key priorities for all the work of the European Union;

- welcomed very much the effort done by the Parliament to amend the proposal. The Commission largely shared the spirit and the approach taken in the Parliament, although some of the amendments in the report called for measures without precedent in export-control legislation and could be a bit difficult to implement in practice;

- supported at least in general a number of specific amendments:

  - amendment 6 extending the proposed definition of 'broker' to cover nationals from Member States not resident or established in the Union. However, it could be difficult to enforce and compatibility with international law should be ensured;

  - amendments 9 and 10 on the transport of transiting goods whose export and import is prohibited by the regulation, as well as the related Amendment 15 (caution on the formulation, which had to be compatible with WTO requirements);

  - amendment 21 referring to the transmission of information to human rights oversight bodies (caution on drafting with reference to the legitimate interest in data protection);

  - amendments 18 on best practices for technical assistance, 19 on guidelines and 26 on the report published by the Commission on the implementation (provided that not an obligation for the Commission);

  - amendment 2 adding human dignity and then several other more technical amendments;

- had issues with:
    - the proposed end-use or catch-all clause (amendment 20) which was unprecedented in export-control legislation and could lead to the introduction of restrictions going beyond what is necessary and preventing a level playing field for exporters. This could present a challenge to the uniformity of the Union's trade policy. The Commission had proposed an urgency procedure, which it felt was more appropriate. However, the rationale of the amendment was understood and the underlying objectives were basically the same and the Commission was willing to look at a formula to reconcile the positions;
    - amendment 5 on the very broad definition of brokering services would be very difficult to monitor and control. The same objective could be met in another way though;
    - amendment 28 on the Coordination Group. She was in agreement on the usefulness and the objective behind the amendment but the amendment should be carefully drafted to ensure it would not be at odds with the agreed arrangement for delegated powers in the treaty;
    - amendments 33, 35 and 37 (on the country annex). There was nothing to show that the countries concerned would have applied the death penalty, despite their ratification of the protocol;
- was confident that solutions could be found on the points of divergence in order to achieve a workable and efficient system that was future proof and equipped to ensure rapid reaction when a risk would arise.

The rapporteur for the opinion of the Committee on Foreign Affairs, Ms Barbara LOCHBIHLER (Greens/EFA, DE) agreed that the aim was to close loopholes in the existing Council Regulation and urged the Commission to take up the Parliament's amendments. Important were in particular the amendments on prohibition of commercial marketing and promotion and of providing advice or training on the use of these goods, as well as the „targeted end use" clause.

On behalf of the EPP group, Mr Santiago FISAS AYXELÀ (ES):

- underlined the importance of the EU policy to eliminate capital punishment and inhumane treatment: it was a top priority in the EU human rights policy. EPP was clearly against the death penalty and torture. Therefore, the group was in favour of the control of exports of products that could be used to these ends;

- supported the report of the Committee because it was balanced proposal that would ensure human rights and contribute to eliminate trade in these products. The proposal for a Regulation would contribute to protect human life while ensuring that products could be used for legitimate purposes (e.g. in the case of medicinal products).

On behalf of the S&D group, Ms Inmaculada RODRÍGUEZ-PIÑERO FERNÁNDEZ (ES):

- stated that EU is committed to eradicate death penalty but this commitment is not worth much if not accompanied by firm and vigorous action like the Regulation currently under debate. The current Regulation adopted 10 years ago rather quickly became obsolete because of developments in manufacturing and market dynamics;

- welcomed the reform. The Committee had improved the proposal with an extension of the list of products that could be used for death penalty and torture and by establishing more efficient mechanisms for revising the list of banned products;

- argued that with this proposal no company or country would be able to be make money out of this trade. The proposal showed that trade policy was a fundamental instrument in defence of human rights.

On behalf of the ECR group, Mr Sander LOONES (BE):

- welcomed that the Parliament was taking a serious step in ensuring the control of products that could be used for the purposes of the death penalty and torture. This was done in a considered, clear, flexible and proportional way;

- mentioned as examples that the use a number of product lists that could be amended in a speedy manner, providing clarity to importers and exporters while ensuring flexibility. By specifically regulating medicinal products their lawful use would be better ensured. The text provided for correct controls without unnecessary burdens. That way a balanced model could be ensured and another ambitious but realistic step could be taken to promote our values.

On behalf of the EUL/NGL group, Ms Lola SÁNCHEZ CALDENTEY (ES):

- stated that it made sense not to allow trade in goods that were be used in inhumane practices. We shouldn't allow to export what is illegal in our own countries;

- underlined the importance of a system for efficient monitoring to ensure that Member States apply the rules. There should be a prohibition of the transit of such goods;

- called for going beyond current measures, e.g. by revising the trade agreements with those states that consistently violate human rights to forbid the sale of arms to these states.

On behalf of the Greens/EFA group, Ms Ska KELLER (DE):

- argued that this issue demonstrated that trade policy could actually do something good; that it could contribute to the coherence that is needed in respect of our values in the world;

- found that mainly thanks to the work and insistence of the Parliament a very good step had been taken with the update of the Regulation. In particular, she highlighted the catch-all clause providing the possibility to prevent new goods going out and being used for torture or execution;

- regretted somewhat that more was not done, e.g. a ban against advertising such goods outside the EU.

On behalf of the EFDD group, Ms Tiziana BEGHIN (IT):

- stated that this instrument was one of biggest successes of trade policy. The present update of the Regulation dealt with challenges of new technology and new materials. It was also important to fill in existing gaps in the dual use instruments;

- was convinced that when the new Regulation came into force, there would be better and tougher controls. It could no longer be tolerated that these products could be bought online or on commercial fairs across Europe. The "Cinque Stelle Movement" supported the report without reservation.

The subsequent speakers largely echoed the interventions of the rapporteur and the speakers of the political groups in their support for the Committee's report. The ENF group did not intervene in the debate.

III. VOTE

When it voted on the proposal on 27 October 2015, the European Parliament adopted 38 amendments to the proposal. All of the Committee's amendments were adopted; all but one (amendment 21) with more than 600 votes in favour. The amendments adopted are set out in the Annex.

The vote on the legislative resolution was postponed to a later session, thereby not closing the first reading. The matter was then referred back to the Committee, pursuant to Rule 61(2) of the Parliament's Rules of Procedure.

ANNEX

(27.10.2015)

Trade in certain goods which could be used for capital punishment, torture or other treatment or punishment ***I

Amendments adopted by the European Parliament on 27 October 2015 on the proposal for a regulation of the European Parliament and of the Council 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 (COM(2014)0001 – C7-0014/2014 – 2014/0005(COD))[1]

(Ordinary legislative procedure: first reading)

Amendment 1

Proposal for a regulation
Recital 8

Text proposed by the Commission	*Amendment*
(8) Granting a global authorisation would also be appropriate where a manufacturer needs to export medicinal products controlled by Regulation (EC) No 1236/2005 to a distributor in a country that has not abolished capital punishment, provided the exporter and the 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.	(8) Granting a global authorisation would also be appropriate where a manufacturer needs to export medicinal products controlled by Regulation (EC) No 1236/2005 to a distributor in a country that has not abolished capital punishment, provided the exporter and the 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***, for torture or for other cruel, inhuman or degrading treatment or punishment***.

Amendment 2

Proposal for a regulation
Recital 12

Text proposed by the Commission	*Amendment*
(12) It is necessary to prohibit brokers in	(12) It is necessary to prohibit brokers in

[1] The matter was referred back to the committee responsible for reconsideration pursuant to Rule 61(2), second subparagraph (A8-0267/2015)

the Union from providing brokering services in relation to goods whose export and import are prohibited as such goods have no practical use other than for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment. Prohibiting the provision of such services serves the purpose of protecting public morals.	the Union from providing brokering services in relation to goods whose export and import are prohibited as such goods have no practical use other than for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment. Prohibiting the provision of such services serves the purpose 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 of Fundamental Rights of the European Union***.

Amendment 3

Proposal for a regulation
Recital 19 a (new)

Text proposed by the Commission	*Amendment*
	(19a) A targeted end-use clause should be introduced in order for Member States to suspend or halt the transfer of security-related items not listed in Annexes II and III that clearly have no practical use other than for the purposes of capital punishment, torture or other cruel, degrading or inhuman treatment or punishment, or where there are reasonable grounds to believe that the transfer of those items would lead to the facilitation or the commission of capital punishment, torture or other cruel, degrading or inhuman treatment or punishment. Powers granted under the targeted end-use clause should not extend to medical products that could be used for the purpose of capital punishment,

Amendment 4

Proposal for a regulation
Article 1 – point 2 – point a a (new)

Regulation (EC) No 1236/2005

Article 2 – point f

Present text	*Amendment*
	(aa) Point (f) is replaced by the following:
(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;	(f) 'technical assistance' means any technical support related to repairs, development, manufacture, testing, maintenance, assembly***, usage, practices*** 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;

Amendment 5

Proposal for a regulation
Article 1 – point 2 – point c

Regulation (EC) No 1236/2005

Article 2 – point k – subparagraph 2

Text proposed by the Commission	*Amendment*
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;	For the purposes of this Regulation the provision of ancillary services is ***included in*** this definition. Ancillary services are transportation, financial services, insurance or re-insurance, or general advertising or promotion***, including via internet***;

Amendment 6

Proposal for a regulation
Article 1 – point 2 – point c

Regulation (EC) No 1236/2005

Article 2 – point l

Text proposed by the Commission	*Amendment*
(l) 'broker' means any natural or legal person or partnership resident or	(l) 'broker' means any natural or legal person or partnership resident or

established in a Member State of the Union that carries out services defined under point (k) ***from the Union into the territory of a third country;***	established in***, or a national of,*** a Member State of the Union***, or a subsidiary of a legal person or partnership,*** that carries out services defined under point (k);

Amendment 7

Proposal for a regulation
Article 1 – point 2 – point c

Regulation (EC) No 1236/2005

Article 2 – point m

Text proposed by the Commission	*Amendment*
(m) ”supplier of technical assistance' means any natural or legal person or partnership resident or established in a Member State of the Union that supplies technical assistance defined under point (f) ***from the Union into the territory of a third country***;	(m) ”supplier of technical assistance' means any natural or legal person or partnership resident or established in a Member State of the Union that supplies technical assistance defined under point (f);

Amendment 8

Proposal for a regulation
Article 1 – point 2 – point c

Regulation (EC) No 1236/2005

Article 2 – point n

Text proposed by the Commission	*Amendment*
(n) ‘exporter’ means any natural or legal person or partnership on whose behalf an export declaration is made, that is to say the person who, at the time when the 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 export contract has been concluded or if the holder of the contract does not act on its own behalf, the exporter means the person who has the necessary power for	(n) ‘exporter’ means any natural or legal person or partnership on whose behalf an export declaration is made, that is to say the person who, at the time when the 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 export contract has been concluded or if the holder of the contract does not act on its own behalf, the exporter means the person who has the necessary power for

determining the sending of the item out of the customs territory of the Union. Where the benefit of a right to dispose of the goods belongs to a person established outside the Union pursuant to the contract on which the export is based, the exporter shall be considered to be the contracting party established in the Union;	determining the sending of the item out of the customs territory of the Union. Where the benefit of a right to dispose of the goods belongs to a person established outside the Union pursuant to the contract on which the export is based, the exporter shall be considered to be the contracting party ***resident or*** established in the Union;

Amendment 9

Proposal for a regulation
Article 1 – point 2 – point c

Regulation (EC) No 1236/2005

Article 2 – point ra (new)

Text proposed by the Commission	*Amendment*
	(ra) 'transit' means a transport of non-Union goods, listed in Annexes, entering and passing through the customs territory of the Union with a destination outside the Union.

Amendment 10

Proposal for a regulation
Article 1 – point 3 a (new)

Regulation (EC) No 1236/2005

Article 4 b (new)

Text proposed by the Commission	*Amendment*
	(3a) The following article is inserted:
	'Article 4b
	Transit prohibition
	1. Any transit of goods listed in Annex II shall be prohibited, irrespective of the origin of such goods.
	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 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.'

Amendment 11

Proposal for a regulation
Article 1 – point 3 b (new)

Regulation (EC) No 1236/2005

Article 4 c (new)

Text proposed by the Commission	*Amendment*
	(3b) The following article is inserted:
	'Article 4c
	Prohibition of commercial marketing and promotion
	Online and offline commercial marketing and promotion activities within the Union, by any natural or legal person or partnership, for the purpose of the transfer of goods listed in Annex II shall be prohibited.'

Amendment 12

Proposal for a regulation
Article 1 – point 5

Regulation (EC) No 1236/2005

Article 6 – paragraph 1

Text proposed by the Commission	*Amendment*
1. Decisions on applications for authorisations in respect of the export of goods listed in ***Annex*** IIIa shall be taken by the competent authorities on a case by case basis, taking into account all relevant considerations, including in particular whether an application in respect of an essentially identical export has been	1. Decisions on applications for authorisations in respect of the export of goods listed in ***Annexes III and*** IIIa shall be taken by the competent authorities on a case by case basis, 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.	dismissed by another Member State in the preceding three years and considerations about intended end-use and the risk of diversion.

Amendment 13

Proposal for a regulation
Article 1 – point 5 a (new)

Regulation (EC) No 1236/2005

Article 6 – paragraph 1a (new)

Text proposed by the Commission	*Amendment*
	(5a) In Article 6, the following paragraph is inserted:
	1a. The competent authority, taking into account all relevant evidence, shall , along with Member States, ensure that all companies marketing security equipment and those organising trade fairs and other events where such equipment is marketed, are made aware of the fact that such equipment could be used for torture and other cruel, degrading or inhuman treatment or punishment and that marketing such equipment may become prohibited and authorisations relating to it may be withdrawn.

Amendment 14

Proposal for a regulation
Article 1 – point 5 b (new)

Regulation (EC) No 1236/2005

Article 6 – paragraph 2

Present text	*Amendment*
	(5b) In Article 6, paragraph 2 is replaced by the following:
2. The competent authority shall not grant any authorisation when there are	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.	reasonable grounds to believe that goods listed in Annex III ***and Annex IIIa*** 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:	The competent authority shall take into account:
— available international court judgements,	– 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.	– 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.	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***, III and IIIa*** applied by the country of destination, may be taken into account.

Amendment 15

Proposal for a regulation
Article 1 – point 5 c (new)

Regulation (EC) No 1236/2005

Article 6 a (new)

Text proposed by the Commission	*Amendment*
	(5c) The following article is inserted:
	'Article 6a
	Transit authorisation requirement
	1. An authorisation shall be required for the transit of goods listed in Annex III or IIIa if the economic operator has been informed by the competent authorities of

	the Member State where the transit occurs that the items in question are or may be intended, in their entirety or in part, for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment.
	2. If an economic operator is aware that the goods in transit listed in Annex III or IIIa are intended, in their entirety or in part, for the purpose of capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, it shall notify the competent authorities, which shall decide whether or not it is expedient to make the transit concerned subject to authorisation.
	3. A Member State which imposes an authorisation requirement, pursuant toparagraphs 1 and 2, on the transit of an item not listed in Annex III or IIIa, shall inform the other Member States and the Commission.'

Amendment 16

Proposal for a regulation
Article 1 – point 6

Regulation (EC) No 1236/2005

Article 7a – paragraph 1

Text proposed by the Commission	*Amendment*
1. A broker shall be prohibited from providing to any person, entity or body in a third country brokering services in relation to goods listed in ***Annex*** III, irrespective of the origin of such goods, if the broker knows or has grounds for suspecting that any part of a shipment of such goods is or may be intended to be used for torture or other cruel, inhuman or degrading treatment or punishment in a country that does not belong to the customs territory of the Union.	1. A broker shall be prohibited from providing to any person, entity or body in a third country brokering services in relation to goods listed in ***Annexes*** III ***and IIIa***, irrespective of the origin of such goods, if the broker knows or has grounds for suspecting that any part of a shipment of such goods is or may be intended to be used for torture or other cruel, inhuman or degrading treatment or punishment in a country that does not belong to the customs territory of the Union.

Amendment 17

Proposal for a regulation
Article 1 – point 6

Regulation (EC) No 1236/2005

Article 7a – paragraph 2

Text proposed by the Commission	*Amendment*
2. A supplier of technical assistance shall be prohibited from supplying to any person, entity or body in a third country technical assistance in relation to goods listed in ***Annex*** III, irrespective of the origin of such goods, if the supplier of such assistance knows or has grounds for suspecting that some or all of the relevant goods are or may be intended to be used for torture or other cruel, inhuman or degrading treatment or punishment in a country that does not belong to the customs territory of the Union.	2. A supplier of technical assistance shall be prohibited from supplying to any person, entity or body in a third country technical assistance in relation to goods listed in ***Annexes*** III ***and IIIa***, irrespective of the origin of such goods, if the supplier of such assistance knows or has grounds for suspecting that some or all of the relevant goods are or may be intended to be used for torture or other cruel, inhuman or degrading treatment or punishment in a country that does not belong to the customs territory of the Union. ***A supplier of technical assistance shall also be prohibited from giving instruction, advice, training or transmitting working knowledge or skills that could aid the commission of capital punishment, torture or other cruel, inhuman or degrading treatment or punishment.***

Amendment 18

Proposal for a regulation
Article 1 – point 6 a (new)

Regulation (EC) No 1236/2005

Article 7 aa (new)

Text proposed by the Commission	*Amendment*
	6a. The following article is inserted:
	'Article 7aa
	Exchange of best practices
	Member States are encouraged to promote

best practice between suppliers of technical assistance to ensure that this assistance contributes positively to combating torture and other cruel, inhuman or degrading treatment or punishment.'

Amendment 19

Proposal for a regulation
Article 1 – point 7

Regulation (EC) No 1236/2005

Article 7c – paragraph 3 – point 3.3 (new)

Text proposed by the Commission	*Amendment*
	'3.3. The Commission, in cooperation with competent authorities of the Member States and third countries where appropriate, shall adopt best practice guidelines on the verification of end-use.'

Amendment 20

Proposal for a regulation
Article 1 – point 7 a (new)

Regulation (EC) No 1236/2005

Chapter III b (new) – Article 7e (new)

Text proposed by the Commission	*Amendment*
	(7a) The following Chapter is inserted:
	'Chapter III b
	Non-listed goods
	Article 7e
	Catch-all clause
	1. An authorisation shall be required for the export of items not listed in the Annexes to this Regulation if the exporter has been informed by the competent authorities of the Member State in which it is established that the items in question

are or may be intended, in their entirety or in part, for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment.

2. If an exporter is aware that items which it proposes to export, not listed in Annex II, III or IIIa, are intended, in their entirety or in part, for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment, it shall notify the authorities of the Member State in which it is established, which shall decide whether or not it is expedient to make the export concerned subject to authorisation.

3. A Member State which imposes an authorisation requirement, pursuant to paragraphs 1 and 2, on the export of item not listed in Annex II, III or IIIa, shall immediately inform the other Member States and the Commission thereof and indicate precise reasons for the imposition of an authorisation requirement. Member States shall also immediately inform the Commission of any modifications made to measures adopted under paragraphs 1 and 2.

4. The other Member States shall give all due consideration to this information and shall inform their customs administration and other relevant national authorities.

5. When imperative grounds of urgency so require, the Commission shall adopt delegated acts adding items referred to in paragraphs 1 and 2 to Annex II, Annex III or Annex IIIa. The procedure provided for in Article 15b shall apply to delegated acts adopted pursuant to this paragraph.

6. Medicinal products, as defined in Directive 2001/83/EC of the European Parliament and of the Council[1a], shall be excluded from the scope of this Article.

[1a.] Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code

relating to medicinal products for human use (OJ L 311, 28.11.2001, p. 67).'

Amendment 21

Proposal for a regulation
Article 1 – point 8

Regulation (EC) No 1236/2005

Article 8 – paragraph 6

Text proposed by the Commission	*Amendment*
6. By way of derogation from paragraph 5, where medicinal products are to be exported by a manufacturer to a distributor, the manufacturer shall provide information on the arrangements made and the measures taken to prevent these products 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.	6. By way of derogation from paragraph 5, where medicinal products are to be exported by a manufacturer to a distributor, the manufacturer shall provide information on the arrangements made and the measures taken to prevent these products 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. ***This information shall be accessible, upon request, to a relevant independent oversight body such as National Preventive Mechanism established under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, or a national human rights institution in a Member State.***

Amendment 22

Proposal for a regulation
Article 1 – point 8 a (new)

Regulation (EC) No 1236/2005

Article 10 – paragraph 2

Present text	*Amendment*
	(8a) In Article 10, paragraph 2 is replaced by the following:
2. If a customs declaration is made	'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.	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 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.'

Amendment 23

Proposal for a regulation
Article 1 – point 12

Regulation (EC) No 1236/2005

Article 12a – paragraph 2

Text proposed by the Commission	*Amendment*
2. The Commission may, within three months, 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.	2. ***Upon receipt of a request referred to in paragraph 1, the Commission shall immediately inform all Member States and circulate the information received from the requesting Member State. Pending a final decision by the Commission, Member States may immediately suspend transfers of the goods contained in the request.*** The Commission may, within three months, 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.

Amendment 24

Proposal for a regulation
Article 1 – point 12

Regulation (EC) No 1236/2005

Article 12 a – paragraph 3

Text proposed by the Commission	*Amendment*
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 ***six months*** commence the procedure for the adoption of the requested amendment or inform the requesting Member States of the reasons for not doing so.	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 ***three months*** commence the procedure for the adoption of the requested amendment or inform the requesting Member States of the reasons for not doing so.

Amendment 25

Proposal for a regulation
Article 1 – point 12 a (new)

Regulation (EC) No 1236/2005

Article 13 – paragraph 1

Present text	*Amendment*
	(12a) In Article 13, paragraph 1 is replaced by the following:
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.	'1. Without prejudice to Article 11, ***each Member State*** shall inform ***the Commission*** of measures taken under this Regulation and supply any relevant information at their disposal in connection with this Regulation, in particular information on authorisations granted and refused***, as well as in relation to measures taken under the targeted end-use clause. The Commission shall forward the information to other Member States.'***

Amendment 26

Proposal for a regulation
Article 1 – point 12 b (new)

Regulation (EC) No 1236/2005

Article 13 – paragraph 3a (new)

Text proposed by the Commission	*Amendment*
	(12b) In Article 13, the following paragraph is inserted:
	'3a. The Commission shall make annual report compiled of annual activity reports referred to in paragraph 3. The report shall be made publicly available.'

Amendment 27

Proposal for a regulation
Article 1 – point 15

Regulation (EC) No 1236/2005

Article 15 a

Text proposed by the Commission	*Amendment*
Article 15a	***deleted***
Exercise of delegation	
1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.	
2. The delegation of power referred to in Article 12 shall be conferred on the Commission for a period of five years from …. 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 on 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. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. 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 by the Council within a period of two months from the notification of that act to the European Parliament and to the Council or if, before 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.

Amendment 28

Proposal for a regulation
Article 1 – point 15 a (new)

Regulation (EC) No 1236/2005

Article 15c (new)

Text proposed by the Commission	*Amendment*
	(15a) The following article is inserted;
	'Article 15c
	Anti-Torture Coordination Group
	1. An Anti-Torture Coordination Group chaired by a representative of the Commission shall be set up. Each

Member State shall appoint a representative to this Group. It shall examine any question concerning the application of this Regulation which may be raised either by the chair or by a representative of a Member State.

2. The Coordination Group shall in cooperation with the Commission take appropriate measures to establish direct cooperation and exchange of information between competent authorities, in particular to eliminate the risk of possible disparities in the application of export controls to goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment and which may lead to a deflection of trade.

3. The Chair of the Anti-Torture Coordination Group shall, whenever it considers it to be necessary, consult exporters, brokers and other relevant stakeholders, including from all parts of civil society with relevant expertise in matters covered 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, which shall be subject to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council .'

Amendment 29

Proposal for a regulation
Article 1 – point 15 b (new)

Regulation (EC) No 1236/2005

Article 15d (new)

Text proposed by the Commission	*Amendment*
	(15b) The following article is inserted:
	'Article 15d
	1. By...*, and every three 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. 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, examinations and consultations. Information that the Commission provides on the Coordination Group's examinations and consultations shall be treated as confidential pursuant to Article 4 of Regulation (EC) No 1049/2001. Information shall, in any case, be considered to be confidential if its disclosure is likely to have a significantly adverse effect upon the supplier or the source of such information;

(b) information on national licensing decisions by Member States, reporting to the Commission by Member States, notification and consultation mechanisms among Member States, promulgation and enforcement.

(c) comprehensive information on the nature and effect of measures taken by the Member States pursuant to Article 17, including operation of the penalty regimes introduced by Member States, and assessment whether such regimes are effective, proportionate and dissuasive.

**** OJ: please insert date: three years after the entry into force of this Regulation.'***

Amendment 30

Proposal for a regulation
Article 1 – point 15 c (new)

Regulation (EC) No 1236/2005

Article 17 – paragraph 2.a (new)

Text proposed by the Commission	*Amendment*
	(15c) In Article 17, the following paragraph is added:
	'2.a The Commission shall assess whether rules on penalties laid down by Member States are of a similar nature and effect.'

Amendment 31

Proposal for a regulation

Article 1 – point 15 – point (-a) (new)

Regulation (EC) No 1236/2005

Annex III – column 2 – points 1 and 2

Present text	*Amendment*
	(-a) In Annex III, in the second column, points 1 and 2 are replaced by the following:
1. Goods designed for restraining human beings, as follows:	'1. Goods designed for restraining human beings, as follows:
1.1. Shackles and gang chains	1.1. Shackles and gang chains
Notes:	Notes:
1. Shackles are restraints consisting of two cuffs or rings fitted with a locking mechanism, with a connecting chain or bar 2. This item does not control the leg restraints and gang chains prohibited by	1. Shackles are restraints consisting of two cuffs or rings fitted with a locking mechanism, with a connecting chain or bar 2. This item does not control the leg restraints and gang chains prohibited by

item 2.3 of Annex II	item 2.3 of Annex II
3. This item does not control ‘ordinary handcuffs’. Ordinary handcuffs are handcuffs which meet all the following conditions:	3. This item does not control ‘ordinary handcuffs’. Ordinary handcuffs are handcuffs which meet all the following conditions:
— their overall dimension including chain, measured from the outer edge of one cuff to the outer edge of the other cuff, is between 150 and 280 mm when both cuffs are locked;	— their overall dimension including chain, measured from the outer edge of one cuff to the outer edge of the other cuff, is between 150 and 280 mm when both cuffs are locked;
— the inside circumference of each cuff is a maximum of 165 mm when the ratchet is engaged at the last notch entering the locking mechanism;	— the inside circumference of each cuff is a maximum of 165 mm when the ratchet is engaged at the last notch entering the locking mechanism;
— the inside circumference of each cuff is a minimum of 200 mm when the ratchet is engaged at the first notch entering the locking mechanism; and	— the inside circumference of each cuff is a minimum of 200 mm when the ratchet is engaged at the first notch entering the locking mechanism; and
— the cuffs have not been modified to cause physical pain or suffering.	— the cuffs have not been modified to cause physical pain or suffering.
1.2. Individual cuffs or rings fitted with a locking mechanism, having an inside circumference exceeding 165 mm when the ratchet is engaged at the last notch entering the locking mechanism	1.2. Individual cuffs or rings fitted with a locking mechanism, having an inside circumference exceeding 165 mm when the ratchet is engaged at the last notch entering the locking mechanism
Note:	Note:
This item includes neck restraints and other individual cuffs or rings fitted with a locking mechanism, which are linked to ordinary handcuffs by means of a chain	This item includes neck restraints and other individual cuffs or rings fitted with a locking mechanism, which are linked to ordinary handcuffs by means of a chain

1.3. Spit hoods: hoods, including hoods made of netting, comprising a cover of the mouth which prevents spitting	1.3. Spit hoods: hoods, including hoods made of netting, comprising a cover of the mouth which prevents spitting
Note: This item includes spit hoods which are linked to ordinary handcuffs by means of a chain	Note: This item includes spit hoods which are linked to ordinary handcuffs by means of a chain
	1.3.a Chairs, boards and beds fitted with straps
2. Weapons and devices designed for the purpose of riot control or self-protection, as follows:	2. Weapons and devices designed for the purpose of riot control or self-protection, as follows:
2.1. Portable electric discharge weapons that can target only one individual each time an electric shock is administered, including but not limited to electric shock batons, electric shock shields, stun guns and electric shock dart guns	2.1. Portable electric discharge weapons that can target only one individual each time an electric shock is administered, including but not limited to electric shock batons, electric shock shields, stun guns and electric shock dart guns
Notes:	Notes:
1. This item does not control electric shock belts and other devices falling within item 2.1 of Annex II	1. This item does not control electric shock belts and other devices falling within item 2.1 of Annex II
2. This item does not control individual electronic shock devices when accompanying their user for the user's own personal protection	2. This item does not control individual electronic shock devices when accompanying their user for the user's own personal protection
2.2. Kits containing all essential components for assembly of portable electric discharge weapons controlled by item 2.1	2.2. Kits containing all essential components for assembly of portable electric discharge weapons controlled by item 2.1

Note:	Note:
The following goods are considered to be essential components:	The following goods are considered to be essential components:
— the unit producing an electric shock,	— the unit producing an electric shock,
— the switch, whether or not on a remote control, and	— the switch, whether or not on a remote control, and
— the electrodes or, where applicable, the wires through which the electrical shock is to be administered	— the electrodes or, where applicable, the wires through which the electrical shock is to be administered
2.3. Fixed or mountable electric discharge weapons that cover a wide area and can target multiple individuals with electrical shocks	2.3. Fixed or mountable electric discharge weapons that cover a wide area and can target multiple individuals with electrical shocks
	2.3.a Acoustic devices for the purpose of crowd/riot control
	2.3.b Millimetre wave weapons'

Amendment 32

Proposal for a regulation
Article 2 – paragraph 2

Text proposed by the Commission	*Amendment*
Point 6 of Article 1 and, to the extent that it inserts Article 7d, point 7 of Article 1 shall apply as from ***1 January 2015***.	Point 6 of Article 1 and, to the extent that it inserts Article 7d, point 7 of Article 1 shall apply as from ***1 February 2016***.

Amendment 33

Proposal for a regulation
Annex II – Part 2

Regulation (EC) No 1236/2005

Annex IIIb

Text proposed by the Commission	*Amendment*
Benin	***deleted***

Amendment 34

Proposal for a regulation
Annex II – Part 2

Regulation (EC) No 1236/2005

Annex IIIb

Text proposed by the Commission	*Amendment*
	Gabon

Amendment 35

Proposal for a regulation
Annex II – Part 2

Regulation (EC) No 1236/2005

Annex IIIb

Text proposed by the Commission	*Amendment*
Liberia	***deleted***

Amendment 36

Proposal for a regulation
Annex II – Part 2

Regulation (EC) 1236/2005

Annex IIIb

Text proposed by the Commission	*Amendment*
Madagascar	***deleted***

Amendment 37

Proposal for a regulation
Annex II – Part 2

Regulation (EC) No 1236/2005

Annex IIIb

Text proposed by the Commission	*Amendment*
Mongolia	***deleted***

Amendment 38

Proposal for a regulation
Annex II – Part 2

Regulation (EC) No 1236/2005

Annex IIIb

Text proposed by the Commission	*Amendment*
Sao Tome and Principe	***deleted***