Basic information

2014/0005(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
Trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment See also 2010/2685(RSP) **Subject** 6.10.08 Fundamental freedoms, human rights, democracy in general 6.20.02 Export/import control, trade defence, trade barriers	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
INTA International Trade	SCHAAKE Marietje (ALDE)	21/01/2015
	Shadow rapporteur FISAS AYXELÀ Santiago (PPE) RODRÍGUEZ-PIÑERO Inma (S&D) LOONES Sander (ECR) FORENZA Eleonora (GUE/NGL) KELLER Ska (Verts/ALE) BEGHIN Tiziana (EFDD)	

Former committee responsible	Former rapporteur	Appointed
AFET Foreign Affairs		

Committee for opinion	Rapporteur for opinion	Appointed
AFET Foreign Affairs	LOCHBIHLER Barbara (Verts/ALE)	03/12/2014

Former committee for opinion	Former rapporteur for opinion	Appointed

	INTA International Trade		

Council of the European Union	Council configuration	Meetings	Date
	Agriculture and Fisheries	3497	2016-11-14

European Commission	Commission DG	Commissioner
	Trade and Economic Security	ASHTON Catherine

Key events

Date	Event	Reference	Summary
14/01/2014	Legislative proposal published	COM(2014)0001	Summary
24/02/2014	Committee referral announced in Parliament, 1st reading		
20/10/2014	Resumption of business from the previous parliamentary term		
22/09/2015	Vote in committee, 1st reading		
29/09/2015	Committee report tabled for plenary, 1st reading	A8-0267/2015	Summary
26/10/2015	Debate in Parliament		
27/10/2015	Decision by Parliament, 1st reading	T8-0368/2015	Summary
27/10/2015	Results of vote in Parliament		
27/10/2015	Matter referred back to the committee responsible		
14/07/2016	Approval in committee of the text agreed at 1st reading interinstitutional negotiations		
04/10/2016	Decision by Parliament, 1st reading	T8-0369/2016	Summary
04/10/2016	Results of vote in Parliament		
04/10/2016	Debate in Parliament		
14/11/2016	Act adopted by Council after Parliament's 1st reading		
23/11/2016	Final act signed		
23/11/2016	End of procedure in Parliament		
13/12/2016	Final act published in Official Journal		

Technical information

Procedure reference	2014/0005(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)

Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	See also 2010/2685(RSP)
Legal basis	Rules of Procedure EP 61 Treaty on the Functioning of the European Union TFEU 207
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	INTA/8/00332

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE554.890	20/05/2015	
Amendments tabled in committee		PE555.012	15/06/2015	
Committee opinion	AFET	PE555.011	06/07/2015	
Amendments tabled in committee		PE560.865	14/07/2015	
Committee report tabled for plenary, 1st reading/single reading		A8-0267/2015	29/09/2015	Summary
Text adopted by Parliament, partial vote at 1st reading /single reading		T8-0368/2015	27/10/2015	Summary
Text adopted by Parliament, 1st reading/single reading		T8-0369/2016	04/10/2016	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	00027/2016/LEX	23/11/2016	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2014)0001	14/01/2014	Summary
Commission response to text adopted in plenary	SP(2016)805	29/11/2016	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	PT_PARLIAMENT	COM(2014)0001	19/11/2014	

Additional information

Source	Document	Date
European Parliament	Briefing	
European Commission	EUR-Lex	

Final act	
Regulation 2016/2134 OJ L 338 13.12.2016, p. 0001	Summary
Corrigendum to final act 32016R2134R(07) OJ L 302I 28.11.2018, p. 0003	
Corrigendum to final act 32016R2134R(04) OJ L 157 20.06.2017, p. 0022	
Corrigendum to final act 32016R2134R(03) OJ L 098 11.04.2017, p. 0044	

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

2014/0005(COD) - 23/11/2016 - Final act

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.

LEGISLATIVE ACT: Regulation (EU) 2016/2134 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.

CONTENT: the amending Regulation amends Council Regulation (EC) No 1236/2005 in the light of developments since it entered into force in 2006. It lays down Union rules governing **trade with third countries in goods that could be used for the purpose of capital punishment or for the purpose of torture or other cruel, inhuman or degrading treatment or punishment**, and rules governing the supply of brokering services, technical assistance, training and advertising related to such goods.

It amends the definition of “other cruel, inhuman or degrading treatment or punishment” to align it with the case-law of the European Court of Human Rights.

The amending Regulation:

- **prohibits imports and exports** of goods listed in Annex II to that Regulation and the supply of technical assistance in respect of such goods. Goods listed in Annex II have no practical use other than for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment;
- **prohibits the supply of technical assistance** related to goods listed in Annex II to any person, entity or body in a third country, whether for consideration or not;
- **prohibits the transit** of goods listed in Annex II or Annex IIIa (goods that could be used for the purpose of capital punishment, torture or other cruel, inhuman or degrading treatment or punishment) is prohibited if the economic operator has knowledge about the intended use;
- prohibits brokers from supplying to any person, entity or body in a third country brokering services in relation to goods listed in Annex II, irrespective of the origin of such goods;
- prohibits **promotion and advertising** of goods listed in Annex II to the Regulation at trade fairs or exhibitions in the Union;
- introduces a **prior authorisation system** for the supply of brokering services and technical assistance in respect of the goods listed in Annex III or in Annex IIIa;
- provides **authorisations** for export, import or transit, authorisations concerning brokering services and authorisations concerning technical assistance shall be issued on a form consistent with the model set out in Annexes V, VI and VII. Such authorisations shall be valid throughout the Union. The period of validity of an authorisation shall be from three to twelve months with a possible extension of up to 12 months;
- provides an **urgency procedure** in the cases where amendments to the Annexes to the Regulation are needed when new goods enter into the market;
- establishes an **anti-torture coordination group** enabling Member States’ experts and the Commission to exchange information on administrative practices and to discuss questions of interpretation of the Regulation, technical issues with respect to the goods listed, and developments related to the Regulation.

By 31 July 2020, and every five years thereafter, the Commission shall review the implementation of this Regulation and assess the need to include the activities of EU nationals abroad.

ENTRY INTO FORCE: 16.12.2016 with the exception of certain provisions which shall enter into force on 17.3.2017.

DELEGATED ACTS: the power to adopt delegated acts shall be delegated to the Commission to amend Annexes I, II, III, IIIa, IIIb, IV, V, VI and VII of Council Regulation (EC) No 1236/2005. The power to adopt delegated acts shall be conferred on the Commission for a period of five years (renewable) from 16 December 2016. The European Parliament or the Council shall have the right to object to a delegated act within a period of two months (extendable for two months) from the date of notification.

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

2014/0005(COD) - 04/10/2016 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 612 votes to 11 with 54 abstentions a legislative resolution 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.

Parliament's position adopted in first reading following the ordinary legislative procedure, amended the Commission proposal as follows:

Prohibition of imports and exports: Parliament specified that Regulation (EC) No 1236/2005 prohibit the export and import of goods listed in **Annex II** to that Regulation and the supply of technical assistance in respect of such goods. Goods listed in Annex II have no practical use other than for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment. Where such goods are located in **third countries**, brokers in the Union are prohibited from providing brokering services in relation to such goods.

Prohibition on training, promotion and advertising: as goods listed in Annex II to the Regulation have no practical use other than for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, the amended text:

- prohibits brokers and suppliers of technical assistance from **providing training** on the use of such goods to third countries;
- prohibits both the **promotion** of such goods in trade fairs or exhibitions in the Union, and the sale or purchase of advertising space in print media or on the Internet and of advertising time on television or radio in relation to such goods.

Prohibition on transit: in order to prevent economic operators from deriving benefits from transporting goods which pass through the customs territory of the Union on their way to a third country and which are intended to be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, the text **prohibits transport within the Union of such goods, if they are listed in Annex II.**

By way of derogation, a transit of goods may be authorised if it is demonstrated that, in the country of destination, such goods will be used for the exclusive purpose of public display in a museum in view of their historic significance.

In addition, transit of **goods listed in Annex III or Annex IIIa** to the Regulation (EC) No 1236/2005 (goods that could be used for the purpose of capital punishment, torture or other cruel, inhuman or degrading treatment or punishment) is prohibited if the economic operator has **knowledge about the intended use.**

Criteria for granting export authorisations: Parliament introduced a number of rules that apply to the **verification of the intended end-use and the risk of diversion**.

If the manufacturer of goods listed in Annex III requests an authorisation for exporting such goods to a distributor, the competent authority shall make an assessment of the contractual arrangements made by the manufacturer and the distributor and of the measures that they are taking to ensure that these goods and, if applicable, the products in which they will be incorporated will not be used for torture or other cruel, inhuman or degrading treatment or punishment.

An authorisation shall be required for any supply, by a supplier of technical assistance or a broker, respectively, of one of the following services: (i) technical assistance related to goods listed in Annex III, irrespective of the origin of such goods; and (ii) brokering services related to goods listed in Annex III, irrespective of the origin of such goods.

Authorisations: authorisations for export, import or transit shall be issued on a **form** consistent with the models set out in Annexes V, VI and VII. Such authorisations shall be valid throughout the Union. The period of validity of an authorisation shall be **from three to twelve months** with a possible extension of up to 12 months. The period of validity of a global authorisation shall be from one year to three years with a possible extension of up to two years.

Urgent action on new goods: Members extended the scope of the procedure allowing the Commission to add new goods to the list of those that are prohibited or controlled.

Anti-Torture Coordination Group: the amended text provides for a coordination group to serve as a platform for Member States' experts and the Commission to exchange information on administrative practices and to discuss questions of interpretation of the Regulation, technical issues with respect to the goods listed, and developments related to the Regulation. The Commission shall submit an **annual report** in writing to the European Parliament on the activities, examinations and consultations of the Group.

Review: by 31 July 2020, and every five years thereafter, the Commission shall review the implementation of this Regulation and assess the need to include the activities of EU nationals abroad.

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.

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).

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

2014/0005(COD) - 29/09/2015 - Committee report tabled for plenary, 1st reading/single reading

The Committee on International Trade adopted the report by Marietje SCHAAKE (ADLE, NL) 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.

Parliament's position adopted in first reading following the ordinary legislative procedure amends the proposal as follows:

Definition of 'broker': Members feel 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.

Prohibition of commercial marketing and promotion: 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.

Targeted end-use clause: Members propose 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: Members consider that best practice guidelines built upon the experiences of both Member States and third country authorities would set a clearer framework for determining the end-use of goods that could be misused for capital punishment, thereby also facilitating legitimate exports for intended use, especially in the medicinal and pharmaceutical sector.

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.

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: Members 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.

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).