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

2018/0160(COD) - 01/10/2019 - Follow-up document

Pursuant to Regulation (EU) 2019/125 of the European Parliament and of the Council, the Commission presented a first report providing information on Member States' authorisation activities concerning exports of goods which could be used for torture or for capital punishment, in 2017 and 2018.

All 28 Member States reported on the number of export authorisations that were granted and refused under the Regulation and on the goods and countries of destination concerned by them. Except for one Member State, they also reported the numbers or quantities of goods authorized for export and the category of end-user to which those goods would be supplied.

Authorisations granted and refused

The report noted that in 2018, the total number of reported authorisations amounted to 231, with 11 Member States reporting that they had granted authorisations. In 2017, the total number of reported authorisations was 292, granted by 12 Member States. The remaining Member States informed the Commission that they have not received any applications for authorisations.

During the two-year period, nine applications for an export authorisation were reported as dismissed: five in 2018 and four in 2017. The reported cases of dismissal in 2018 concerned certain intended transactions with customers in Bangladesh, China (Macao), Egypt, Moldova and Vietnam, whereas in 2017 the rejections concerned certain intended transactions with customers in Côte d'Ivoire, Kazakhstan, Togo and Moldova. The unauthorised transactions primarily concerned goods listed in Annex III (the goods might be used for torture or other cruel, inhuman or degrading treatment or punishment); those with Bangladesh and Egypt, however, would have involved goods listed in Annex IV (the goods might be used for capital punishment).

Such a dismissal, also known informally as a 'denial', typically means that the exporter has not provided the competent authority with sufficient information to show that, in the case at hand, the goods concerned were going to be used for a legitimate purpose. In other words, a denial does not necessarily imply that there was evidence that the goods were going to be used for torture or for capital punishment.

One Member State mentioned that it had granted three global authorisations concerning goods listed in Annex III; they concerned exports of goods that certain national authorities were going to use to fulfil their duties abroad

End-users

The information that was provided indicates that trading firms represent an important part of the exports of portable electric discharge weapons, of portable weapons or equipment for administering a dose of an incapacitating or irritating chemical substance, and of thiopental sodium salt. One Member State did not provide information on the category of end-users concerned by its authorisations.

It is unclear whether the second paragraph of Article 12(3) of Regulation (EU) 2019/125, which provides how the competent authority should assess exports of pelargonic acid vanillylamide (PAVA) and of oleoresin capsicum (OC) to a distributor, was applied by analogy when assessing those exports.

Goods and countries of destination concerned by the export authorisations

The information provided by the competent authorities sometimes includes authorisations for exports to destinations listed in the Union General Export Authorisation (Annex V to Regulation (EU) 2019/125) of goods listed in Annex IV. It is not clear whether in those cases the terms of the Union General Export Authorisation were not met or whether there is another explanation. For example, it is possible that the exporter preferred to obtain an individual or a global authorisation.

One Member State did not specify to which of the goods listed in Annex IV the reported authorisations relate. Another Member State reported that goods had been ‘exported’ to one of the Channel Islands. This information was not taken into account for the purposes of the present report.