Trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment

2014/0005(COD) - 14/01/2014 - Legislative proposal

PURPOSE: to amend 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.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: in June 2005, the Council of the European Union adopted Regulation (EC) No 1236 /2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment. The Regulation entered into force on 30 July 2006.

In response to calls from the European Parliament in 2010 and indications that medicines exported from the Union had been used for capital punishment in a third country, the lists of prohibited and controlled goods in Annexes II and III to that Regulation were amended by means of Commission Implementing Regulation (EU) No 1352/2011.

The Commission also started a process to review Regulation (EC) No 1236/2005 in its entirety, responding in particular to a Resolution of the European Parliament of 17 June 2010. In spring 2012, the Commission issued a call for applications with a view to establishing a Group of Experts to assist it with this review. During the period from July 2012 to July 2013, the Group of Experts met six times in Brussels with relevant Commission services.

CONTENT: the main amendments that the Commission proposes to make to Council Regulation (EC) No 1236/2005 focus on the following:

Export controls targeting capital punishment: given these firm international commitments under either Protocol No 13 to the European Convention on Human Rights or, the Second Optional Protocol to the International Covenant on Civil and Political Rights, exports to the States that are parties to one of them need not be subject to specific authorisation in order to prevent the relevant goods from being used for capital punishment and can be covered by a general export authorisation.

According to the proposal, such authorisation should be subject to appropriate conditions to avoid the diversion of the goods to a country that has not abolished capital punishment without prior scrutiny by the competent authorities. The general authorisation should, therefore, only apply where the end-user of the exported goods is established in the country of destination and no re-export to another country takes place. If these conditions are not met, a request for a specific or global authorisation should be made to the competent authorities.

Additional measures concerning listed goods: the proposal prohibits brokers in the Union from providing brokering services in relation to goods whose export and import are prohibited as such goods have no practical use other than for capital punishment, torture or other cruel, inhuman or degrading

treatment or punishment. Prohibiting the provision of such services serves the purpose of protecting public morals.

Where controls on exports are applied, the provision of brokering services and the supply of technical assistance in relation to any of the listed goods should be prohibited, if the broker or supplier of technical assistance is aware that the relevant goods are or may be intended for capital punishment, when the controls are applied to prevent use for such punishment, or for torture or other cruel, inhuman or degrading treatment or punishment, when the controls are intended to prevent such use.

Definition of torture and other cruel, inhuman or degrading treatment or punishment: the definition in Regulation (EC) No 1236/2005 currently covers acts inflicting 'significant pain or suffering', whereas the definition of torture refers to 'severe pain or suffering'.

Instead of being based on different levels of pain or suffering, the distinction between these types of acts should take account of the presence or absence of an intention to inflict pain or suffering and of the use of pain or suffering for a purpose included in the definition of torture.

The definition of 'other cruel, inhuman or degrading treatment or punishment', which is not found in the Convention, should be amended to align it with the case-law of the European Court of Human Rights. The Commission also considers it appropriate to clarify the meaning of the term 'lawful penalties' in the definitions of 'torture' and 'other cruel, inhuman or degrading treatment or punishment', taking into account this case-law and the Union's policy on capital punishment.

Exchange of information between customs authorities: the proposal requires customs authorities to share certain information with other customs authorities and, when they detect prohibited exports or imports of goods or exports of goods for which the required authorisation has not been granted, to inform the relevant authorities with a view to imposing penalties on the economic operator that committed the infringement.

DELEGATED ACTS: the proposal contains provisions empowering the Commission to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union.