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COVER NOTE

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 18 October 2017

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

No. Cion doc.: C(2017) 6902 final

Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 18.10.2017
amending Annex IIIb to 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

Delegations will find attached document C(2017) 6902 final.

Encl.: C(2017) 6902 final



Brussels, 18.10.2017
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COMMISSION DELEGATED REGULATION (EU) .../...

of 18.10.2017

**amending Annex IIIb to 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**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Regulation (EU) 2016/2134 of the European Parliament and of the Council (OJ L 338, 13.12.2016, p. 1) amended 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. It established, among other things, a Union General Export Authorisation applicable to exports of certain medicinal products which could be used for capital punishment.

The Commission is empowered to amend the Union General Export Authorisation by means of a Delegated Regulation. Where imperative grounds of urgency so require, the Delegated Regulation can enter into force without delay and apply as long as no objection is expressed by the European Parliament or by the Council.

The list of countries to which such goods may be exported on the basis of that authorisation, is based on the abolition of capital punishment for all crimes by the countries concerned. Taking recent their ratifications of a relevant international agreement into account, three countries should be added to the destinations to which that authorisation is applicable.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The Anti-Torture Coordination Group was consulted on the draft Delegated Regulation in its first meeting, held on 12 July 2017. The group agreed with the addition of three countries to the list of destinations to which the Union General Export Authorisation is applicable. It also shared the Commission's assessment that the Delegated Regulation should be adopted using the normal procedure for delegated acts.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The Delegated Regulation adds three countries that have acceded to or ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights without making a reservation, to the list of destinations to which the Union General Export Authorisation is applicable.

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

of 18.10.2017

amending Annex IIIb to 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

THE EUROPEAN COMMISSION,

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

Having regard to 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 punishment¹, and in particular Article 12 thereof,

Whereas:

- (1) Pursuant to Articles 7b and 7e of Regulation (EC) No 1236/2005 an authorisation is required for any export of certain goods that could be used for the purpose of capital punishment and for brokering services or technical assistance related to those goods, which are listed in Annex IIIa to that Regulation.
- (2) A Union General Export Authorisation, which is set out in Annex IIIb to that Regulation, applies to exports to countries that have abolished capital punishment for all crimes and confirmed that abolition through an international commitment, if the conditions and requirements for using that authorisation are met. Its Part 2 lists the relevant countries.
- (3) As regards countries that are not members of the Council of Europe, that list comprises the countries which have not only abolished capital punishment for all crimes but also ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights without making a reservation.
- (4) Following their ratifications of that Protocol without making a reservation, the Dominican Republic, Sao Tome and Principe and Togo meet the conditions for inclusion in that list.
- (5) Regulation (EC) No 1236/2005 should therefore be amended accordingly.
- (6) In order to avoid undue burdens for exporters and competent authorities, the former should be able to rely on the amended Union General Export Authorisation as soon as possible. This Regulation should, therefore, enter into force immediately,

HAS ADOPTED THIS REGULATION:

Article 1

In Annex IIIb to Regulation (EC) No 1236/2005, the list in Part 2 – Destinations is amended as follows:

- (1) after Djibouti, the entry 'Dominican Republic' is inserted,

¹ OJ L 200, 30.7.2005, p. 1.

- (2) after San Marino, the entry 'Sao Tome and Principe' is inserted,
- (3) after Timor-Leste, the entry 'Togo' is inserted.

Article 2

This Regulation shall enter into force on the 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, 18.10.2017

For the Commission
The President
Jean-Claude JUNCKER