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

2014/0005(COD) - 27/10/2015 - Text adopted by Parliament, partial vote at 1st reading/single reading

The European Parliament adopted **amendments** to 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.

The matter had been referred back to the competent committee for re-consideration. **The vote on the legislative resolution has been put back to a later session.**

The main amendments adopted in plenary are the following:

Definition of 'broker': Parliament feels that the EU should also be able to enforce this Regulation when EU nationals or legal persons established in the EU are involved in transactions that take place outside the Union territory. Prohibiting the provision of such services serves the purpose 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 of Fundamental Rights of the European Union.

Prohibition of commercial marketing and promotion: any transit of goods listed in Annex II (banned from import and export) shall be prohibited, irrespective of the origin of such goods, unless 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.

Similarly, online and offline commercial marketing and promotion activities within the Union, by any natural or legal person or partnership, for the purpose of the transfer of goods listed in Annex II shall be prohibited.

All companies marketing security equipment must be **made aware** of the fact that such equipment could be used for torture and other cruel, degrading or inhuman treatment or punishment and that marketing such equipment may become prohibited and authorisations relating to it may be withdrawn.

Targeted end-use clause: Parliament proposed to insert such a clause 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 cruel, degrading or inhuman treatment or punishment, or where there are reasonable grounds to believe that the transfer of those items would lead to the facilitation or the commission of capital punishment, torture or other cruel, degrading or inhuman treatment or punishment. Powers granted under the targeted end-use clause should not extend to medical products that could be used for the purpose of capital punishment,

Criteria for granting export authorisations: the amended text stipulates that the competent authority shall not grant any authorisation when there are reasonable grounds to believe that goods listed in Annex III and Annex IIIa 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 available international court judgements and findings of the competent bodies of the UN, the Council of Europe and the EU.

Transit authorisation requirement: Members proposed to strengthen the provision regarding authorisation in order to prevent the transit of goods for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment.

Technical assistance delivered independently of the supply of equipment: a supplier of technical assistance shall be prohibited from giving instruction, advice, training or transmitting working knowledge or skills that could aid the commission of capital punishment, torture or other cruel, inhuman or degrading treatment or punishment.

Exchange of best practices: the Commission, in cooperation with competent authorities of the Member States and third countries where appropriate, shall adopt best practice guidelines on the verification of end-use.

Non-listed goods: Members suggested introducing a catch-all clause to ensure that additional safeguards against the risks are in place with regard to the export of goods not listed in the annexes. In such cases the Commission should adopt delegated acts adding items to Annex II, Annex III or Annex IIIa. Medicinal products, as defined in Directive 2001/83/EC of the European Parliament and of the Council shall be excluded from the scope of this prohibition.

Customs procedures: if a customs declaration is made concerning goods listed in Annex II, III, or IIIa 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 draw attention to the possibility to apply for an authorisation pursuant to the Regulation. If the competent authority dismisses such an application, the customs authorities shall dispose of the detained goods.

Delegation of power: the delegation of powers has been carried out under Regulation (EU) 37/2014 (the "Trade Omnibus I"). Consequently, provisions on the delegation of powers in the current proposal are redundant and are deleted.

Anti-Torture Coordination Group: Parliament proposed the setting up of Coordination Group chaired by a representative of the Commission. Each Member State shall appoint a representative to this Group. It shall examine any question concerning the application of the Regulation and take appropriate measures to establish direct cooperation and exchange of information between competent authorities.

Report: three years after the entry into force of the Regulation and every three years thereafter, the Commission shall review the implementation of the Regulation and present a comprehensive report which may include proposals for its amendment.

The Commission shall assess whether rules on **penalties** laid down by Member States are of a similar nature and effect.

Union General Export Authorisation No EU (Annex II Part 2): Members deleted from the Annex certain countries that have not abolished the death penalty or have not ratified without reservation the 2nd Optional Protocol to the International Covenant on Civil and Political Rights (Benin, Madagascar, Liberia, Mongolia and Sao Tomé-et-Principe).