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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	24 May 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2018) 316 final
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (codification)

Delegations will find herewith attached the Commission codification proposal referred to in the subject (COM(2018) 316 final - 2018/0160 (COD) and Annexes 1 to 11).

Delegations are invited to send their comments on the codification proposal by Monday 25 June 2018 to the following addresses:

SECRETARIAT.Codification@consilium.europa.eu **AND** sj-codification@ec.europa.eu

Delegation's attention is drawn to the Practical Guide on Codification (doc. 14722/14 + COR1).

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EN



Brussels, 24.5.2018
COM(2018) 316 final

2018/0160 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**concerning trade in certain goods which could be used for capital punishment, torture
or other cruel, inhuman or degrading treatment or punishment (codification)**

EXPLANATORY MEMORANDUM

1. In the context of a people's Europe, the Commission attaches great importance to simplifying and clarifying the law of the Union so as to make it clearer and more accessible to citizens, thus giving them new opportunities and the chance to make use of the specific rights it gives them.

This aim cannot be achieved so long as numerous provisions that have been amended several times, often quite substantially, remain scattered, so that they must be sought partly in the original instrument and partly in later amending ones. Considerable research work, comparing many different instruments, is thus needed to identify the current rules.

For this reason a codification of rules that have frequently been amended is also essential if the law is to be clear and transparent.

2. On 1 April 1987 the Commission decided¹ to instruct its staff that all acts should be codified after no more than ten amendments, stressing that this is a minimum requirement and that departments should endeavour to codify at even shorter intervals the texts for which they are responsible, to ensure that their provisions are clear and readily understandable.
3. The Conclusions of the Presidency of the Edinburgh European Council (December 1992) confirmed this², stressing the importance of codification as it offers certainty as to the law applicable to a given matter at a given time.

Codification must be undertaken in full compliance with the normal procedure for the adoption of acts of the Union.

Given that no changes of substance may be made to the instruments affected by codification, the European Parliament, the Council and the Commission have agreed, by an interinstitutional agreement dated 20 December 1994, that an accelerated procedure may be used for the fast-track adoption of codification instruments.

4. The purpose of this proposal is to undertake a codification of 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 punishment³. The new Regulation will supersede the various acts incorporated in it⁴; this proposal fully preserves the content of the acts being codified and hence does no more than bring them together with only such formal amendments as are required by the codification exercise itself.
5. The codification proposal was drawn up on the basis of a preliminary consolidation, in 24 official languages, of Regulation (EC) No 1236/2005 and the instruments amending it, carried out by the Publications Office of the European Union, by means of a data-processing system. Where the Articles have been given new numbers, the

¹ COM(87) 868 PV.

² See Annex 3 to Part A of the Conclusions.

³ Entered in the legislative programme for 2017.

⁴ See Annex X to this proposal.

correlation between the old and the new numbers is shown in a table set out in Annex XI to the codified Regulation.

↓ 1236/2005 (adapted)

2018/0160 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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 ~~establishing the European Community~~ on the Functioning of the European Union , and in particular Article ~~133~~ 207(2) thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee⁵,

Acting in accordance with the ordinary legislative procedure,

Whereas:

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- (1) Council Regulation (EC) No 1236/2005⁶ has been substantially amended several times⁷. In the interests of clarity and rationality, that Regulation should be codified.

↓ 1236/2005 recital 1 (adapted)

- (2) Pursuant to Article ~~6~~ 2 of the Treaty on European Union, respect for human rights ~~and fundamental freedoms~~ constitutes one of the ~~principles~~ values common to the Member States. ~~In view of this, 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 ~~that it concludes~~ concluded with third countries.

⁵ OJ C [...], [...], p. [...].

⁶ 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).

⁷ See Annex X.

↓ 1236/2005 recital 2 (adapted)

- (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 ~~Against~~ on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ⁸ 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.

↓ 1236/2005 recital 3 (adapted)

- (4) Article 2(2) of the Charter of Fundamental Rights of the European Union⁹ (Charter) states that no one shall be condemned to the death penalty or executed. On ~~29 June 1998~~ 22 April 2013 , the Council approved ‘ EU Guidelines ~~on EU policy towards third countries~~ on the death penalty’ and resolved that the Union would work towards the universal abolition of the death penalty.

↓ 1236/2005 recital 4 (adapted)

- (5) Article 4 of the ~~said~~ Charter states that no one shall be subjected to torture or to inhuman or degrading treatment or punishment. On ~~9 April 2001~~ 20 March 2012 , the Council approved ‘Guidelines to ~~the~~ EU policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment (An update of the Guidelines) ’. ~~These guidelines refer to both the adoption of the EU Code of Conduct on Arms Exports in 1998 and the ongoing work to introduce EU-wide controls on the exports of paramilitary equipment as examples of measures to work effectively towards the prevention of torture and other cruel, inhuman or degrading treatment or punishment within the Common Foreign and Security Policy.~~ In accordance with ~~those~~ guidelines, ~~also provide for~~ third countries ~~to~~ 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, ~~They also make the point that~~ the prohibition of cruel, inhuman or degrading punishment should imposes clear limits on the use of the death penalty. Therefore ~~and in line with these texts~~, capital punishment is not to be considered a lawful penalty under any circumstances.

↓ 1236/2005 recital 7 (adapted)

- (6) It is therefore appropriate to lay down ~~Community~~ 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

⁸ Resolution 3452 (XXX) of 9 December 1975 of the General Assembly of the United Nations.

⁹ ~~OLC 364, 18.12.2000, p. 1~~

for human life and for fundamental human rights and thus serve the purpose of protecting public morals. Such rules should ensure that ~~Community~~ ☒ 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 of Fundamental Rights of the ~~European Union~~ and international conventions and treaties.

↓ 1236/2005 recital 8 (adapted),
2016/2134 recital 2 (adapted)

- (7) For the purpose of this Regulation, it is considered appropriate to apply the definitions of torture ~~and other cruel, inhuman or degrading treatment or punishment~~ laid down in the 1984 United Nations Convention ~~A~~ against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and in Resolution 3452 (XXX) of the General Assembly of the United Nations. ~~These~~ ☒ That ☒ definitions 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 Charter of Fundamental Rights of the European Union (the ‘Charter’) became legally binding with the entry into force of the Treaty of Lisbon on 1 December 2009. The definition of torture in Regulation (EC) No 1236/2005 was taken over from the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and continues to be valid.~~ The definition of ‘other cruel, inhuman or degrading treatment or punishment’, which is not found in that Convention, should be ~~amended to align it~~ ☒ in line ☒ with the case law of the European Court of Human Rights. ~~It is also appropriate to clarify~~ †The meaning of the term ‘lawful penalties’ in the definitions of ‘torture’ and ‘other cruel, inhuman or degrading treatment or punishment’, ☒ should take ☒ ~~taking~~ into account the Union's policy on capital punishment.
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↓ 1236/2005 recital 9 (adapted)

- (8) It is considered necessary to prohibit exports and imports of ~~equipment~~ ☒ goods ☒ which ~~has~~ ☒ 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 the supply of technical assistance in respect of such goods ☒.
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↓ 2016/2134 recital 13 (adapted)

- (9) ~~Regulation (EC) No 1236/2005 prohibits the export and import of goods listed in Annex II to that Regulation and the supply of technical assistance in respect of such goods.~~ 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 ~~as they have no practical use other than for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment. Prohibiting the provision of such brokering services would serve the purposes 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.~~

↓ 1236/2005 recital 20

- (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 punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment.
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↓ 2016/2134 recital 17 (adapted)

- (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.
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↓ 2016/2134 recital 18 (adapted)

- (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 ~~or, provided the economic operator has knowledge about the intended use, if they are listed in Annex III or Annex IIIa~~ to this Regulation (EC) No 1236/2005.
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↓ 2016/2134 recital 19 (adapted)

- (13) ~~It is appropriate to clarify that~~ should be possible for Member States ~~may~~ 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 ~~listed in Annex II to Regulation (EC) No 1236/2005~~, in compliance with the applicable Union rules.
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↓ 2016/2134 recital 3 (adapted)

- (14) This Regulation ~~(EC) No 1236/2005 established~~ lays down an export authorisation system designed to prevent ~~the~~ certain goods ~~listed in Annex III to that Regulation~~ from being used for torture or other cruel, inhuman or degrading treatment or punishment.
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↓ 1236/2005 recital 10 (adapted)

- (15) It is ~~also~~ 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 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.

↓ 1236/2005 recital 11

- (16) As regards law enforcement equipment, it should be noted that Article 3 of the Code of Conduct for Law Enforcement Officials¹⁰ 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.
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↓ 1236/2005 recital 12

- (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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↓ 1236/2005 recital 13

- (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.
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↓ 1236/2005 recital 14 (adapted)

- (19) This Regulation should ~~also~~ apply to trade in some specific chemical substances used to incapacitate persons.
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↓ 1236/2005 recital 15 (adapted)

- (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 Prisoners¹¹ 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

¹⁰ Resolution 34/169 of 17 December 1979 of the General Assembly of the United Nations.

¹¹ Approved 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977 of the Economic and Social Council of the United by Resolutions Nations.

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.

↓ 775/2014 recital 13

- (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.
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↓ 775/2014 recital 17 (adapted)

- (22) ~~the scope of the export controls include, in addition to the portable weapons that are already controlled,~~ 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.
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↓ 775/2014 recital 19

- (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.
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↓ 775/2014 recital 20

- (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/CFSP¹². 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.
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↓ 775/2014 recital 21 (adapted)

- (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. ~~It is appropriate to clarify that, w~~Where appropriate, references to incapacitating or irritating chemical agents
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¹² Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment (OJ L 335, 13.12.2008, p. 99).

~~must~~ ☒ should ☒ be construed as including oleoresin capsicum and the relevant mixtures containing it.

↓ 1236/2005 recital 18 (adapted)

- (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 peace keeping or crisis management operations ~~and, subject to review at a later stage, in order to allow transit of foreign goods.~~
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↓ 1236/2005 recital 16

- (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.
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↓ 2016/2134 recital 11

- (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 ~~(EC) No 1236/2005~~ to prevent the relevant goods from being used for torture or for other cruel, inhuman or degrading treatment or punishment.
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↓ 1352/2011 recital 2

- (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.
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↓ 1352/2011 recital 3 (adapted)

- (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 capital punishment 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 ~~and their export should therefore not be made subject to a complete prohibition.~~
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↓ 2016/2134 recital 4

- (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.

↓ 2016/2134 recital 9

- (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.

↓ 2016/2134 recital 5 (adapted)

- (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 ~~establish~~ 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 countries that have abolished capital punishment for all crimes and confirmed that abolition through an international commitment.

↓ 2016/2134 recital 6 (adapted)

- (34) If a country has not abolished capital punishment for all crimes and confirmed that abolition through an international commitment, the competent authorities should, when examining a request for an export authorisation, check whether there is a risk that the end-user in the country of destination would use the exported goods for such punishment. Appropriate conditions and requirements should be imposed to control sales or transfers to third parties by the end-user. If multiple shipments between the same exporter and end-user take place, the competent authorities should be allowed to review the status of the end-user on a periodic basis, for example every six months, rather than every time an export authorisation for a shipment is granted, without prejudice to the right of the competent authorities to annul, suspend, modify or revoke an export authorisation ~~in accordance with Article 9(4) 21(5) of Regulation (EC) No 1236/2005~~ where warranted.

↓ 2016/2134 recital 7 (adapted)

- (35) In order to limit the administrative burden for exporters, the competent authorities should be allowed to grant an exporter a global authorisation for all shipments of medicinal products from the exporter to a specific end-user for a fixed period of time, specifying, where necessary, a quantity corresponding to the end-user's normal use of such products. Such authorisation ~~would, in accordance with Article 9(1) of Regulation (EC) No 1236/2005~~ should be valid for between one and three years with a possible extension of up to two years.

↓ 2016/2134 recital 8 (adapted)

- (36) Granting a global authorisation would also be appropriate where a manufacturer intends to export medicinal products falling within the scope of this Regulation ~~(EC) No 1236/2005~~ to a distributor in a country that has not abolished capital punishment, provided that 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.
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↓ 2016/2134 recital 10

- (37) Medicinal products falling within the scope of this Regulation ~~(EC) No 1236/2005~~ may be subject to controls in accordance with international conventions on narcotic drugs and psychotropic substances, such as the 1971 Convention on Psychotropic Substances. Since such controls are not applied to prevent the relevant medicinal products from being used for capital punishment but to prevent illicit drug trafficking, the export controls of this Regulation ~~(EC) No 1236/2005~~ should be applied in addition to the international controls. Member States should, however, be encouraged to use a single procedure in order to apply both control systems.
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↓ 2016/2134 recital 12

- (38) The controls on exports in accordance with this Regulation ~~(EC) No 1236/2005~~ should not apply to goods whose export is controlled in accordance with ~~Council~~ Common Position 2008/944/CFSP, Council Regulation (EC) No 428/2009¹³ and Regulation (EU) No 258/2012 of the European Parliament and of the Council¹⁴.
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↓ 2016/2134 recital 14

- (39) The supply of brokering services and the supply of technical assistance in respect of the goods listed in Annex III or in Annex ~~III~~ IV to this Regulation ~~(EC) No 1236/2005~~ should be subject to prior authorisation in order to prevent the brokering services or the technical assistance contributing to the use of the goods to which they relate for the purpose of capital punishment, torture or other cruel, inhuman or degrading treatment or punishment.
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↓ 2016/2134 recital 15

- (40) The brokering services and technical assistance which this Regulation subjects to prior authorisation should be those that are supplied from within the Union, that is from

¹³ Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (OJ L 134, 29.5.2009, p. 1).

¹⁴ Regulation (EU) No 258/2012 of the European Parliament and of the Council 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 export authorisation, and import and transit measures for firearms, their parts and components and ammunition (OJ L 94, 30.3.2012, p. 1).

within territories within the territorial scope of the Treaties, including airspace and any aircraft or any vessel under the jurisdiction of a Member State.

↓ 2016/2134 recital 16 (adapted)

- (41) When authorising the supply of technical assistance related to goods listed in Annex III to this Regulation ~~(EC) No 1236/2005~~, the competent authorities should endeavour to ensure that the technical assistance and any training on the use of such goods that would be supplied or offered in conjunction with the technical assistance for which the authorisation is requested, are provided in such a way that they promote law enforcement standards that respect human rights and contribute to the prevention of torture and other cruel, inhuman or degrading treatment or punishment.
- (42) ☒ In order to prevent economic operators from deriving benefits from transporting goods which could 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 III or Annex IV to this Regulation, provided the economic operator has knowledge about the intended use. ☒
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↓ 1236/2005 recital 19 (adapted)

- (43) The Guidelines to ~~the~~ EU Policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment provide, *inter alia*, that the Heads of Mission in third countries will include in their periodic reports an analysis of the occurrence of torture and other cruel, inhuman or degrading treatment or punishment in the State of their accreditation, and the measures taken to combat it. It is appropriate for the competent authorities to take those and similar reports made by relevant international and civil society organisations into account when deciding on requests for authorisations. Such reports should also describe any equipment used in third countries for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment.
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↓ 2016/2134 recital 20 (adapted)

- (44) While customs authorities should share certain information with other customs authorities using the customs risk management system ☒ in accordance with ☒ Union customs legislation, the competent authorities referred to in ~~Article 8 of this Regulation (EC) No 1236/2005~~ should share certain information with other competent authorities ~~in accordance with Article 11 of that Regulation~~. It is appropriate to require that the competent authorities use a secure and encrypted system for the exchange of information on denials ~~in accordance with Article 11 of Regulation (EC) No 1236/2005~~. To that end the Commission should make available a new functionality in the existing system set up pursuant to Article 19(4) of Regulation (EC) No 428/2009.
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↓ 2016/2134 recital 21 (adapted)

- (45) ~~It is appropriate to clarify that,~~ It To the extent that it concerns personal data, processing and the exchange of information should comply with the applicable rules on

processing and the exchange of personal data in accordance with Directive 95/46/EC of the European Parliament and of the Council¹⁵ and Regulation (EC) No 45/2001 of the European Parliament and of the Council¹⁶.

↓ 2016/2134 recital 22 (adapted)

- (46) In order to adopt the provisions necessary for the application of this Regulation (EC) No 1236/2005, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of amendments to ~~the new Annexes I to IX IIIa, IIIb, VI and VII to this Regulation (EC) No 1236/2005. It is recalled that Regulation (EU) No 37/2014 of the European Parliament and of the Council¹⁷ delegated the power to the Commission to adopt acts in accordance with Article 290 TFEU in respect of amending Annexes I, II, III, IV and V to Regulation (EC) No 1236/2005. 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-Making¹⁸. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.~~

↓ 2016/2134 recital 23

- (47) In order to allow the Union to respond quickly when new goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, are developed, and where there is a clear and immediate risk that those goods will be used for purposes that entail such human rights abuses, it is appropriate to provide for the immediate application of the relevant Commission act, where, in the case of amendment of Annex II or III to this Regulation (EC) No 1236/2005, there are imperative grounds of urgency for such amendment. In order to allow the Union to respond quickly when one or more third countries either approve certain goods for use for capital punishment, or accept or violate an international commitment to abolish capital punishment for all crimes, it is appropriate to provide for the immediate application of the relevant Commission act, where, in the case of amendment of Annex IIIa IV or IIIb V to this Regulation (EC) No 1236/2005, imperative grounds of urgency so require. Where the urgency procedure is followed, it is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.

¹⁵ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

¹⁶ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

¹⁷ ~~Regulation (EU) No 37/2014 of the European Parliament and of the Council of 15 January 2014 amending certain regulations relating to the common commercial policy as regards the procedures for the adoption of certain measures (OJ L 18, 21.1.2014, p. 1).~~

¹⁸ OJ L 123, 12.5.2016, p. 1.

↓ 2016/2134 recital 24

- (48) A coordination group should be established. The group should serve as a platform for Member States' experts and the Commission to exchange information on administrative practices and to discuss questions of interpretation of this Regulation, technical issues with respect to the goods listed, developments related to this Regulation and any other questions that may arise. The group may, in particular, discuss issues related to the nature and the intended effect of goods, the availability of goods in third countries and the question whether goods are specifically designed or modified for capital punishment or for torture or other cruel, inhuman or degrading treatment or punishment. 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.
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↓ 2016/2134 recital 25

- (49) The Commission does not procure equipment for law enforcement purposes since it is not responsible for maintenance of law and order, proceedings in criminal matters or the enforcement of judicial decisions in criminal matters. Therefore, a procedure should be established to ensure that the Commission receives information on non-listed law enforcement equipment and products marketed in the Union in order to ensure that the lists of goods whose trade is prohibited or controlled are updated to take account of new developments. When addressing its request to the Commission, the requesting Member State should forward its request to add goods to Annex II, to Annex III or to Annex ~~III~~ IV to this Regulation ~~(EC) No 1236/2005~~ to other Member States.
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↓ 1236/2005 recital 21 (adapted)

- (50) The measures of this Regulation are intended to prevent both capital punishment and torture and other cruel, inhuman or degrading treatment or punishment in third countries. They comprise restrictions on trade with third countries in goods that could be used for the purpose of capital punishment or for the purpose of torture and other cruel, degrading or inhuman treatment or punishment. It is not considered necessary to establish similar controls on transactions within the ~~Community~~ Union as, in the Member States, capital punishment does not exist and Member States will have adopted appropriate measures to outlaw and prevent torture and other cruel, inhuman or degrading treatment or punishment.
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↓ 1236/2005 recital 22 (adapted)

- (51) The ~~above-mentioned~~ Guidelines to EU Policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment state that, in order to meet the objective of taking effective measures against torture and other cruel, inhuman or degrading treatment or punishment, measures should be taken to prevent the use, production and trade of equipment which is designed to inflict torture or other cruel, inhuman or degrading treatment or punishment. It is up to the Member States to impose and enforce the necessary restrictions on the use and production of such equipment.

↓ 2016/2134 recital 24

- (52) The Commission and the Member States should inform each other of the measures taken under this Regulation and of other relevant information at their disposal in connection with this Regulation.

↓ 1236/2005 recital 26

- (53) Member States should lay down rules on penalties applicable to infringements of the provisions of this Regulation and ensure that they are implemented. Those penalties should be effective, proportionate and dissuasive,

↓ 1236/2005 (adapted)

HAVE ADOPTED THIS REGULATION:

CHAPTER I

Subject matter, scope and definitions

↓ 2016/2134 Art. 1.1

Article 1

Subject matter

This Regulation lays down Union rules governing trade with third countries in goods that could be used for the purpose of capital punishment or for the purpose of torture or other cruel, inhuman or degrading treatment or punishment, and rules governing the supply of brokering services, technical assistance, training and advertising related to such goods.

↓ 1236/2005

Article 2

Definitions

For the purposes of this Regulation:

↓ 2016/2134 Art. 1.2(a)

- (a) ‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from that person or from a third person information or a confession, punishing that person for an act that either that person or a third person has committed or is suspected of

having committed, or intimidating or coercing that person or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted either by or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity. It does not, however, include pain or suffering arising only from, inherent in or incidental to, lawful penalties. Capital punishment is not deemed a lawful penalty under any circumstances;

- (b) ‘other cruel, inhuman or degrading treatment or punishment’ means any act by which pain or suffering attaining a minimum level of severity, whether physical or mental, is inflicted on a person, when such pain or suffering is inflicted either by or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity. It does not, however, include pain or suffering arising only from, inherent in or incidental to, lawful penalties. Capital punishment is not deemed a lawful penalty under any circumstances;
- (c) ‘law enforcement authority’ means any authority responsible for preventing, detecting, investigating, combating and punishing criminal offences, including, but not limited to, the police, any prosecutor, any judicial authority, any public or private prison authority and, where appropriate, any of the state security forces and military authorities;
- (d) ‘export’ means any departure of goods from the customs territory of the Union, including the departure of goods that requires a customs declaration and the departure of goods after their storage in a free zone within the meaning of Regulation (EU) No 952/2013 of the European Parliament and of the Council¹⁹;
- (e) ‘import’ means any entry of goods into the customs territory of the Union, including temporary storage, the placing in a free zone, the placing under a special procedure and the release for free circulation within the meaning of Regulation (EU) No 952/2013;

↓ 1236/2005

- (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;
- (g) ‘museum’ means a non-profit making, permanent institution in the service of society and of its development, and open to the public, which acquires, conserves, researches, communicates and exhibits, for purposes of study, education and enjoyment, material evidence of people and their environment;

¹⁹ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

- (h) ‘competent authority’ means an authority of one of the Member States, as listed in Annex I, which is, in accordance with Article ~~8~~ 20, entitled to make a decision on an application for an authorisation or to prohibit an exporter from using the Union general export authorisation;
- (i) ‘applicant’ means:
- (1) the exporter, in the case of exports referred to in Article 3, ~~5~~ 11 or ~~7a~~ 16;
 - (2) the natural or legal person, entity or body transporting the goods within the customs territory of the Union, in the case of transit referred to in Article ~~4a~~ 5;
 - (3) the supplier of technical assistance, in the case of supplies of technical assistance referred to in Article 3;
 - (4) the museum that will display the goods, in the case of imports and supplies of technical assistance referred to in Article 4;
 - (5) the supplier of technical assistance or the broker, in the case of supplies of technical assistance referred to in Article ~~7a~~ 15 or brokering services referred to in Article ~~7d~~ 18;

- (j) ‘customs territory of the Union’ means the territory within the meaning of Article 4 of Regulation (EU) No 952/2013;
- (k) ‘brokering services’ means:
- (1) the negotiation or arrangement of transactions for the purchase, sale or supply of relevant goods from a third country to any other third country, or
 - (2) the selling or buying of relevant goods that are located in a third country for their transfer to another third country.

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;

- (l) ‘broker’ means any natural or legal person, entity or body, including a partnership, resident or established in a Member State that supplies services defined under point (k) from within the Union; any natural person having the nationality of a Member State, wherever resident, who supplies such services from within the Union; and any legal person, entity or body incorporated or constituted under the law of a Member State, wherever established, that supplies such services from within the Union;
- (m) ‘supplier of technical assistance’ means any natural or legal person, entity or body, including a partnership, resident or established in a Member State that supplies

technical assistance defined under point (f) from within the Union; any natural person having the nationality of a Member State, wherever resident, who supplies such assistance from within the Union; and any legal person, entity or body incorporated or constituted under the law of a Member State, wherever established that supplies such assistance from within the Union;

- (n) ‘exporter’ means any natural or legal person entity or body, including a partnership, on whose behalf an export declaration is made, that is to say the person, entity or body, who, at the time when the export 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 such contract has been concluded or if the holder of that contract does not act on its own behalf, the exporter means the person, entity or body who has the necessary power for determining the sending of the goods out of the customs territory of the Union. Where the benefit of a right to dispose of the goods belongs to a person, entity or body resident or established outside the Union pursuant to that contract, the exporter shall be considered to be the contracting party resident or established in the Union;
- (o) ‘Union General Export Authorisation’ means an authorisation for exports as defined under point (d) to certain countries which is available to all exporters who respect conditions and requirements for its use as listed in Annex ~~IIIb~~ V;
- (p) ‘individual authorisation’ means an authorisation granted to:
- (1) one specific exporter for exports as defined under point (d) to one end-user or consignee in a third country and covering one or more goods;
 - (2) one specific broker for the supply of brokering services as defined under point (k) to one end-user or consignee in a third country and covering one or more goods; or
 - (3) a natural or legal person, entity or body transporting goods within the customs territory of the Union for transit as defined under point (s);
- (q) ‘global authorisation’ means an authorisation granted to one specific exporter or broker in respect of a type of goods listed in Annex III or in Annex ~~IIIa~~ IV, which may be valid for:
- (1) exports as defined under point (d) to one or more specified end-users in one or more specified third countries;
 - (2) exports as defined under point (d) to one or more specified distributors in one or more specified third countries, where the exporter is a manufacturer of goods included in point 3.2 or 3.3. of Annex III or in Section 1 of Annex ~~IIIa~~ IV;
 - (3) the supply of brokering services related to transfers of goods which are located in a third country, to one or more specified end-users in one or more specified third countries;

- (4) the supply of brokering services related to transfers of goods which are located in a third country, to one or more specified distributors in one or more specified third countries, where the broker is a manufacturer of goods included in point 3.2 or 3.3. of Annex III or in Section 1 of Annex ~~III~~ IV;
- (r) ‘distributor’ means an economic operator performing wholesale activities in relation to goods listed in point 3.2 or 3.3 of Annex III or in section 1 of Annex ~~III~~ IV, such as procuring such goods from manufacturers or holding, supplying or exporting such goods; wholesale activities of such goods do not include procurement by either a hospital, a pharmacist or a medical professional for the sole purpose of supplying such goods to the public;
- (s) ‘transit’ means a transport within the customs territory of the Union of non-Union goods which pass through the customs territory of the Union with a destination outside the customs territory of the Union.
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↓ 1236/2005

CHAPTER II

Goods which have no practical use other than for the purposes of capital punishment, torture and other cruel, inhuman or degrading treatment or punishment

Article 3

Export prohibition

↓ 2016/2134 Art. 1.3

1. Any export of goods listed in Annex II~~2~~ shall be prohibited, irrespective of the origin of such goods.

Annex II shall comprise 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.

A supplier of technical assistance shall be prohibited from supplying technical assistance related to goods listed in Annex II to any person, entity or body in a third country, whether for consideration or not.

↓ 1236/2005

2. By way of derogation from paragraph 1, the competent authority may authorise an export of goods listed in Annex II, and the supply of related technical assistance, 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.

Article 4

Import prohibition

↓ 2016/2134 Art. 1.4

1. Any import of goods listed in Annex II~~3~~ shall be prohibited, irrespective of the origin of such goods.

The acceptance by a person, entity or body in the Union of technical assistance related to goods listed in Annex II~~3~~ supplied from a third country, whether for consideration or not, by any person, entity or body shall be prohibited.

↓ 1236/2005 (adapted)

2. By way of derogation from paragraph 1, the competent authority may authorise an import of goods listed in Annex II, and the supply of related technical assistance, if it is demonstrated that, in the Member State of destination, such goods will be used for the exclusive purpose of public display in a museum in view of ~~its~~ their historic significance.

↓ 2016/2134 Art. 1.5 (adapted)

Article ~~4a~~ 5

Prohibition of transit

1. Any transit of goods listed in Annex II shall be prohibited.

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 of destination, such goods will be used for the exclusive purpose of public display in a museum in view of their historic significance.

Article ~~4b~~ 6

Prohibition of brokering services

A broker shall be prohibited from supplying to any person, entity or body in a third country brokering services in relation to goods listed in Annex II, irrespective of the origin of such goods.

Article ~~4c~~ 7

Prohibition of training

A supplier of technical assistance or a broker shall be prohibited from supplying or offering to any person, entity or body in a third country training on the use of goods listed in Annex II.

Article ~~4d~~ 8

Trade fairs

It shall be prohibited for any natural or legal person, entity or body, including a partnership, whether resident or established in a Member State or not, to display or offer for sale any of the goods listed in Annex II in an exhibition or fair taking place in the Union, unless it is demonstrated that, given the nature of the exhibition or fair, such display or offering for sale is neither instrumental in nor promotes the sale or supply of the relevant goods to any person, entity or body in a third country.

Article ~~4e~~ 9

Advertising

It shall be prohibited for any natural or legal person, entity or body, including a partnership, resident or established in a Member State that sells or purchases advertising space or advertising time from within the Union, for any natural person having the nationality of a Member State that sells or purchases advertising space or advertising time from within the Union, and for any legal person, entity or body incorporated or constituted under the law of a Member State, that sells or purchases advertising space or advertising time from within the Union, to sell to or purchase from any person, entity or body in a third country advertising space in print media or on the Internet or advertising time on television or radio in relation to goods listed in Annex II.

Article ~~4f~~ 10

National measures

1. Without prejudice to the applicable Union rules, including the prohibition of discrimination on grounds of nationality, Member States may adopt or maintain national measures restricting transportation, financial services, insurance or re-insurance, or general advertising or promotion in relation to goods listed in Annex II.

2. Member States shall notify the Commission of any measures adopted pursuant to paragraph 1. ~~Existing measures shall be notified by 17 February 2017. New measures, or amendments and repeals thereof, shall be notified~~ before they enter into force.

CHAPTER III

Goods that could be used for the purpose of torture or other cruel, inhuman or degrading treatment or punishment

Article ~~5~~ 11

Export authorisation requirement

1. For any export of goods listed in Annex III, an authorisation shall be required, irrespective of the origin of such goods. However, no authorisation shall be required for goods which only pass through the customs territory of the Union, namely those which are not assigned a customs approved treatment or use other than the external transit procedure under Article 226 of Regulation (EU) No 952/2013, including storage of non-Union goods in a free zone.

Annex III shall only comprise the following goods that could be used for the purpose of torture or other cruel, inhuman or degrading treatment or punishment:

- (a) goods which are primarily used for law enforcement purposes; ~~and~~
- (b) 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.

Annex III shall not include:

- (a) firearms controlled by Regulation (EU) No 258/2012 ~~of the European Parliament and of the Council~~²⁰;
- (b) dual-use items controlled by ~~Council~~ Regulation (EC) No 428/2009²¹; ~~and~~
- (c) goods controlled in accordance with ~~Council~~ Common Position 2008/944/CFSP²².

²⁰ ~~Regulation (EU) No 258/2012 of the European Parliament and of the Council 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 export authorisation, and import and transit measures for firearms, their parts and components and ammunition (OJ L 94, 30.3.2012, p. 1).~~

²¹ ~~Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (OJ L 134, 29.5.2009, p. 1).~~

²² ~~Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment (OJ L 335, 13.12.2008, p. 99).~~

↓ 1236/2005 (adapted)

2. Paragraph 1 shall not apply to exports to those territories of Member States which are both listed in Annex ~~IV~~ VI and are not part of the customs territory of the ~~Community~~ Union ~~☒~~ , provided that the goods are used by an authority in charge of law enforcement in both the country or territory of destination and the metropolitan part of the Member State to which that territory belongs. Customs or other relevant authorities shall have the right to verify whether this condition is met and may decide that, pending such verification, the export shall not take place.

3. Paragraph 1 shall not apply to exports to third countries, provided that the goods are used by military or civil personnel of a Member State, if such personnel is taking part in an EU or UN peace keeping or crisis management operation in the third country concerned or in an operation based on agreements between Member States and third countries in the field of defence. Customs and other relevant authorities shall have the right to verify whether this condition is met. Pending such verification, the export shall not take place.

Article ~~6~~ 12

Criteria for granting export authorisations

↓ 2016/2134 Art. 1.7(a)

1. Decisions on applications for authorisations in respect of the export of goods listed in Annex III shall be taken by the competent authorities, 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.

↓ 1236/2005 (adapted)

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.

The competent authority shall take into account:

- (a) available international court judgements~~s~~;
- (b) 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.

↓ 2016/2134 Art. 1.7(b) (adapted)

3. The ~~following~~ rules ~~in~~ in the second and third subparagraphs ~~shall~~ shall apply to the verification of the intended end-use and the risk of diversion~~s~~.

~~3.1.~~ If the manufacturer of goods listed in point 3.2 or 3.3 of Annex III requests an authorisation for exporting such goods to a distributor, the competent authority shall make an assessment of the contractual arrangements made by the manufacturer and the distributor and of the measures that they are taking to ensure that these goods and, if applicable, the products in which they will be incorporated will not be used for torture or other cruel, inhuman or degrading treatment or punishment.

~~3.2.~~ If an authorisation is requested for exporting goods listed in point 3.2 or 3.3 of Annex III to an end-user, the competent authority may, when assessing the risk of diversion, take into account the contractual arrangements that apply and the end-use statement signed by the end-user, if such a statement is provided. If no end-use statement is provided, it shall be up to the exporter to demonstrate who will be the end-user and what use will be made of the goods. If the exporter fails to provide sufficient information on the end-user and the end-use, the competent authority shall be deemed to have reasonable grounds to believe that the goods might be used for torture or other cruel, inhuman or degrading treatment or punishment.

4. In addition to the criteria set out in paragraph 1, when assessing an application for a global authorisation, the competent authority shall take into consideration the application by the exporter of proportionate and adequate means and procedures to ensure compliance with the provisions and objectives of this Regulation and with the terms and conditions of the authorisation.

↓ 2016/2134 Art. 1.8

Article ~~6a~~ 13

Prohibition of transit

A natural or legal person, entity or body, including a partnership, whether resident or established in a Member State or not, shall be prohibited from executing the transit of goods listed in Annex III, if he, she or it knows that any part of a shipment of such goods is intended to be used for torture or other cruel, inhuman or degrading treatment or punishment in a third country.

Article ~~7~~ 14

National measures

1. Notwithstanding the provisions in Articles ~~5~~ 11 and ~~6~~ 12, a Member State may adopt or maintain a prohibition on the export and import of leg irons, gang chains and portable electric shock devices.
2. A Member State may impose an authorisation requirement on the export of handcuffs which have an overall dimension including chains, measured from the outer edge of one cuff to the outer edge of the other cuff, exceeding 240 mm when locked. The Member State concerned shall apply Chapter III and ~~IV~~ V to such handcuffs.
3. Member States shall notify the Commission of any measures adopted pursuant to paragraphs 1 and 2. ~~Existing measures shall be notified by 30 July 2006. Subsequent measures shall be notified~~ before they enter into force.

Article ~~7a~~ 15

Authorisation requirement for certain services

1. An authorisation shall be required for any supply, by a supplier of technical assistance or a broker, respectively, of one of the following services to any person, entity or body in a third country, whether for consideration or not:
 - (a) technical assistance related to goods listed in Annex III, irrespective of the origin of such goods; and
 - (b) brokering services related to goods listed in Annex III, irrespective of the origin of such goods.
2. When deciding on applications for an authorisation for the supply of brokering services concerning goods listed in Annex III, Article ~~6~~ 12 shall apply mutatis mutandis.

When deciding on applications for an authorisation for the supply of technical assistance related to goods listed in Annex III, the criteria set out in Article ~~6~~ 12 shall be taken into account to assess:

- (a) whether the technical assistance would be supplied to a person, entity or body that might use the goods to which the technical assistance relates for torture or other cruel, inhuman or degrading treatment or punishment; and
- (b) whether the technical assistance would be used to repair, develop, manufacture, test, maintain or assemble goods listed in Annex III for, or supply technical assistance to,

a person, entity or body that might use the goods to which the technical assistance relates for torture or other cruel, inhuman or degrading treatment or punishment.

3. Paragraph 1 shall not apply to the supply of technical assistance, if

- (a) the technical assistance is supplied to a law enforcement authority of a Member State or to military or civil personnel of a Member State as described in the first sentence of Article ~~5~~ 11(3);
- (b) the technical assistance consists of providing information that is in the public domain; or
- (c) the technical assistance is the minimum necessary for the installation, operation, maintenance or repair of those goods listed in Annex III whose export has been authorised by a competent authority in accordance with this Regulation.

4. Notwithstanding paragraph 1, a Member State may maintain a prohibition on the supply of brokering services related to leg irons, gang chains and portable electric shock devices. Where a Member State maintains such a prohibition, it shall ~~notify the measures it has adopted to the Commission by 17 February 2017 and~~ inform the Commission if ~~these~~ measures previously adopted and notified in accordance with Article 7a(4) of Regulation (EC) No 1236/2005 are amended or repealed.

↓ 2016/2134 Art. 1.10 (adapted)

CHAPTER ~~IIIa~~ IV

Goods that could be used for the purpose of capital punishment

Article ~~7b~~ 16

Export authorisation requirement

1. For any export of goods listed in Annex ~~IIIa~~ IV, an authorisation shall be required irrespective of the origin of such goods. However, no authorisation shall be required for goods which only pass through the customs territory of the Union, namely those which are not assigned a customs approved treatment or use other than the external transit procedure under Article 226 of Regulation (EU) No 952/2013, including storage of non-Union goods in a free zone.

Annex ~~IIIa~~ IV shall only comprise goods that could be used for the purpose of capital punishment and have been approved or actually used for capital punishment by one or more third countries that have not abolished capital punishment. It shall not include:

- (a) firearms controlled by Regulation (EU) No 258/2012;
- (b) dual-use items controlled by Regulation (EC) No 428/2009 and
- (c) goods controlled in accordance with Common Position 2008/944/CFSP.

2. Where the export of medicinal products requires an export authorisation pursuant to this Regulation and the export is also subject to authorisation requirements in accordance with international conventions controlling narcotic drugs and psychotropic substances, such as the 1971 Convention on Psychotropic Substances, Member States may use a single procedure to carry out the obligations imposed on them by this Regulation and by the relevant convention.

Article ~~7e~~ 17

Criteria for granting export authorisations

1. Decisions on applications for authorisations in respect of the export of goods listed in Annex ~~IIIa~~ IV shall be taken by the competent authorities, 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.

2. The competent authority shall not grant any authorisation when there are reasonable grounds to believe that the goods listed in Annex ~~IIIa~~ IV might be used for capital punishment in a third country.

3. The ~~following~~ rules ~~☒~~ in the second, third and fourth subparagraphs ~~☒~~ shall apply to the verification of the intended end-use and the risk of diversion~~s~~.

~~3.1.~~ If the manufacturer of goods listed in section 1 of Annex ~~IIIa~~ IV requests an authorisation for exporting such products to a distributor, the competent authority shall make an assessment of the contractual arrangements made by the manufacturer and the distributor and of the measures that they are taking to ensure that the goods will not be used for capital punishment.

~~3.2.~~ If an authorisation is requested for exporting goods listed in section 1 of Annex ~~IIIa~~ IV to an end-user, the competent authority may, when assessing the risk of diversion, take into account the contractual arrangements that apply and the end-use statement signed by the end-user, if such a statement is provided. If no end-use statement is provided, it shall be up to the exporter to demonstrate who will be the end-user and what use will be made of the goods. If the exporter fails to provide sufficient information on the end-user and the end-use, the competent authority shall be deemed to have reasonable grounds to believe that the goods might be used for capital punishment.

~~3.3.~~ The Commission, in cooperation with competent authorities of the Member States, may adopt best practice guidelines on the assessment of end-use and assessing the purpose for which technical assistance would be used.

4. In addition to the criteria set out in paragraph 1, when assessing an application for a global authorisation the competent authority shall take into consideration the application by the exporter of proportionate and adequate means and procedures to ensure compliance with the provisions and objectives of this Regulation and with the terms and conditions of the authorisation.

Article ~~74~~ 18

Prohibition of transit

A natural or legal person, entity or body, including a partnership, whether resident or established in a Member State or not, shall be prohibited from executing the transit of goods listed in Annex ~~IIIa~~ IV, if he, she or it knows that any part of a shipment of such goods is intended to be used for capital punishment in a third country.

Article ~~7e~~ 19

Authorisation requirement for certain services

1. An authorisation shall be required for any supply, by a supplier of technical assistance or a broker, respectively, of one of the following services to any person, entity or body in a third country whether for consideration or not:

- (a) technical assistance related to goods listed in Annex ~~IIIa~~ IV, irrespective of the origin of such goods; and
- (b) brokering services related to goods listed in Annex ~~IIIa~~ IV, irrespective of the origin of such goods.

2. When deciding on applications for an authorisation for the supply of brokering services concerning goods listed in Annex ~~IIIa~~ IV Article ~~7e~~ 17 shall apply mutatis mutandis.

When deciding on applications for an authorisation for the supply of technical assistance related to goods listed in Annex ~~IIIa~~ IV the criteria set out in Article ~~7e~~ 17 shall be taken into account to assess:

- (a) whether the technical assistance would be supplied to a person, entity or body that might use the goods to which the technical assistance relates for capital punishment; and
- (b) whether the technical assistance would be used to repair, develop, manufacture, test, maintain or assemble goods listed in Annex ~~IIIa~~ IV for, or supply technical assistance to, a person, entity or body that might use the goods to which the technical assistance relates for capital punishment.

3. Paragraph 1 shall not apply to the supply of technical assistance, if

- (a) the technical assistance consists of providing information that is in the public domain; or
- (b) the technical assistance is the minimum necessary for the installation, operation, maintenance or repair of those goods listed in Annex ~~IIIa~~ IV whose export has been authorised by a competent authority in accordance with this Regulation.

CHAPTER ~~IV~~ V**Authorisation procedures***Article ~~8~~ 20***Types of authorisations and issuing authorities**

1. A Union General Export Authorisation for certain exports as set out in Annex ~~IIIb~~ V is established by this Regulation.

The competent authority of the Member State where the exporter is resident or established can prohibit the exporter from using this authorisation, if there is reasonable suspicion about the exporter's ability to comply with the terms of this authorisation or with a provision of the export control legislation.

The competent authorities of the Member States shall exchange information on all exporters deprived of the right to use the Union General Export Authorisation, unless they determine that a specific exporter will not attempt to export goods listed in Annex ~~IIIa~~ IV through another Member State. A secure and encrypted system for exchange of information shall be used for this purpose.

2. An authorisation for exports other than those referred to in paragraph 1 for which an authorisation is required under this Regulation shall be granted by the competent authority of the Member State where the exporter is resident or established, as listed in Annex I. Such authorisation may be an individual or a global authorisation, if it concerns goods listed in Annex III or in Annex ~~IIIa~~ IV. An authorisation concerning goods listed in Annex II shall be an individual authorisation.

3. An authorisation for transit of goods listed in Annex II shall be granted by the competent authority of the Member State where the natural or legal person, entity or body transporting the goods within the customs territory of the Union is resident or established, as listed in Annex I. If that person, entity or body is not resident or established in a Member State, an authorisation shall be granted by the competent authority of the Member State in which the entry of goods into the customs territory of the Union takes place. Such an authorisation shall be an individual authorisation.

4. An authorisation for imports for which an authorisation is required under this Regulation shall be granted by the competent authority of the Member State where the museum is established, as listed in Annex I. An authorisation concerning goods listed in Annex II shall be an individual authorisation.

5. An authorisation for the supply of technical assistance related to goods listed in Annex II shall be granted by:

- (a) the competent authority of the Member State where the supplier of technical assistance is resident or established, as listed in Annex I, or, if there is no such Member State, the competent authority of the Member State of which the supplier of technical assistance is a national or under whose law it has been incorporated or constituted, if the assistance is to be supplied to a museum in a third country; or
- (b) the competent authority of the Member State where the museum is established, as listed in Annex I, if the assistance is to be supplied to a museum in the Union.

6. An authorisation for the supply of technical assistance related to goods listed in Annex III or in Annex ~~III~~ IV shall be granted by the competent authority of the Member State where the supplier of technical assistance is resident or established, as listed in Annex I, or, if there is no such Member State, the competent authority of the Member State of which the supplier of technical assistance is a national or under whose law it has been incorporated or constituted.

7. An authorisation for the supply of brokering services related to goods listed in Annex III or in Annex ~~III~~ IV shall be granted by the competent authority of the Member State where the broker is resident or established, as listed in Annex I, or, if there is no such Member State, the competent authority of the Member State of which the broker is a national or under whose law it has been incorporated or constituted. Such an authorisation shall be granted for a set quantity of specific goods moving between two or more third countries. The location of the goods in the originating third country, the end-user and its exact location shall be clearly identified.

8. Applicants shall supply the competent authority with all relevant information required for their applications for an individual or global authorisation for exports or for brokering services, for an authorisation for technical assistance, for an individual import authorisation or for an individual authorisation for transit.

As regards exports the competent authorities shall receive complete information in particular on the end-user, the country of destination and the end-use of the goods.

As regards brokering services the competent authorities shall in particular receive details of the location of the goods in the originating third country, a clear description of the goods and the quantity involved, third parties involved in the transaction, the third country of destination, the end-user in that country and its exact location.

The granting of an authorisation may be subject to an end-use statement, if appropriate.

9. By way of derogation from paragraph 8, where a manufacturer or a manufacturer's representative is to export or to sell and transfer goods included in point 3.2 or 3.3 of Annex III or in section 1 of Annex ~~III~~ IV to a distributor in a third country, the manufacturer shall provide information on the arrangements made and the measures taken to prevent the goods included in point 3.2 or 3.3 of Annex III from being used for torture or other cruel, inhuman or degrading treatment or punishment or to prevent the goods included in section 1 of Annex ~~III~~ IV 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.

10. Upon request of a national preventive mechanism established under the Optional Protocol to the 1984 ~~☒~~ United Nations ~~☒~~ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the competent authorities may decide to make the information they have received from an applicant on the country of destination, the consignee, the end-use and the end-users or, where relevant, the distributor and the arrangements and measures referred to in paragraph 9, available to the requesting national preventive mechanism. The competent authorities shall hear the applicant before the information is made available and may impose restrictions on the use that can be made of the information. The competent authorities shall make their decisions in accordance with national laws and practice.

11. Member States shall process requests for individual or global authorisations within a period of time to be determined by national law or practice.

↓ 2016/2134 Art. 1.12

Article ~~9~~ 21

Authorisations

1. Authorisations for export, import or transit shall be issued on a form consistent with the model set out in Annex ~~V~~ VII. Authorisations concerning brokering services shall be issued on a form consistent with the model set out in Annex ~~VI~~ VIII. Authorisations concerning technical assistance shall be issued on a form consistent with the model set out in Annex ~~VII~~ IX. Such authorisations shall be valid throughout the Union. The period of validity of an authorisation shall be from three to twelve months with a possible extension of up to 12 months. The period of validity of a global authorisation shall be from one year to three years with a possible extension of up to two years.

2. An authorisation for export granted in accordance with Article ~~6~~ 12 or with Article ~~7e~~ 17 implies an authorisation for the exporter to supply technical assistance to the end-user to the extent that such assistance is necessary for the installation, operation, maintenance or repair of those goods whose export is authorised.

3. The authorisations may be issued by electronic means. The specific procedures shall be established on a national basis. Member States availing themselves of this option shall inform the Commission.

4. Authorisations for export, import, transit, the supply of technical assistance or the supply of brokering services shall be subject to any requirements and conditions the competent authority deems appropriate.

5. The competent authorities, acting in accordance with this Regulation, may refuse to grant an authorisation and may annul, suspend, modify or revoke an authorisation which they have already granted.

Article ~~19~~ 22

Customs formalities

1. When completing customs formalities, the exporter or importer shall submit the duly completed form set out in Annex ~~V~~ VII as proof that the necessary authorisation for the export or import concerned has been obtained. If the document is not filled out in an official language of the Member State where the customs formalities are being completed, the exporter or importer may be required to provide a translation into such official language.

2. If a customs declaration is made concerning goods listed in Annex II, III or ~~IIIa~~ IV 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 shall make the exporter or importer aware of the possibility to apply for an authorisation pursuant to this Regulation. If no application for an authorisation is made within six months of 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 law.

Article ~~11~~ 23

Notification and consultation requirement

1. A Member State shall notify the other Member States and the Commission if its competent authorities, as listed in Annex I, take a decision dismissing an application for an authorisation under this Regulation or if they annul an authorisation they have granted. Such notification shall be made not later than 30 days following the date of the decision or annulment.

2. The competent authority shall, through diplomatic channels where required or appropriate, consult the authority or authorities which, in the preceding three years, dismissed an application for authorisation of an export, a transit, the supply of technical assistance to a person, entity or body in a third country or the supply of brokering services under this Regulation, if it receives an application concerning an export, a transit, the supply of technical assistance to a person, entity or body in a third country or the supply of brokering services involving an essentially identical transaction referred to in such earlier application and considers that an authorisation should, nevertheless, be granted.

3. If, after the consultations referred to in paragraph 2, the competent authority decides to grant an authorisation, the relevant Member State shall immediately inform the other Member States and the Commission of its decision and explain the reasons for its decision, submitting supporting information as appropriate.

4. Where a refusal to grant an authorisation is based on a national prohibition in accordance with Article ~~7~~ 14(1) or Article ~~7a~~ 15(4), it shall not constitute a decision dismissing an application within the meaning of paragraph 1 of this Article.

5. All notifications required under this Article shall be made via a secure and encrypted system for exchange of information.

↓ 1236/2005

CHAPTER ~~V~~ VI

General and final provisions

↓ 2016/2134 Art. 1.15

Article ~~12~~ 24

Amendment of Annexes

The Commission is empowered to adopt delegated acts in accordance with Article ~~15a~~ 29, to amend Annexes I, ~~II, III, IIIa, IIIb, IV, V, VI and VII~~ to IX. The data in Annex I regarding competent authorities of the Member States shall be amended on the basis of information supplied by the Member States.

Where, in the case of amendment of Annex II, III, ~~IIIa~~ IV or ~~IIIb~~ V, imperative grounds of urgency so require, the procedure provided for in Article ~~15b~~ 30 shall apply to delegated acts adopted pursuant to this Article.

↓ 2016/2134 Art. 1.16

Article ~~12a~~ 25

Requests for adding goods to one of the lists of goods

1. Each Member State may address a duly substantiated request to the Commission to add goods designed or marketed for law enforcement to Annex II, Annex III or Annex ~~IIIa~~ IV. Such a request shall include information on:

- (a) the design and characteristics of the goods;
- (b) all the purposes for which they can be used; and
- (c) the international or domestic rules that would be broken if the goods were to be used for law enforcement.

When addressing its request to the Commission, the requesting Member State shall also forward that request to the other Member States.

2. The Commission may, within three months of the receipt of the request 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. The Commission shall forward its questions to the other Member States. The other Member States may also provide the Commission with further information for the assessment of the request.

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 twenty weeks of the receipt of the request or the receipt of supplementary information, respectively, commence the procedure for the adoption of the requested amendment or inform the requesting Member State of the reasons for not doing so.

↓ 1236/2005

Article ~~13~~ 26

Exchange of information between Member States' authorities and the Commission

1. Without prejudice to Article ~~11~~ 23, 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.

2. Relevant information on authorisations granted and refused shall comprise at least the type of decision, the grounds for the decision or a summary thereof, the names of the consignees and, if they are not the same, of the end-users as well as the goods concerned.

3. Member States, if possible in cooperation with the Commission, shall make a public, annual activity report, providing information on the number of applications received, on the goods and countries concerned by these applications, and on the decisions they have taken on these applications. This report shall not include information the disclosure of which a Member State considers to be contrary to the essential interests of its security.

↓ 2016/2134 Art. 1.17

~~3a~~4. The Commission shall prepare an annual report comprised of the annual activity reports referred to in paragraph 3. That annual report shall be made publicly available.

↓ 1236/2005

45. Except for the supply of information mentioned in paragraph 2 to the authorities of the other Member State and to the Commission, this Article shall be without prejudice to applicable national rules concerning confidentiality and professional secrecy.

56. The refusal to grant an authorisation, if it is based on a national prohibition adopted in accordance with Article ~~7~~ 14(1), shall not constitute an authorisation refused within the meaning of paragraphs 1, 2 and 3 of this Article.

↓ 2016/2134 Art. 1.18

Article ~~13a~~ 27

Processing of personal data

Personal data shall be processed and exchanged in accordance with the rules laid down in Directive 95/46/EC ~~of the European Parliament and of the Council~~²³ and Regulation (EC) No 45/2001 ~~of the European Parliament and of the Council~~²⁴.

↓ 1236/2005

Article ~~14~~ 28

Use of information

Without prejudice to Regulation (EC) No 1049/2001 of the European Parliament and of the Council ~~of 30 May 2001 regarding public access to European Parliament, Council and Commission documents~~²⁵ and national legislation on public access to documents, information received pursuant to this Regulation shall be used only for the purpose for which it was requested.

↓ 2016/2134 Art. 1.19

Article ~~15a~~ 29

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article ~~12~~ 24 shall be conferred on the Commission for a period of five years from 16 December 2016. 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.

²³ ~~Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).~~

²⁴ ~~Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).~~

²⁵ ~~Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).~~

3. The delegation of power referred to in Article ~~12~~ 24 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 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. 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-Making²⁶.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article ~~12~~ 24 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the 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.

↓ 2016/2134 Art. 1.20 (adapted)

Article ~~15b~~ 30

Urgency procedure

1. Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.

2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article ~~15a~~ 29(6). In such a case, the Commission shall repeal the act immediately following the notification of the decision to object by the European Parliament or by the Council.

Article ~~15c~~ 31

Anti-Torture Coordination Group

1. An Anti-Torture Coordination Group chaired by a representative of the Commission shall be established. Each Member State shall appoint a representative to this group.

2. The group shall examine any questions concerning the application of this Regulation, including, without limitation, the exchange of information on administrative practices and any questions which may be raised either by the chair or by a representative of a Member State.

²⁶

[OJL 123, 12.5.2016, p. 1](#)

3. The Anti-Torture Coordination Group may, whenever it considers it to be necessary, consult exporters, brokers, suppliers of technical assistance and other relevant stakeholders concerned 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.

The annual report shall be drawn up paying due regard to the need not to undermine the commercial interests of natural or legal persons. The discussions in the group shall be kept confidential.

Article ~~15d~~ 32

Review

1. By 31 July 2020, and every five 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. The review will assess the need to include the activities of EU nationals abroad. 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. The report shall be drawn up paying due regard to the need not to undermine the commercial interests of natural or legal persons. The discussions in the group shall be kept confidential;
- (b) information on the measures taken by the Member States pursuant to Article ~~17~~ 33(1) and notified to the Commission pursuant to Article ~~17~~ 33(2).

↓ 1236/2005 (adapted)

Article ~~17~~ 33

Penalties

1. Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

2. Member States shall notify the Commission ~~of those rules by 29 August 2006 and shall notify it without delay of any subsequent amendment affecting them~~ rules on penalties notified in accordance with Article 17(2) of Regulation (EC) No 1236/2005 .

Article ~~18~~ 34

Territorial scope

↓ 2016/2134 Art. 1.21

1. This Regulation shall have the same territorial scope of application as the Treaties, except for the first subparagraph of Article 3(1), the first subparagraph of Article 4(1), Articles ~~4a~~ 5, ~~5~~ 11, ~~6a~~ 13, ~~7~~ 14, ~~7b~~ 16 and ~~7d~~ 18, Article ~~8~~ 20(1) to (4) and Article ~~10~~ 22, which shall apply to:

- the customs territory of the Union~~;~~;
 - the Spanish territories of Ceuta and Melilla~~;~~;
 - the German territory of Helgoland.
-

↓ 1236/2005 (adapted)

2. For the purpose of this Regulation Ceuta, Helgoland and Melilla shall be treated as part of the customs territory of the ~~Community~~ Union .

↓

Article 35

Repeal

Regulation (EC) No 1236/2005 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex XI.

↓ 1236/2005 (adapted)

Article ~~19~~ 36

Entry into force

This Regulation shall enter into force on ~~30 July 2006~~ 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,

*For the European Parliament
The President*

*For the Council
The President*