

Brussels, 22 May 2025
(OR. en)

9305/25

POLCOM 100
COMER 82
UD 117
COHOM 81
DELECT 63

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	21 May 2025
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	C(2025) 3066 final
Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 21.5.2025 amending 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

Delegations will find attached document C(2025) 3066 final.

Encl.: C(2025) 3066 final



EUROPEAN
COMMISSION

Brussels, 21.5.2025
C(2025) 3066 final

COMMISSION DELEGATED REGULATION (EU) .../...

of 21.5.2025

amending 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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The objective of Regulation (EU) 2019/125 ('the Regulation') concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment¹ is to prevent, in countries outside the EU, capital punishment, on the one hand, and torture and other cruel, inhuman or degrading treatment or punishment, on the other.

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 Annexes III and IV are to be subject to effective control when they are exported from or transit through the European Union or are delivered to a third country as a result of brokering services or technical assistance.

The Regulation was designed to be a "living instrument", incorporating mechanisms that allow the European Parliament, the Council, and the Commission to collectively respond to changes in the international security marketplace and in the nature of use and misuse of law enforcement equipment, as well as address technological developments in trade.

The list of goods described in the Regulation needs to stay up to date in order to respond, on the one hand, to changes in the international security market where technological and market developments are frequently occurring and, on the other hand, to changes in use, and misuse, of law enforcement equipment as noted in the Commission's 2020 review report². To remain fit for purpose, the Regulation also needs to respond to emerging trends and challenges observed in recent years as regards extra-custodial torture and ill-treatment in the context of the repression of peaceful protests. In recent years, the so-called less lethal weapons, including pepper spray, water cannons, and rubber bullets have been routinely misused by law enforcement authorities in some countries to suppress dissent and silence peaceful protesters, contributing to increasing numbers of citizens being seriously injured or killed. Protesters in some parts of the world have increasingly been subjected to excessive, unlawful, or unnecessary use of force³.

The current list of goods was last updated by 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 punishment⁴.

This delegated act presents amendments to list of goods described in Annex II and Annex III. Annex II comprises 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

¹ 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.

² COM (2020) 343 final, 30.7.2020.

³ <https://www.amnesty.org/en/latest/news/2022/07/protect-the-protest/>

⁴ OJ L 338, 13.12.2016, p. 1.

punishment. Annex III comprises the goods that *could be* used for the purpose of torture or other cruel, inhuman or degrading treatment or punishment:

goods which are primarily used for law enforcement purposes.

goods which, taking into account their design and technical features, present a material risk of use for torture or other cruel, inhuman or degrading treatment or punishment.

The delegated act prohibits weapons, devices and equipment disseminating incapacitating or irritating chemical or certain related substances and related ammunition which are not suitable for use by law enforcement authorities to restrain human beings or for the purpose of riot control or self-protection. The delegated act furthermore prohibits goods where there is a high risk of inflicting pain or suffering so severe that it may amount to torture or cruel, inhuman or degrading treatment or punishment.

The amendments build primarily upon the conclusions of the 2020 Commission's report as regards the scope of goods⁵, the work of the Commission's informal group of experts for the implementation of the Regulation, reports from the UN Special Rapporteur on Torture⁶ and from organizations engaged in the protection of human rights as well as relevant international standards in this field⁷. For example, the UN Standard Minimum Rules for the Treatment of Prisoners (revised in 2015 and referred to as the Nelson Mandela Rules) prohibit the use of instruments of restraint which are inherently degrading or painful as they fulfil no legitimate law enforcement purpose that cannot be achieved using standard hand or leg restraints explain the inclusion of gang chains in Annex II, while previously included in Annex III.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

Article 29 (4) of the Regulation provides that *'Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making'*⁸.

Recital 46 of the Regulation provides that *'It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making'*.

Furthermore recital 48 of the Regulation provides that *'If the Commission decides to consult the group when preparing delegated acts, it should do so in accordance with the principles laid down in the Inter-institutional Agreement of 13 April 2016 on Better Law-Making'*.

Extensive months-long consultations have been carried out with Member States' government experts in the preparation of this delegated act through the Anti-Torture Coordination Group, including at meetings held on 23 November 2023, 6 June 2024 and 5 December 2024.

⁵ COM (2020) 343 final, 30.7.2020.

⁶ UN Special Rapporteur on Torture, "extra-custodial use of force and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment...", UN.doc A/72/178, 20 July 2017: 'Any extra-custodial use of force that does not pursue a lawful purpose (legality), or that is unnecessary for the achievement of a lawful purpose (necessity), or that inflicts excessive harm compared to the purpose pursued (proportionality) contradicts established international legal principles governing the use of force by law enforcement officials and amounts to cruel, inhuman or degrading treatment or punishment'.

⁷ UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), the OHCHR, Guidance on Less-Lethal Weapons in Law Enforcement or the UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (The Istanbul Protocol).

⁸ [OJ L 123, 12.5.2016, p.1.](#)

The draft delegated act was published for feedback by stakeholders between 5 March 2025 and 2 April 2025.

In total, the Commission received six contributions, of which three came from private citizens, two from non-governmental organisations and one from a company.

Overall, the feedback received was positive. The Commission has noted the contributions from non-governmental organisations expressing support for the Commission's initiative as well as the suggestions to strengthen the scope of the Regulation, which will be explored during the forthcoming report on the review of the Anti-Torture Regulation. Moreover, the Commission has noted and addressed the company's comments regarding an item in Annex III.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Article 24 of the Regulation provides that '*the Commission is empowered to adopt delegated acts in accordance with Article 29, to amend Annexes I, II, III, IV, V, VI, VII, VIII and IX*' to the Regulation.

COMMISSION DELEGATED REGULATION (EU) .../...

of 21.5.2025

amending 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

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 punishment¹, and in particular the first paragraph of Article 24 thereof,

Whereas:

- (1) Pursuant to Regulation 2019/125 any export, import, transit of goods listed in Annex II shall be prohibited, irrespective of the origin of such goods. Annex II comprises 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.
- (2) Pursuant to Regulation (EU) 2019/125 for any export of goods listed in Annex III, an authorisation shall be required, irrespective of the origin of such goods. Annex III comprises the goods that could be used for the purpose of torture or other cruel, inhuman or degrading treatment or punishment, namely goods which are primarily used for law enforcement purposes, and goods which, taking into account their design and technical features, present a material risk of use for torture or other cruel, inhuman or degrading treatment or punishment.
- (3) The list of goods set out in Annex II and III to Regulation (EU) 2019/125 needs to stay updated in order to respond to changes in the international security market where technological and market developments are occurring frequently and to changes in the use, and misuse, of law enforcement equipment. Annex II and III to Regulation (EU) 2019/125 should therefore be amended. In order to facilitate references for the competent authorities and economic operators, Annex II and III to that Regulation should be replaced.
- (4) Article 24 of Regulation (EU) 2019/125 empowers the Commission to adopt delegated acts in accordance with Article 29, to amend the Annexes to the Regulation.
- (5) Regulation (EU) 2019/125 should therefore be amended accordingly,

¹ OJ L 30, 31.1.2019, p. 1.

HAS ADOPTED THIS REGULATION:

Article 1

Annex II to Regulation (EU) 2019/125 is replaced by the text in the Annex I to this Regulation.

Annex III to Regulation (EU) 2019/125 is replaced by the text in the Annex II to this Regulation.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 21.5.2025

For the Commission
The President
Ursula VON DER LEYEN