



EUROPEAN PARLIAMENT

2014 - 2019

Committee on Foreign Affairs

2014/0005(COD)

2.7.2015

OPINION

of the Committee on Foreign Affairs

for the Committee on International Trade

on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (COM(2014)0001 – C7-0014/2014 – 2014/0005(COD))

Rapporteur: Barbara Lochbihler

PA_Legam

SHORT JUSTIFICATION

The review of the Regulation aims to further strengthen the EU's role as a leading and responsible global actor in the fight against the death penalty and the eradication of torture. The draft opinion seeks to strengthen the provisions on the ancillary services linked to the transfer of goods, as well as on transit, technical assistance and commercial marketing. In line with Parliament's repeatedly expressed position, it aims to introduce a targeted end-use clause in order for Member States to prohibit or suspend the transfer of security-related items not listed in Annex II and III that clearly have no other practical use other than the purpose of capital punishment, torture or other ill-treatment, or there are reasonable grounds to believe that the transfer of those items would lead to the facilitation or the commission of judicial execution, torture or other ill-treatment.

It also proposes establishing an Equipment Coordination Group and introducing a periodical review mechanism and more systematic information-sharing and reporting in order to strengthen the oversight and efficient implementation of the Regulation.

AMENDMENTS

The Committee on Foreign Affairs calls on the Committee on International Trade, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a regulation Recital 19 a (new)

Text proposed by the Commission

Amendment

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

Amendment 2

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point a a (new)

Regulation (EC) No 1236/2005

Article 2 – point f

Present text

‘(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;

Amendment

(aa) Point (f) is replaced by the following:

‘(f) ‘technical assistance’ means any technical support related to repairs, development, manufacture, testing, maintenance, assembly, ***use*** 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;’

Justification

This amendment seeks to amend a provision within the existing act - Article 2 f - that was not referred to in the Commission proposal. The amendment seeks to add the word 'use' to clarify the definition of technical assistance.

Amendment 3

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point c

Regulation (EC) No 1236/2005

Article 2 – point k – subparagraph 2

Text proposed by the Commission

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;

Amendment

For the purposes of this Regulation, the provision of ancillary services is ***included in*** this definition. Ancillary services are transportation, financial services, insurance or re-insurance, or general advertising or promotion;

Amendment 4

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point c

Regulation (EC) No 1236/2005

Article 2 – point l

Text proposed by the Commission

(l) ‘broker’ means any natural or legal person or partnership resident or established in a Member State **of the Union** that carries out services defined under point (k) **from the Union into the territory of a third country**;

Amendment

(l) ‘broker’ means any natural or legal person or partnership resident or established in a Member State **or a national of a Member State** that carries out services defined under point (k);

Amendment 5

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point c

Regulation (EC) No 1236/2005

Article 2 – point m

Text proposed by the Commission

(m) ‘supplier of technical assistance’ means any natural or legal person or partnership resident or established in a Member State of the Union that supplies technical assistance defined under point (f) **from the Union into the territory of a third country**;

Amendment

(m) ‘supplier of technical assistance’ means any natural or legal person or partnership resident or established in a Member State of the Union that supplies technical assistance defined under point (f);

Amendment 6

Proposal for a regulation

Article 1 – paragraph 1 – point 2

Regulation (EC) No 1236/2005

Article 2 – point r a (new)

Text proposed by the Commission

Amendment

(ra) ‘transit’ means a transport of non - Union goods, entering and passing through the customs territory of the

Union, with a destination outside the Union.'

Amendment 7

Proposal for a regulation

Article 1 – paragraph 1 – point 2 a (new)

Regulation (EC) No 1236/2005

Article 4 – paragraph 1

Present text

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

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

Amendment

(2a) Article 4(1) is replaced by the following:

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

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

Transit through the customs territory of the Union shall be prohibited for goods listed in Annex II.’

Amendment 8

Proposal for a regulation

Article 1 – paragraph 1 – point 2 b (new)

Regulation (EC) No 1236/2005

Article -4 a (new)

Text proposed by the Commission

Amendment

(2b) After Article 4, the following Article is inserted:

‘Article -4a

Prohibition of commercial marketing and promotion

Commercial marketing and promotion

within the Union by Union and non-Union registered companies and individuals for the purpose of transfer of products listed in Annex II shall be strictly prohibited. Those commercial marketing and promotion activities shall include those done using intangible sources, notably the internet. Other ancillary services, including transportation, financial services, insurance and re-insurance, shall also be strictly prohibited.'

Amendment 9

Proposal for a regulation

Article 1 – paragraph 1 – point 4

Regulation (EC) No 1236/2005

Article 5 – paragraph 1 – subparagraph 1

Text proposed by the Commission

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 91 of Council Regulation (EEC) No 2913/92, including storage of non-Union goods in a free zone of control type I or a free warehouse.*

Amendment

For any export of goods listed in Annex III, an authorisation shall be required, irrespective of the origin of such goods. *A transit authorisation shall be required for goods listed in Annex III which only pass through the customs territory of the Union.*

Amendment 10

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EC) No 1236/2005

Article 7a – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States shall conduct appropriate promulgation activities to ensure that all companies promoting security equipment and also those companies organising trade fairs and other events where such equipment is promoted are made aware of this Regulation and their obligations under it.

Justification

This amendment seeks to amend a provision within the existing act - Article 7a - point 1

Amendment 11

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EC) No 1236/2005

Article 7a – paragraph 2

Text proposed by the Commission

Amendment

2. A supplier of technical assistance shall be prohibited from supplying to any person, entity or body in a third country technical assistance in relation to goods listed in Annex III, irrespective of the origin of such goods, if the supplier of such assistance knows or has grounds for suspecting that some or all of the relevant goods are or may be intended to be used for torture or other cruel, inhuman or degrading treatment or punishment in a country that does not belong to the customs territory of the Union.’

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

Amendment 12

Proposal for a regulation

Article 1 – paragraph 1 – point 6 a (new)

Regulation (EC) No 1236/2005

Article 7 a a (new)

Text proposed by the Commission

Amendment

(6a) After Article 7a, the following Article is inserted:

‘Article 7aa

Targeted end-use clause

- 1. A Member State shall prohibit or suspend the transfer of a security-related item not listed in Annexes II and III that clearly has no practical use other than for the purpose of capital punishment, torture or other ill-treatment, or where there are reasonable grounds to believe that the transfer of such item would lead to the facilitation of the commission of judicial execution, torture or other ill-treatment.***
- 2. Member States shall notify the Commission of any measures adopted pursuant to paragraph 1 immediately after their adoption and shall indicate the precise reason for such measures.***
- 3. Member States shall also immediately notify the Commission of any modifications made to measures adopted pursuant to paragraph 1.***
- 4. The Commission shall publish the measures notified to it pursuant to paragraphs 2 and 3 in the C series of the Official Journal of the European Union.***
- 5. The Commission shall determine whether the items referred to in paragraph 1 should be added to the relevant Annex in order for their transfer to be prohibited or made subject to authorisation.***
- 6. Powers granted under the targeted end-***

use clause shall not extend to medical products that could be used for the purpose of capital punishment.’

Amendment 13

Proposal for a regulation

Article 1 – paragraph 1 – point 7

Regulation (EC) No 1236/2005

Article 7b – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. An authorisation shall be required for any export of goods listed in Annex IIIa, 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 91 of Council Regulation (EEC) No 2913/92, including storage of non-Union goods in a free zone of control type I or a free warehouse.***

Amendment

1. An authorisation shall be required for any export of goods listed in Annex IIIa, irrespective of the origin of such goods. ***A transit authorisation shall be required for goods listed in Annex IIIa which only pass through the customs territory of the Union.***

Amendment 14

Proposal for a regulation

Article 1 – paragraph 1 – point 7

Regulation (EC) No 1236/2005

Article 7d – paragraph 2

Text proposed by the Commission

2. A supplier of technical assistance shall be prohibited from supplying to any person, entity or body in a third country technical assistance in relation to goods listed in Annex IIIa, irrespective of the origin of such goods, if the supplier of technical assistance knows or has grounds for suspecting that some or all of the relevant goods are or may be intended to

Amendment

2. A supplier of technical assistance shall be prohibited from supplying to any person, entity or body in a third country technical assistance in relation to goods listed in Annex IIIa, irrespective of the origin of such goods, if the supplier of technical assistance knows or has grounds for suspecting that some or all of the relevant goods are or may be intended to

be used for capital punishment in a country that does not belong to the customs territory of the Union.’

be used for capital punishment in a country that does not belong to the customs territory of the Union. *A supplier of technical assistance shall also be prohibited from giving instruction, advice, training, or transmitting working knowledge or skills that could aid the commission of judicial executions.’*

Amendment 15

Proposal for a regulation

Article 1 – paragraph 1 – point 8

Regulation (EC) No 1236/2005

Article 8 – paragraph 6

Text proposed by the Commission

6. By way of derogation from paragraph 5, where medicinal products are to be exported by a manufacturer to a distributor, the manufacturer shall provide information on the arrangements made and the measures taken to prevent these products from being used for capital punishment, on the country of destination and, if it is available, information on the end-use and the end-users of the goods.

Amendment

6. By way of derogation from paragraph 5, where medicinal products are to be exported by a manufacturer to a distributor, the manufacturer shall provide information on the arrangements made and the measures taken to prevent these products from being used for capital punishment, on the country of destination and, if it is available, information on the end-use and the end-users of the goods. *This information shall be accessible, upon request, to a relevant independent oversight body such as a National Preventive Mechanism established under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, or a national human rights institution in a Member State.*

Amendment 16

Proposal for a regulation

Article 1 – paragraph 1 – point 12 a (new)

Regulation (EC) No 1236/2005

Article 13 – paragraph 1

Present text

Amendment

'1. Without prejudice to Article 11, **the Commission and the Member States** shall, **upon request**, inform **each other of the** measures taken under this Regulation and supply **each other with** any relevant information at their disposal in connection with this Regulation, in particular information on authorisations granted and refused.

(12a) In Article 13, paragraph 1 is replaced by the following:

'1. Without prejudice to Article 11, **each Member State** shall inform **the Commission** of measures taken under this Regulation and supply any relevant information at their disposal in connection with this Regulation, in particular information on authorisations granted and refused, **as well as in relation to measures taken under the targeted end-use clause. The Commission shall forward the information to the other Member States.**'

Justification

This amendment seeks to amend a provision within the existing act - Article 13.1 - that was not referred to in the Commission proposal.

Amendment 17

Proposal for a regulation

Article 1 – paragraph 1 – 12 b (new)

Regulation (EC) No 1236/2005

Article 13 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

(12b) In Article 13, the following paragraph is inserted:

'3a. The Commission shall make available publicly its annual report, compiling the annual activity reports made public by Member States in accordance with paragraph 3.'

Amendment 18

Proposal for a regulation

Article 1 – paragraph 1 – point 14 a (new)

Regulation (EC) No 1236/2005

Article -15 a (new)

PE555.011v02-00

12/17

AD\1067235EN.doc

(14a) The following Article is inserted:

‘Article -15a

Coordination Group

- 1. A Coordination Group chaired by a representative of the Commission shall be established, to which each Member State shall appoint a representative. The Coordination Group shall examine any question concerning the application of this Regulation which may be raised either by the Chair or by a representative of a Member State.***
- 2. The Coordination Group shall, in cooperation with the Commission, take appropriate measures to establish direct cooperation and exchange of information between competent authorities, in particular to eliminate the risk of possible disparities in the application of export controls to goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment and which may lead to a deflection of trade.***
- 3. The Chair of the Coordination Group shall, whenever he/she considers it to be necessary, consult exporters, brokers and other relevant stakeholders affected by this Regulation, including civil society representatives.***
- 4. The Coordination Group may receive information and proposals related to the effectiveness of the Regulation from all sides of civil society with relevant expertise.’***

Amendment 19

Proposal for a regulation

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

Regulation (EC) No 1236/2005

Article 15 c

Text proposed by the Commission

Amendment

(15c) The following Article is inserted:

‘Article 15c

Review of the implementation

1. Every three years the Commission shall review the implementation of this Regulation and present a report to the European Parliament and the Council on its application, which may include proposals for its amendment. Member States shall provide all appropriate information to the Commission for the preparation of the report.

2. This review shall include national licensing decisions by Member States, reporting to the Commission by Member States, notification and consultation mechanisms among Member States, promulgation and enforcement. The review procedure should analyse the operation of the penalty regimes introduced by Member States, and assess whether such regimes are effective, proportionate and dissuasive.

3. A dedicated section of this report shall also provide an overview of the activities, examinations and consultations of the Coordination Group, which shall be subject to Article 4 of Regulation (EC) No 1049/2001.

Amendment 20

Proposal for a regulation

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

Regulation (EC) No 1236/2005

Annex II – table 1 – column 2 – point 2.2a (new)

Text proposed by the Commission

Amendment

(-a) In Annex II, after point 2.2 the following points are inserted:

‘2.2a Direct contact electric shock batons, stun guns and stun shields intended for law enforcement purposes

2.2b Prisoner hoods intended for law enforcement purposes

2.2c Prisoner control pliers’

Amendment 21

Proposal for a regulation

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

Regulation (EC) No 1236/2005

Annex III – table 1 – column 2 – point 1.3 a (new)

Text proposed by the Commission

Amendment

(-aa) In Annex III, after point 1.3 the following point is inserted:

‘1.3a Chairs, boards and beds fitted with straps’

Amendment 22

Proposal for a regulation

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

Regulation (EC) No 1236/2005

Annex III – table 1 – column 2 – point 2.1

Present text

Amendment

(-ab) Point 2.1 of Annex III is replaced by

‘2.1. Portable electric *discharge weapons that can target only one individual each time an electric shock is administered*, including but not limited to *electric shock batons, electric shock shields, stun guns and* electric shock dart guns.

Notes:

1. This item does not *control* electric shock belts and other devices *falling within* item 2.1 of Annex II

2. This item does not *control* individual electronic shock devices when accompanying their user for the user’s own personal protection’

the following:

‘2.1 Portable electric *shock devices* including but not limited to, electric shock dart guns *having a no-load voltage exceeding 10 000 V*.

Notes:

1. This item does not *cover* electric shock belts and other devices *as described in* item 2.1 *and 2.2a* of Annex II

2. This item does not *cover* individual electronic shock devices when accompanying their user for the user’s own personal protection’

Justification

This amendment seeks to amend a provision within the existing act - Annex III Point 2 - that was not referred to in the Commission proposal.

Amendment 23

Proposal for a regulation

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

Regulation (EC) No 1236/2005

Annex III – table 1 – column 2 – point 2.3 a (new)

Text proposed by the Commission

Amendment

(-ac) In Annex III, after point 2.3 the following points are inserted:

‘2.3a Acoustic devices for the purpose of crowd/riot control

2.3b Millimetre wave weapons’

PROCEDURE

| | |
|-----------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Title | Trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment |
| References | COM(2014)0001 – C7-0014/2014 – 2014/0005(COD) |
| Committee responsible Date announced in plenary | INTA 15.1.2015 |
| Opinion by Date announced in plenary | AFET 15.1.2015 |
| Rapporteur Date appointed | Barbara Lochbihler 3.12.2014 |
| Date adopted | 29.6.2015 |
| Result of final vote | + : 45 - : 2 0 : 3 |
| Members present for the final vote | Francisco Assis, Petras Auštrevičius, Goffredo Maria Bettini, Elmar Brok, Klaus Buchner, James Carver, Fabio Massimo Castaldo, Javier Couso Permuy, Mark Demesmaeker, Georgios Epitideios, Eugen Freund, Sandra Kalniete, Manolis Kefalogiannis, Afzal Khan, Janusz Korwin-Mikke, Eduard Kukan, Ilhan Kyuchyuk, Barbara Lochbihler, Sabine Lösing, Andrejs Mamikins, David McAllister, Tamás Meszerics, Francisco José Millán Mon, Javier Nart, Pier Antonio Panzeri, Tonino Picula, Andrej Plenković, Jozo Radoš, Sofia Sakorafa, Jacek Saryusz-Wolski, Jaromír Štětina, Charles Tannock, Geoffrey Van Orden, Hilde Vautmans, Boris Zala |
| Substitutes present for the final vote | Brando Benifei, Tanja Fajon, Neena Gill, Sergio Gutiérrez Prieto, Javi López, Godelieve Quisthoudt-Rowohl, Marietje Schaake, Helmut Scholz, Igor Šoltes, Traian Ungureanu |
| Substitutes under Rule 200(2) present for the final vote | Franc Bogovič, Daniel Buda, Pascal Durand, Andrey Novakov, Jarosław Wałęsa |