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MOTION FOR A RESOLUTION

further to Questions for Oral Answer B7-0303/2010 and B7-0304/2010

pursuant to Rule 115(5) of the Rules of Procedure

on trade in goods used for torture

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on behalf of the ALDE Group

European Parliament resolution on trade in goods used for torture

The European Parliament,

- having regard to the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment, a prohibition which applies in all circumstances and, as a peremptory norm in international law, to all states,
- having regard to the articulation of this prohibition in a number of international and regional human rights instruments and documents, including the Universal Declaration of Human Rights¹, the International Covenant on Civil and Political Rights (ICCPR)², the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), the European Convention for the Protection of Human Rights and Fundamental Freedoms³, and the Charter of Fundamental Rights of the European Union⁴,
- having regard to its resolution of 3 October 2001 urging the European Commission to act swiftly to bring forward an appropriate Community instrument banning the promotion, trade and export of police and security equipment the use of which is inherently cruel, inhuman or degrading⁵,
- having regard to 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 which came into force on 30 July 2006⁶,
- having regard to the Guidelines to EU policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment, adopted in 2001 and reviewed in 2008⁷,

¹ Article 5, Universal Declaration of Human Rights, adopted and proclaimed by General Assembly resolution 217 A (III), 10th December 1948.

² Article 7, International Covenant on Civil and Political Rights. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI), 16 December 1966, entered into force 23 March 1976.

³ Article 3, European Convention for the Protection of Human Rights and Fundamental Freedoms. Adopted by the Council of Europe on 4 November 1950, entered into force 3 September 1953.

⁴ Article 4, European Union Charter of Fundamental Rights, as signed and proclaimed by the Presidents of the European Parliament, the Council and the Commission at the European Council meeting in Nice on 7 December 2000.

⁵ OJ C 87 E, 11.4.2002.

⁶ EC Regulation 1236/2005 of 27th June 2005 concerning trade in goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, published in Official Journal of the European Union, L200/1, 30th July 2005 (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:200:0001:0019:EN:PDF>).

⁷ Council of the European Union, Guidelines to EU policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment – An update of the Guidelines (PESC 450, COHOM 41, 18th April 2008)

- having regard to the 2008 report of the Council General Secretariat on implementation of the EU Guidelines on torture and other cruel, inhuman or degrading treatment or punishment⁸,
 - having regard to activity in other countries following the development of Council Regulation (EC) No 1236/2005, particularly amendments to US export control law proposed by the US Bureau of Industry and Security in August 2009 which mirror and in some cases go beyond some of those contained in Council Regulation (EC) No 1236/2005⁹,
 - having regard to the Memorandum of Understanding between the Council of Europe and the European Union, which invites the Committee for the Prevention of Torture of the Council of Europe to reinforce its cooperation with relevant institutions of the Union; and the 17th General Report on the activities of the Committee for the Prevention of Torture (CPT), which calls for the Council of Europe to consider the role that the CPT might play as regards implementation of Council Regulation (EC) No 1236/2005,
 - having regard to the reports published by Amnesty International and the Omega Research Foundation in 2007 and 2010 highlighting particular weaknesses in Council Regulation (EC) No 1236/2005 and expressing concern about the inadequate implementation of the Regulation by some European Union Member States¹⁰,
 - having regard to Rules 115(5) and 110(2) of its Rules of Procedure,
- A. whereas the Convention against Torture imposes specific obligations on states to prevent torture and other ill-treatment, to investigate its occurrences, to bring to justice the perpetrators and to provide reparations to the victims¹¹,
- B. whereas only seven Member States have produced public annual activity report as required under Article 13.3 of the regulation¹²,
- C. whereas despite such obligations, torture or other ill-treatment is still perpetrated throughout the world, and a wide range of policing and security equipment has been utilised for such practices,

(http://www.consilium.europa.eu/applications/HumanRights/docs.asp?cmsid=943&lang=EN&command=show_subdocs&id=108).

⁸ As quoted in European Council General Secretariat, Implementation of the EU Guidelines on torture and other cruel, inhuman or degrading treatment or punishment – stock taking and new implementation measures, 8407/1/08 REV 1 18 April 2008, (www.consilium.europa.eu/ueDocs/cms_Data/docs/hr/news129.pdf).

⁹ The proposed US changes include the introduction of controls on ‘equipment designed for the execution of human beings’, and the classification of ‘spiked batons’ and ‘shock sleeves’ as instruments explicitly ‘designed for torture’, and thus subject to a presumption of export licence denial. US Department of Commerce (Bureau of Industry and Security), *Revisions to the Commerce Control List to Update and Clarify Crime Control License Requirements*, published in US Federal Register, Vol.74.

¹⁰ Amnesty International, *European Union: Stopping the Trade in Tools of Torture* (Index: POL 34/001/2007); Amnesty International and Omega Research Foundation, *From Words to Deeds: making the EU ban on the trade in ‘tools of torture’ a reality* (Index: EUR 01/004/2010).

¹¹ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Adopted by General Assembly resolution 39/46 of 10 December 1984, entered into force 26 June 1987.

¹² Article 4, Charter of Fundamental Rights of the European Union.

- D. whereas the UN Special Rapporteur on Torture asserts that controlling the trade of such equipment forms part of every state's obligations under the UN Convention Against Torture¹³,
- E. whereas the Guidelines to EU policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment, state that the EU will urge third countries to prevent the use, production and trade of 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 ends¹⁴,
- F. whereas the 2008 report of the Council General Secretariat on EU actions in furtherance of commitments to combat torture and other ill-treatment in third countries, states that 'The adoption of the regulation on torture instruments is the first example of an EU regulation adopted in line with Human Rights guidelines. The United Nations Special Rapporteur on Torture has welcomed this step and expressed the view that it could serve as a model for a global regulation on this theme. This entails for the EU the need to assess the implementation of the regulation',
- G. whereas some European Union Member States, including the Czech Republic and Germany, have since the entry into force of Council Regulation (EC) No 1236/2005 licensed exports of items including leg restraints, chemical irritants and electric-shock stun devices, controlled under the Regulation, to countries with a poor human rights record,
- H. whereas only twelve Member States introduced penalty legislation by 29 August 2006 as required by Article 17 of Council Regulation (EC) No 1236/2005,
- I. whereas only seven Member States have produced one or more of the public, annual activity reports giving details of their licensing decisions as required under Article 13 of Council Regulation (EC) No 1236/2005, and that some such reports which have been published have been insufficiently detailed to allow meaningful oversight of these licensing decisions,
- J. whereas the list of items and equipment whose trade is prohibited by Council Regulation (EC) No 1236/2005 does not include some policing and security equipment, currently traded internationally, which either have no practical use than for torture or other ill-treatment, including spiked batons, certain wall or floor restraints, certain leg restraints, finger-cuffs, thumbcuffs, thumbscrews, and body-worn electric-shock stun devices other than 'stun belts',
- K. whereas the list of items and equipment whose trade is controlled by Council Regulation (EC) No 1236/2005 does not include some policing and security equipment, currently

¹³ Report of the Special Rapporteur on the question of torture, Theo Van Boven, Commission on Human Rights, UN Doc. E/CN.4/2005/62, 15th December 2004, para. 14.

¹⁴ Council of the European Union, *Guidelines to EU policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment – An update of the Guidelines* (PESC 450, COHOM 41, 18th April 2008) (http://www.consilium.europa.eu/applications/HumanRights/docs.asp?cmsid=943&lang=EN&command=show_subdocs&id=108).

traded internationally, which may have legitimate law enforcement or penal uses when their use is regulated in accordance with international human rights obligations and law enforcement best practice standards, but which are widely misused for torture or other ill-treatment, including handcuffs, batons and other hand-held impact devices, high-voltage electric-shock stun weapons operating below 10,000 volts, as well as specially designed components and accessories for controlled and prohibited equipment,

- L. whereas the Committee on Common Rules for Exports of Products is due to meet again on 29 June 2010,
1. Calls on all Member States to inform the European Commission without delay of the relevant penalties they have introduced for breaches of Council Regulation (EC) No 1236/2005, as they are obliged to do under Article 17 of the Regulation;
 2. Calls on the European Commission and the Committee on Common Rules for Exports of Products to provide guidance and assistance to Member States to strengthen such penalties where they are insufficient or have not been introduced;
 3. Recalls the obligation of all Member States under Article 13(3) of Council Regulation (EC) No 1236/2005 to compile timely, public annual activity reports, and urges the Commission to write to Member States which have not supplied the Commission with such reports to comply with their obligations;
 4. Urges Member States, in order that their annual activity reports provide sufficient information for meaningful public oversight, to include at a minimum in such reports: the number of applications received, the items involved and countries of destination for each application, as well as the decisions made on each of these applications, and reports of 'null activity' if applicable;
 5. Urges the European Commission to develop a model template for Member States' annual activity reports in order to facilitate the compilation of such reports by all Member States and to ensure their consistency;
 6. Urges the European Commission to undertake a formal review, assisted by the Committee on Common Rules for Exports of Products (as empowered by Articles 15 and 16 of the Regulation) of Member States implementation and licensing activity under the Regulation, including an examination of all Member States' annual activity reports; and to publish this review alongside the annual activity reports received from each Member State in each year since the Regulation entered into force;
 7. Urges Member States to ensure that the procedures highlighted under Article 13 of Council Regulation (EC) No 1236/2005 to share information between Member States and the Commission regarding licensing decisions and implementation measures, either through the denial notification mechanism already established for military export denials in COARM, or through other effective procedures, are properly implemented;
 8. Urges the Commission to inform Parliament of activities undertaken to date to facilitate Member States' fulfilment of Article 13;

9. Requests the Commission to provide the Parliament, and publish, the information it has received from *each* Member State in *each* year since the Regulation entered into force: specifically, notifications of dismissals of applications for authorisation under Article 11 of the Regulation; details of the relevant penalties which each Member State has introduced for breaches of the Regulation; and the full contents of Member States' annual activity reports;
10. Urges the Commission and Member States to ensure that the Committee on Common Rules for Exports of Products meet on a regular basis, produce a clear timetable for a formal review of the Regulation, and establish a procedure for timely investigations into possible breaches of the Regulation;
11. Strongly condemns any attempts by Member States or companies within the European Union to import electric-shock stun belts whose import is prohibited by Council Regulation (EC) No 1236/2005 or other electric-shock body-worn restraint devices essentially similar in effect, and urges the Commission to conduct an urgent investigation to establish whether and when electric-shock stun belts or related parts, other electric-shock body-worn restraint devices, technical assistance or training, have been transferred to any Member States prior to, or since, the introduction of the Regulation; to determine whether such devices have been deployed by any law enforcement or prison authorities in those countries; and to report its findings to the Parliament;
12. Calls on all Member States in order to contribute to the prevention of torture and other cruel, inhuman or degrading treatment or punishment, to monitor technical assistance to third countries in order to avoid this technical assistance to be misused for the production of goods with purpose of capital punishment, for the purpose of torture and other cruel, inhuman or degrading treatment or punishment;
13. Calls on the Commission to review and update the list of items prohibited under Annex II of Council Regulation (EC) No. 1236/2005 to include spiked batons, fixed wall and floor restraints, leg irons, chains and shackles, thumb-cuffs, finger-cuffs and thumb-screws, stun-cuffs and other body-worn electric-shock stun devices;
14. Calls on the Commission to review and update the list of items controlled under Annex II of Council Regulation (EC) No. 1236/2005 to include handcuffs, batons and other hand-held impact devices, and portable electric-shock devices below 10,000 volts;
15. Further calls on the Commission to establish a specific procedure to regularly review the lists of items in Annex II and Annex III as mandated in Paragraph 23 of Council Regulation (EC) No. 1236/2005;
16. Urges the Commission to come forward with a proposal to introduce as soon as practicable into the Regulation a 'torture end-use' clause, which would allow, on the basis of prior information, Member States to license and thus refuse the export of any items which pose a substantial risk of being used for capital punishment, torture or other ill-treatment by its destined end-users;
17. Urges the Commission to come forward with a proposal to introduce as soon as practicable into the Regulation a prohibition on the brokering of transactions by any

European Union natural or legal person from any place involving international transfers, including sales and exports, of items with no practical use other than for capital punishment, torture or other ill-treatment, as included in Annex II of the Regulation; and requiring Member States to introduce effective mechanisms to control the brokering of transactions involving transfers of any items listed in Annex III of the Regulation;

18. Urges the Commission to come forward with a proposal to introduce as soon as practicable into the Regulation a requirement for importers to obtain an import authorisation for the import of items listed in Annex III of the Regulation into the European Union, and for Member States to refuse such import authorisations where there are reasonable grounds to believe that such equipment might be used for torture or other ill-treatment either within the European Union or once further traded outside the European Union;
19. Urges the Committee on Common Rules for Exports of Products to consider means for removing the exemption for the requirement of import or export authorisations for Annex III items transiting through the European Union;
20. Recalls the 2008 update to the Guidelines to EU policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment, and calls on the Council and Commission in accordance with these Guidelines to promote Council Regulation (EC) No. 1236/2005 as an example of best practice in meetings with third countries; and to encourage third countries which export equipment whose import is prohibited by Council Regulation (EC) No. 1236/2005 to make traders in those countries aware of the Regulation's prohibitions;
21. Urges the Commission and Member States to promote international trade controls on equipment that could be used for capital punishment, torture and other ill-treatment at an international level, and particularly to work to expand the UN General Assembly's annual call "to prevent and prohibit the production, trade, export and use of equipment that is specifically designed to inflict torture", so as also to call on all states to regulate the production, trade, export and use of equipment that is not specifically designed but is widely misused in order to inflict torture or other ill-treatment;
22. Instructs its President to forward this resolution to the Council, the Commission and the Member States.