



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.12.2002
COM(2002) 770 final

Proposal for a

COUNCIL REGULATION

concerning trade in certain equipment and products which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment

(presented by the Commission)

EXPLANATORY MEMORANDUM

- (1) The objective of the attached proposal is to set up a specific trade regime covering certain equipment and products which could be used for torture and other cruel, inhuman or degrading treatment or punishment. The purpose of a regime of this kind is to contribute to the prevention of the violation of the fundamental human right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. This is a key aim of the European Union, as underlined in the Guidelines to the EU Policy on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by Council (General Affairs) on 9 April 2001. These Guidelines make clear the EU position on the prevention of the use and production of, and trade in, such equipment.
- (2) These Guidelines also make the point that the prohibition of cruel, inhuman or degrading punishment imposes clear limits on the use of the death penalty. As regards the latter, the Council adopted Guidelines on the EU Policy towards Third Countries on the Death Penalty on 29 June 1998.
- (3) The International Covenant on Civil and Political Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the 1984 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Charter of Fundamental Rights of the European Union show that no exceptions can be made to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.
- (4) The prohibition of torture and other cruel, inhuman or degrading treatment or punishment is part of the public morals of the international community. The proposed regime restricts trade with a view to preventing violations of that prohibition in cases where such violations are likely to occur, and is therefore necessary to protect public morals.
- (5) The proposed regime consists of two components. The first component is a ban on all trade in equipment which has no, or virtually no, practical use other than for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment.
- (6) The second component allows the competent authorities to control trade in listed equipment and products, which could be used for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment, but which also has legitimate uses. The competent authorities should impose any conditions they deem appropriate to prevent the equipment and products being used for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment. When doing so, they should of course take into account all relevant factors, including reports on any occurrences in the country of destination of torture and other cruel, inhuman or degrading treatment or punishment.
- (7) Accordingly, the list of equipment consists of two parts. Annex I comprises both equipment which has no, or virtually no, practical use other than for the purpose of capital punishment, and equipment which has in fact no, or virtually no, practical use other than for the purpose of torture and other cruel, inhuman or degrading treatment or punishment.

- (8) Annex II comprises equipment and products which could be used for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment, which also has other, legitimate uses. In order to avoid unnecessarily cumbersome and costly procedures, Annex II is limited to equipment and products which have been designed in such a way that it could easily be abused for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment, e.g. because it is capable of inflicting severe pain or injury on human beings, and to equipment and products that are used for law enforcement purposes, i.e. which are intended for use by law enforcement officers and similar professionals.
- (9) The proposed Regulation also imposes restrictions on services relating to equipment included in the list and on brokering activities. However, it does not restrict trade in equipment and products not included in the relevant list.
- (10) In order to take technological developments into account, the list of equipment and products should be kept under review. In this regard, particular attention will have to be given to law enforcement equipment that is presented as "non-lethal", which could be more harmful than claimed by its manufacturer and therefore lend itself to abuse for the purpose of torture and other cruel, inhuman or degrading treatment or punishment.
- (11) The Guidelines to EU policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment, adopted by the Council on 9 April 2001, state that the EU will urge third countries to "prevent the use, production and trade of equipment which is designed to inflict torture or other cruel, inhuman or degrading treatment or punishment". The Commission considers that the EU itself should take the very measures that it urges third countries to take. To that end, it proposes to impose restrictions on trade with third countries in equipment and products which could be used for the purpose of capital punishment or for the purpose of torture and other cruel, degrading or inhuman treatment.
- (12) The proposed Regulation does not impose any restrictions on the use, production, marketing and sales within the internal market of the equipment and products concerned. The Commission encourages Member States to take supplementary measures, especially on production of such equipment and products, and expects that they do so in the short term.
- (13) Finally, it should be noted that the proposed Regulation neither prejudices the export control regime concerning dual-use goods (Council Regulation (EC) No 1334/2000) and the control regime concerning firearms (Council Directive 91/477/EC, which provides, *inter alia*, that Member States shall intensify controls on the possession of weapons at external borders), nor precludes the imposition of export prohibitions on other grounds, e.g. in order to prevent and condemn internal repression in a third country (e.g. Council Regulations (EC) No 1081/2000 concerning Myanmar/Burma and No 310/2002 concerning Zimbabwe).

Proposal for a

COUNCIL REGULATION

concerning trade in certain equipment and products which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission¹,

Whereas:

- (1) Pursuant to Article 6 of the Treaty on European Union respect for human rights and fundamental freedoms constitutes one of the principles common to the Member States. In view of this the Community resolved in 1995 to make respect for human rights and fundamental freedoms an essential element of its relations with third countries. It was decided to insert a clause to that end in any new trade, co-operation and association agreement of a general nature that it concludes with third countries.
- (2) Article 5 of the Universal Declaration of Human Rights, Article 7 of the International Covenant on Civil and Political Rights and Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms all lay down an unconditional, comprehensive prohibition on torture and other cruel, inhuman or degrading treatment or punishment. Other provisions, in particular the United Nations Declaration Against Torture² and the 1984 United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, place an obligation on States to prevent torture.
- (3) Article 2(2) of the Charter of Fundamental Rights of the European Union³ prohibits executions and condemnations to the death penalty. On 29 June 1998, the Council approved "Guidelines on EU Policy towards Third Countries on the Death Penalty" and resolved that the European Union would work towards the universal abolition of the death penalty.
- (4) Article 4 of the Charter of Fundamental Rights of the European Union prohibits torture and inhuman or degrading treatment and punishment. On 9 April 2001, the Council approved "Guidelines to the EU Policy toward Third Countries, on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." These guidelines refer to both the adoption of the EU Code of Conduct on Arms Exports in 1998, and

¹ OJ C [...], [...], p. [...].

² Resolution 3452 (XXX) of 9.12.1975 of the General Assembly of the United Nations.

³ OJ C 364, 18.12.2000, p. 1.

the prospective introduction of controls on the exports of paramilitary equipment, as examples of measures to work effectively towards the prevention of torture and other cruel, inhuman or degrading treatment or punishment. These guidelines also provide for third countries to be urged to prevent the use and production of, and trade in, equipment designed for torture or other cruel, inhuman or degrading treatment or punishment. They also make the point that the prohibition of cruel, inhuman or degrading punishment imposes clear limits on the use of the death penalty.

- (5) In its Resolution on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 25 April 2001 and supported by the EU Member States, the United Nations Commission on Human Rights, called upon United Nations Members to take appropriate steps, including legislative measures, to prevent and prohibit, inter alia, the export of equipment which is specifically designed to inflict torture or other cruel, inhuman or degrading treatment or punishment. This point was confirmed by a Resolution adopted on 16 April 2002.
- (6) On 3 October 2001, the European Parliament adopted a Resolution ⁴ on the Council's second Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports, urging the Commission to act swiftly to bring forward an appropriate Community instrument banning the promotion, trade and export of police and security equipment whose use is inherently cruel, inhuman or degrading, and to ensure that that Community instrument would suspend the transfer of police and security equipment whose medical effects are not fully known, and of such equipment where its use in practice has revealed a substantial risk of abuse or unwarranted injury.
- (7) It is therefore appropriate to lay down Community rules on trade with third countries in equipment and products which could be used for the purpose of capital punishment and in equipment and products which could be used for the purpose of torture and other cruel, inhuman or degrading treatment or punishment. These rules are instrumental in promoting respect for human life and for fundamental human rights, and thus serve the purpose of protecting public morals. These rules should ensure that Community economic operators do not derive any benefits from trade which either promotes or otherwise facilitates the implementation of policies on capital punishment or on torture and other cruel, inhuman or degrading treatment or punishment, which are not compatible with the relevant EU Guidelines, the Charter of Fundamental Rights of the European Union and international conventions and treaties.
- (8) For the purpose of this Regulation, it is considered appropriate to apply the definitions of torture and other cruel, inhuman or degrading treatment or punishment laid down in the 1984 United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. These definitions should be interpreted taking into account the case law on the interpretation of the corresponding terms in the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union.
- (9) It is considered necessary to prohibit exports and imports of equipment which has no, or virtually no, practical use other than for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment. In

⁴ OJ C 87 E, 11.4.2002, p. 136.

this regard, it should be noted that Article 33 of the United Nations Standard Minimum Rules for the Treatment of Prisoners⁵ prohibits the use of chains and irons as restraints.

- (10) It is also necessary to impose controls on exports of certain equipment and products which could be used not only for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment, but also for other, legitimate purposes. These controls should apply to equipment that has been designed in such a way that it could easily be abused for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment, and to equipment and products that are used for law enforcement purposes.
- (11) As regards law enforcement equipment, it should be noted that Article 3 of the Code of Conduct for Law Enforcement Officials⁶ provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1990, provide that law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms.
- (12) In view of this, those Basic Principles advocate the development of non-lethal incapacitating weapons for use in appropriate situations, while admitting that the use of such weapons should be carefully controlled. In this context, certain equipment traditionally used by the police for self-defence and riot-control purposes has been modified in such a way that it can be used to apply electric shocks and chemical substances to incapacitate persons. There are indications that, in several countries, such weapons are abused for the purpose of torture and other cruel, inhuman or degrading treatment or punishment.
- (13) Those Basic Principles stress that law enforcement officials should be equipped with equipment for self-defence. Therefore, this Regulation should not apply to trade in traditional equipment for self-defence, such as shields.
- (14) This Regulation should also apply to trade in the chemical substances used to incapacitate persons, including tear gases and riot control agents.
- (15) It should also be noted that the United Nations Standard Minimum Rules for the Treatment of Prisoners⁷ provide that instruments of restraint must never be applied as a punishment and that such instruments of restraint may only be used either as a precaution against escape during a transfer, on medical grounds as directed by a medical officer, or, if other methods of control fail, in order to prevent a prisoner from injuring himself or others, or from damaging property.

⁵ Approved by Resolutions 663 C (XXIV) of 31.7.1957 and 2076 (LXII) of 13.5.1977 of the Economic and Social Council of the United Nations.

⁶ Resolution 34/169 of 17.12.1979 of the General Assembly of the United Nations.

⁷ Approved by Resolutions 663 C (XXIV) of 31.7.1957 and 2076 (LXII) of 13.5.1977 of the Economic and Social Council of the United Nations.

- (16) The Guidelines to the EU Policy toward Third Countries, on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provide, inter alia, that the Heads of Mission in third countries will include in their periodic reports an analysis of the occurrence of torture and other cruel, inhuman or degrading treatment or punishment in the State of their accreditation, and the measures taken to combat it. The competent authorities should take these reports and similar reports made by relevant international organisations, into account when deciding on requests for authorisations. Such reports should also describe any equipment used in third countries for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment.
- (17) In order to contribute to the abolition of the death penalty in third countries and to the prevention of torture and other cruel, inhuman or degrading treatment or punishment, it is considered necessary to impose restrictions on the provision to third countries of services pertaining to the operation and use of all equipment subject to this Regulation. For the same reason, restrictions should also be imposed on the provision of services which promote sales of equipment and products subject to this Regulation, such as brokerage, irrespective of whether the equipment concerned has been, is or will be in free circulation in the territory of the Community at any material time.
- (18) The measures of this Regulation are intended to prevent both capital punishment and torture and other cruel, inhuman or degrading treatment or punishment in third countries. They comprise restrictions on trade with third countries in equipment that could be used for the purpose of capital punishment or for the purpose of torture and other cruel, degrading or inhuman treatment or punishment. It is not considered necessary to establish similar controls on transactions within the Community as, in the Member States, capital punishment does not exist and there are sufficient safeguards in place to prevent torture and other cruel, inhuman or degrading treatment or punishment.
- (19) The Guidelines to the EU Policy toward Third Countries, on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment state that, in order to meet the objective of taking effective measures against torture and other cruel, inhuman or degrading treatment or punishment, measures to prevent the use and production of equipment which is designed to inflict torture or other cruel, inhuman or degrading treatment or punishment, should supplement these restrictions on trade with third countries.
- (20) In order to take into account new data and technological developments, the list of equipment and products covered by this Regulation should be reviewed within a reasonable period of time.
- (21) The Commission and the Member States should inform each other of the measures taken under this Regulation and of other relevant information at their disposal in connection with this Regulation.
- (22) The substantive measures necessary for the implementation of this Regulation are management measures within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of

implementing powers conferred on the Commission⁸. They should be adopted by use of the management procedure provided for in Article 4 of that Decision.

- (23) Member States should lay down rules on penalties applicable to infringements of the provisions of this Regulation and ensure that they are implemented. Those penalties must be effective, proportionate and dissuasive.
- (24) This act respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union,

HAS ADOPTED THIS REGULATION:

Chapter I

Subject matter, scope and definitions

Article 1

Subject matter and scope

This Regulation lays down Community rules governing trade with third countries in equipment and products that could be used for the purpose of capital punishment or for the purpose of torture and other cruel, degrading or inhuman treatment or punishment, and in related services.

Article 2

Definitions

For the purposes of this Regulation:

- (a) "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from that person or from a third person information or a confession, punishing that person for an act that either that person or a third person has committed or is suspected of having committed, or intimidating or coercing that person or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted either by or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity. It does not, however, include pain or suffering arising only from, inherent in or incidental to the proper application of lawful penalties, it being understood that for the purpose of this Regulation capital punishment is not a lawful penalty;
- (b) "other cruel, inhuman or degrading treatment or punishment" means any act by which significant pain or suffering, whether physical or mental, is intentionally inflicted on a person, when such pain or suffering is inflicted either by or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity. It does not, however, include pain or suffering

⁸ OJ L 184, 17.7.1999, p. 23.

arising only from, inherent in or incidental to the proper application of lawful penalties, it being understood that for the purpose of this Regulation capital punishment is not a lawful penalty;

- (c) "law enforcement authority" means any authority responsible for preventing, detecting, investigating, combating and punishing criminal offences, including, but not limited to, the police, any prosecutor, any judicial authority, any public or private prison authority and, where appropriate, any of the state security forces and military authorities;
- (d) "export transaction" means any export, re-export, sale, transfer, delivery or shipment, whether directly or indirectly, to any person, entity or body in a third country or to any person, entity or body for the purpose of any business carried on in, or operated from, the territory of any third country;
- (e) "import transaction" means any introduction of goods into the territory of the Community;
- (f) "competent authority" means an authority listed in Annex III.
- (g) "territory of the Community" means all the territories of the Member States to which the Treaty establishing the European Community is applicable, under the conditions laid down in that Treaty.

Chapter II

Equipment which has no, or virtually no, practical use other than for the purposes of capital punishment, torture and other cruel, inhuman or degrading treatment or punishment

Article 3 Export prohibition

1. With respect to equipment listed in Annex I, any export transaction shall be prohibited, irrespective of the origin of such equipment.

Any grant, sale, supply or transfer to any person, entity or body in a third country or to any other person, entity or body for the purpose of any business carried on in, or operated from, the territory of any third country, whether directly or indirectly, of technical advice, assistance or training related to the functioning, use, production, composition or transformation of equipment listed in Annex I, shall be prohibited.

The provision of brokering and similar activities with a view to facilitating or promoting any export transaction concerning such equipment, shall be prohibited.

2. By way of derogation from paragraph 1, a competent authority may authorise an export transaction with respect to equipment listed in Annex I, and the provision of related services, if it is demonstrated that, in the third country to which the

equipment, will be exported, such equipment will be used for the exclusive purpose of public display in a museum in view of its historic significance.

Article 4 *Import prohibition*

1. With respect to equipment listed in Annex I, any import transaction shall be prohibited, irrespective of the origin of such equipment.

Any grant, sale, supply or transfer to any person, entity or body in the Community or to any other person, entity or body for the purpose of any business carried on in, or operated from, the territory of the Community, whether directly or indirectly, of technical advice, assistance or training related to the functioning, use, production, composition or transformation of equipment listed in Annex I, shall be prohibited.

The provision of brokering and similar activities with a view to facilitating or promoting any import transaction concerning such equipment, shall be prohibited.

2. By way of derogation from paragraph 1, a competent authority may authorise an import with respect to equipment listed in Annex I, and the provision of related services, if it is demonstrated that, in the Member State of destination, such equipment will be used for the exclusive purpose of public display in a museum in view of its historic significance.

Chapter III

Equipment and products that could be used for the purpose of capital punishment, torture or other cruel, inhuman or degrading treatment or punishment

Article 5 *Export authorisation requirement*

1. For any export transaction concerning equipment and products listed in Annex II, an authorisation shall be required, irrespective of the origin of such equipment.
2. With respect to equipment and products listed in Annex II, an authorisation shall be required for the following activities:
 - (a) negotiating or arranging a contract or agreement concerning the purchase, transfer, delivery or shipment of such equipment, if
 - (i) such contract or agreement would be concluded either by or on behalf of a person, entity or body in a third country, or by or on behalf of any other person, entity or body for the purpose of any business carried on in, or operated from, the territory of any third country,

- (ii) such contract or agreement would require that equipment listed in Annex II be put at the disposal of that person, entity or body, and
 - (iii) the person, entity or body engaging in brokering or similar activities is established in the territory of the Community;
- (b) granting, selling, supplying or transferring, whether directly or indirectly, technical advice, assistance or training related to the functioning, use, production, composition or transformation of such equipment, to any person, entity or body in a third country or to any other person, entity or body for the purpose of any business carried on in, or operated from, the territory of any third country.

Article 6 *Applications for authorisations*

1. An authorisation for export transactions and activities referred to in Articles 5(1) and 5(2)(b), may be granted only by the competent authority of the Member State where the exporter, seller, service provider or transferring party is established.

An authorisation for activities referred to in Article 5(2)(a), may be granted only by the competent authority of the Member State where the negotiating or arranging person, entity or body is established.

2. Applicants shall supply the competent authority with all relevant information on the activities for which an authorisation is required. For export transactions this shall include, in particular :
 - (a) a precise statement on the country of destination, the end-user and the intended end-use; and
 - (b) full information on the shipment route and intermediaries.

The competent authority may request any additional information it considers necessary in order to make a decision on the application.

3. An authorisation may be subject to such requirements and conditions as the competent authority deems appropriate in order to prevent the equipment concerned being used for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment, such as an obligation to provide a statement signed by the end-user or acceptance of a commitment not to re-export.
4. Without prejudice to Article 14(2), the competent authority shall make a decision on the application for an authorisation within two months. It shall without delay communicate its decision to the applicant and, where appropriate, to the Member State in whose territory the export declaration will be presented.
5. Unless an authorisation for an export transaction stipulates otherwise, such authorisation implies an authorisation for the applicant and for those entering into contractual relations with the applicant, to sell, transfer, deliver and ship the equipment referred to in the request, to a specific person, entity or body in a third country.

6. Authorisations shall be valid throughout the Community. The period of validity of an authorisation shall be six months, unless the competent authority decides that this period must be shorter.

Article 7

Decisions on authorisations for export transactions

Subject to Articles 8 to 11, decisions on applications for authorisation for export transactions concerning any equipment and products listed in Annex II shall be taken by the competent authority on a case by case basis, taking into account all relevant considerations, including the enforcement of restrictions on the transfer of the equipment concerned, if any, by the country of destination, and the acceptance of international obligations and commitments in this regard.

Article 8

Criteria for granting export authorisations for end-use by parties other than law enforcement authorities

As regards export transactions concerning equipment and products listed in Annex II that is destined for end-users other than law enforcement authorities, a competent authority shall refrain from granting an authorisation, if it is not satisfied that all the following conditions are met:

- (a) the end-user needs such equipment for a legitimate purpose;
- (b) the end-user will effectively use this equipment for such purpose;
- (c) the equipment will not be sold, transferred or delivered by the end-user to any other person, entity or body, including in particular law enforcement authorities, in a third country where torture or other cruel, inhuman or degrading treatment or punishment is reported to occur.

Article 9

Criteria for granting export authorisations for end-use by law enforcement authorities

As regards export transactions concerning equipment and products listed in Annex II destined for law enforcement authorities, a competent authority shall refrain from granting an authorisation, if

- (a) there are indications that torture or other cruel, degrading or inhuman treatment or punishment has been or is being practised by the law enforcement authority concerned, and
- (b) the competent authority is not satisfied that the third country concerned:
 - (i) has prohibited torture and other cruel, degrading or inhuman treatment or punishment in law, including criminal law,
 - (ii) is bringing the persons responsible for torture and other cruel, degrading or inhuman treatment or punishment to justice, and

- (iii) is imposing, in respect of such acts, penalties other than capital punishment, which are both dissuasive and proportionate to the nature of the acts committed.

It shall refrain from granting an authorisation if it has reason to conclude that the equipment concerned is likely to be used for judicial corporal punishment.

Article 10

Additional criteria for granting export authorisations for end-use by law enforcement authorities interrogating individuals

As regards export transactions concerning equipment and products listed in Annex II destined for law enforcement authorities interrogating individuals, a competent authority shall refrain from granting an authorisation, if

- (a) there are indications that torture or other cruel, degrading or inhuman treatment or punishment have occurred in the third country concerned during interrogations, and
- (b) the competent authority is not satisfied that the third country concerned has ensured that statements obtained through torture and other cruel, inhuman or degrading treatment or punishment shall not be invoked as evidence in any proceedings, except against a person accused of such acts as evidence that the statement was made.

Article 11

Additional criteria for granting export authorisations for end-use by law enforcement authorities detaining individuals

As regards export transactions concerning equipment and products listed in Annex II destined for law enforcement authorities detaining individuals, a competent authority shall refrain from granting an authorisation, if

- (a) there are indications that torture or other cruel, degrading or inhuman treatment or punishment has occurred in a detention centre or prison which either is being managed by, or operates under the authority or supervision of, the law enforcement authority concerned, and
- (b) the competent authority is not satisfied that the third country concerned is both bringing the persons responsible for torture and other cruel, degrading or inhuman treatment or punishment committed in detention centres or prisons to justice, and imposing penalties other than capital punishment, which are both dissuasive and proportionate to the nature of the acts committed.

Article 12

Authorisations for export of services

1. A competent authority shall refrain from granting an authorisation for the activities referred to in Article 5(2)(a), if the export transactions or the provision of services implementing the contract or agreement which the applicant intends to negotiate or arrange, would not be authorised in accordance with this Regulation, assuming,

where necessary, that such implementing export transaction or provision of services would be subject to the jurisdiction of the Community.

2. A competent authority shall refrain from granting an authorisation for the activities referred to in Article 5(2)(b), if the equipment to which the services relate, would not be authorised for export from the Community to the end-user concerned, assuming, where necessary, that such export transaction would be subject to the jurisdiction of the Community.

Chapter IV

General and final provisions

Article 13

Amendment of data regarding competent authorities

The data regarding competent authorities in Annex III shall be amended by the Commission on the basis of information supplied by the Member States.

Article 14

Exchange of information

1. The Commission and the Member States shall 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
 - (a) information on authorisations granted and refused;
 - (b) information on new law enforcement equipment, including test reports;
 - (c) findings and reports on the policies and practices of third countries concerning capital punishment and torture and other cruel, inhuman or degrading treatment;
 - (d) information in respect of violation and enforcement problems and judgements handed down by national courts.
2. A competent authority, which receives an application for an authorisation referred to in Article 6, shall provide a summary of the application to the competent authorities of the other Member States and the Commission within two weeks of receipt of the application. It shall inform them of the grounds on which it intends to either reject the application or grant an authorisation, and of any conditions that it considers appropriate.

If a reasoned objection is raised by a Member State or the Commission within two weeks of receipt of the summary of the application, the competent authority concerned may make a new proposal within one week.

If the competent authority fails to make a new proposal, or if a reasoned objection is raised by a Member State or by the Commission in respect of any new proposal within one week, the decision on authorisation shall be taken by the Commission in accordance with the procedure referred to in Article 16(2).

Article 15

Report

Each competent authority shall make an activity report to the Commission, providing information on the number of applications received, on the equipment, products and countries concerned by these applications, on the decisions it has taken on these applications, on interpretation issues that have arisen, and on any organisational or other problems it has faced. An activity report shall be made for each period of twelve months.

Article 16

Committee

1. The Commission shall be assisted by the committee on common rules for exports of products, instituted by Article 4(1) of Regulation (EEC) No 2603/1969.⁹
2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at 10 working days.

3. The Committee shall adopt its rules of procedure.

Article 17

Penalties

1. The Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.
2. The Member States shall notify those provisions to the Commission by 30 April 2003 at the latest and shall notify it without delay of any subsequent amendment affecting them.

⁹ OJ L 324, 27.12.1969, p. 25.

Article 18
Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, [...]

For the Council
The President

ANNEX I

List of equipment referred to in Articles 3 and 4

Equipment which has no, or virtually no, practical use other than for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment.

<u>CN code</u>	<u>Description</u>
ex 4421 90 98 ex 8208 90 00 ex 8543 89 95 ex 9401 79 00 ex 9401 80 00 ex 9402 10 00 ex 9402 90 00 ex 9406 00 39 ex 9406 00 90	Gallows and guillotines Electric chairs designed or modified for the purpose of execution of human beings (output at least 1 000 V) Air-tight vaults, made of e.g. steel and glass, designed or modified for the purpose of execution of human beings by the administration of a lethal gas
ex 8413 81 90 ex 9018 90 50 ex 9018 90 60 ex 9018 90 85 ex 8543 89 95	Automatic drug injection systems designed or modified for the purpose of execution of human beings by the administration of a lethal chemical substance Electric-shock belts designed or modified for restraining human beings by the administration of electric shocks equal to or exceeding 50 000 V
ex 7326 90 97 ex 8301 50 00 ex 3926 90 99	Leg-irons, gang-chains and shackles, designed for restraining human beings, <i>except</i> handcuffs for which the overall dimension including chain, measured from the outer edge of one cuff to the outer edge of the other cuff, does not exceed 240 mm when locked
ex 7326 90 97 ex 8301 50 00 ex 3926 90 99	Individual cuffs or shackle bracelets, designed for restraining human beings, having a minimum internal perimeter exceeding 190 mm when fully locked
ex 7326 90 97 ex 8301 50 00 ex 3926 90 99	Thumb-cuffs and thumb-screws, including serrated thumb-cuffs
	Components designed or modified for any of the above

ANNEX II

List of equipment and products referred to in Article 5

Equipment and products that could be used for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment.

<u>CN code</u>	<u>Description</u>
<i>ex</i> 9401 61 00	Restraint chairs and shackle boards
<i>ex</i> 9401 69 00	
<i>ex</i> 9401 71 00	
<i>ex</i> 9401 79 00	
<i>ex</i> 9402 90 00	
<i>ex</i> 9403 20 91	
<i>ex</i> 9403 20 99	
<i>ex</i> 9403 50 00	
<i>ex</i> 9403 70 90	
<i>ex</i> 9403 80 00	
<i>ex</i> 8543 89 95	Portable devices designed or modified for the purpose of riot control or self-protection by the administration of an electric shock (high frequency pulses equal to or exceeding 50 000 V), including but not limited to electric-shock batons, electric shock shields, stun guns and electric shock dart guns (tasers)
<i>ex</i> 9304 00 00	
<i>ex</i> 8424 20 00	Portable devices designed or modified for the purpose of riot control or self-protection by the administration of an incapacitating chemical substance such as tear gas, OC (oleoresin capsicum or pepper spray) and PAVA (pelargonic acid vanillylamide, synthetic pepper spray)
<i>ex</i> 9304 00 00	
	Components specially designed or modified for any of the above
<i>ex</i> 2926 90 95	α -Bromophenylacetone nitrile (α -bromobenzyl cyanide) (CA) (CAS 5798-79-8)
<i>ex</i> 2926 90 95	(2-chlorobenzylidene)malononitrile (o-chlorobenzal malononitrile) (CS) (CAS 2698-41-1)
<i>ex</i> 2914 70 90	2-chloroacetophenone (Phenylacetyl chloride) (CN) (CAS 532-27-4)
<i>ex</i> 2934 99 90	Dibenz-[b,f]-[1,4]oxazepine (CR) (CAS 257-07-8)
<i>ex</i> 2924 29 95	Pelargonic acid vanillylamide (PAVA) or synthetic pepper spray (CAS 2444-46-4)
<i>ex</i> 2939 99 90	Oleoresin capsicum (OC) or pepper spray (CAS 8023-77-6)

ANNEX III

List of competent authorities referred to in Article 6

(to be completed by the Member States)