

# Review of EU Anti-Torture Regulation and its implementation

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**Omega** Research Foundation

The Omega Research Foundation is an independent UK-based research organisation. We are dedicated to providing rigorous, objective, evidence-based research on the manufacture, trade in, and use of, military, security and police (MSP) technologies. Since its establishment in 1990, a key focus of Omega's activities has been to research the trade in MSP equipment that can be (mis)used for torture or other grave human rights violations, and to encourage effective State regulation of this trade. Since 2005, Omega has monitored the development and implementation of the EU Anti-Torture Regulation (i.e. Regulation (EU) 2019/125 and its previous iterations), and sought to develop and promote constructive recommendations to strengthen both the Regulation and its implementation by all EU Member States.

Front cover image:

Milipol Paris arms and security equipment trade fair, 22 November 2019.

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## Review of EU Anti-Torture Regulation and its implementation: findings and recommendations

### Executive Summary

European Council (EC) Regulation No. 1236/2005 *Concerning trade in goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment* (the Regulation) was agreed in July 2005 and came into force on 30 July 2006. The world's first multilateral instrument in this area, it is legally binding, and is directly applicable in all EU Member States. The Regulation filled a major gap in human-rights-based trade controls, and serves as an inspiration for other national, regional, and international processes. It introduced unprecedented, binding trade controls on a range of equipment that is frequently used in serious human rights violations, but that is often absent from State military, dual-use, or strategic export control lists. The Regulation has been revised and strengthened over time; the latest consolidated version, Regulation (EU) 2019/125, was published in January 2019 and came into force on 20 February 2019.

The Regulation was designed to be a “*living instrument*”, incorporating mechanisms that allow the Council, the European Parliament, and the Commission to collectively respond to changes in the international security marketplace and in the nature of use and misuse of law enforcement equipment, as well as address developments in relevant technologies. The Regulation requires the European Commission every five years to undertake a comprehensive review of the implementation of the instrument by all EU Member States. The first such formal review has recently been completed by the Commission and its report is currently with the European Parliament and European Council for their consideration and action. The Omega Research Foundation engaged extensively with the European Commission during its review, submitting a number of research and policy briefings to inform this process. This Omega Research Foundation report comprises an independent evaluation of the Regulation and its implementation by Member States, together with analysis of company activities of concern. This report is intended to facilitate and inform the appraisal by the European Parliament and European Council and their subsequent discussions regarding the most appropriate and effective measures to strengthen the Regulation and its implementation by all EU Member States.

The Omega Research Foundation has examined the Regulation, its implementation by all EU Member States, and the activities of companies based or operating in the EU during the 2015-2019 period. From this, Omega has found that aspects of the Regulation remain only partially, or inefficiently, implemented, and that certain goods and activities of concern are not adequately covered by this instrument. Among issues highlighted, the report discusses:

- The promotion, by companies in at least ten EU Member States, of a range of goods not currently prohibited by the Regulation, but which are inappropriate for use by law enforcement officials, and which could facilitate torture or other ill-treatment. These include certain direct contact electric shock devices (including electric shock batons, shields, and stun guns). In addition to direct contact electric shock devices, the Regulation fails to adequately control a range of other goods, including ‘standard handcuffs’, hand-held striking weapons, certain launched kinetic impact weapons, and restraint chairs.
- The failure, by the majority of EU Member States, to fully adhere to their obligations to provide public annual activity reports of their implementation of the Regulation, particularly relating to export licence authorisations. Without making more comprehensive information publicly accessible, the full extent of the implementation of the Regulation cannot be accurately assessed by civil society or by the national parliaments of the EU Member States.
- Issues in State export licencing decision-making and their consideration of human rights risks in this process. Notably, some EU Member States authorised the export of law enforcement equipment controlled under the Regulation (listed in Annex III) to destinations where this type of equipment had been recently used in reported instances of torture and other ill-treatment.
- The inconsistent implementation of the Regulation at arms and security trade fairs or exhibitions held within EU Member States. At such events, companies from outside the EU have been found to promote prohibited equipment (listed in Annex II) that has no practical purpose other than for torture or other ill-treatment.
- Loopholes and limitations in the Regulation with regards to EU nationals operating outside of the EU. This includes those that provide, for instance, security and law enforcement training services, as well as companies that organise arms and security trade fairs or exhibitions in third countries, or that conduct brokering and transportation activities.
- The failure of the EU Anti-Torture Regulation, or other EU-wide measure, to cover import into the EU, or transfer between EU Member States, of law enforcement equipment that can have legitimate law enforcement purposes but that can be readily misused for torture and other ill-treatment, even when equipment of this type has been regularly employed for such human rights violations in certain EU Member States.

Consequently, the Omega Research Foundation has developed a range of policy recommendations to strengthen the Regulation and address existing limitations in the control regime. These include:

- The establishment of a Commission-led process to regularly (at least annually) review and update, as appropriate, all Annexes of goods covered by the Regulation. This should be combined with active Commission monitoring of developments in the manufacture, promotion, trade, and (mis)use of relevant law enforcement equipment and other goods.
- The establishment of an Expert Advisory Group, drawn from civil society, to facilitate the review of the Annexes, and to more broadly support the Commission and Anti-Torture Coordination Group in strengthening the Regulation and its effective implementation.
- The expansion of the list of prohibited goods considered to have no practical use other than for capital punishment, torture and other ill-treatment (Annex II), to include direct contact electric shock weapons (including electric shock batons, shields, and stun guns), prison hoods and blindfolds, and restraint chairs, boards, and beds with straps intended for law enforcement purposes.
- The expansion of the list of controlled goods considered to have legitimate law enforcement purposes but that can be readily misused for torture and other ill-treatment (Annex III), to include ‘standard handcuffs’, hand-held striking weapons, and certain launched kinetic impact weapons.
- The adoption of measures and Commission guidance to facilitate the production and public dissemination, by all Member States, of annual activity reports that provide full information on

licence authorisations in adherence to the Regulation and in line with the Commission's standard reporting template.

- The amendment the Regulation to clarify the obligations of EU companies organising trade fairs, exhibitions and pavilions within the EU or in third countries, so as to prevent the display and promotion of Annex II goods. Guidance for companies and State authorities should be developed to establish procedures should infringements on the Regulation be discovered.
- The extension of existing Regulation controls on brokering to cover the activities by EU nationals and companies in third countries.
- The expansion of the definition of brokering to include provision by EU nationals or EU-based companies of transportation services between third countries, prohibiting transportation of Annex II goods, and regulating transportation of Annex III goods.
- The introduction of appropriate measures to prevent the involvement of EU nationals or entities in the provision of instruction and training in skills that could aid the commission of judicial executions or torture and other ill-treatment. These measures would address instruction and training independent of the supply of any equipment addressed under the Regulation, and apply where ever such activities are conducted.
- The amendment of the Regulation, or introducing appropriate EU-wide measures, to ensure that the import and intra-EU trade in Annex III goods, and the intra-EU trade in Annex II goods, is effectively regulated.

## Section 1: Introduction

### 1.1 State responsibility to eradicate torture and ill-treatment

The prohibition on torture and other cruel, inhuman or degrading treatment or punishment (ill-treatment) is absolute. It applies in all circumstances and, as part of international customary law, to all States. It is incorporated into numerous treaties and documents, including the Universal Declaration of Human Rights<sup>1</sup>, the International Covenant on Civil and Political Rights<sup>2</sup>, and most notably, the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>3</sup> It is also enunciated in a number of regional instruments, including the African Charter on Human and Peoples' Rights<sup>4</sup>, the American Convention on Human Rights<sup>5</sup>, and in Europe within the European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>6</sup> and the Charter of Fundamental Rights of the European Union.<sup>7</sup>

International law imposes specific obligations on States to prevent torture and other ill-treatment: to investigate its occurrences, criminalise complicity in such activities, bring to justice the perpetrators, and provide reparations to the victims.<sup>8</sup> The prohibition against torture is sufficiently strict as to require States to take into account consequences of their actions that may occur in other countries, notably by preventing the removal of a person to a country in which they are at real risk of exposure to serious ill-treatment.<sup>9</sup>

### 1.2 State obligations to regulate the trade in law enforcement equipment to prevent torture and ill-treatment

Despite States' obligations under international law, torture and other ill-treatment is perpetrated in all regions of the world. In the 2015-2019 period, international and regional torture prevention monitoring bodies<sup>10</sup>, as well as non-governmental human rights organisations (NGOs), have

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<sup>1</sup> United Nations (UN), Universal Declaration of Human Rights, adopted and proclaimed by General Assembly resolution 217 A (III), 10th December 1948, Article 5.

<sup>2</sup> UN, International Covenant on Civil and Political Rights. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI), 16 December 1966, entered into force 23 March 1976, Article 7.

<sup>3</sup> UN, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Adopted by General Assembly resolution 39/46 of 10 December 1984, entered into force 26 June 1987.

<sup>4</sup> African Charter on Human and Peoples' Rights, adopted by the eighteenth Assembly of Heads of State and Government, June 1981, Nairobi, Kenya, Article 5.

<sup>5</sup> American Convention on Human Rights, adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 November 1969, Article 2.

<sup>6</sup> Council of Europe (CoE), European Convention for the Protection of Human Rights and Fundamental Freedoms. Adopted by the Council of Europe on 4 November 1950, entered into force 3 September 1953, Article 3.

<sup>7</sup> European Union (EU), Charter of Fundamental Rights of the European Union, C 364/1, Official Journal of the European Communities, 18 December 2000, Article 4.

<sup>8</sup> UN, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Adopted and opened for signature, ratification and accession by United Nations General Assembly resolution 39/46 of 10 December 1984 (entry into force 26 June 1987), Articles 2, 4 and 16.

<sup>9</sup> Council of Europe, Committee on Legal Affairs and Human Rights, PACE, Strengthening international regulations against trade in goods used for torture and the death penalty, Report Doc. 14454, 15 December 2017, paragraph 4.

<sup>10</sup> See for example Steering Committee for Human Rights, Council of Europe, Draft Feasibility study of a legal instrument to strengthen international regulations against trade in goods used for torture or other cruel, inhuman or degrading treatment or punishment and the death penalty, CDDH (2019)31 21 November 2019; See also reports by the UN Subcommittee for the Prevention of Torture, UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN Committee Against Torture, Council of Europe's Committee for the Prevention of Torture, and the Inter-American Commission on Human Rights highlighting specific cases of the employment of law enforcement equipment in torture and ill-treatment in individual countries.

documented many instances of the use of law enforcement weapons and equipment in the facilitation and/or commission of torture or other ill-treatment.<sup>11</sup>

From the early 2000s, there has been growing awareness within the international community of the link between the trade in weapons and equipment, and the risk of their subsequent misuse. Consequently, the international community increasingly recognises the obligation upon all States to regulate and restrict the trade in certain law enforcement weapons and equipment, as part of their efforts to ensure that such goods are not employed for torture and other ill-treatment.

In Resolution 2001/62, the UN Commission on Human Rights called upon: *“all Governments to take appropriate effective legislative, administrative, judicial or other measures to prevent and prohibit the production, trade, export and use of equipment which is specifically designed to inflict torture or other cruel, inhuman or degrading treatment.”*<sup>12</sup> The importance of all States introducing measures to prohibit the trade in such inherently abusive law enforcement equipment as part of a comprehensive anti-torture strategy has repeatedly been recognised – in language mirroring that of the UN Human Rights Commission - by the UN General Assembly (UNGA) in its (now) biannual Omnibus Torture Resolution, most recently, in 2019.<sup>13</sup>

In his report to the 2005 Session of the UN Commission on Human Rights, the then UN Special Rapporteur on Torture, Prof Theo Van Boven, recommended that in addition to prohibiting manufacture, transfer and use of equipment which *“has no or virtually no, practical use”* other than for torture or ill-treatment States should also introduce *“strict controls on the export of other security and law enforcement equipment to help ensure that it is not used to inflict torture or ill-treatment”* and should also *“consider the development of an international regulatory mechanism”*.<sup>14</sup>

In August 2019, the UN General Assembly adopted Resolution A/73/L.94, *Towards torture-free trade: examining the feasibility, scope and parameters for possible common international standards*. The Resolution called on the UN Secretary General to gather Member States’ views on the feasibility and scope of options to establish common international standards for the import, export, and transfer of goods used for capital punishment, torture, and other ill-treatment, and to establish a group of governmental experts, commencing in 2020, to examine the feasibility, scope of goods to be included, and draft parameters, for a range of options to establish common international standards in this area.<sup>15</sup>

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<sup>11</sup> See for example: Amnesty International and Omega Research Foundation, *The Human Rights Impact of Law Enforcement Equipment*, April 2015; Omega Research Foundation and Stockholm International Peace Research Institute, *The Deployment of Law Enforcement Equipment in Central Asia and the South Caucasus*, September 2015; Omega Research Foundation and the Institute for Security Studies, *Compliance through pain: Electric shock equipment in South African prisons*, June 2016; Omega Research Foundation, *Tools of Torture and Repression in South America: Use, manufacture and trade*, July 2016; Omega Research Foundation, *Briefing Paper: Use of Tools of Torture in OSCE participating States*, 2017; Amnesty International and Omega Research Foundation, *Tackling the trade in tools of torture and execution technologies*, ACT 30/6998/2017, 2017; Omega Research Foundation, *Manufacture, trade and use of ‘tools of torture’ in the Council of Europe*, June 2018; Amnesty International and Omega Research Foundation, *Combating torture: the need for comprehensive regulation of law enforcement equipment*, ACT 30/9039/2018, September 2018.

<sup>12</sup> UN, Office of the High Commissioner for Human Rights, *Torture and other cruel, inhuman or degrading treatment or punishment*, Commission on Human Rights resolution 2001/6277th meeting, 25 April 2001

<sup>13</sup> UN, Resolution adopted by the General Assembly on 18 December 2019, A/RES/74/143. *Torture and other cruel, inhuman or degrading treatment or punishment*, 22 January 2020, paragraph 20.

<sup>14</sup> UN Commission on Human Rights, Report of the Special Rapporteur, Theo van Boven, E/CN.4/2005/62, 15 December 2004, Article 37.

<sup>15</sup> UN, General Assembly, Resolution *Towards torture-free trade: examining the feasibility, scope and parameters for possible common international standards*, 21 June 2019, Seventy-third session, A/73/L.94. The Resolution was adopted with 81 States voting in favour, 20 against, and 44 abstentions.



In July 2020, the UN Secretary General's report analysing States' views was published. The report noted that most responding States *"supported the proposal to establish common international standards"*, and that a majority were in favor of a *"legally binding instrument establishing measures to control and restrict trade in goods used for capital punishment, torture or other forms of ill-treatment."* They indicated that *"only an international legally binding instrument could close the gap and put an end to the trade in those goods"*. The majority of responding States suggested that such an instrument could draw on the rules, principles and mechanisms established in the EU Anti-Torture Regulation.<sup>16</sup>

### 1.1. [EU Anti-Torture Regulation](#)

European Council (EC) Regulation No. 1236/2005 *Concerning trade in goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment* (the EU Anti-Torture Regulation) was agreed in July 2005<sup>17</sup> and came into force on 30 July 2006. It was the world's first multilateral instrument in this area, is legally binding, and is directly applicable in all EU Member States.

The EU Anti-Torture Regulation established a harmonised system across the EU for:

- Prohibiting the trade (import, export, and transit) into, from, or through, all EU Member States of equipment and products with *"no other practical use than capital punishment, torture or other cruel, inhuman or degrading treatment"*. The Regulation also prohibits the export of the principal components of such goods. Further, it prohibits the provision of related technical assistance, brokering of trade deals between third countries, and promotion of such goods at trade fairs or exhibitions, on TV, radio, or the internet;
- Regulating and licensing the trade in law enforcement equipment that could be misused for torture and ill-treatment, including principal components and assembly kits for certain goods. As part of this, States are required to refuse export authorisation *"when there are reasonable grounds to believe that the goods might be used for torture or other [ill-treatment] including judicial corporal punishment"*;
- Regulating and licensing the trade in certain pharmaceutical chemicals to ensure they are not transferred for use in lethal injection executions. This process has been designed to not impede trade of such chemicals for legitimate medical, veterinary, or other purposes.

The Regulation requires States to publish annual activity reports detailing licence applications and authorisations. The Regulation includes further measures to facilitate transparency and to dissuade any EU Member State from 'undercutting' any other. As the Regulation was designed to be a *"living instrument"*, mechanisms allow the Council, the European Parliament, and the Commission to collectively respond to changes in the international security marketplace and the nature of use and misuse of law enforcement equipment, and to address technology developments. These measures include, for instance, provisions facilitating regular review and amendment of prohibited and controlled goods lists. As a result of this review process, the European Commission has twice, in 2011 and 2014, updated and extended the Annexes to the Regulation listing prohibited and controlled goods. In 2016, the Council and Parliament, on the initiative of the Commission, also extensively amended the Regulation's operative provisions; the subsequent revisions came into force in

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<sup>16</sup> United Nations General Assembly. 2020. Towards torture-free trade: examining the feasibility, scope and parameters for possible common international standards. A/74/969. 28 July 2020 pa. 48.

<sup>17</sup> EC Regulation 1236/2005 of 27th June 2005 concerning trade in goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, published in Official Journal of the European Union, L200/1, 30th July 2005.

December 2016. A consolidated EU Anti-Torture Regulation, Regulation (EU) 2019/125, was published in January 2019 and came into force on 20 February 2019.<sup>18</sup>

The EU Anti-Torture Regulation fills a major gap in human-rights-based trade controls. It introduced unprecedented, binding trade controls on a range of equipment that is often used in serious human rights violations, but that is often absent from State military, dual-use, or strategic export control lists. This landmark piece of legislation has been praised by the international human rights community, and has been recommended as a model for other regions and States to follow.

### *Review of the EU Anti-Torture Regulation*

The EU Anti-Torture Regulation requires the European Commission to undertake a comprehensive review of the implementation of the Regulation, every five years, beginning in 2020.<sup>19</sup> The first such formal review has recently been completed by the Commission, and its report is currently with the European Parliament and European Council for their consideration and action.<sup>20</sup> The Omega Research Foundation engaged extensively with the European Commission during its review, submitting a number of research and policy briefings to inform this process,<sup>21</sup> as well as participating in formal and informal consultation meetings.

This Omega Research Foundation report comprises an independent evaluation of the Regulation and its implementation by Member States together with analysis of company activities of concern. This report is intended to facilitate and inform the forthcoming appraisal by the European Parliament and European Council and their subsequent discussions regarding the most appropriate and effective measures to strengthen the Regulation and its implementation by all EU Member States. The report presents the results of research conducted by the organisation into the EU Anti-Torture Regulation and its implementation by EU Member States between 1<sup>st</sup> January 2015 and 31<sup>st</sup> December 2019. It should be noted that although the UK formally left the EU on 31 January 2020, given the temporal scope of this report and the European Commission Review process, the UK is treated as any other EU Member State.

#### 1.4 Summary of key findings

During the five-year period studied (2015-2019), the Omega Research Foundation has found that:

- Although required by the Regulation to produce annual public activity reports of their implementation of the Regulation, this obligation remains only partly fulfilled in several Member States, with few States making public their complete reporting on implementation of the Regulation.
- Although the import and export into the Union of equipment listed in Annex II of the Regulation is explicitly prohibited, EU-based companies have promoted law enforcement equipment that has no practical purpose than for torture or other ill-treatment.

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<sup>18</sup> European Union, Regulation (EU) 2019/125 of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment ('Anti-Torture Regulation').

<sup>19</sup> For further information see: Human rights – review of EU 'Anti-Torture' Regulation (2016-20), European Commission, available at: [https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2019-4201434\\_en](https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2019-4201434_en) Accessed 28 April 2020.

<sup>20</sup> European Commission, Report from the Commission to the European Parliament and the Council, on the review of Regulation (EU) 2019/125 of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, COM(2020) 343 final, 30 July 2020.

<sup>21</sup> See in particular: Omega Research Foundation, Review of EU Anti-Torture Regulation and its implementation: Provisional findings and recommendations, May 2020 [submitted to European Commission consultation on 22<sup>nd</sup> May 2020]; Omega Research Foundation, Questionnaire regarding Review of Regulation (EU) 2019/125 of the European Parliament and of the Council of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, Response by the Omega Research Foundation, January 2020.

- Certain EU Member States have authorised the export of law enforcement equipment controlled under the Regulation (Annex III) to destinations where such equipment had recently been used in torture and other ill-treatment. This raises concerns about the adequate assessment of human rights risks in Member States' export licensing decisions.
- The Regulation is not consistently implemented at arms and security trade fairs or exhibitions held within the EU, wherein companies from outside of the EU have been found to promote and display law enforcement equipment that is prohibited under the Regulation.
- The list of goods prohibited in Annex II, and controlled within Annex III, does not encompass the range of law enforcement equipment that is used to facilitate and commit torture and other ill-treatment, or fully reflect how this equipment is used.
- Implementation and oversight gaps remain with regards to the behaviour of EU nationals operating outside of the European Union. This is particularly the case with regards to EU-based companies, institutions, and individuals providing security and law enforcement training services; EU based companies that organise arms and security trade fairs or exhibitions in third countries; or EU-based entities conducting brokering and transportation activities.

### 1.5 Research Methodology

Research for this report was carried out by the Omega Research Foundation during the latter half of 2019 and the first half of 2020. The research included direct surveying of companies engaged in the law enforcement equipment trade, and incorporated correspondence and/or meetings with European Commission and Member State officials responsible for the implementation and review of the EU Anti-Torture Regulation.

The dataset of information on which this report draws is maintained and updated by the Omega Research Foundation, which has researched the global police and security equipment market since 1990. The Omega Research Foundation undertakes market surveying on a continuous basis, and gathers current as well as historical market, product, and trade data from a wide range of open-source and commercial sources. These sources include company-produced information from websites and product brochures, industry sector publications, government publications, company and financial information from national company registries, government-and commercially-produced trade statistics, information from media organisations, and credible, reliable reports and publications by NGOs and international organisations.

Unless otherwise stated, data about the size, scope, and evolution of the manufacture, promotion, and trade of law enforcement equipment is taken from the Omega Research Foundation's datasets. Any information, including photographs, provided in relation to specific companies is for illustrative purposes. Unless otherwise explicitly stated, it is not intended to infer wrong-doing on the part of these companies and no such inference should be drawn.

The report also draws upon the detailed documentation of torture and other ill-treatment undertaken by UN human rights monitoring bodies and regional human rights organisations, notably the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), as well as information from respected international human rights organisations, including Amnesty International and Human Rights Watch.

## Section 2: Member State Implementation of the EU Anti-Torture Regulation

### 2.1. Introduction

The provisions established under the EU Anti-Torture Regulation, which are directly applicable to all EU Member States, provide a common minimum standard for regulating trade in a shared list of goods. Collectively, these provisions appear to constitute broadly appropriate obligations upon States, provided they are translated effectively and efficiently at the Member State level through national legislation and associated national measures. To a large degree, therefore, the Regulation's practical effectiveness depends upon the ability and determination of all Member States to fully and consistently implement (i.e. interpret, apply, monitor and enforce) its provisions. This Section examines contemporary State implementation in two key areas: State licence authorisation and related reporting measures, and State oversight of EU arms and security equipment trade fairs and exhibitions. This Section also explores the functioning of existing Regulation measures intended to promote and facilitate State implementation, notably the Anti-Torture Coordination Group, licence authorisation denial notification and consultation measures, and further Commission oversight and facilitation measures.

### 2.2. Member State licence authorisation and reporting

Article 11 of the EU Anti-Torture Regulation obliges Member States to regulate the export of goods listed in Annex III, with any export of such goods requiring an authorisation by the competent authorities. Under Article 12, which establishes the criteria for granting export authorisations, *“the competent authority shall not grant any authorisation when there are reasonable grounds to believe that goods listed in Annex III 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”* Furthermore, under Article 12.1: *“[d]ecisions on applications for authorisation for the export of goods listed in Annex III shall be taken by the competent authority on a case by case basis, taking into account all relevant considerations, including in particular, whether an application for authorisation of an essentially identical export has been dismissed by another Member State in the preceding three years.”*

Under Article 26.3, Member States are also required to *“make a public, annual activity report, providing information on the number of applications received, on the goods and countries concerned by these applications, and on the decisions they have taken on these applications.”* To facilitate full reporting by EU Member States, the Commission has developed a standard reporting template (see Appendix 3). Since December 2016, the Commission has also been required to prepare an annual report with information from the annual activity reports supplied to it by all EU Member States (discussed in Section 2.3.).

In order to assess the nature of Member State export licensing practices from 2015-2018<sup>22</sup>, as well as the quality of their public reports, the Omega Research Foundation undertook a survey of publicly available information provided by EU Member States and the Commission.<sup>23</sup> Various reporting

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<sup>22</sup> For the purposes of consistency, reports from the period 2015-2018, inclusive, are addressed in this report. Reporting practices suggest that the reports for 2019 will, for those States that publicly release them, not all be available at the time of publication.

<sup>23</sup> In addition to an extensive internet-based search, emails were sent to all Member States. These emails requested information on the reporting practices of States, specifically that the Member State send previous reports compiled (if not

practices from selected Member States are examined below (more comprehensive information from the reports found is compiled in Appendix 1 and 2).<sup>24</sup>

Some publicly reported information, as well as some that has been provided directly to the Omega Research Foundation by Member States, raises concerns that not all Member States are consistently assessing the risk that items covered by the Regulation may be misused for torture or other ill-treatment in recipient States (as Member States are required to consider under Article 12). Some Member States have granted export licences for particular categories of goods to States where, according to human rights monitors, those same types of goods are reported to have been (mis)used for torture and other ill-treatment (some examples of this are discussed below). Without publicly available information on the intended end user of the exported goods, which is currently not systematically available, it is impossible to address these concerns.

### 2.2.1 Publicly Accessible Reporting

Following a review of government trade control websites and related publicly available government material from all EU Member States, the Omega Research Foundation has been able to identify only seven Member States<sup>25</sup> that have regularly released public activity reports covering the 2015-2018 period. Unfortunately, few of these Member State reports address all the reporting requirements as established under Article 26.3 (and detailed in the Commission's standardised reporting template).

The United Kingdom's public reporting of export authorisations under the EU Anti-Torture Regulation is integrated within the annual Department for International Trade *Strategic Export Controls: Country Pivot Report*.<sup>26</sup> The information provided in the annual UK reports is fairly comprehensive, largely mirroring the categories of the Commission's standard reporting template (i.e. with the UK providing a description of goods, financial value, recipient State, and, in some instances, a broad category of end user). The UK has published such information since 2013. A total of 23 licences were granted in 2015, and 20 licences granted in 2016. There are slight differences in the total number of approved export authorisations reported in the 2017 and 2018 UK reports as compared to those recorded in the corresponding Commission activity report<sup>27</sup>. In 2018, 12 UK licences were recorded in the Commission report, while 11 UK licences were recorded in the national UK report; in 2017, 23 UK licences were recorded in the Commission report, and 21 in the UK report.

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available online). If, as in some instances occurred, the email address provided in Regulation (EU) 2019/125 were not operational, Omega undertook to contact States through alternative means (alternative email addresses, phone calls, etc.). Multiple reminders and requests were sent to States. Further information on this research methodology is available from the Omega Research Foundation.

<sup>24</sup> Where information has only been available in reporting languages other than English, the Omega Research Foundation has relied on internet-based translation websites. We acknowledge that, while often relatively accurate, these are not perfect and that errors are made. In some cases, further triangulation has been used to attempt to arrive at a complete picture. Nonetheless, inaccuracies may remain. Should you wish to discuss a perceived inaccuracy, please contact the Omega Research Foundation.

<sup>25</sup> In addition to the seven States identified, it may be the case that additional States have compiled comprehensive public activity reports during this period, but were not identified by the Omega Research Foundation in its review of government websites.

<sup>26</sup> While the UK Government makes these reports public, copies are also held on file by the Omega Research Foundation. See, for example,

Department for International Trade. 2019. *Strategic Export Controls: Country Pivot Report 1<sup>st</sup> January 2018 – 31<sup>st</sup> December 2018*. Government of the United Kingdom.

<sup>27</sup> This report is discussed in more detail below, in section 2.4.5.

The majority of reported export licences approved by the UK in this period do not raise concerns with regard to the nature of the equipment nor the end user. Nonetheless, a small number do lead to questions about the UK's licence determination process. The export authorisation to Hong Kong of handcuffs<sup>28</sup> in 2015, and shackles<sup>29</sup> in 2016, are of particular concern in the light of long-standing allegations of human rights violations committed by the Hong Kong security and police forces, as well as specific reports of the abusive employment by Hong Kong police of handcuffs in 2014, prior to the authorisation of these licences. As detailed in the table below, the end user for the handcuffs was listed as "Government", while that of the shackles was "law enforcement agency". The Omega Research Foundation wrote to the UK government requesting further information about the specific end users. In its response, the Department for International Trade stated, "The end-uses and end-users of items controlled under the EU Torture Goods regulation are rigorously scrutinised". Despite this, the Department declined to provide the Omega Research Foundation with information on end users, stating, "The information requested is commercially sensitive".<sup>30</sup>

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<sup>28</sup> Defined in correspondence as:

*"The exports were classified as within 1.2 of Annex III of the EU Torture Regulation. Due to an update of the EU Human Rights List in 2014, these handcuffs are now controlled under 1.1. where two cuffs or rungs that are connected via either a bar or chain are controlled. These handcuffs are fitted to the wrist and are commonly used by correctional services to safely escort prisoners between locations. They are not classified as 'ordinary handcuffs' as they do not meet all the criteria set out in 1.1 (3) of Annex III of the EU Torture Regulation. These particular handcuffs have adjustable positions so that it can be fitted to a small or large wrist, so it may not meet the diameter requirements. However, they are not modified to cause 'physical pain or suffering'."*

<sup>29</sup> Defined in correspondence as:

*"the 'shackles' that were exported are described as two cuffs or rings that are connected via either a bar or a chain. Again, these are fitted to the wrist and are regularly used by correctional services to escort prisoners between locations. These items are controlled within 1.1. of Annex III in the EU Torture Goods Regulation so require a licence to be exported from the UK."*

<sup>30</sup> Correspondence sent to the Omega Research Foundation by email from a representative of the Export Control Joint Unit, of the UK's Department for International Trade, dated 17<sup>th</sup> December 2019.

Table 1: UK examples of possible licences of concern

Details	Year	State	Examples of misuse of equipment
<b>Handcuffs<sup>31</sup></b> <b>£15,241</b>  <b>End user:</b> <b>Government</b>	2015	Hong Kong	National human rights monitors and the media reported numerous incidents of the ill-treatment by Hong Kong Police officers of individuals arrested or otherwise detained during the large scale series of sit-in street protests, organised by the Umbrella Movement from 26 September to 15 December 2014. Certain incidents reportedly involved the excessive application of force by police officers to individuals who were already, or were in the process of being, handcuffed or held with non-metallic (plastic) restraints. <sup>32</sup>
<b>Shackles<sup>35</sup></b> <b>£7,566</b>  <b>End user:</b> <b>Law enforcement agency</b>	2016	Hong Kong	<p>In one case from October 2014, before the export licences were issued, Hong Kong police officers were filmed apparently beating a protestor who had already been handcuffed. A man identified as the protestor was taken to hospital and photographs showed bruising on his face and body. Seven police officers were later arrested for assault.<sup>33</sup></p> <p>In another case from November 2014, a news photographer wearing a press badge, who claimed he was “only shooting a video of the police operations” was “pressed to the ground by at least six officers and was put on [sic] handcuffs”. He was taken to the police station by “at least 50 police officers”.<sup>34</sup></p>

<sup>31</sup> Defined in correspondence as:

*“The exports were classified as within 1.2 of Annex III of the EU Torture Regulation. Due to an update of the EU Human Rights List in 2014, these handcuffs are now controlled under 1.1. where two cuffs or rungs that are connected via either a bar or chain are controlled. These handcuffs are fitted to the wrist and are commonly used by correctional services to safely escort prisoners between locations. They are not classified as ‘ordinary handcuffs’ as they do not meet all the criteria set out in 1.1 (3) of Annex III of the EU Torture Regulation. These particular handcuffs have adjustable positions so that it can be fitted to a small or large wrist, so it may not meet the diameter requirements. However, they are not modified to cause ‘physical pain or suffering’.”*

<sup>32</sup> See for example, Report on Police Violence in the Umbrella Movement, A report of the State Violence Database Project in Hong Kong, Compiled by The Professional Commons and Hong Kong In-Media, 2015, [https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/HKG/INT\\_CAT\\_CSS\\_HKG\\_22159\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/HKG/INT_CAT_CSS_HKG_22159_E.pdf) (accessed 8 May 2020), pp. 23, 26 and 27.

<sup>33</sup> Pomfret, James, and Clare Jim. 2014. ‘Hong Kong Police Officers Suspended After Allegedly Beating Pro-Democracy Protester’. The Huffington Post. 15 October 2014. Accessed 14 April 2020. Available at:

[https://www.huffpost.com/entry/hong-kong-police-officers-suspended\\_n\\_5987308?guccounter=1&guce\\_referrer=aHR0cHM6Ly9lbi53aWtpcGVkaWEub3JnL3dpa2kvQ29udHJvdmVyc2llc19vZl90aGVfSG9uZ19lb25nX1BvbGJlZV9Gb3JjZQ&guce\\_referrer\\_sig=AQAAAFGQw4zFaGZAC-oGwyVWVz1yME6ChiB8yBf8s7f4WAqaFkDMYvdMRaskUU8RBbULJmpcGVO-TvSP7dnFi0S2FtRrNBqNyblZzXzbGy-dmr6FLPQ8M8gHiTqfG1tZpHehXFz11k1dJGpTriQLtvRb5JBZfurDG1HaX7B\\_kN4\\_eBTI;](https://www.huffpost.com/entry/hong-kong-police-officers-suspended_n_5987308?guccounter=1&guce_referrer=aHR0cHM6Ly9lbi53aWtpcGVkaWEub3JnL3dpa2kvQ29udHJvdmVyc2llc19vZl90aGVfSG9uZ19lb25nX1BvbGJlZV9Gb3JjZQ&guce_referrer_sig=AQAAAFGQw4zFaGZAC-oGwyVWVz1yME6ChiB8yBf8s7f4WAqaFkDMYvdMRaskUU8RBbULJmpcGVO-TvSP7dnFi0S2FtRrNBqNyblZzXzbGy-dmr6FLPQ8M8gHiTqfG1tZpHehXFz11k1dJGpTriQLtvRb5JBZfurDG1HaX7B_kN4_eBTI;)

Associated Press. 2014. ‘Hong Kong police arrest 7 officers for beating protestor’. USA Today. 27 November 2014. Accessed 14 April 2020. Available at: <https://eu.usatoday.com/story/news/world/2014/11/27/hong-kong-protests/19567797/>.

<sup>34</sup> EJInsight. 2014. ‘Journalists assail arrest of Apple Daily photographer’. 28 November 2014. Accessed 15<sup>th</sup> May 2020. Available at: <https://www.ejinsight.com/eji/article/id/944139/20141128-journalists-assail-arrest-of-apple-daily-photographer> (accessed 16 June 2020).

<sup>35</sup> Defined in correspondence as:

*“the ‘shackles’ that were exported are described as two cuffs or rings that are connected via either a bar or a chain. Again, these are fitted to the wrist and are regularly used by correctional services to escort prisoners between locations. These items are controlled within 1.1. of Annex III in the EU Torture Goods Regulation so require a licence to be exported from the UK.”*

Since 2006, *Germany* has published public annual reports of its export authorisations for goods covered under the EU Anti-Torture Regulation.<sup>36</sup> From such information, Germany appears to have granted (and reported on) the largest number of export authorisations of any EU Member State, with over 100 such licences granted each year (owing to this scale, details of German export authorisations from the 2015-2018 period are provided separately in Appendix 2).

German reports detail the EU Anti-Torture Regulation equipment category, describe the equipment concerned, and note the country of destination. Unfortunately, German reporting provides no consistent information regarding the end user, nor the financial value or quantity of goods approved. For the vast majority of reported export licences approved by Germany from 2015-2019, no widely reported prior incidents of the misuse of the equipment in question could be found. Nonetheless, a small number of authorisations, notably for the export of OC or PAVA to Brazil, Kenya, and South Africa, do raise concern given the previous misuse of such goods by the police and security forces for torture or other ill-treatment. To allay concerns about licences such as these, all States should publish full information on the nature of the end user and end use. A further case of concern relates to the 2015 authorisation of the export, to the USA, of goods under the category *“individual cuffs or rings fitted with a locking mechanism, having an inside circumference exceeding 165 mm when the ratchet is engaged at the last notch entering the locking mechanism”*. The Omega Research Foundation asserts that certain goods under this category should be prohibited. Omega has sent email requests to the German government for clarification of the nature of the goods and end user authorised in this case, but has not yet received a response.

Germany lists those authorisation applications that have been denied, although, unlike some other Member States, does not provide a reason for this denial. A more detailed public justification for authorisation refusals would demonstrate the robustness of Germany’s processes with regards to the proper implementation of the Regulation.

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<sup>36</sup> Further information on Germany’s licencing practices, along with all reports, is available at: Bundesamt für Wirtschaft und Ausfuhrkontrolle. 2020. *Außenwirtschaft – Ausfuhrkontrolle – Anti-Folter-Verordnung*. Accessed 14 April 2020. Available at: [https://www.bafa.de/DE/Aussenwirtschaft/Ausfuhrkontrolle/Antragsarten/Anti\\_Folter\\_Verordnung/anti\\_folter\\_node.html](https://www.bafa.de/DE/Aussenwirtschaft/Ausfuhrkontrolle/Antragsarten/Anti_Folter_Verordnung/anti_folter_node.html).



Table 2: German examples of possible licences of concern

Details	Year	State	Examples of misuse of equipment
<b>PAVA and OC</b>	2015 2016 2017 2018	South Africa	The misuse of pepper spray by law enforcement officials against sex workers <sup>37</sup> and asylum seekers <sup>38</sup> , and by correctional officials against inmates have been reported during the period in which licences were being considered and authorised. For example, in 2017, a man held in a South African prison alleged, “A warder held my arms while another punched me repeatedly in the face. I fell down. The warder kicked me many times in the stomach. He also sprayed pepper spray directly into my eyes”. <sup>39</sup>
<b>OC</b>	2016 2017 2018	Kenya	In response to protests in 2017, Kenyan police killed at least 33 people, with Amnesty International noting that some of these victims “died from asphyxiation from inhaling tear gas and pepper spray”. <sup>40</sup> The UN reported misuse of chemical irritants (tear gas) by Kenyan police in 2016 and 2017, including in one instance, in October 2017, where police “reportedly used tear gas in a nursery in Nyalenda, injuring at least three children”. <sup>41</sup>
<b>PAVA</b>	2015 2016 2017 2018	Brazil	In 2014, in response to a police crackdown during the football World Cup, the Director of Amnesty International Brazil, Atila Roque, stated, “The violence meted out by the security forces over the course of the World Cup was excessive, unnecessary and a direct threat to the right to peaceful protest. The heavy-handed crackdown included the use of non-lethal weapons, such as stun grenades, pepper spray and tear gas”. In November 2016, police inappropriately employed pepper spray against anti-austerity protestors outside the Rio Parliament. <sup>42</sup>

<sup>37</sup> Capazorio, Bianca. 2016. ‘Police ‘pepper-spray, rape, abuse’ sex workers’. *Times Live*. 18 August 2016. Accessed 14 April 2020. Available at: <https://www.timeslive.co.za/news/south-africa/2016-08-18-police-pepper-spray-rape-abuse-sex-workers/>.

<sup>38</sup> Amnesty International. 2013. ‘South Africa: Police repeatedly turn on asylum-seekers amid xenophobia spike’. 29 May 2013. Accessed 14 April 2020. Available at: <https://www.amnesty.org/en/latest/news/2013/05/south-africa-police-repeatedly-turn-on-asylum-seekers-amid-xenophobia-spike/>.

<sup>39</sup> Hopkins, Ruth. 2017. ‘Tortured behind bars’. *News24 – City Press*. 6 August 2017. Accessed 14 April 2020. Available at: <https://www.news24.com/SouthAfrica/News/tortured-behind-bars-20170806-2>.

<sup>40</sup> Amnesty International. 2017. ‘Kenya: Police killed, beat post-election protesters’. 16 October 2017. Accessed 14 April 2020. Available at:

<https://www.amnesty.org/en/latest/news/2017/10/kenya-police-killed-beat-post-election-protesters/>

<sup>41</sup> United Nations Human Rights: Office of the High Commissioner. 2016. ‘UN experts criticize Kenya police for excessive use of force against peaceful protesters’. 10 November 2016. Accessed 26 August 2020. Available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20850&LangID=E>.

United Nations Human Rights: Office of the High Commissioner. 2017. ‘News: Kenya must lift protest ban and end pattern of police brutality ahead of poll, UN experts warn.’ 16 October 2017. Accessed 26 August 2020. Available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22238&LangID=E>.

<sup>42</sup> Associated Press in Rio de Janeiro. 2016. ‘Brazil police use pepper spray at austerity protest outside Rio parliament’. *The Guardian*. 16 November 2016. Accessed 14 April 2020. Available at: <https://www.theguardian.com/world/2016/nov/16/brazil-rio-de-janeiro-police-pepper-spray-protest-olympics>.

Since 2008, Czechia has publicly released annual reports of export authorisations on the Czech Government website.<sup>43</sup> Whilst these reports do not conform to the Commission’s reporting template and do not provide details of end users, quantity, or financial value of goods authorised, they do include information describing the goods and note the recipient country. The majority of export authorisations were not to countries where the law enforcement equipment in question had been reportedly misused. Nonetheless, certain authorisations do give cause for concern. Among these are authorisations for “*electric stun guns*” to Azerbaijan, Nigeria, and Ukraine – all States where electric shock torture has reportedly been employed by law enforcement officials. Although the electric shock devices/techniques used were not identified, the occurrence of electric shock torture should have informed the export authorisation process. Authorisations were also approved for the export of pepper spray to Serbia, even though reports suggest goods of this type have been misused by the police for torture or other ill-treatment. A further case of concern relates to authorisations granted in 2018 for ‘*handcuffs*’ (to Bahrain and Botswana). As ordinary handcuffs are not controlled under the Regulation, and Czechia has not adopted any additional national measures to regulate such devices, it is unclear what kinds of restraints are meant in the reports. Despite certain limitations in public reporting, Czechia, unlike many EU States, publicly documents its reasons for refusing authorisations, which does give an indication into implementation practices. In 2015, for example, it denied one authorisation for the export of thiopental to Vietnam owing to the “*risk of using exported goods for torture*”. It also denied licences for export of thiopental to Hong Kong in 2017, and pepper spray to Kosovo in 2016, citing, less explicitly, the “*risk of using exported goods*”.

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<sup>43</sup>Ministerstvo Průmyslu a Obchodu - Oddělení Mezinárodních Kontrolních Režimů - Licenční správa. 2019. *Zpráva Ministerstva průmyslu a obchodu o plnění nařízení Rady (ES) č. 1236/2005 za rok 2018*. Accessed 8 April 2020. Available at: <https://www.mpo.cz/cz/zahranicni-obchod/licencni-sprava/mucici-nastroje/zprava-ministerstva-prumyslu-a-obchodu-o-plneni-narizeni-rady-es-c-1236-2005-za-rok-2018--54368/>.

The Omega Research Foundation also received email correspondence from a representative of Department of International Control Regimes: License Management, Ministry of Industry and Trade, Government of Czechia.

Table 3: Czech examples of possible licences of concern

Details	Year	State	Examples of misuse of equipment
'electric stun guns'	2018	Azerbaijan	Amnesty International reported allegations made by members of the Muslim Unity Movement during their trial, where they stated that they had been they had been <i>"tortured or otherwise ill-treated with beating and electric shocks during their incommunicado detention at the MOCD [Main Organized Crime Department]"</i> , following their arrests in November 2015 <sup>44</sup> . Human Rights Watch highlighted the case of Mehman Huseynov who on 7 January 2017 was reportedly attacked by a group of plain-clothed officers who <i>"blindfolded and gagged him, forced a bag over his head, used an electroshock weapon on his groin, and punched him, bloodying his nose"</i> . <sup>45</sup>
'electric stun guns'	2015 2017 2018	Nigeria	In a 2014 report, Amnesty International documented various cases of the misuse of electric shock weapons by Nigerian officials, including to make people confess. In one case, the prisoner reported, <i>"About two policemen normally come to my cell to take me to the interrogation room. They used a cutlass to swipe my body inflicting wounds all over my body. Sometimes they also used rods to beat me. They will ask me to confess as they torture me. They used electric shocks on me. At the end I had no choice but to admit to the crime... the torture was so intense that when I saw my father, I called him 'mother'"</i> . <sup>46</sup>
'electric stun guns'	2016	Ukraine	In a 2016 report, Amnesty International and Human Rights Watch documented various instances of torture and other forms of ill-treatment in Ukraine. In one case from April 2015, a man was imprisoned by Ukraine's Security Service personnel, who <i>"tortured him with electric shocks, burned him with cigarettes, and beat him, demanding that he confess to working for Russia-backed separatists"</i> . <sup>47</sup>
Pepper spray	2016 2018	Serbia	In 2015, Human Rights Watch documented reports of Serbian authorities misusing pepper spray against migrants and asylum seekers. The report noted, <i>"Five, including children, said the police</i>

<sup>44</sup> Amnesty International, Azerbaijan: Torture and travesty of justice in Nardaran case, Public statement, EUR 55/5633/2017, 6 February 2017

<sup>45</sup> Gogia, Giorgi. 2018. 'Torture is 'Systemic and Endemic' in Azerbaijan'. *Human Rights Watch*. 25 July 2018. Accessed 14 April 2020. Available at:

<https://www.hrw.org/news/2018/07/25/torture-systemic-and-endemic-azerbaijan>; Buchanan, J. The Price for Journalism in Azerbaijan: Police Attack Reporter Who Alleged High-Level Corruption, Human Rights Watch, 11 January 2017; See also Amnesty International. 2019. Annual Report 2017/2018: Azerbaijan. Accessed 14 April 2020. Available at: <https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF>.

<sup>46</sup> Amnesty International. 2014. 'Welcome to Hell Fire': Torture and other ill-treatment in Nigeria. Accessed 14 April 2020. Available at:

[https://www.amnesty.org.uk/files/webfm/Documents/issues/p4334\\_nigeria\\_report\\_complete\\_web.pdf?xrfJiQFCsRhjuDsklKn6iEG3Y5yKNC1r](https://www.amnesty.org.uk/files/webfm/Documents/issues/p4334_nigeria_report_complete_web.pdf?xrfJiQFCsRhjuDsklKn6iEG3Y5yKNC1r); see also Amnesty International. 2014. 'Nigeria: Torture so common that police stations have 'Officer in Charge of Torture''. 18 September 2014. Accessed 14 April 2020. Available at: <https://www.amnesty.org.uk/press-releases/nigeria-torture-so-common-police-stations-have-officer-charge-torture>.

<sup>47</sup> Amnesty International and Human Rights Watch. 2016. *"You Don't Exist": Arbitrary Detentions, Enforced Disappearances, and Torture in Eastern Ukraine*. Accessed 14 April 2020. Available at: <https://www.amnesty.org/download/Documents/EUR5044552016ENGLISH.PDF>; see also Amnesty International UK. 2015. *Breaking Bodies: Torture and Summary Killings in Eastern Ukraine*. EUR 50/1683/2015. Accessed 24 April 2020. Available at: <https://www.amnesty.org/download/Documents/EUR5016832015ENGLISH.pdf>

			<i>hit, kicked, and punched them. Two said police hit them in the eyes with pepper spray</i> <sup>48</sup>
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In addition to Germany, the UK, and Czechia, four other States regularly make available public activity reports that follow most but not all the Regulation's reporting requirements. *Bulgaria* maintains a public record of its licence authorisation measures under the Regulation between 2009 and 2018.<sup>49</sup> In the period 2015-2018, inclusive, Bulgaria neither received nor authorised any applications for licences. Similarly, *Lithuania* makes available its reporting under the Regulation,<sup>50</sup> which confirm no authorisations have ever been issued under the Regulation.<sup>51</sup> *Sweden* received one application during the 2005-2017 period (this application was received in 2017, no further information is provided), and issued no authorisations.<sup>52</sup> The Swedish Government also provided the Omega Research Foundation with a copy of its 2018 report to the Commission,<sup>53</sup> which followed the Commission's standardised reporting template, and fully detailed the two licences issued in that year. *Slovenia's* reports use the Commission template,<sup>54</sup> and record both the nature of the equipment and end user for all licences issued during the period examined (1 in 2017, 1 in 2016, 3 in 2015).

### 2.2.2. Other Reporting Practices

While not regularly providing comprehensive public annual activity reports, certain Member States have engaged in some measure of public reporting (sometimes only accessible on request), and others have issued public reports in some years, but not others. These Member States should be encouraged to fully, and publicly, report on their implementation of the Regulation.

*Finland* and *Ireland* both provide the Commission with an annual activity report, but have not released these publicly. They have, however, sent copies of some of these reports, upon request, to the Omega Research Foundation.<sup>55</sup> According to such reports, in the period from 2015 to 2018, neither Finland

<sup>48</sup> Human Rights Watch. 2015. 'Serbia: Police Abusing Migrants, Asylum Seekers'. 15 April 2015. Accessed 24 April 2020. <https://www.hrw.org/news/2015/04/15/serbia-police-abusing-migrants-asylum-seekers>.

<sup>49</sup> Republic of Bulgaria, Ministry of Economy. 2020. *Annual Reports under Article 13(3) of Regulation (EC) No 1236/2005*. Available at: <https://mi.government.bg/en/themes/godishni-otcheti-v-izpalnenie-na-chlen-13-3-ot-reglament-es-1236-2005-288-338.html>. Accessed 2 April 2020.

<sup>50</sup> For instance, see:

Lietuvos Policija. 2019. *Annual Report Under Regulation (EC) No 1236/2005*. Accessed 7 April 2020. Available at: <https://policija.lrv.lt/uploads/policija/documents/files/paslaugos/kankinimo%20iranga%202018.pdf>.

Lietuvos Policija. 2018. *Annual Report Under Regulation (EC) No 1236/2005*. Accessed 7 April 2020. Available at: <http://policija.lrv.lt/uploads/policija/documents/files/paslaugos/kankinimo%20iranga%202017.pdf>.

Lietuvos Policija. 2017. *Lentele kankinimo iranga*. Accessed 7 April 2020. Available at:

[http://policija.lrv.lt/uploads/policija/documents/files/paslaugos/Lentele%20kankinimo%20iranga\\_2017.pdf](http://policija.lrv.lt/uploads/policija/documents/files/paslaugos/Lentele%20kankinimo%20iranga_2017.pdf).

<sup>51</sup> Email correspondence with a representative of the License Division of the Public Police Board, Police department under the Ministry of the Interior, Lithuania, received 27<sup>th</sup> September 2019.

<sup>52</sup> Kommerskollegium / National Board of Trade, Sweden. 2018. *Rapport om antalet ansökningar enligt art. 13.3 i förordning (EG) 1236/2005*. Accessed 16 September 2019. Available at:

<https://www.kommers.se/verksamhetsomraden/Handelsfragor/Importlicenser/Begransning-av-handel-med-varor-for-tortyr-mm/>

<sup>53</sup> A copy of the document was received via email from the Swedish Enheten för Internationell Handelsutveckling Department for Trade and Policy Developments, 1<sup>st</sup> October 2019.

<sup>54</sup> The 2018 report was not available online at time of writing, but was provided, along with further information, by email from a representative of the Directorate for Internal Market, Division for Trade Policy of the Republic of Slovenia Ministry of the Economic Development and Technology, received 15<sup>th</sup> November 2019.

<sup>55</sup> Finland: Received email correspondence from a representative of the Police Department, within the Finnish Government's Ministry of the Interior, 18<sup>th</sup> October 2019. Ireland: Received email correspondence from a representative of the Irish Government's Trade and Licensing Control Unit, Department of Business, Enterprise and Innovation, 17<sup>th</sup> October 2019.

nor Ireland<sup>56</sup> received applications for export authorisations, and therefore granted no export authorisations.<sup>57</sup> *Romania* has a clear history of providing public reports on the Regulation (reports found address the years 2007 to 2012<sup>58</sup>, as well as 2017-2018); the most recent report analysed here (2017-2018) suggests no applications were received, and no authorisations granted.<sup>59</sup> Only *Denmark's* most recent figures are publicly accessible, and these do not conform to the Commission's template.<sup>60</sup> *Estonia's* reports from 2010 to 2015 are publicly accessible (in 2015, for instance, Estonia reported no applications for authorisations, and thus issued none).<sup>61</sup> More recent reports are not public, however, and therefore assumptions around more recent licencing activity (2017 and 2018) must be drawn from the Commission compilation report released in 2019.

*France* refers to its implementation of the EU Anti-Torture Regulation within its '*Report to Parliament on arms exports from France*', although this text is so vague and limited as to be almost meaningless. Iterations of this report released from 2013 to 2018, merely state "*approximately twenty [authorisations] each year are issued by the Minister responsible for customs after consulting [other relevant Ministers]*" (or slight variations thereof).<sup>62</sup> Such language, repeated largely unchanged over several years, is not in line with the standardised reporting template recommended by the Commission. This approach provides no information describing goods authorised, their quantities or financial value, nor recipient States or end users, and makes it impossible for the French Parliament or civil society to assess implementation of the Regulation. Furthermore, these Parliamentary reports provide no information on France's fulfilment of its annual reporting obligations to the Commission under the Regulation. In the light of the lack of Parliamentary and public reporting transparency, the anomaly between France's claim of authorising "*approximately 20 licences*" and the significantly fewer licences documented by the Commission in 2017 (8) and 2018 (5) is of concern. The Omega Research Foundation and Amnesty International France have written to the French authorities requesting clarification on these issues, but have, to date, received no reply. France's active commercial law enforcement equipment sector (comprising companies that manufacture and promote such equipment as well as those organising international trade events [see Section 2.3]) exacerbates concerns regarding France's incomplete reporting practices on licence authorisations.

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<sup>56</sup> Prior to the introduction of the Commission activity reporting measure in 2017, Ireland's implementation of the Regulation was detailed in the Irish Department of Business, Enterprise and Innovation annual report under the Control of Exports Act 2008. All are accessible via the Department's website, and the Omega Research Foundation has copies.

<sup>57</sup> An Roinn Post, Fiontar agus Nuálaíochta – Department of Jobs, Enterprise and Innovation. 2017. *Report under the Control of Exports Act 2008 Covering the Period 1<sup>st</sup> January 2015 – 31<sup>st</sup> December 2015*.

<sup>58</sup> For the English-language version, see:

Ministry of Economy, Directorate General for Trade and International Relations, Directorate for Trade Policies, Romania. 2013. *Public annual reports*. Accessed 7 April 2020. Available at: <http://www.dce.gov.ro/poli-com/tortura/RapGodishenEng.pdf>.

<sup>59</sup> Ministerul pentru Mediul de Afaceri, Comerț și Antreprenoriat, Departamentul de Comerț Exterior, Direcția Politici Comerciale și Afaceri Europene. 2019. *Repoarte publice anuale*. Accessed 7 September 2020. Available at: [http://www.imm.gov.ro/adaugare\\_fisiere\\_imm/2019/10/Rapoarte-anuale-comert-tortura-2017-2018.pdf](http://www.imm.gov.ro/adaugare_fisiere_imm/2019/10/Rapoarte-anuale-comert-tortura-2017-2018.pdf)

<sup>60</sup> As these are the figures for 2019, they are not considered in this report (per efforts to ensure consistency across reporting States). Nonetheless, information publicly available they appear to suggest no licences were issued in 2019. See: Erhvervsstyrelsen. 2020. *Eksportkontrol: Produkter - Bilag III til EU-forordning 775/2014 (antitortur-forordningen)*. Accessed 4 August 2020. Available at: <https://eksportkontrol.erhvervsstyrelsen.dk/produkter>.

<sup>61</sup> All available reports accessible at: Republic of Estonia, Ministry of Foreign Affairs. 2016. *Annual Reports of Strategic Goods Commission*. Accessed 11 May 2020. Available at: <https://vm.ee/en/annual-reports-strategic-goods-commission>.

<sup>62</sup> See, for example, Ministère des Armées, République Française. 2018. *Rapport au Parlement 2018 sur les exportations d'armement de la France*.

Copies of the export reports are held on file by the Omega Research Foundation. Emails sent from the Omega Research Foundation 24<sup>th</sup> September, 26<sup>th</sup> September, 15<sup>th</sup> October, 31<sup>st</sup> October. Efforts to access further information were made by Amnesty International France in early 2020.

### 2.2.3. No Public Reporting

There were several States for which the Omega Research Foundation was not able to find significant public information concerning export authorisations of goods covered by the EU Anti-Torture Regulation. Among these are six Member States (Austria, Italy, Netherlands, Poland, Portugal, and Spain) that provided licence information to the Commission, and were recorded in the 2019 Commission compilation report as having issued export authorisations in the 2017-2018 period.<sup>63</sup> Despite reporting to the Commission, these six States have not made such information available to the public. Since the Commission provides no details of specific Member State authorisations in its compilation report (see Section 2.4.5.), it is not possible to say to whom and for what items the authorisations were issued. In addition to these six States, Slovakia does not submit annual reports to the Commission, “because we have not registered any applications or any permits”. They noted this practice would change “if we have an application, we will make an annual report and provide the relevant data to the Commission”.<sup>64</sup> Belgium, Croatia, Cyprus, and Greece do not publish public reports (despite confirming that they send activity reports to the Commission) owing to no licences having been issued under the Regulation during the 2015-2018 period.<sup>65</sup> Similarly, although Latvia did not confirm whether it reported to the Commission, a Latvian government official noted no applications for licences had been made, and therefore, none approved.<sup>66</sup>

In correspondence, Austria confirmed that it does not publish “public, annual activity report[s]” (despite the requirement to do so under Article 26.3), although they are provided, in conformity with the Commission template, to the Commission.<sup>67</sup> For Hungary, Italy, Luxembourg, Malta, Netherlands, Poland, Portugal, and Spain, research by the Omega Research Foundation, as well as repeated requests for information, failed to find records of public reporting under the Regulation. It may be the case that public reports are available, but were not in evidence to Omega’s researchers.

### 2.2.4 Recommendations

Omega’s findings are broadly in line with the limited information provided by the Commission in its July 2020 Review Report, which stated that “Five Member States confirmed that they publish annual activity reports in line with Article 26(3) of the Regulation.”<sup>68</sup> This Commission report further acknowledged that the “level of detail included in those annual reports may not always allow for an

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<sup>63</sup> European Commission Review Report, 30<sup>th</sup> July 2020.

<sup>64</sup> Email correspondence from a representative of the Department of Trade Measures, Ministry of Economy of the Slovak Republic, received 8<sup>th</sup> November 2019.

<sup>65</sup> Belgium: Email correspondence from a representative of the Directorate-General for Economic Analyses and Global Economy, International Department – Licence service (Diamond), of the Belgian Ministry of the Economy, received 23<sup>rd</sup> October 2019. Croatia: Email correspondence from a representative of the Export Control Division, Sector for Trade and Investment Policy, in the Croatian Ministry of Foreign and European Affairs, received 11<sup>th</sup> October 2019. Cyprus: Email correspondence from a representative of the Imports/Exports Licensing Section, Trade Service, of the Ministry of Energy, Commerce and Industry in the Government of Cyprus, received 24<sup>th</sup> October 2019. Greece: Email correspondence from a representative of the Greek Ministry of Development & Investments, Directorate for Trade Regimes and Defence Instruments, received 31<sup>st</sup> October 2019.

<sup>66</sup> Email correspondence from a representative of the Latvian Division of Export Control Of Strategic Goods, Ministry of Foreign Affairs, received 9<sup>th</sup> October 2019.

<sup>67</sup> Email correspondence from a representative of the Foreign Trade Administration – Division III/2, of the Austrian Federal Ministry for Digital and Economic Affairs, received 22<sup>nd</sup> October 2019.

<sup>68</sup> European Commission Review Report (30 July 2020) op.cit. p.16. The five States that informed the Commission about their (2019) annual public activity reports were Czechia, Denmark, Germany, Romania, and the United Kingdom.

*accurate assessment of the Regulation's implementation at national level*<sup>69</sup> Consequently, the Commission *"recognised...the need for greater transparency and accountability (notably by publishing annual activity reports).*"<sup>70</sup>

It is clear from Omega's research that the majority of Member States do not make *"a public, annual activity report"* of their licensing activity available (i.e. on their Government website or easily accessible to the public by other means), as required under Article 26, paragraph 3. Furthermore, of the Member States that do provide public information, most do not provide the full range of information required and/or do not provide this information consistently on an annual basis. This is unsatisfactory, particularly as such information is provided to the Commission by most Member States, as required under Article 26, paragraph 4. This disparity in Member State reporting to the public and the Commission is unnecessary and inefficient. As the information has already been compiled annually for submission to the Commission, it would not entail the use of any significant State resources to make it available to the public.

**Recommendation: In order for the national Parliaments and civil society organisations (including academics, journalists, and arms control and human rights organisations) to assess the implementation of the Regulation, it is vital that all Member States fully, and publicly, report on export authorisations applied for, granted, and undertaken, including those States that receive and grant none.**

**At a minimum, and in line with Article 26, paragraph 3, all EU Member States should prepare *"a public, annual activity report, providing information on the number of applications received, on the goods and countries concerned by these applications, and on the decisions they have taken on these applications."* A copy of this report should be made publicly available. All States should adopt the good practices incorporated in the Commission's standard reporting template, and ensure that their public reports also include details of quantities/financial value of the goods, as well as the specific end users. Where a licence has been refused, the reason for such refusal should be noted in the State report.**

The survey by Omega has also brought to light licence authorisations of types of equipment that may have been misused by authorities in recipient States. Unfortunately, under current reporting practices, insufficient information is publicly available regarding the nature and quantities of the goods, and the end users concerned, for civil society to be assured that the specific licensing decisions were in conformity with the Regulation. Similarly, there is currently a lack of publicly available information provided by the majority of EU Member States regarding their license authorisation practices, specifically, it is difficult to independently determine whether assessments conducted to evaluate risk of end user misuse or diversion of proposed exported goods are rigorous and employ the full range of relevant information. In its July 2020 Review Report, the Commission also recognised that *"currently only limited information"* was available on issues such as national risk assessment procedures and monitoring of the end-use of exported goods and services. The Commission report also recognised that *"some form of European Union guidance or on best practices on the implementation of the Regulation"* in these and other areas was needed.<sup>71</sup>

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<sup>69</sup> European Commission Review Report (30 July 2020) op.cit. p.16.

<sup>70</sup> European Commission Review Report (30 July 2020) op.cit. p.19.

<sup>71</sup> European Commission Review Report. 30<sup>th</sup> July 2020. op.cit. p.15.

**Recommendation: All Member States must fulfil their obligations under Article 11 and 12 of the Regulation, and refuse the authorisation of any export of an item under Annex III where there are “reasonable grounds” to believe that such equipment might be used for torture or other ill-treatment. In the process of making such export decisions, as required under Article 12.2 of the Regulation, the competent authority must consider available international court judgements, findings of the competent bodies of the UN, the Council of Europe and the EU, and reports of the Council of Europe’s Committee for the Prevention of Torture, and of the UN Special Rapporteur on Torture. In addition, we recommend that credible reports or other information prepared by civil society organisations are also considered, as is permitted under Article 12.2. In order to promote and facilitate effective and consistent practice, the European Commission should develop guidance concerning license authorisation procedures, notably including risk assessment mechanisms.**

### 2.3. Commission reporting of State licensing authorisations

Article 26, paragraph 4, of the EU Anti-Torture Regulation requires that the Commission prepare an annual report comprised of the annual activity reports supplied to it by all EU Member States. Since December 2016, when the revised Regulation, which incorporates this new obligation, came into force, the Commission has published one public report. Released in October 2019, it documents export authorisations issued by EU Member States under the Regulation in 2017 and 2018<sup>72</sup>.

**Recommendation: While the public provision of this first report<sup>73</sup> by the Commission is to be welcomed, all future reports should be released annually by the Commission.**

According to the Commission report, the vast majority of States provided all required information, guided by the Commission’s standardised reporting template, which requested provision of the Annex III reference, product description, destination, quantity, and end user, for granted and denied export authorisations. That such comprehensive information was provided by the vast majority of Member States to the Commission is to be welcomed, and it is vital that this level of transparency be maintained in future reports. According to the Commission, however, one (un-named) State did not provide complete information, omitting details of quantities of goods authorised for export, as well as the category of end user to which those goods would be supplied. Thus, the report compiled by the Commission is incomplete. Concerns about limited or inadequate reporting by certain States to the Commission were repeated in the Commission’s July 2020 Review Report, which highlighted the failure of certain States to “provide a complete account and/or information on end-users”.<sup>74</sup> To ensure confidence – both between EU Member States and with the public – in the full and effective implementation of the Regulation, all Member States should provide the Commission with all information, as required under Article 26.

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<sup>72</sup> European Commission. 2019. *Annexes to the Report from the Commission to the European Parliament and the Council – Report on export authorization in 2017 and 2018 pursuant to the Regulation concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading[sic] treatment or punishment*. COM(2019) 445 final. Available at: <https://op.europa.eu/en/publication-detail/-/publication/1d99bff9-e42c-11e9-9c4e-01aa75ed71a1/language-en/format-PDF/source-search>. Accessed 8 April 2020.

<sup>73</sup> No such report exists for 2015 or 2016, with the requirement that the Commission prepare an annual report inserted into the Regulation on 23<sup>rd</sup> November, 2016.

See *Regulation (EU) 2016/2134 of the European Parliament and of the Council of 23 November 2016 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*.

<sup>74</sup> European Commission Review Report, 30<sup>th</sup> July 2020. op.cit. p.10.



**Recommendation: Any Member States that do not fulfil their obligations under Article 26 should be named in the Commission activity report.**

In the absence of regular, full, and meaningful publicly accessible reporting by the majority of EU Member States (as elaborated in Section 2.2), it is vital that the Commission’s annual report of activity reports provides a complete public record of licences reported to the Commission by States. The first Commission report does not, however, contain sufficient detail for it to be used to independently assess implementation of the Regulation. This remains the case even when it is considered in conjunction with the limited reporting made public by Member States. The Commission report contains information on reported export authorisations by Member States, reported end use of authorised exports by product category, and reported destination of authorised exports by product category. Unfortunately, the information provided by Member States has been aggregated and displayed in such a way that the Commission’s report does not provide any detailed information on individual State licensing activity (see table below). Consequently, it is not possible to determine how many licences have been granted by each Member State for specific goods, the recipient State, or the end users. The Commission has thus reduced the clarity and usefulness of any information it has received from Member States. Any future report should contain the full information supplied by Member States, in a clear format.

*Table 4: “Number of reported export authorisations granted by Member States pursuant to Article 20(2) of Regulation (EU) 2019/125”<sup>75</sup>*

(table compiled and formatted by the Commission)

	2017	2018
EU	292	231
Austria	6	6
Czechia	11	17
Denmark	1	1
France	8	5
Germany	187	142
Italy	5	2
Netherlands	46	37
Poland	3	0
Portugal	3	1
Slovenia	1	0
Spain	1	3
Sweden	0	2
United Kingdom	23	12
Other Member States	0	0

<sup>75</sup> European Commission. 2019. *Annexes to the Report from the Commission to the European Parliament and the Council – Report on export authorization in 2017 and 2018 pursuant to the Regulation concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading[sic] treatment or punishment*. COM(2019) 445 final. Available at:

<https://op.europa.eu/en/publication-detail/-/publication/1d99bff9-e42c-11e9-9c4e-01aa75ed71a1/language-en/format-PDF/source-search>. Accessed 8 April 2020.

The reported information indicates disparities between State export authorisations granted. Germany's reported figures, for example, indicate either that Germany's trade in goods covered by the Regulation is significantly larger than all other EU States, or that there are inconsistencies in how States are reporting their export authorisations.

**Recommendation: The primary information provided by all EU Member States (based on the Commission's standardised reporting template) should be published in full in the Commission's annual activity report.**

#### 2.4. EU arms and security equipment trade fairs and exhibitions

Several EU Member States regularly permit, facilitate and/or co-organise the operation of arms and security equipment trade fairs or exhibitions in their territories, at which both companies based in the EU, and in third countries, market their goods. These trade fairs are attended by correctional and law enforcement communities, as well as other security professionals, from both EU Member States and third countries. During the 2015-2019 period, companies that promote law enforcement equipment addressed under the Regulation exhibited in at least 53 arms and security equipment trade fairs and exhibitions (these were held in at least 10 EU Member States).<sup>76</sup> All EU Member States in whose territories arms and security equipment trade fairs or exhibitions are held have a responsibility to ensure that they occur in line with the principles established under the EU Anti-Torture Regulation, notably Article 8, which prohibits the display or marketing, at a fair within the EU, of goods prohibited under Annex II. Arms and security fairs present a case study into the practical challenges that need to be overcome for effective implementation of the Regulation.

#### Evidence of companies promoting goods prohibited under the EU Anti Torture Regulation

During the period examined (2015-2019, inclusive), the Omega Research Foundation did not find any evidence of companies promoting goods specifically designed for the application of the death penalty at fairs held in EU Member States. Furthermore, a preliminary review suggests an apparent reduction in the marketing, to law enforcement and correctional communities, of a range of other products that are prohibited under the Regulation, by both EU-based and non-EU-based companies at fairs held in EU Member States. Nonetheless, cases of prohibited (Annex II) equipment being promoted at fairs held in certain EU Member States have been discovered.

The following section of this report presents case studies of two prominent arms and security equipment trade fairs held within the EU – Milipol in Paris, France, and DSEI in London, UK – where prohibited goods was promoted by non-EU companies, and a third case where prohibited goods were promoted on the website of the IWA trade fair held in Nuremberg, Germany. This report does not seek to imply that the fairs discussed are exceptional, or that they are the only fairs within the EU region where such breaches of the Regulation have occurred. Instead, they demonstrate instances where the fair organisers and/or State authorities have attempted to address these breaches and thus present key learning opportunities.

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<sup>76</sup> This figure comprises approximately 22 distinct relevant trade fairs and exhibitions which were repeatedly held (on either an annual or biennial basis) during this period.

EU Member States where these fairs were held include: Bulgaria, Croatia, Czechia, France, Germany, Poland, Romania, Spain, Sweden, United Kingdom.

## Milipol

Held biennially in Paris, the latest Milipol Paris exhibition took place during 19-22 November 2019. While the logistical organisation for the event is undertaken by a French exhibition organiser, Comexposium,<sup>77</sup> Milipol is organised by State-controlled CIVIPOL<sup>78</sup>, under the auspices of the French Ministry of Interior, and in partnership with several other government bodies, including the French National Police and Gendarmerie, and French Customs.<sup>79</sup> Milipol events are bound by compliance policies, which, in part, reflect French obligations under the EU Anti-Torture Regulation. The compliance policy from Milipol Paris<sup>80</sup> provides detailed descriptions of prohibited equipment, very similar to those outlined in the Regulation itself. Adherence to, and enforcement of, these policies at Milipol Paris 2017 and 2019 present a clear case of the capacity of State authorities and organisers to liaise, engage civil society, and improve compliance, as well as the challenges they face.



**Photograph of “Constraint” body-worn electric shock device physically on display at the Origin Dynamic (Beijing) Technology Co., Ltd. (China) stall (left); image of promotional poster of “Ering 210 Electric Ankle Cuffs” displayed on the Origin Dynamic stall, 21 November 2017 at Milipol 2017, Paris, France (right) © Robin Ballantyne / Omega Research Foundation (both images)**



At Milipol Paris, held in November 2017, Origin Dynamic (Beijing) Technology Co., Ltd.,<sup>81</sup> a Chinese company, promoted a range of body-worn electric shock devices. The import, export, transit, brokering, and provision of training in the use of these products is prohibited under the EU Anti-Torture Regulation. In almost all circumstances, the “display or offer for sale of any of the goods listed

<sup>77</sup> The Omega Research Foundation contacted Comexposium with the information in this report, but has not, as yet, received a reply.

<sup>78</sup> CIVIPOL is the “technical cooperation operator of the French Ministry of the Interior”, which “supports exportation in the internal security industry through the Milipol group”. Representatives from CIVIPOL provided information to Amnesty International and the Omega Research Foundation on some of the practical matters taken around enforcement at Milipol. See: Civipol. 2020. *Civipol: The company – Our missions and values*. Available at: <https://www.civipol.fr/en/civipol/company>. Accessed 20 January 2020.

<sup>79</sup> “The Milipol brand is the property of GIE Milipol, which includes the likes of CIVIPOL, Thales, Visiom and Protecop. The President of Milipol is also the CEO of CIVIPOL”. See 2020. *Milipol Paris*. Available at: <https://en.milipol.com/Milipol-Paris/About-Milipol-Paris-2019>. Accessed 24 January 2020.

<sup>80</sup> 2019. *Exhibitors Guide: Milipol Paris*. Available at: <https://event.milipol.com/Data/ElFinder/s58/2019/Guide-l-exposant/GT-MILIPOL-2019-GB-V5-ANNULE-ET-REPLACE-.pdf>. pp55-56. Accessed 20 January 2020.

<sup>81</sup> The Omega Research Foundation contacted Origin Dynamic (Beijing) Technology Co. Ltd. with the information in this report, but has not, as yet, received a reply.

in Annex II in an exhibition or fair taking place in the Union” is also prohibited.<sup>82</sup> Among the products promoted by Origin Dynamic at Milipol 2017 was, the “Ering 210 Electric Ankle Cuffs” which the company described as a “behaviour controlling system forced to be worn on the prisoner’s ankles” capable of delivering a “high-voltage shock” of 200 KV.<sup>83</sup> Another product promoted by Origin Dynamic, “Constraint”, employs an “electronic pulse” and is worn on a prisoner’s arms or legs. According to the company’s promotional material, “One click will bring down the person and the wearer will lose capability to act and attack”.<sup>84</sup> In addition to the promotional images and materials available, the “Constraint” device (as well as a vest containing this device) was physically displayed on the company’s stand during Milipol 2017. As noted above, the import of any such items into the EU was an infringement of the Regulation, and it is unclear how such devices were allowed to enter France. Amnesty International publicised the case<sup>85</sup>, and brought the matter to the attention of the French Government and Milipol’s organisers, who subsequently closed the company’s stand.<sup>86</sup> Despite this, the goods in question were not seized by French Customs and no prosecutions were instituted against the Chinese company.

In addition to the prohibited body-worn electric shock devices, a number of companies acted in violation of the EU Anti-Torture Regulation by promoting Annex II products, including weighted leg restraints, in their product catalogues at Milipol 2017. For example, three Chinese companies, Anhui Blue Diamond Industries,<sup>87</sup> Weihao Protector Co Ltd/Deqing Weihao Security Equipment Technology Co., Ltd,<sup>88</sup> and Xinxing Jihua International Trading Co., Ltd.,<sup>89</sup> promoted weighted leg irons attached by a chain to handcuffs. Another Chinese company, China Pioneer,<sup>90</sup> distributed marketing materials showing a metal spiked baton, and a range of hardened plastic/rubber spiked batons. CIVIPOL and the fair organising company informed Amnesty International that the catalogues promoting this prohibited equipment were either seized, or the product pages torn up.<sup>91</sup>

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<sup>82</sup> Regulation (EU) 2019/125 of the European Parliament and of the Council of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment. Chapter II, Articles 3-9.

<sup>83</sup> Origin Dynamic electric shock products poster, on display 21 November 2017 on the Origin Dynamic stall, Milipol Paris, 2017, Paris, France. See also, Origin Dynamic product catalogue, distributed at Origin Dynamic stall, Milipol Paris, 2017, Paris, France (copy of this brochure held by the Omega Research Foundation).

<sup>84</sup> Origin Dynamic electric shock products poster, on display 21 November 2017 on the Origin Dynamic stall, Milipol Paris, 2017, Paris, France. See also, Origin Dynamic product catalogue, distributed at Origin Dynamic stall, Milipol Paris, 2017, Paris, France (copy of this brochure held by the Omega Research Foundation).

<sup>85</sup> Amnesty International. 2017. *EU: Amnesty discovers gruesome illegal torture equipment for sale in Paris*. 22 November 2017.

<sup>86</sup> New York Times. 2017. *French fairs shuts stand after Amnesty finds “torture tool”*. 22 November 2017.

<sup>87</sup> The Omega Research Foundation contacted Anhui Blue Diamond Industries with the information in this report, but has not, as yet, received a reply.

<sup>88</sup> The Omega Research Foundation contacted Weihao Protector Co Ltd/Deqing Weihao Security Equipment Technology Co., Ltd with the information in this report, but has not, as yet, received a reply.

<sup>89</sup> The Omega Research Foundation contacted Xinxing Jihua International Trading Co., Ltd. with the information in this report, but has not, as yet, received a reply.

<sup>90</sup> The Omega Research Foundation contacted China Pioneer with the information in this report, but has not, as yet, received a reply.

<sup>91</sup> These measures were confirmed by Milipol in a letter sent to the Amnesty France Executive Director, dated 21 December, 2017.



**Images of inherently degrading or painful restraints promoted at Milipol 2017. Images taken from product catalogues of Anhui Blue Diamond Industries, Weihao Protector Co Ltd/Deqing Weihao Security Equipment Technology Co., Ltd, and Xinxing Jihua International Trading Co., Ltd. © Anhui Blue Diamond Industries, Weihao Protector Co Ltd/Deqing Weihao Security Equipment Technology Co., Ltd, and Xinxing Jihua International Trading Co., Ltd., respectively.**

As a consequence of the infringements observed at Milipol 2017, the fair organiser and French authorities (CIVIPOL and Customs), enacted several measures to respond to violations and to improve future compliance. For instance, Amnesty International reports that CIVIPOL filed a complaint, under Article 40 of the Code of Criminal Procedure,<sup>92</sup> against Origin Dynamic, the company promoting body-worn electric shock devices. While no progress has yet been made in this legal case,<sup>93</sup> the case remains open, and the complaint demonstrates a commitment from CIVIPOL to uphold French obligations under the Regulation. Origin Dynamic has also been definitively banned by Milipol from all Milipol events, and there is no evidence of the company being present at any Milipol events in France or elsewhere, since 2017. The four other Chinese companies promoting prohibited goods received a formal warning prior to the Milipol 2019 event.

Comexposium and CIVIPOL have taken additional steps to ensure exhibitors are aware of restrictions on equipment. In addition to detailing the EU Anti-Torture Regulation in the Exhibitor Guide, an alert outlining the Regulation was integrated into the registration portal for Milipol Paris 2019, where companies were asked to check a box, stating that they would not promote equipment prohibited under the Regulation.<sup>94</sup> Companies that registered from particular “*target countries*”, also received an email confirming their responsibilities under European law; however a copy of the email, seen by the Omega Research Foundation, unfortunately references only the Geneva Conventions explicitly, and, in a significant oversight, did not mention the EU Anti-Torture Regulation.<sup>95</sup> In a proactive effort to engage Chinese companies, CIVIPOL made available a Mandarin translation<sup>96</sup> of the requirements of

<sup>92</sup> Article 40 legally obliges French civil servants (including the head of CIVIPOL, for instance) to formally report any breaches of French law that they observe. In this instance, the company in question was observed breaching French commitments under the European Anti-Torture Regulation. The complaint is dated 10 January 2018, High Court Bobigny.

<sup>93</sup> At the time of writing, CIVIPOL has not received a formal answer from the prosecutor.

<sup>94</sup> A copy, sent by CIVIPOL to Amnesty International France in February 2020, has also been provided to the Omega Research Foundation.

<sup>95</sup> A copy is held on file by the Omega Research Foundation.

<sup>96</sup> A copy is held on file by the Omega Research Foundation

the EU Anti-Torture Regulation and associated sanctions (for example, that any non-compliance would result in the removal of the item and relevant catalogues<sup>97</sup>), with Comexposium's Shanghai office involved in liaising with Chinese companies<sup>98</sup>. Additional outreach (via phone) was particularly directed towards companies identified as posing a risk of exhibiting prohibited material (identified as: China Pioneer, XinXing Jihua International, Jangxi Greatwall Protection, and Senken Group<sup>99</sup>).<sup>100</sup>

The compliance policy from Milipol Paris 2019 differs from previous Milipol Paris fairs (and also from Milipol fairs held outside France) in that it includes a notice warning that: "*The EXHIBITED MATERIALS CONTROL OFFICE will make daily checks of the materials exhibited at stands and ensure compliance*".<sup>101</sup> The expansion of the Milipol Control Desk for Exhibits, which doubled in personnel from 4 in 2017, to 8 in 2019, also enhanced the organisers' capacity to ensure compliance. The compliance team met with Amnesty International on the first day of the 2019 exhibition and remained in contact with Amnesty throughout. This relationship facilitated the compliance process, with the team regularly requesting advice from Amnesty. That Amnesty International is granted free access to Milipol is notable (setting this exhibition apart from DSEI London, for example). CIVIPOL has also indicated their willingness to further liaise with Amnesty International and the Omega Research Foundation in the preparations for Milipol 2021.

Unlike Milipol 2017, no body-worn electric shock devices were reported to have been promoted or on display, and no companies were found to be promoting weighted leg irons at Milipol 2019. Despite such improvements and clear efforts by the fair organiser, CIVIPOL, and other French authorities to improve compliance, several breaches of the EU Anti-Torture Regulation were reported at the Milipol 2019 event. Arm shields with metal spikes were advertised in catalogues promoted by four Chinese companies, Jiangxi Great Wall Protection Equipment Industry Co., Ltd./CCGK The Great Wall Protection,<sup>102</sup> Tianjin Zennison Special Equipment Co., Ltd.<sup>103</sup>, Senken Group Co., Ltd., and Zhejiang Huan Security Equipment Co., Ltd.<sup>104</sup>. Another Chinese company, Wenzhou Jinniu Police Equipment Manufacturing Co., Ltd., promoted a round shield that also had metal spikes.<sup>105</sup>

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<sup>97</sup> Comexposium. 2019. *Exhibitors Guide: Milipol Paris*. Available at: <https://event.milipol.com/Data/ElFinder/s58/2019/Guide-l-exposant/GT-MILIPOL-2019-GB-V5-ANNULE-ET-REPLACE-.pdf>. Accessed 20 January 2020. pp56.

<sup>98</sup> Comexposium's Shanghai office confirmed, via Amnesty France, that, in addition to material being sent to Chinese companies, Shanghai office also telephoned four companies flagged by Amnesty France at Milipol 2017 (China Pioneer, XinXing Jihua International, Jangxi Greatwall Protection, Senken Group).

<sup>99</sup> The Omega Research Foundation contacted Senken Group with the information in this report, but has not, as yet, received a reply.

<sup>100</sup> These firms identified by French fair organising company and CIVIPOL, and provided to Amnesty France by CIVIPOL. A copy of the email is held on file by the Omega Research Foundation.

<sup>101</sup> Comexposium. 2019. *Exhibitors' Guide*. Available at: <https://event.milipol.com/Data/ElFinder/s58/2019/Guide-l-exposant/GT-MILIPOL-2019-GB-V5-ANNULE-ET-REPLACE-.pdf>. Accessed 17 December 2019. p56.

<sup>102</sup> The Omega Research Foundation contacted Jiangxi Great Wall Protection Equipment Industry Co., Ltd./CCGK The Great Wall Protection with the information in this report, but has not, as yet, received a reply.

<sup>103</sup> The Omega Research Foundation contacted Tianjin Zennison Special Equipment Co., Ltd with the information in this report, but has not, as yet, received a reply.

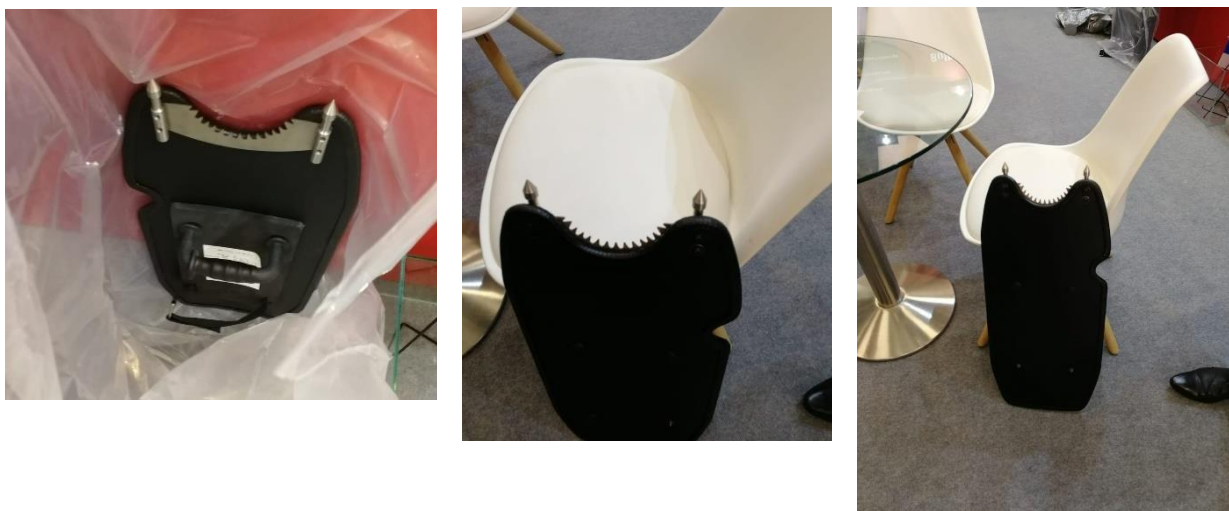
<sup>104</sup> The Omega Research Foundation contacted Zhejiang Huan Security Equipment Co., Ltd. with the information in this report, but has not, as yet, received a reply.

<sup>105</sup> Copies of promotional materials are held by the Omega Research Foundation. In correspondence with the Omega Research Foundation, the company stated that it was "sorry for what happened in Milipol", that they "really tried [their] best to cover the products as soon as [they] noticed these products were prohibited in EU...[by using]... a sticker to cover the shield, which was not easily removed...[and they]... would study harder on regulations in the future to avoid such things from happening again." Correspondence from Wenzhou Jinniu Police Equipment Manufacturing Co.,Ltd to the Omega Research Foundation, 16 July 2020.

Selected company brochures with product images covered with paper and business cards, taken at Milipol Paris 2019. © Robin Ballantyne / Omega Research Foundation (both images)



Amnesty International alerted the fair organiser, CIVIPOL, and Customs authorities to the materials promoting prohibited equipment. Subsequently, the images of this equipment in brochures were covered (variously, with 'X' drawn over the items, removable 'post-it' notes stuck to the page, small pieces of paper glued over the photograph, and pieces of paper and business cards stapled over product images). In all of these cases, however, it was easily possible for the reader to remove the covering to see the image and promotional information, thereby uncovering how to procure this item. While authorities and organisers demonstrated their awareness of inappropriateness of the display of prohibited equipment, and their intention to cover the images is clear, the limited nature of the companies' response is of concern. At a minimum, the information and images should have been cut out of the promotional material, or the inappropriate brochures should have been removed from display. Three of the companies in question (Tianjin Zennison Special Equipment Co., Ltd., Senken Group Co., Ltd., and Jiangxi Great Wall Protection Equipment Co., Ltd.) had previously been reported to French customs authorities, CIVIPOL, and the fair organising company for similar violations at Milipol 2017. With their behaviour unchanged, these three companies not only demonstrated disregard for the EU Anti-Torture Regulation, but also for the measures taken by organisers and authorities in 2017 and subsequently.



**Images of a spiked shield on display at the Jiangxi Great Wall Protection Equipment Industry Co. Ltd. stand at Milipol Paris 2019. © Robin Ballantyne / Omega Research Foundation (all images).**

Additional concerns relate to a spiked arm shield promoted by Jiangxi Great Wall Protection Equipment Industry Co., Ltd., which was briefly physically on display on the company's Milipol stand. As part of their compliance checks, the organisers discovered this item on 18 November 2019, prior to the opening of the fair. They subsequently photographed the shield, and asked for it to be removed from display, thus successfully ensuring it would not be promoted during the fair itself. While this illustrates effective identification and compliance mechanisms, unfortunately the prohibited product was not seized by either the organisers or by the relevant authorities (e.g. Customs) and was retained by the Chinese company (and presumably returned to China). This failure by French Customs officials to take decisive action has occurred at previous Milipol events, notably Milipol Paris 2017 (described above) and also Milipol Paris 2015, when weighted leg irons were displayed, and were not seized.<sup>106</sup> The Omega Research Foundation has requested further information from CIVIPOL to establish why, in 2019, this prohibited item was not confiscated, and to establish what has become of it. To date, we are awaiting a definitive response.

When prohibited equipment was physically displayed at Milipol 2017, authorities and organisers closed the offending company stalls. At Milipol 2019, however, the offending company was allowed to continue distributing product catalogues, albeit with the photograph of the prohibited item initially crossed out, and later covered with paper. This is not only a less robust response than that at Milipol 2017, it also does not meet the organiser's own standards outlined in the Exhibitors Guide: "*The Organiser reserves the right to remove from stands any objects prohibited from exhibition at the show and any catalogues prohibited from exhibition*"<sup>107</sup>. That this spiked shield was imported into, and presumably re-exported out of, France is a key failing on the part of the Customs authorities, and the policies and practices in this regard need to be reviewed and strengthened. This case may act as a

<sup>106</sup> Omega Research Foundation. 2018. *Manufacture, trade and use of 'tools of torture' in the Council of Europe*. Pp42, 60.

<sup>107</sup> Comexposium. 2019. *Exhibitors Guide: Milipol Paris*. Available at: [https://event.milipol.com/Data/ElFinder/s58/2019/Guide-l-exposant/GT-MILIPOL-2019-GB-V5-ANNULE-ET-REMPLEASE-.pdf](https://event.milipol.com/Data/ElFinder/s58/2019/Guide-l-exposant/GT-MILIPOL-2019-GB-V5-ANNULE-ET-REMPPLACE-.pdf). Accessed 20 January 2020. pp56.



catalyst, however, as CIVIPOL have since indicated, to Amnesty International and the Omega Research Foundation, their willingness to work to improve and strengthen their practices with regards the implementation of the EU Anti-Torture Regulation, including through further liaising with Customs officials during the fair.

## DSEI

A UK-based company, Clarion Defence & Security Limited<sup>108</sup>, organises arms and security fairs around the world, including the Defence and Security Equipment International (DSEI) exhibition, held in London every two years (most recently 10-13 September 2019). DSEI 2021 (London, currently scheduled for 14-17 September 2021), is to be held with the support of the UK Ministry of Defence, and the UK Department for International Trade's Defence & Security Organisation.<sup>109</sup> Clarion "[s]upports the application and enforcement of both UK and other relevant international arms control and arms export legislation wherever we operate".<sup>110</sup> In addition, Clarion requires that "all equipment, services, documentation and all other forms of visual promotion and display, exhibited or proposed, must comply with UK law and UK international undertakings, EU/UN Law and EU/UN international undertakings".<sup>111</sup> Clarion translates this assertion into compliance policies, intended to guide exhibitors at each of its fairs, including, notably, those fairs that are not held within the EU (non-EU fairs are discussed at greater length in Section 4.3. of this report). Exhibitors at DSEI London 2019 were bound by a compliance policy that outlined restrictions for exhibitors, including those relevant to the Regulation.<sup>112</sup> The compliance policy notes that DSEI organisers work in cooperation with the UK Government's Export Control Joint Unit (based within the Department for International Trade), to ensure legal compliance.<sup>113</sup>

Since Clarion's flagship event, DSEI, is held in London, those exhibiting and/or attending were bound not only by the EU Anti-Torture Regulation (although the Regulation is not mentioned by name in the DSEI 2019 compliance rules), but also by certain additional restrictions that the UK maintains under its own national export control framework. The effective cooperation between the exhibition organiser, Clarion, and the UK authorities on the implementation of compliance policies was demonstrated at the September 2019 DSEI exhibition. During this event, Condor Non-Lethal Technologies<sup>114</sup>, a Brazilian firm, was discovered promoting a projectile electric shock weapon (the 'Spark')<sup>115</sup> in marketing brochures on its stand. As stated in the subsequent DSEI Compliance Notice, this brochure was "not permitted under UK law and [was] a breach of the event's strict contractual

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<sup>108</sup> The Omega Research Foundation contacted Clarion Defence with the information in this report, but has not, as yet, received a reply.

<sup>109</sup> Clarion Defence & Security Limited. 2020. *Welcome to Defence & Security Equipment International*. Available at: <https://www.dsei.co.uk/welcome>. Accessed 28 February 2020.

<sup>110</sup> Clarion Defence & Security Limited. 2018. *EDEX Compliance*. Available at: <https://www.egyptdefenceexpo.com/compliance>. Accessed 2 November 2018.

<sup>111</sup> Clarion Defence & Security Limited. 2018. *EDEX Compliance*. Available at: <https://www.egyptdefenceexpo.com/compliance>. Accessed 2 November 2018.

<sup>112</sup> DSEI 2019: Clarion. 2019. *Compliance & Eligibility to Exhibit*. Available at: <https://www.dsei.co.uk/exhibiting/compliance>. Accessed 2 March 2020.

<sup>113</sup> DSEI 2019: Clarion. 2019. *Compliance & Eligibility to Exhibit*. Available at: <https://www.dsei.co.uk/exhibiting/compliance>. Accessed 9 March 2020.

<sup>114</sup> The Omega Research Foundation contacted Condor Non-Lethal Technologies with the information in this report, but has not, as yet, received a reply.

<sup>115</sup> For further information on this particular weapon, see Condor Non-Lethal Technologies. 2019. *Products: Non-Lethal Devices*. Accessed 5 June 2020. Available at: <http://www.condornaletal.com.br/eng/produtos.php>.

*terms and conditions*".<sup>116</sup> As a result of this breach, Condor's stand was closed by the DSEI Security and Compliance Team, all Condor staff were ejected from the event, and the relevant company marketing brochures were confiscated by the UK's HM Revenue and Customs.<sup>117</sup> While the product in question is prohibited under UK law, not under the EU Anti-Torture Regulation, the process of enforcing the compliance policy provides a useful case study applicable to effective implementation of the Regulation. This action demonstrates the necessity of ongoing vigilance on the part of EU-based companies organising such fairs, and of those Member States in which these fairs take place. The response largely conformed to the sanctions outlined in the DSEI compliance policy: *"If you are caught promoting any type of prohibited goods without a relevant export control and/or import license or permit, you will be ejected from the event"*.<sup>118</sup> The DSEI case also shows the important role that the national Customs authorities can and should play in such cases, which is vital in ensuring effective State implementation of the EU Anti-Torture Regulation.

## IWA

In Germany, IWA Outdoor Classics is a major biennial security and recreational shooting exhibition, last held in Nuremberg, 9-12 March 2018. IWA is organised by NürnbergMesse GmbH, a German company that also organises German pavilions at international trade fairs and exhibitions. As part of their promotional activities for the 2018 event, NürnbergMesse GmbH established a dedicated website incorporating information on the exhibitors and their products. Among those promoted on these webpages was a Taiwanese company, Shan Chun Company Ltd<sup>119</sup>, and its product range, which included steel thumbcuffs.<sup>120</sup> The promotion of such devices on a European company website was a breach of the EU Anti-Torture Regulation.

The Omega Research Foundation wrote to both Shan Chun and to the exhibition organisers alerting them of the breach. Following this correspondence, a holding answer was received from the IWA organisers, and the images were subsequently removed from the IWA website.<sup>121</sup> An investigation of the Shan Chun stall at the IWA 2018 exhibition by civil society representatives, found no evidence of the promotion of prohibited goods by the company.

In its response to an information request by Omega, NürnbergMesse stated that *"as organizer of IWA OutdoorClassics, [the company] has a strict position against any misuse of goods for torture or other cruel, inhuman or degrading treatment or punishment!...We deeply regret the displaying of the thumbcuffs by Shan Chun Company Ltd. and ... we removed the product presentation after receiving [Omega's] notification."* The company explained, *"All exhibitors have the possibility to display up to five of their products on our product database. Due to the fact that we have around 1,500 exhibitors at IWA OutdoorClassics we have outsourced the managing of the platform. The content of the platform is checked on a regular basis, we are sorry that this banned product was not detected."*<sup>122</sup>

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<sup>116</sup> Clarion Defence & Security Limited. 2019. *Event News: DSEI Compliance Notice – Friday 13 September 2019*.

<sup>117</sup> Clarion Defence & Security Limited. 2019. *Event News: DSEI Compliance Notice – Friday 13 September 2019*.

<sup>118</sup> DSEI 2019: Clarion. 2019. *Compliance & Eligibility to Exhibit*. Available at: <https://www.dsei.co.uk/exhibiting/compliance>. Accessed 16 December 2019.

<sup>119</sup> The Omega Research Foundation contacted Shan Chun Company Limited with the information in this report, but has not, as yet, received a reply.

<sup>120</sup> Shan Chun Company products, as displayed on: Exhibitors & Products IWA Outdoor Classics 2018 website, <https://www.iwa.info/en/ausstellerprodukte/iwa18/product-9939757/batons-handcuffs-foot-shackles>. Accessed 30 November 2017; images subsequently removed.

<sup>121</sup> Correspondence from the Exhibitions Executive Director and Sales Manager, IWA Outdoor Classics to the Omega Research Foundation, 22 December 2017.

<sup>122</sup> Correspondence from the Executive Director Marketing Expo & Conferences, NürnbergMesse GmbH to the Omega Research Foundation, 20 July 2020.

NürnbergMesse GmbH further explained that for IWA OutdoorClassics, it closely cooperates with the German Federal Office of Criminal Investigation (Bundeskriminalamt) and the Nuremberg Regulatory Authority (Ordnungsamt der Stadt Nürnberg). Prior to the exhibition, these authorities check import requests from exhibitors of potentially forbidden items into Germany, granting or refusing permission as appropriate. The company also employs an “external consultant who gives advice to the exhibitors in all questions of importing and displaying goods before it comes to the point of official permission”. Furthermore, during the exhibition, compliance checks of the exhibitors’ stands are undertaken by NürnbergMesse staff and by uniformed and undercover State officials.<sup>123</sup>

NürnbergMesse GmbH has established a range of measures to monitor exhibitors’ compliance with German and EU trade controls, and has acted swiftly to remove prohibited material from its website. Nonetheless, the company recognises it can further facilitate exhibitors’ knowledge and compliance, specifically with regard to the EU Anti-Torture Regulation. A review undertaken by Omega of the IWA website for the next exhibition, due to take place 12-15 March 2021,<sup>124</sup> found no information concerning the EU Anti-Torture Regulation on the main site or on the information pages for exhibitors.<sup>125</sup> NürnbergMesse GmbH has recognised this omission, and has committed to “checking how to implement the EU Anti-Torture Regulations into [its] terms of condition in order to point out our position against any kind of torture or other cruel, inhuman or degrading treatment or punishment.”<sup>126</sup> The company has also committed to reviewing “how we can increase our actions in screening the product database in order to prevent ... banned products [from] being displayed on the website.” Furthermore, NürnbergMesse GmbH has also contacted the local Amnesty International group and the Nuremberg Office of Human Rights to explore possibilities for enhancing public awareness and transparency surrounding the IWA OutdoorClassics exhibition.<sup>127</sup>



Image of thumbcuffs taken from the Shan Chun Company Ltd. promotional page on IWA Outdoor Classics 2018 website. © IWA Outdoor Classics, NürnbergMesse GmbH.

#### Recommendations:

**Although the EU Anti-Torture Regulation prohibits the display of Annex II goods at trade fairs or exhibitions in the EU, it does not specifically address the role and responsibilities of the fair organisers. The Omega Research Foundation recommends that the Regulation should be amended (or associated Commission guidance produced) to clarify the specific obligations of event organisers to prevent such display and promotion.**

<sup>123</sup> Correspondence from the Executive Director Marketing Expo & Conferences, NürnbergMesse GmbH to the Omega Research Foundation, 20 July 2020.

<sup>124</sup> IWA 2020, due to take place in September 2020, was cancelled as a result of the Covid-19 pandemic.

<sup>125</sup> See in particular: NürnbergMesse GmbH. 2020. *General Conditions for Participation in Fairs and Exhibitions As per July 2019*; and *Special Conditions for Participation in the trade fair IWA Outdoor Classics 2020*. Available at: <https://www.iwa.info/en/exhibitors/exhibition-presentation/regulations>.

<sup>126</sup> Correspondence from the Executive Director Marketing Expo & Conferences, NürnbergMesse GmbH to the Omega Research Foundation, 20 July 2020.

<sup>127</sup> Correspondence from the Executive Director Marketing Expo & Conferences, NürnbergMesse GmbH to the Omega Research Foundation, 20 July 2020.

**Organisers of EU-based arms and security trade fairs or exhibitions should ensure that all companies exhibiting at their events are made aware of the EU Anti-Torture Regulation provisions, specifically the prohibition upon marketing Annex II goods. This should be undertaken as part of the registration process, and Regulation provisions should clearly be displayed in all exhibition materials and on the exhibition website.**

**All marketing material (including online material) to be displayed by the exhibitors at fairs should be screened by the organisers to ensure compliance with prohibitions. Marketing material found to be promoting Annex II goods should be removed. Following consideration of the nature and scale of the prohibited promotional activity discovered, the fair organisers should, where appropriate, close the stall and remove the company from the fair. If such prohibited promotional activities are serious, extensive, or the company has engaged in such activity previously, the offending company should be banned from exhibiting or attending any future exhibitions or trade events held by the organisers.**

**Fair organisers should inform the authority of the EU Member State where the fair is held, of any instances of such promotion of Annex II goods. If deemed appropriate, the authorities should investigate the case, and determine whether and how the companies should be sanctioned. Should Annex II goods be found to be physically displayed at an event held within the EU, these must be seized by State authorities and destroyed.**

## [2.5. Measures to oversee and facilitate implementation of the Regulation by EU Member States](#)

Although the implementation of the Regulation is the responsibility of Member States, there are a range of measures contained in the instrument to facilitate this, and these are reviewed below. Implementation of the Regulation by many States appears incomplete and inconsistent. The Regulation's measures to facilitate improved implementation are therefore vitally important.

### [2.5.1. Anti-Torture Coordination Group](#)

Following the 2016 review of the Regulation, the Anti-Torture Coordination Group (ATCG) was established, under Article 31, to *“examine any questions concerning the application of this Regulation, including without limitation, the exchange of information on administrative practices and any questions which may be raised either by the chair [i.e. the Commission] or by a representative of a Member State”*. It provides a potentially wide and flexible mechanism to ensure effective implementation, facilitate State implementation, and respond to new developments in the law enforcement equipment marketplace.

According to publicly available information, as of May 2020, the ATCG has met four times since its establishment in November 2016.<sup>128</sup> Unfortunately, there are no substantive public records of these meetings, and the only documentation currently in the public domain is a short summary of ATCG actions included in the July 2020 Commission Review Report<sup>129</sup> and a record from the Commission to

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<sup>128</sup> European Commission (30 July 2020) op.cit.p.7 The ATCG meetings were held on: 12 July 2017, 28 June 2018, 29 April 2019, and 17 December 2019.

<sup>129</sup> European Commission (30 July 2020) op.cit.p.7

the European Parliament of the ATCG's activities in 2017 and 2018,<sup>130</sup> with a similar update of ATCG 2019 activities expected later in 2020. As a consequence of the extremely limited information currently available as to the ATCG's activities, it is not possible to determine how effectively the ATCG has been in fulfilling its mandate to date.

**Recommendation: Although we note the Regulation states that the “discussion in the [ATCG] shall be kept confidential”, the ATCG should explore the scope for greater public transparency with regards to the substance of its discussions and other activities. This could be achieved in its annual Report to the European Parliament, or through other means, without compromising confidentiality concerns.**

The Omega Research Foundation welcomes the ability of the ATCG to “consult exporters, brokers, suppliers of technical assistance and other relevant stakeholders concerned by this Regulation.” From the limited information publicly available, it nonetheless appears that this resource has not been accessed by the Group to its full potential. For instance, we welcome the ATCG's technical exchanges of information regarding prohibitions concerning trade and advertising, which “touched in particular upon possible guidance for relevant authorities as well as enforcement modalities”.<sup>131</sup> Nonetheless, both the Omega Research Foundation and Amnesty International have conducted research on this topic that has uncovered a number of contemporary cases of concern, but neither organisation was invited to participate in the ATCG discussions, nor asked to submit materials that could inform and facilitate discussions.

**Recommendation: The working practices of the ATCG should be reviewed by that Group to explore how civil society organisations with expertise could more effectively interact with the Group on a proactive basis, including through submission of reports, briefings, or other information provision pertaining to the Regulation and its implementation.**

### 2.5.2. Authorisation denial notification and consultation measures

Article 23 requires States to alert the Commission and all other Member States of their decisions to deny or annul authorisations under the Regulation for export or transit of goods or provision of technical assistance or brokering services. It requires States to inform and consult with Member States where they are considering granting an “essentially identical” transaction to one denied or annulled by another Member State. Article 23 also requires any State granting authorisation for “essentially identical” transactions to inform the Commission and all Member States of its decision and reasons. In theory, these notification, consultation, and information provision measures provide an effective and efficient system to alert all Member States, and the Commission, of divergent application of the Regulation by Member States. This process would thereby minimise the risks that one EU Member State would ‘undercut’ another, i.e. that it would authorise an “essentially identical” transaction to one denied or annulled by another EU Member State.

There is no detailed information publicly available specifically concerning the operation of Article 23. Without such information, it is impossible for civil society to determine whether the Article 23 measures have been applied consistently and in full by all Member States. It is hoped that the ATCG – given its extremely wide mandate to “examine any questions concerning the application of this Regulation” – would have assessed the operation of Article 23 and determined whether the system

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<sup>130</sup> European Commission. *Report from the Commission to the European Parliament*. COM(2019) 449 final. 7 October 2019. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2019:0449:FIN:EN:PDF>. Accessed 8 May 2020

<sup>131</sup> European Commission. *Report from the Commission to the European Parliament*. COM(2019) 449 final, 7 October 2019, item 3.3.

has been respected and followed up on. To date, the only ATCG activity report released by the Commission noted that the ATCG had held technical exchanges on the secure electronic system employed for Article 23 notifications. Nonetheless, no information has yet been provided regarding any substantive discussion by the ATCG on the notification, consultation, and information provision measures themselves, their implementation by Member States, or cases where ‘undercutting’ may have taken place.

**Recommendation: Analysis of State implementation of Article 23 should be an essential element of the ATCG’s monitoring role and should be undertaken on a regular basis, in a systematic manner, and its findings should be publicly reported.**

### 2.5.3. Commission oversight of implementation

Currently, neither the Commission nor any other oversight body formally monitors the implementation of the Regulation on a continuous, in-depth, basis. The wide mandate given to the ATCG “to examine any questions concerning the application of this Regulation” should allow this forum to address specific issues of concern regarding implementation or other matters. In practice, this would only occur when and if issues are “raised by either the chair [i.e. the Commission] or... Member State”. Although the ATCG provides a forum in which implementation concerns could be raised and addressed, it is clearly not a substitute for a body charged with continuous monitoring of Member State implementation. Furthermore, given the lack of transparency regarding the nature of the ATCG’s discussions, it is unclear whether and how specific issues of concern regarding individual State implementation have been raised by the Commission in its role as Chair (or indeed by other Member States), and how such matters were addressed and resolved by the ATCG. Similarly, outside of the ATCG it is unclear how systematically and effectively the Commission raises and seeks to resolve concerns it may have over potential failures in implementation of the Regulation with individual Member States.

There is little public evidence of the Commission proactively monitoring and following up on cases of potential breaches of the Regulation (by EU or non-EU companies or individuals), as well as implementation failures on the part of Member States, that are reported by the media and human rights organisations. Despite this, there have been isolated cases where the then-Trade Commissioner, Cecilia Malmström, did publicly voice her concern, and followed up with particular Member States to resolve issues, notably regarding promotion of prohibited goods at EU trade fairs and exhibitions in 2017 and 2018.<sup>132</sup> Whilst such high-level reactive interventions have been welcomed by the Omega Research Foundation, Omega has previously called for the Commission and Member States to introduce measures enabling more systematic engagement with relevant civil society organisations, and specifically facilitating receipt, examination and effective response to NGO reports highlighting weaknesses and loopholes in the Regulation, failures in State implementation or potential breaches of the Regulation, in a systematic rather than *ad hoc* manner<sup>133</sup>. In its July 2020 Review Report, the Commission appears to have acknowledged such concerns, stating, “A more systematic interaction with non-governmental organisations, international organisations and other stakeholders with

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<sup>132</sup> See: Alonso, P. Au Milipol, la torture fait salon, *La Liberation*, 23 November 2017, [https://www.liberation.fr/france/2017/11/23/au-milipol-la-torture-fait-salon\\_1612052](https://www.liberation.fr/france/2017/11/23/au-milipol-la-torture-fait-salon_1612052) Accessed 9 July 2020. Instrumentos de tortura a la venta en una feria de seguridad en Paris, *Heraldo Diario De Soria*, 23 November 2017, <https://heraldodiariodesoria.elmundo.es/content/print/instrumentos-tortura-venta-feria-seguridad-paris/20171123163358143509>. Accessed 9 July 2020.

<sup>133</sup> Omega Research Foundation, Review of EU Anti-Torture Regulation and its implementation: Provisional findings and recommendations, May 2020 [submitted to European Commission consultation on 22<sup>nd</sup> May 2020]; Omega Research Foundation, Questionnaire regarding Review of Regulation (EU) 2019/125 of the European Parliament and of the Council of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, Response by the Omega Research Foundation, January 2020.

*relevant expertise should be encouraged, including through the submission of ...information relating to the Regulation and its implementation. This would facilitate a more robust monitoring and detection of instances of possible breaches, and help to inform national risk assessment procedures.*<sup>134</sup>

**Recommendation: The Commission should be specifically tasked with monitoring Member State implementation of the Regulation, and its responsibilities and scope for proactive independent response should be clarified. The Commission should bring specific implementation concerns to the attention of individual Member States for clarification and resolution, and, if unresolved, raise such issues with the ATCG. The Commission should establish mechanisms to receive, analyse and where appropriate, act upon reliable public information provided by concerned stakeholders, for example, civil society and the media, that indicated breaches of the Regulation had occurred or State implementation was incomplete. The Omega Foundation supports the Commission’s proposed establishment of a group of experts (see Section 2.5.4), and believes it could act as one potential forum for such issues to be raised.**

#### 2.5.4. Commission facilitation of implementation

The European Commission is tasked with certain measures to facilitate EU Member State implementation. Under Article 26, the Commission is implicitly responsible for facilitating overarching information exchange between Member States, specifically including authorisations granted and refused, as well as cooperating with Member States in their preparation of public, annual activity reports. Article 26 also explicitly requires the Commission to prepare a report comprised of the annual activity reports prepared by Member States. Under Article 25, the Commission is tasked, at the request of Member States, with adding goods designed or marketed for law enforcement to Annex II, III, or IV. In all such activities, the Commission fulfils an essentially ‘neutral’ passive, bureaucratic, or secretarial role.

Under Article 29 of the Regulation, the Commission has additionally been empowered to adopt “*delegated acts*” in certain areas. For instance, under Article 24, the Commission can amend the Annexes, thereby allowing it to take the lead in regularly updating the lists of prohibited and controlled goods, and the list of destinations covered by Union General Export Authorisations for certain pharmaceutical chemicals employed in ‘lethal injection’ executions. Under Article 30, where there are “*imperative grounds of urgency*”, amendments to Annex II, III, IV, or V can be expedited by the Commission. To date, however, it is unclear how frequently and effectively the Commission has employed such “*delegated acts*” powers to amend the Annexes of controlled and prohibited goods.<sup>135</sup>

In its July 2020 Review Report, the Commission explicitly acknowledged that “*the scope of goods covered by the Regulation, should respond to evolving technological and market developments and take account of changes in the nature of the use, and misuse, of law enforcement equipment.*”<sup>136</sup> Despite this, there were no indications in this report that the Commission had undertaken any comprehensive review and revision of the lists of controlled and prohibited goods since their last update in 2016.<sup>137</sup>

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<sup>134</sup> European Commission. 30 July 2020. op.cit.p.19.

<sup>135</sup> The list of abolitionist States has been updated, most recently in February 2020. See, Commission Delegated Regulation (EU) 2020/621 of 18 February 2020 amending Annexes I and V to Regulation (EU) 2019/125 of the European Parliament and of the Council concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment. C/2020/819.

<sup>136</sup> European Commission. 30 July 2020. op.cit.p.19.

<sup>137</sup> Although the report notes that Annex V – the list of countries list of countries of destination to which the Union general export authorisation applies – was updated in October 2019 and February 2020, there are no revisions to Annex I, II or III. [See European Commission. 30 July 2020. op.cit.p.5].

### **Recommendations:**

The Commission should take a more proactive role, ensuring that all Annexes are regularly reviewed and updated, as appropriate, and as a minimum on an annual basis. (More detailed recommendations for amending Annex II and Annex III are provided in Section 3 of this report). This should be combined with active monitoring of developments in the manufacture, promotion, trade, use and misuse of relevant law enforcement equipment and other goods.

The European Commission could also play a more proactive role in strengthening EU Member State implementation of the Regulation in the following areas:

- **Facilitating the sharing of existing good Member State practice with a view to harmonisation amongst all EU Member States (for example, with regards to introduction and implementation of “effective, proportionate and dissuasive” penalties, as required under Article 33);**
- **Facilitating the discussion of, and making proposals for, effective measures for States to introduce to address existing challenging areas of implementation (for instance, to prevent promotion of Annex II goods at EU trade fairs and on associated fair websites, as well as halting any such promotion by EU manufacturers or marketing companies on their websites), or prospective new areas (for example, to regulate the activities of EU companies and citizens in third countries);**
- **Developing Member State implementation guidance, guidelines, templates, tools, or training to facilitate understanding and effective implementation of the Regulation in key or challenging areas, (e.g. on applying criteria for export licence authorisation decision-making).**

The Commission (and individual EU Member States) should consider providing advice and technical assistance to non-EU States wishing to, or currently in the process of, joining the EU. This would facilitate the development of national legislation in line with the EU Anti-Torture Regulation provisions. Similarly, the Commission and all EU Member States should collectively explore the feasibility of developing measures for appropriate information sharing with non-EU States that have national controls closely aligned to the EU Anti-Torture Regulation (e.g. the UK, North Macedonia, Montenegro) to facilitate continued alignment particularly with regard to goods and activities covered by these controls.

The Omega Research Foundation has previously highlighted the important role that non-governmental stakeholders could play in aiding States and the Commission to more effectively implement the Regulation throughout the EU. Consequently, Omega recommended the establishment of an Expert Advisory Group drawn from civil society (including academia, industry, human rights and arms control organisations) to support the Commission and Anti-Torture Coordination Group in strengthening the Regulation and also its effective implementation.<sup>138</sup> Omega therefore welcomes the recent Commission proposal, in the July 2020 Review Report, to establish such a group of experts drawn from *“relevant non-governmental organisations..., international organizations, academia and industry”* which is intended to *“provide in a regular manner support to the Commission in exploring avenues to strengthen compliance and make the Regulation and its implementation more effective.”* According to the Commission, the group’s function would be to *“provide broad expertise that would be complementary to the role of the ATCG”* and *“provide the*

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<sup>138</sup> Omega Research Foundation, Review of EU Anti-Torture Regulation and its implementation: Provisional findings and recommendations, May 2020 [submitted to European Commission consultation on 22nd May 2020]; Omega Research Foundation, Questionnaire regarding Review of Regulation (EU) 2019/125 of the European Parliament and of the Council of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, Response by the Omega Research Foundation, January 2020.



*substantive input to drive the discussion on policy and implementation and enable all stakeholders involved to engage in continuous dialogue.*"<sup>139</sup>

**Recommendation:** The Omega Research Foundation supports the Commission's proposed establishment of a group of experts to aid and advise the Commission in strengthening compliance and facilitating more effective implementation of the Regulation by all Member States, and recommends that the relevant EU bodies (i.e. the Council and Parliament) endorse this proposal. The membership, mandate and working practices of this group of experts should be clearly defined by the Commission and could be informed by the previous group of experts established by the Commission in 2014 to facilitate its comprehensive review of the Regulation. In order to function effectively the group should meet virtually or in person on a regular basis (i.e. at least semi-annually). The group of experts could be tasked with providing information, expertise and advice to the Commission regarding *inter alia*:

- Developments in the manufacture, promotion, trade, use and misuse of law enforcement equipment, relevant equipment, and goods including pharmaceutical chemicals, to inform and facilitate regular and responsive updating of the Regulation Annexes;
- Failures of State implementation or potential breaches of the Regulation, to facilitate an appropriate response by the Commission and Member States
- Compilation of good State practice and/or development of guidance on the practical application of the Regulation in certain difficult or emerging areas, such as the effective oversight of trade fairs and exhibitions, risk assessment during licensing, and end use monitoring
- Development of standardised reporting methodologies and templates, notably in annual activity reports
- Development of proposals for regulation in new areas, such as regulation of the activities of EU companies or individuals in third countries.

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<sup>139</sup> European Commission. 30 July 2020. op.cit.p.19

## Section 3: Law enforcement equipment not adequately covered by the Regulation

### 3.1. Introduction

The Omega Research Foundation supports the broad architecture of the EU Anti-Torture Regulation and its division of goods according to whether they are inherently abusive (Annex II) and should never be traded, or whether they can have legitimate uses (law enforcement equipment [Annex III] and certain pharmaceutical chemicals [Annex IV]) with their trade requiring appropriate State control. The current iteration of the Regulation includes, and appropriately prohibits or regulates trade in, a number of goods that have been (mis)used by law enforcement or correctional officials for torture, other ill-treatment or the death penalty. Research undertaken by the Omega Research Foundation has, however, identified a further range of law enforcement equipment that is, variously, not controlled under the Regulation, or inadequately controlled under the Regulation. This Section presents each of these types of law enforcement equipment, highlighting the nature of contemporary use and reported misuse by law enforcement officials, information concerning EU manufacture, promotion and trade, and recommending how such equipment should be covered under the EU Anti-Torture Regulation.

### 3.2. Equipment that should be prohibited under the EU Anti-Torture Regulation

#### 3.2.1. Direct contact electric shock weapons and devices

A wide range of direct contact electric shock weapons (including electric shock batons, shields, and stun guns) have been developed, traded, and are now employed by law enforcement officials throughout the world. The high voltage electric shock from these weapons is applied directly by hand, as the weapon is pressed against an individual, causing the target intense pain. A growing number of police forces also use projectile electric shock weapons, which fire darts attached to wires that, when attached to the target, deliver an electric shock from a distance.<sup>140</sup> Certain types of these projectile electric shock weapons can also be switched to ‘drive stun’ mode, allowing them to be used as direct contact electric shock weapons.

The employment of direct contact electric shock weapons by law enforcement personnel carries an unacceptable risk of arbitrary force that could amount to torture and other ill-treatment. This unacceptable risk is due to the intrinsic nature and design of such weapons. For instance, if and when they are employed, the officers applying shocks would usually not know if the target has an underlying medical condition, which may put them at increased risk. Officers also cannot reasonably ascertain the degree of pain they inflict with such a weapon, since that pain can vary significantly from person to person, depending on a range of physical and psychological factors, as well as different environmental factors, such as the presence of moisture. It is evidently easy for a law enforcement officer to use a direct contact electric shock weapon to apply extremely painful shocks at the touch of a button, including to very sensitive parts of the body, such as the neck, throat, ears, underarms, groin, and genitals, potentially without long-lasting identifiable physical traces. Such weapons can also be used to inflict repeated or prolonged shocks on an individual. It is unlikely that officers would not have other, less arbitrary, means at their disposal if they are sufficiently close to a person to apply a direct contact electric shock weapon (batons, for instance).<sup>141</sup> International and regional human rights

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<sup>140</sup> While US-product, Taser, is the most well-known, many other types of projectile electric shock weapons exist. These products vary widely, and all products have different specifications.

<sup>141</sup> See, for example:

European Court of Human Rights. 2018. ‘Eleven inmates of Grevena Prison were ill-treated during a search of their cells in 2013’. Press Release issued by the Registrar of the Court. 22 November 2018. ECHR 399 (2018).

monitors and NGOs have highlighted electric shock torture in many parts of the world, and in certain cases, have identified the use of specifically designed electric shock devices and weapons for such violations (as illustrated in the cases below)<sup>142</sup>.

### Egypt

On 17 June 2019, approximately 130 detainees held at al-Aqrab maximum security prison in Tora went on a mass hunger strike in protest at the cruel and inhumane detention conditions at the prison and the refusal of the authorities to allow regular family visits. Many of those on strike had been arrested more than two years previously and had not been allowed a single visit from their families or lawyers. Amnesty International highlighted a statement from the detainees in prison, describing how the authorities had beaten them, applied electric shocks with “*tasers*” and punished some of them with disciplinary measures, in an effort to coerce them to end their strike.<sup>143</sup>

### Russian Federation

In its 2016-7 Annual Report, Amnesty International stated that in the Russian Federation “*torture and other ill-treatment continued to be widespread and systematic during initial detention and in prison colonies*”. Among the cases highlighted was that of Murad Ragimov. “*On 30 August 2016, Murad Ragimov and his father were beaten and tortured by officers from the Ministry of the Interior’s Special Response Unit for two hours in the kitchen of their home in Moscow. The officers accused Murad Ragimov of killing a policeman in Dagestan, and of fighting for the armed group Islamic State in Syria. **Murad Ragimov’s cousin was handcuffed to the kitchen table while officers tortured Murad Ragimov using an electric-shock baton, and suffocating him with a plastic bag.***”<sup>144</sup>[Emphasis added].

### Serbia

During its 2017 visit to Serbia, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) delegation received *several* allegations of criminal suspects being subjected to shocks from electrical discharge devices at the time of apprehension or during questioning. The CPT reported that the intended purpose of the ill-treatment was apparently to coerce suspects to admit to certain offences or to punish them. For example, testimony from one former prisoner describes how he was arrested in Belgrade in March 2017 and brought to the Metropolitan Police Headquarters. He claimed that while handcuffed with his hands behind his back, he received several punches to the body and was “*subjected to repeated electrical charges from a hand-held torch-like device (measuring around 20 cm) to the ribs, legs and lower back*”.<sup>145</sup> Another person arrested and also taken to the Metropolitan Police Headquarters alleged that while handcuffed behind his back, a bullet-proof vest had been placed over his upper body and several police officers then proceeded to deliver punches and baton blows to his body. According to the report, he “*stated that they used a torch device «Police 20000W» to deliver electro-shocks to his genitals; he claimed that he had blood in*

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<sup>142</sup> It should be noted that for many cases of alleged application of electric shocks for torture and other ill-treatment, the specific implement used to deliver such shocks is not identified, so it is not possible to determine whether such torture is being committed with specifically designed direct contact electric shock weapons or whether *ad hoc* devices or techniques are being employed. Furthermore, in a number of cases electric shock devices are described as “*tasers*” even when they appear to be direct contact shock weapons.

<sup>143</sup> Amnesty International, Egypt: Mass hunger strike at al-Aqrab prison over denial of family visits and dire conditions, 31 July 2019; for details of the prisoners statement see:

[https://www.facebook.com/permalink.php?story\\_fbid=2191866930911873&id=1075452062553371&\\_\\_tn\\_\\_=-R](https://www.facebook.com/permalink.php?story_fbid=2191866930911873&id=1075452062553371&__tn__=-R)

<sup>144</sup> Amnesty International, AI 2016 Annual Report, February 2017, Russian Federation entry.

<sup>145</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Report to the Government of Serbia on the visit to Serbia carried out by the CPT from 31 May to 7 June 2017, CPT/Inf (2018) 21, 21 June 2018, p.12.

*his urine for several days thereafter.*<sup>146</sup> Testimony from a further witness described how he had been arrested at the Hungarian border and taken to Novi Sad District Police Station where he was “*subjected to repeated electro shocks from a hand-held device (which also served as a torch) to the inner part of his legs and his testicles both during transportation and while handcuffed to a safe in a crime inspector’s office*”.<sup>147</sup>

#### [Production and promotion of direct contact electric shock weapons by EU companies](#)

The Omega Research Foundation recognises that there is an existing trade in certain direct contact electric shock devices (particularly electric shock stun guns marketed to individuals for self-defence), which is outside the scope of this report. Beyond this, however, research by the organisation has uncovered companies in at least 10 EU Member States that have manufactured and/or promoted direct contact electric shock devices and weapons – including electric shock batons, stun guns, and shock shields – for use by correctional or law enforcement officials, during the 2015-19 period (as summarised in the table below).

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<sup>146</sup> Ibid.

<sup>147</sup> Ibid.



Images of a range of electric shock devices promoted by: Carriar El Trading Limited (Cyprus) on its website (top left), © Carriar El Trading Limited; electric shock “stun” gloves promoted by Ledwave (Spain) at Eurosecurity 2016, Paris, France, © Robin Ballantyne/Omega Research Foundation (top centre left); electric shock “stun” gloves (“Paralyzing Patent Police and Security Glove”) promoted by Akis Technology (France) on the Alibaba website (top centre right), © Akis Technology/Alibaba; electric shock device (American Shocker Piranha Knuckler 2) promoted by Dépot SD Equipements (France) (top right), © Dépot SD Equipements; electric shock baton used against handcuff taken from a HPE Holsters (Poland) catalogue (bottom left), © HPE Holsters; Spitting Cobra police electric shock shield taken from the GER d.o.o. (Slovenia) website (bottom centre), © GER d.o.o.; Powermax electric shock “stun gun” taken from the Euro Security Products (Czechia) company website (bottom right), © Euro Security Products.

Table 5: EU companies manufacturing and/or promoting direct contact electric shock devices for law enforcement purposes

Country	Company	Equipment	Further information
Bulgaria	GUNS.BG <sup>148</sup>	Electric shock stun gun	An online shop “created to meet the demand of hunters, security guards, police and civilians for quality equipment, weapons”. <sup>149</sup> The company promotes a 500,000-volt electric shock stun gun with pepper spray. <sup>150</sup>
Cyprus	Carriar El Trading Limited	Electric shock batons, stuns and shields.	The company website promotes “electroshock weapons” among its products and has images of a range of electric shock batons and stun guns labelled as “high voltage self-protection devices” on its “anti-riot equipment” section. <sup>151</sup> This section also includes images of an “electric shock shield” and a “multi-function electric shock shield” both with police markings. <sup>152</sup> In recent correspondence with Omega, the company stated that it had not sold any of “the following items connected to Riot control[:]:... handcuffs, electrical shock [device]s, teasers [sic], stun guns, batons, pepper spray, shields” <sup>153</sup>
Czechia	Euro Security Products <sup>154</sup>	Electric shock stun guns.	The company has promoted its electric shock products to the law enforcement community on its website <sup>155</sup> and through EU arms and security equipment fairs in 2016 and 2018. <sup>156</sup> The company also conducts training programmes for law enforcement personnel (see section 4.4.1). The company promotes a range of 200,000-volt stun guns to the general public. In contrast, for law enforcement, it promotes one electric shock weapon capable of generating 500,000 volts “intended for professional use for security companies, for the police...” <sup>157</sup> , and a second 500,000-volt electric shock weapon with combined pepper spray “designed for

<sup>148</sup> The Omega Research Foundation contacted GUNS.BG with the information in this report, but has not, as yet, received a reply.

<sup>149</sup> Guns.bg. 2020. Accessed 25 March 2020. Available at:

<http://guns.bg/%D0%B7%D0%B0-%D0%BD%D0%B0%D1%81-page1.html>.

<sup>150</sup> Guns.bg. 2020. Accessed 25 March 2020. Available at: [http://guns.bg/ESP\\_Scorpy\\_Max-cat53-scat56-p3117.html?searchKey=&priceOrder=A&latestOrder=&items=12&promo=&ref=&needReg=&outlet](http://guns.bg/ESP_Scorpy_Max-cat53-scat56-p3117.html?searchKey=&priceOrder=A&latestOrder=&items=12&promo=&ref=&needReg=&outlet).

<sup>151</sup> Carriar El Limited. 2020. Accessed 25 March 2020. Available at: <https://www.carriar.eu/anti-riot>.

<sup>152</sup> Carriar El Limited. 2020. Accessed 25 March 2020. Available at: <https://www.carriar.eu/fullscreen-page/comp-j4ps0kk0/398cd44d-38b7-4760-9e1e-237606dd4512/17/%3Fi%3D17%26p%3Dc165h%26s%3Dstyle-j4v1wxm9>.

<sup>153</sup> Correspondence from the Director of Carriar El Trading Limited to the Omega Research Foundation, 2 July 2020.

<sup>154</sup> The Omega Research Foundation contacted Euro Security Products with the information in this report, but has not, as yet, received a reply.

<sup>155</sup> Euro Security Products. 2020. Accessed 25 March 2020. Available at: <http://www.euro-security.info/en/>.

<sup>156</sup> Euro Security products, catalogue, undated, p.24, distributed at Eurosatory 2016, Paris, France, 13-17 June 2016; Euro Security products, catalogue, undated, p.21, distributed at IWA 2018, Nuremberg, Germany, 9-12 March 2018. Copies of both product catalogues held by the Omega Research Foundation.

<sup>157</sup> Euro Security Products. 2020. Accessed 25 March 2020. Available at: <https://www.euro-security.info/en/stun-guns/power-max.html>

			<i>professional use in security agencies, for the police</i> <sup>158</sup>
France	Magforce <sup>159</sup>	Electric shock stun shield and stun baton	According to the company website: <i>“our comprehensive civil defense and defensive military equipment line has made MagForce the supplier of choice for the public services end users.”</i> <sup>160</sup> Although the company previously promoted electric shock products on its website, these have been removed. <sup>161</sup> However in 2016 it distributed marketing materials for an electric shock stun shield at an EU arms and security exhibition. <sup>162</sup>
France	Akis Technology <sup>163</sup>	Electric shock stun batons, stun guns, stun gloves and an electric shock knuckle duster.	This company promotes itself as a <i>“manufacturer in defense weapons”</i> that undertakes <i>“sales to professionals only”</i> . <sup>164</sup> It markets a range of security equipment on its website including electric shock devices. <sup>165</sup> The company also promotes the <i>“Paralyzing Patent Police and Security Glove”</i> on the Alibaba marketing website. <i>“This glove with patented technology is designed for law enforcement or security, it has the effect of paralyzing on contact with the skin.”</i> <sup>166</sup>
France	Dépot SD Equipements <sup>167</sup>	Electric shock stun batons and stun guns	This company promotes a wide range of security equipment including electric shock batons and stun guns, on its website. <sup>168</sup> The company describes itself as <i>“an online gun shop selling safety equipment and defense to security professionals, law enforcement or individuals.”</i> The company <i>“provide[s] various services in government security (Gendarmerie, National Police, Municipal Police), and also a large number of private security companies.”</i> The company claims to have the endorsement of the French Police Nationale, Police Municipale, and

<sup>158</sup> Euro Security Products. 2020. Accessed 25 March 2020. Available at: <https://www.euro-security.info/en/stun-guns/scorpy-max.html>.

<sup>159</sup> The Omega Research Foundation contacted Magforce with the information in this report, but has not, as yet, received a reply.

<sup>160</sup> Magforce. 2020. Accessed 25 March 2020. Available at: <http://www.magforce.fr/magforce/magforce-en.php>.

<sup>161</sup> Magforce, 2020. Accessed 25 March 2020. Available at: <http://www.magforce.fr/magforce/magforce-en.php>.

<sup>162</sup> Magforce International product catalogue, p.75, distributed at Eurosatory 2016, Paris, France, 13-17 June 2016 (Copies of catalogue are held by the Omega Research Foundation).

<sup>163</sup> The Omega Research Foundation contacted Akis Technologies with the information in this report, but has not, as yet, received a reply.

<sup>164</sup> Akis Technology. 2020. Accessed 25 March 2020. Available at: <https://www.akis.technology/>.

<sup>165</sup> Akis Technology. 2020. Accessed 25 March 2020. Available at: <https://en.akis.technology/shockerhorsserie>.

<sup>166</sup> Alibaba. 2020. Accessed 25 March 2002. Available at: <https://french.alibaba.com/product-detail/patent-stun-glove-police-and-security-62005734255.html?spm=a2700.7787047.0.0.5fHFNI>.

<sup>167</sup> The Omega Research Foundation contacted Dépot SD Equipements with the information in this report, but has not, as yet, received a reply.

<sup>168</sup> Dépot SD Equipements. 2020. Accessed 25 March 2020. Available at: <https://www.boutique-sd-equipements.fr/23-shocker-electrique>.

			Gendarmerie Nationale as well as the Ministry of the Interior and the Ministry of Defence. <sup>169</sup>
France	DourSoux <sup>170</sup>	Electric shock baton	According to its website, DourSoux is “A long-standing partner of the French administration... providing [equipment to] law enforcement and security forces for over 40 years (national and municipal police, gendarmerie, firefighters, soldiers, etc.).” <sup>171</sup> The company promotes a 750,000-volt electric shock baton with integrated torch in its Security equipment catalogue. <sup>172</sup>
France	GK Professional <sup>173</sup>	Electric shock stun batons and stun guns	According to its website: “GK Professional is a designer, manufacturer, vendor and distributor of duty and tactical gear for law enforcement and military personnel, with customers worldwide. ” <sup>174</sup> The company promotes two types of electric stun baton on its website, <sup>175</sup> and has promoted its electric shock products in EU arms and security exhibitions in 2015 and 2018. <sup>176</sup>
France	Le Protecteur-Scorpion-ATAM <sup>177</sup>	Electric shock stun batons and stun guns	Until November 2017, the company promoted a range of electric shock batons and stun guns on its website <sup>178</sup> and previously promoted such products at security exhibitions held in at least one EU Member State. <sup>179</sup>
Russia/ France/ Germany	March Group (Iron Protection Privee <sup>180</sup> & WASP GmbH <sup>181</sup> )	Electric shock stun batons, stun guns and stun shields.	According to its website, the Russian company March Group is the “official supplier for all the military structures in Russia: Ministry of Internal Affairs, Special Police Forces, Head Department of the Penitentiary, Federal Bailiff Service, Federal Security Service, Federal Drug Control

<sup>169</sup> Dépot SD Equipements. 2020. Accessed 25 March 2020. Available at: <http://www.boutique-sd-equipements.fr/content/4-qui-sommes-nous->

<sup>170</sup> The Omega Research Foundation contacted DourSoux with the information in this report, but has not, as yet, received a reply.

<sup>171</sup> DourSoux. 2020. Accessed 25 March 2020. Available at: <https://www.doursoux-securite.com/>.

<sup>172</sup> DourSoux. *Catalogue No.6 Securite*, p. 133, which was distributed at Milipol 2019 (copy held by the Omega Research Foundation).

<sup>173</sup> The Omega Research Foundation contacted GK Professional with the information in this report, but has not, as yet, received a reply.

<sup>174</sup> GK Professional. 2020. *About us*. Accessed 25 March 2020. Available at: <https://gkpro.fr/en/about-us/>

<sup>175</sup> GK Professional. 2020. *Electric defense: stun baton*, Accessed 25 March 2020. Available at: <https://gkpro.fr/en/product-cat/defense-en/electric-defense/>

<sup>176</sup> GK Professional, *Catalogue No.18*, p.23, distributed at Milipol 2015, 17-20 November 2015, Paris, France and at IWA 2018, Nuremberg, Germany, 9-12 March 2018. (Copies of both brochures held by the Omega Research Foundation).

<sup>177</sup> The Omega Research Foundation contacted Le Protecteur-Scorpion-ATAM with the information in this report, but has not, as yet, received a reply.

<sup>178</sup> Le Proteceur-Scorpion-ATAM. 2017. Accessed 16 November 2017, subsequently removed. Available at: <http://www.lp-sa.com/106-defenses-electriques>. An archived copy of this website is held by Omega Research Foundation.

<sup>179</sup> Le Protecteur-Scorpion-ATAM, product catalogue edition 01, p.8-9 distributed at Milipol 2015, Paris, France, 17-20 November 2015, (copy held by Omega Research Foundation).

<sup>180</sup> The Omega Research Foundation contacted Iron Protection Privee, separately to March Group, with the information in this report, but has not, as yet, received a reply.

<sup>181</sup> The Omega Research Foundation contacted WASP GmbH, separately to March Group, with the information in this report, but has not, as yet, received a reply.



			<i>Service and etc.</i> <sup>182</sup> March Group promotes a range of electric shock weapons specifically to the law enforcement community. <sup>183</sup> The company's list of official partners or agents promoting their products includes representatives of a French company, Iron Protection Privee, and of a German company, WASP GmbH. <sup>184</sup>
Germany	Enforcer Pülz GmbH <sup>185</sup>	Electric shock stun guns	According to its website, the company has <i>"been supplying police, fire brigades, customs, private security services and many other satisfied customers throughout Europe with our high quality products since 1992."</i> <sup>186</sup> This company promotes a wide range of security equipment, including electric shock stun guns. <sup>187</sup>
Germany	Buchner Grosshandel <sup>188</sup>	Electric shock stun guns	The website states that <i>"The customer base of the Buchner wholesale trade is diversified and spread across the borders. Especially in the security sector, the company is certified a high level of competence."</i> <sup>189</sup> This company promotes a wide range of security equipment including electric shock stun guns. <sup>190</sup>
Greece	International Armour/ Defense-Security <sup>191</sup>	Electric shock shield	The company describes itself as an <i>"international well established Defense and Security firm that is offering innovative concepts of national defense and private security solutions and policies with analytical expertise and a wide range of weapon systems for air, sea, and land based applications."</i> <sup>192</sup> The website includes a B2B portal which links to a <i>"Spitting Cobra"</i> electric shock shield, manufactured by Slovenian company GER d.o.o. <sup>193</sup>

<sup>182</sup> March Group. 2020. Accessed 25 March 2020. Available at: <http://russian-shockers.com/>.

<sup>183</sup> In email correspondence from March Group to the Omega Research Foundation (dated 2 July 2020), March Group stated, *"Over the last 10 years there were no significant supplies of our stun guns to European countries. There is great demand but American Taser has the market for now. We supplied several units of stun guns to European Law Enforcement Bodies as samples for carrying out of tests"*.

<sup>184</sup> March Group company website, dealers and representatives of companies, <https://russian-shockers.com/contacts/predstaviteli.html>. Accessed 25 March 2020.

<sup>185</sup> The Omega Research Foundation contacted Enforcer Pülz GmbH with the information in this report, but has not, as yet, received a reply.

<sup>186</sup> Enforcer Pülz GmbH <https://enforcer.de/> (accessed 25 March 2020).

<sup>187</sup> Enforcer Pülz GmbH <https://enforcer.de/catalogsearch/result/?q=elektroschocker> Accessed 25 March 2020.

<sup>188</sup> The Omega Research Foundation contacted Buchner Grosshandel with the information in this report, but has not, as yet, received a reply.

<sup>189</sup> Buchner Grosshandel. Accessed 25 March 2020. [https://www.buchner-grosshandel.de/ueber\\_uns/](https://www.buchner-grosshandel.de/ueber_uns/)

<sup>190</sup> Buchner Grosshandel. 2020. Accessed 25 March 2020. Available at: <https://www.buchner-grosshandel.de/security/securityequipment/elektroschocker-m-ptb.html>.

<sup>191</sup> The Omega Research Foundation contacted International Armour/Defense-Security with the information in this report, but has not, as yet, received a reply.

<sup>192</sup> International Armour/Defense-Security. 2020. Accessed 25 March 2020. Available at: <http://armour.gr/securityequipment.html#>.

<sup>193</sup> B2B. 2020. Accessed 25 March 2020. Available at: <https://www.b2b-markets.com/contents/en-us/search.html?searchphrase=electroshock>. See also: <https://www.b2b-markets.com/contents/en-us/p56262.html>

Poland	Eltraf Bis <sup>194</sup>	Electric shock stun guns and stun batons	The company manufactures and promotes a range of electric shock batons and stun guns on its website. <sup>195</sup> Some of these appear to be specifically promoted for use by law enforcement personnel, such as the “ <i>URP 1000 Police professional</i> .” <sup>196</sup> The company has previously promoted its electric shock products at arms and security equipment exhibitions held in at least one EU Member State. <sup>197</sup>
Poland	HPE Holsters <sup>198</sup>	Electric shock stun shield, stun batons, and stun guns.	The company markets its products on its website and previously at arms and security fairs in the EU Member States and beyond. <sup>199</sup> Promotional material states that it, “ <i>produces a wide range of military products</i> ” although it is not clear whether it manufactures the electric shock devices or only promotes these. <sup>200</sup> An “ <i>electric shield</i> ” is advertised in its “ <i>Anti-riot division</i> ” product range under “ <i>plastic shields for prison guards</i> ”. <sup>201</sup> Stun batons are advertised under the “ <i>Tactical &amp; Military accessories division</i> ” of goods. The promotional material shows images of a baton and stun gun being used to shock a handcuff. <sup>202</sup>
Portugal	Inventarium Security, Research & Development	Electric shock shield	According to its website, ISRD is an “ <i>industrial manufacturer</i> ” “ <i>committed to develop new products in the security and defense sector for Law Enforcement, Military and Private security applications</i> .” <sup>203</sup> Products on its website include the: “ <i>SHOCK4SHIELD [which] is an electrified riot shield design[ed] to provide added protection for police and military personnel in hazardous crowd control situations</i> .” <sup>204</sup> In correspondence with Omega, Inventarium stated, although these

<sup>194</sup> The Omega Research Foundation contacted Eltraf Bis with the information in this report, but has not, as yet, received a reply.

<sup>195</sup> Eltraf Bis, [http://www.eltraf.com.pl/master\\_eltrafbis.html](http://www.eltraf.com.pl/master_eltrafbis.html). Accessed 13 September 2019 but site malfunctioning; products available on alternate website [http://wizart.pl/eltraf/eltraf\\_sklep/](http://wizart.pl/eltraf/eltraf_sklep/). Accessed 25 March 2020, September 2019, see [http://wizart.pl/eltraf/eltraf\\_sklep/paralizatory/](http://wizart.pl/eltraf/eltraf_sklep/paralizatory/). Accessed 25 March 2020.

<sup>196</sup> Eltraf Bis. 2020. Accessed 25 March 2020. Available at: [http://www.eltraf.com.pl/pdf/eltraf\\_folder.pdf](http://www.eltraf.com.pl/pdf/eltraf_folder.pdf).

<sup>197</sup> Eltraf Bis promoted its products at Milipol 2013, Paris, France. A copy of the company product brochure distributed is held by Omega Research Foundation.

<sup>198</sup> The Omega Research Foundation contacted HPE Holsters with the information in this report, but has not, as yet, received a reply.

<sup>199</sup> For example, HPE Holsters Product Catalogue was distributed at IDEX 2017, 19-23 February 2017 in Abu Dhabi, United Arab Emirates; and at Eurosatory 2018, 11-15 June 2018, Paris, France, (copies of both catalogues held by the Omega Research Foundation).

<sup>200</sup> HPE Holsters. 2020. Accessed 25 March 2020. Available at: [http://hpe.pl/img/cms/5\\_accessories\\_division.pdf](http://hpe.pl/img/cms/5_accessories_division.pdf). See p.34.

<sup>201</sup> HPE Holsters. 2020. Accessed 25 March 2020. Available at: [http://hpe.pl/img/cms/2\\_anti-riot\\_division.pdf](http://hpe.pl/img/cms/2_anti-riot_division.pdf). See p.15.

<sup>202</sup> HPE Holsters. 2020. Accessed 25 March 2020. Available at: [http://hpe.pl/img/cms/5\\_accessories\\_division.pdf](http://hpe.pl/img/cms/5_accessories_division.pdf). See pp.40-41.

<sup>203</sup> Inventarium. 2020. Accessed 25 March 2020. Available at: <http://inventarium-srd.com/thecompany.html>. In email correspondence from Inventarium Research, Security & Development to the Omega Research Foundation, received 25 June 2020.

<sup>204</sup> Inventarium. 2020. Accessed 25 March 2020. Available at: <http://inventarium-srd.com/page31x.html>.

			products are promoted on its website, it has “never [brought] to commercial market the shield or any other weapon”, noting that it has developed “only prototypes” of equipment including the electric shock shield. <sup>205</sup>
Slovenia	GER d.o.o. <sup>206</sup>	Electric shock shields	The company appears to be the manufacturer as well as the promoter of a range of electric shock shields which are clearly intended for use by police or military personnel. The company promotes its products on its website <sup>207</sup> and cites: USA Army; UAE Police; and Croatia Police as “reference customers” <sup>208</sup> The company manufactures and promotes a range of “Spitting Cobra” electric shock shields which also incorporate a pepper spray dispenser.
Spain	Ledwave <sup>209</sup>	Electric shock stun glove and electric shock shield	The company has promoted “stun gloves for easy arrest control” as well as a police “combat arm shield”, which incorporates an electric shock function. These products were promoted by the company via the internet and also in at least one recent EU security exhibition. <sup>210</sup>

### Promotion of direct contact electric shock weapons at EU arms and security fairs

As documented, a range of companies based in EU Member States manufacture and/or promote direct contact electric shock weapons. In addition, certain companies from non-EU Member States have promoted such devices at arms and security fairs and exhibitions in the EU region, three examples of which are discussed below.

#### Milipol 2015

At the Milipol 2015 exhibition held in November 2015, in Paris, France, the Israeli company Tar Ideal Concepts Ltd.<sup>211</sup> promoted an “Electric Riot Shield”, “designed to quell a riot or a disturbance with electric shock.”<sup>212</sup> Marketing materials distributed at the same event by a South Korean company, Kolon Defense Solution<sup>213</sup>, included a 100,000-volt electric shield, a “knock-down” electric shock stun

<sup>205</sup> In email correspondence from Inventarium Research, Security & Development to the Omega Research Foundation, received 25 June 2020.

<sup>206</sup> The Omega Research Foundation contacted GER d.o.o. with the information in this report, but has not, as yet, received a reply.

<sup>207</sup> GER d.o.o. 2020. Accessed 25 March 2020. Available at: <http://www.shield-sc.com/index.html>.

<sup>208</sup> GER d.o.o. 2020. Accessed 25 March 2020. Available at: <http://www.shield-sc.com/concept-police-anti-riot-shield.html>.

<sup>209</sup> The Omega Research Foundation contacted Ledwave with the information in this report, but has not, as yet, received a reply.

<sup>210</sup> Ledwave promoted these products at Eurosatory 2016, 13-16 June 2016, Paris, France. A copy of the company product brochures distributed are held by Omega Research Foundation. Videos of company staff promoting devices at Eurosatory 2016, June 2016, are available at: <https://www.youtube.com/watch?v=u0-Otthi-0w> and <https://www.youtube.com/watch?v=JtK8Oab8Jt4> Accessed 25 March 2020.

<sup>211</sup> The Omega Research Foundation contacted Tar Ideal Concepts Ltd with the information in this report, but has not, as yet, received a reply.

<sup>212</sup> Law enforcement catalogue 2016-2017, Tar Ideal Concepts Ltd, distributed at Milipol 2015 (copy held by Omega Research Foundation).

<sup>213</sup> The Omega Research Foundation contacted Kolon Defense Solution with the information in this report, but has not, as yet, received a reply.

gun, a “*palm size stun gun*,” and an electric shock baton.<sup>214</sup> An electrified capture device – having two electrodes at the end of a long pole positioned between two curved arms designed to capture or hold a target – was physically displayed at the exhibition by a Chinese company, China Aole Safety Equipment Co. Ltd.<sup>215</sup>



Electric shock capture device photographed at the China Aole Safety Equipment Co., Ltd (China) stand, Milipol 2015, Paris, France © Robin Ballantyne/Omega Research Foundation (both images).

### *Eurosatory 2018*

At the Eurosatory 2018 exhibition, held in Paris, France in June 2018, civil society representatives uncovered evidence of Chinese companies promoting a range of electric shock weapons, with Beijing Heweyongtai Sci & Tech Co., Ltd,<sup>216</sup> for instance, marketing an electric shock “*telescopic anti-riot baton*” which can inflict a 60,000-volt electric shock for 5 seconds. The company also promoted electric shock “*police arrest gloves*”. The company claimed these gloves, which “*can make the person loose resistance ability immediately*” are “*widely used to arrest...criminals by the public security departments*”<sup>217</sup>. Electric shock batons were also promoted at the same event by two other Chinese companies, Fox Armour Co. Ltd<sup>218</sup> and YF Protector.<sup>219</sup>

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<sup>214</sup> Product catalogue, Kolon Defense Solution, distributed at Milipol 2015 (copy held by Omega Research Foundation).

<sup>215</sup> The Omega Research Foundation contacted China Aole Safety Equipment Co., Ltd. with the information in this report, but has not, as yet, received a reply.

<sup>216</sup> The Omega Research Foundation contacted Beijing Heweyongtai Sci & Tech Co., Ltd with the information in this report, but has not, as yet, received a reply.

<sup>217</sup> Beijing Heweyongtai Sci & Tech Co., Ltd. (China) product catalogue, undated, p.48, distributed at Eurosatory 2018 (copy held by the Omega Research Foundation).

<sup>218</sup> Fox Armour, Antiriot & Bulletproof Technology, Catalogue 2017-2018, (undated) p.22, distributed at Eurosatory 2018 (copy held by the Omega Research Foundation).

The Omega Research Foundation contacted Fox Armour Co. Ltd with the information in this report, but has not, as yet, received a reply.

<sup>219</sup> YF Protector Co. Ltd, Antiriot & Bulletproof Technology, Catalogue 2017-2018, (undated) p.22, distributed at Eurosatory 2018 (copy held by the Omega Research Foundation).

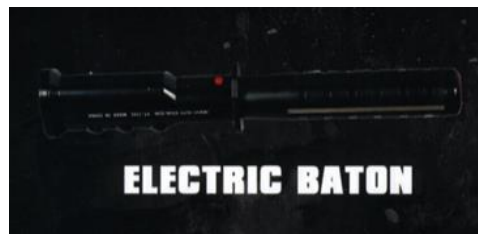
The Omega Research Foundation contacted YF Protector Co. Ltd with the information in this report, but has not, as yet, received a reply.



Images of electric shock “Police Arrest Gloves” and a direct contact electric shock baton (“Telescopic Anti-Riot Baton”) taken from a Beijing Hweiyongtai Sci & Tech Co., Ltd. (China) product catalogue, distributed at Eurosatory 2018; © Beijing Hweiyongtai Sci & Tech Co., Ltd.

### Milipol 2019

At the Milipol 2019 exhibition held in November 2019, in Paris, France, a Russian company, March Group, promoted a variety of direct contact electric shock devices, specifically intended for use by law enforcement officials, including the Skala electric shock shield, AIR Malvina (200-A and 50-A) devices, and a range of electric shock batons (Scorpion AIR-107 [250-A/SK, 350-A/SK and the 500-A]),<sup>220</sup> which cause “Total mental confusion and state of shock for 10-15 min. with no health effects”.<sup>221</sup> Three Chinese companies also promoted electric shock stun batons.<sup>222</sup>



(Above) Images of electric shock batons taken from product catalogues distributed at Milipol 2019 by three Chinese companies, Fox Armour Co., Ltd., Shanghai China Best Source Industrial Developments Co., Ltd., and YF Protector. © Fox Armour Co., Ltd., Shanghai China Best Source Industrial Developments Co., Ltd., and YF Protector, respectively.

<sup>220</sup> March Group, Non-lethal weapons and security equipment, product catalogue, undated, distributed at Milipol 2019 (copy held by Omega Research Foundation).

<sup>221</sup> March Group. 2020. *Law enforcement electroshock devices, Electroshock device AIR-107 «Scorpion-A» (500)*. Accessed 25 March 2020. Available at: <https://russian-shockers.com/products/power/electroshock-device-air-107-scorpion-a-500.html>.

<sup>222</sup> The Omega Research Foundation contacted the three companies (Shanghai China Best Source Industrial Developments Co., Ltd., Fox Armour Co., Ltd., and YF Protector) with the information in this report, but has not, as yet, received a reply.



Images of the Skala electric shock shield (left) and the Scorpion AIR-107 electric shock baton (top right) taken from a March Group (Russia) product catalogue, distributed at Milipol 2019; image promoting the company's "law enforcement electroshock devices", taken from the company website (bottom right), © March Group.



### [3.2.2. Projectile electric shock devices](#)

Projectile electric shock weapons are designed to incapacitate an individual at a distance. Most models work by firing darts attached to the launch device by thin wires, at an individual, and can be used from a distance of several metres. The darts attach to a person's body or clothing, delivering an incapacitating high voltage electric shock that causes the subject to lose neuro-muscular control and collapse. Depending on the model, the shock can be continuous and prolonged (up to several minutes in duration) if the trigger is held down, repeated numerous times if retriggered, or can be interrupted.<sup>223</sup>

When deployed by highly trained police officers, and used as a projectile weapon in a stand-off situation to prevent an imminent threat of serious injury or death, such projectile electric shock weapons can be a legitimate alternative to firearms.

Most projectile electric shock weapons are designed so that they can easily be switched to 'drive stun' mode to enable them to be used as *de facto* direct contact electric shock weapons. The Omega Research Foundation considers the use of such *de facto* direct contact electric shock weapons to pose a substantial risk of torture or other ill-treatment, and therefore calls for the prohibition of the 'drive stun' or direct contact mode on such electric shock projectile weapons. Human rights monitors have

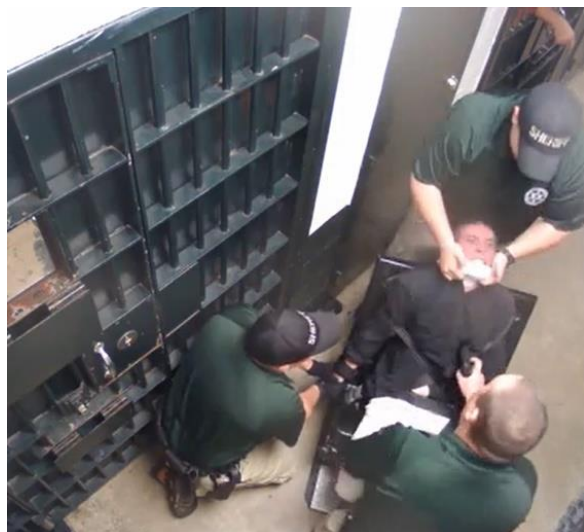
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<sup>223</sup> While US-product, Taser, is the most well-known, many other types of projectile electric shock weapons exist. These products vary widely, and all products have different specifications. Additionally, the function of these weapons may be adjusted. In the case of law enforcement Tasers in the Netherlands, for instance, TBM confirms, "For the Netherlands devices we have been asked to set additional restrictions (technically programmed limitation) to the maximum of 5 seconds duration of electrical current via the ark[sic] button (which then transfers via the wires to the suspect). This is limited to 3 cycles and to life threatening situations. The request of the police to technical limit the duration is an example of the restrictive and responsible policy to prevent the overuse of the device." TBM also notes other features it considers to enhance the use of Tasers in the Netherlands, writing, "the TASER X2 device has an internal logging system that cannot be manipulated. All activities of the user in the operation and performance of the device will be registered. So the disarming, or putting it on safe, the launching of projectiles or arking[sic] of the device will be logged in time (internal clock). The downloading of the data on the use is a standard procedure and this knowledge is transferred to the Police. This prevents false claims of the use of the device by either the police officer or the suspect. The log will tell when and what AND duration of the device has been used." (email correspondence from TBM to the Omega Research Foundation, received 3 July 2020).

reported the misuse of projectile electric shock weapons in all world regions; the case below illustrates their employment as a *de facto* direct contact weapon in torture.

### [Illustrative case of misuse of projectile electric shock weapons](#)

USA



**Surveillance video shows officers from the Cheatham County Police Department using a projectile electric shock device on Jordan Norris whilst he is held down, gagged and strapped into a restraint chair. [Video from Cheatham County Police Department, 5 November 2016]. © Cheatham County Police Department**

During the 2015-2019 period, human rights organisations and the media documented numerous cases of the reported misuse of projectile electric shock devices by US correctional officials in prisons, as well as by US police officers in non-custodial settings. Reported misuse of these devices has included cases where these devices have been employed as *de facto* direct contact electric shock weapons to facilitate torture or other ill-treatment. For example, the *Washington Post*<sup>224</sup> documented the case of 18-year-old Jordan Norris who was arrested on 3 November 2016 by Cheatham County police in Tennessee for possession of drugs and weapons. On 5 November 2016 whilst in detention, Mr Norris began to suffer a “*mental health episode*” and banged his head against the door. He was put on suicide watch while a nurse was called to attend to him. During this period, he was placed in a restraint chair and his arms, chest, waist, and legs were strapped down. While he was restrained, a cloth gag was placed in his mouth and two Cheatham County deputies held him down while a third used a projectile electric shock device in direct contact mode against his chest at least four times, merely inches from his heart. The incident was filmed by the Cheatham County Police Department video surveillance camera, which recorded the deputy with the projectile electric shock weapon telling Mr Norris: “*I’ll keep on doing that until I run out of batteries*”.

### [Manufacture, promotion and/or transfer of projectile electric shock weapons](#)<sup>225</sup>

During the 2015-2019 period, the Omega Research Foundation could find no evidence of EU companies manufacturing projectile electric shock weapons. Nonetheless, a number of companies based in the EU have promoted electric shock projectile weapons manufactured by companies outside

<sup>224</sup> Horton, A. Deputies tortured a restrained teenager by using a stun gun on him, lawyers say, *Washington Post*, 2 August 2017, <https://www.washingtonpost.com/news/post-nation/wp/2017/08/02/would-you-like-to-comply-deputies-used-torture-by-taser-a-restrained-inmate-lawyers-say/> (accessed 31 March 2020)

<sup>225</sup> For information on all of the companies cited below, please contact the Omega Research Foundation.

the region. The US company, Axon<sup>226</sup> (formerly Taser International, Inc.), which is the manufacturer and supplier of Taser, the most prominent projectile electric shock weapons for law enforcement agencies across the globe, has established its European headquarters in the Netherlands,<sup>227</sup> and the company has national websites marketing its products to law enforcement in France, Germany, Italy, Poland, Spain, and the UK.<sup>228</sup> During the 2015-2019 period, Axon/Taser International products have also been promoted by the Croatian company, ETIS d.o.o.<sup>229</sup>; Cypriot company, Carriar El Trading Limited<sup>230</sup>; Dutch company, TBM<sup>231</sup>; and Spanish company, Shoke Defensa y Seguridad<sup>232</sup>.

EU companies have promoted projectile electric shock weapons from other non-EU manufacturers. For example, Schelli KFT, a Hungarian company, whose clients include “*Ministry of Public Administration and Justice, ORFK, including Police Standby, KR Economic Directorate GEK, Airport Police Directorate, National Penitentiary Command, HM El Zrt. civil security services, military and police equipment stores*”<sup>233</sup> features on its website the Spark projectile electric shock weapon<sup>234</sup>, which appears to be the same model as that manufactured by the Brazilian company, Condor Non-Lethal Technologies.<sup>235</sup> Although this product is featured on the website, in email correspondence from Schelli to the Omega Research Foundation (received 26 June 2020), the company noted, “*Schelli Ltd. has never sold a single piece of projectile electric shock devices*”. Instead, Schelli “*usually post[s] these products on our website after an international exhibition... [to] help to inform the staff of law enforcement agencies*”.

#### [Current EU trade measures concerning direct contact and projectile electric shock devices](#)

Under the EU Anti-Torture Regulation, all EU Member States are required to control the export from the EU of “*portable electric shock weapons that can target only one individual each time an electric shock is administered, including but not limited to electric shock batons, electric shock shields, stun guns and electric shock dart guns*”.<sup>236</sup> All EU Member States are required to deny any export

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<sup>226</sup> The Omega Research Foundation contacted Axon with the information in this report, but has not, as yet, received a reply.

<sup>227</sup> TASER to Open New International Office in Amsterdam, 29 April 2014, available on <https://finance.yahoo.com/news/taser-open-international-office-amsterdam-113000494.html> (accessed 19 November 2019).

<sup>228</sup> See: France (<https://fr.axon.com/>), Germany (<https://de.axon.com/>), Italy (<https://it.axon.com/>), Poland (<https://pl.axon.com/>), Spain (<https://es.axon.com/>), UK (<https://uk.axon.com/>).

<sup>229</sup> ETIS d.o.o. 2020. Elektrošokeri TASER i AXON kamere. Available at: <http://www.etis-elektrosoker.com/uvjeti-kupnje/>. Accessed 16 July 2020.

The Omega Research Foundation contacted ETIS d.o.o. with the information in this report, but has not, as yet, received a reply.

<sup>230</sup> Carriar El Limited. 2017. Products & Services. Available at: <https://www.carriar.eu/products-services>. Accessed 24 October 2017.

<sup>231</sup> TBM. 2020. Taser & Bodycam. Available at: <https://tbm.nl/taser-en-bodycam/>. Accessed 16 July 2020. Confirmed in email correspondence from TBM to the Omega Research Foundation (received 3 July 2020). In this correspondence, TBM noted, “*we are proud to represent a company like AXON for decades who holds the values “protect life” and “protect the truth” in high esteem. The TASER devices have been in service from 2008 on and saved numerous Dutch lives in operations. Both of civilians as of police officers. We have a general high regard for the Dutch National police who has strict policies on the use of force, professional training and extensive accountability protocol to prevent any misuse.*”

<sup>232</sup> SHOKE Defensa y Seguridad. 2020. Taser Policia. Available at: <https://www.tiendashoke.es/taser-policia>. Accessed 16 July 2020.

The Omega Research Foundation contacted SHOKE Defensa y Seguridad with the information in this report, but has not, as yet, received a reply.

<sup>233</sup> Schelli KFT. 2020. ‘Rólunk’. Available at: <http://schelli.hu/rolunk/>. Accessed 15 June 2020. In email correspondence from Schelli to the Omega Research Foundation (received 26 June 2020), the company confirmed that it has never had an international sale, and therefore, has not exported any equipment from Hungary.

<sup>234</sup> Schelli KFT. 2020. ‘SPARK – Elektromos sokkoló pisztoly.’ Available at: <http://schelli.hu/termek/spark-elektromos-sokkolo-pisztoly/>. Accessed 15 June 2020.

<sup>235</sup> See Condor Non-Lethal Technologies. 2020 Spark DSKK 700, Non lethal platforms, Products, Available at: <https://www.condornaletal.com.br/produtos.php>. Accessed 19 June 2020.

<sup>236</sup> EU, Anti-Torture Regulation. 2019. op.cit., Annex III, Article 2.1.



authorisations where such goods “*might be used for torture or other [ill-treatment]*”<sup>237</sup> The EU Anti-Torture Regulation does not, however, require EU Member States to regulate the promotion of such goods, control the import of such goods, or require EU Member States to control the transfer of such goods between EU Member States.

**Recommendations:**

**Direct contact electric shock weapons and devices including stun guns, shock batons, shock shields, and stun gloves intended for law enforcement, should be added to Annex II of the EU Anti-Torture Regulation, and their promotion and trade (import, export, and transit) be prohibited.**

**Projectile electric shock weapons and devices, intended for law enforcement, that incorporate direct contact capabilities, should have such capabilities permanently disabled. Where this is not possible, such weapons, where intended for law enforcement, should be added to Annex II of the EU Anti-Torture Regulation and their promotion and trade prohibited.**

**Projectile electric shock weapons, intended for law enforcement, which do not incorporate direct contact capability, or that have such capability permanently disabled, should be retained in Annex III and their trade controlled.**

### [3.2.3. Prisoner hoods and blindfolds](#)

International and regional human rights bodies have repeatedly documented the use of hooding and blindfolding as part of a process of ill-treatment or torture conducted by law enforcement officials. The UN Committee against Torture, for instance, has stated that blindfolding can constitute torture or other ill-treatment.<sup>238</sup> The former UN Special Rapporteur on Torture has also noted that “*the practice of blindfolding and hooding often makes the prosecution of torture virtually impossible, as victims are rendered incapable of identifying their torturers*” and recommended that “*blindfolding and hooding should be forbidden.*”<sup>239</sup> The European Court of Human Rights has determined that blindfolding a prisoner constitutes cruel or inhuman treatment when used in combination with other interrogation or detention methods,<sup>240</sup> and can constitute torture when used with other techniques.<sup>241</sup>

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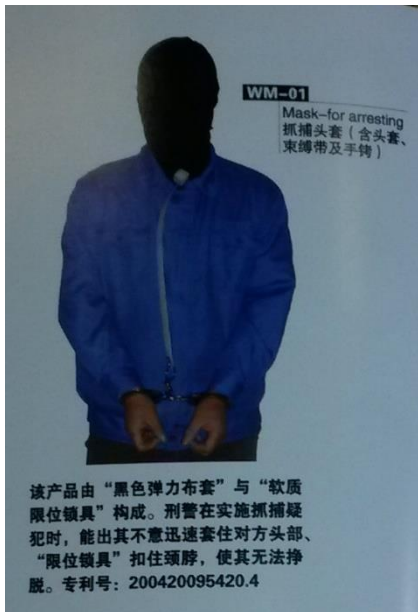
<sup>237</sup> EU, Anti-Torture Regulation (2019) op.cit., Article 6.

<sup>238</sup> UN, Committee Against Torture, Concluding observations of the Committee against Torture: Israel, 5 September 1997, A/52/44; UN, Committee Against Torture, Report on Mexico produced by the Committee under article 20 of the convention, and reply from the government of Mexico. CAT/C/75 (2003), 26 May 2003.

<sup>239</sup> UN, Commission on Human Rights, Report of the special rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights Resolution 2001/62. E/CN.4/2002/76, 27 December 2001.

<sup>240</sup> Ireland v. United Kingdom, 25 Eur. H.R. Rep. (ser. A) (1978); Ocalan v. Turkey, 37 Eur. Ct. H.R. 238, 222 (2003). [As cited in IRCT, Statement on hooding, International Forensic Group, *Torture*, volume 21, 3 November 2011].

<sup>241</sup> Aksoy v. Turkey, 1996-VI Eur. Ct. H.R. 2260 (1996); Aydin v. Turkey, 1997-VI Eur. H.R. Rep. 1866 (1997). [As cited in IRCT (2011) op.cit].



**“Mask for arresting”**: image taken from promotional material distributed by Chinese company China Xinxing Import & Export Corp. at Eurosatory 2016, Paris, France, © China Xinxing Import & Export Corp.

The CPT has regularly highlighted its concerns regarding specific cases of blindfolding discovered in individual CoE countries. Its 2015 Standards document, for example, states that *“from the information gathered over the years, it is clear ...that in many if not most cases, persons are blindfolded in order to prevent them from being able to identify law enforcement officials who inflict ill-treatment upon them.”*<sup>242</sup> Furthermore, the CPT considered, *“even in cases when no physical ill-treatment occurs, to blindfold a person in custody - and in particular someone undergoing questioning - is a form of oppressive conduct, the effect of which on the person concerned will frequently amount to psychological ill-treatment.”* The CPT has consequently recommended that *“the blindfolding of persons who are in police custody be expressly prohibited.”*<sup>243</sup> This CPT policy recommending the prohibition of blindfolding is included in The European Convention on Human Rights and Policing, a handbook developed in the framework of a joint programme between the European Union and the Council of Europe.<sup>244</sup>

[Manufacture, promotion and/or transfer of blindfolds or hoods for law enforcement](#)

During the 2015-2019 period, the Omega Research Foundation found no evidence of the manufacture or promotion by EU companies of hoods or blindfolds specifically intended for law enforcement purposes. The Omega Research Foundation does, however, have evidence of the promotion, on at least one occasion, of such devices at an EU arms and security exhibition by a non-EU company during this period. At Eurosatory 2016, held in Paris, France in June 2016, Chinese company China Xinxing Import & Export Corp.<sup>245</sup> promoted the *“WM-01 Mask – for arresting.”* This device consists of a cloth hood (designed to completely block vision by covering the entire prisoner’s head including nose and mouth), which is attached to metal handcuffs. In addition to concerns about the risk of asphyxiation, such systems restrict the prisoner’s movements and may increase the risk of neck or other injury, for example due to falling.

<sup>242</sup> CPT, CPT Standards. 2015. op.cit., paragraph 38.

<sup>243</sup> CPT, CPT Standards. 2015. op.cit., paragraph 38.

<sup>244</sup> Murdoch, J.& Roche, R. European Convention on Human Rights and Policing, A handbook for police officers and other law enforcement officials, CoE Publishing, December 2013 p. 84.

<sup>245</sup> The Omega Research Foundation contacted China Xinxing Import & Export Corp. with the information in this report, but has not, as yet, received a reply.

### Current EU trade measures

The EU Anti-Torture Regulation controls the EU export of “*Spit hoods: hoods, including hoods made of netting, comprising a cover of the mouth which prevents spitting*”.<sup>246</sup> Despite this, the Regulation does not currently prohibit or even control the EU trade in law enforcement blindfolds or hoods that completely block a prisoner’s vision.

**Recommendation: Blindfolds and related restraint systems that are designed to block the vision of a human being (including prisoner hoods) intended for law enforcement purposes, should be added to Annex II of the EU Anti-Torture Regulation, and their promotion and trade prohibited. Spit guards and spit masks should be added to existing controls on spit hoods, to reflect the nature of goods on the marketplace.** In light of the COVID-19 pandemic,<sup>247</sup> it is vital that the Regulation explicitly address all such restraints.

### 3.2.4. Restraint chairs, restraint beds and restraint boards

A restraint chair usually consists of a metal-framed chair onto which individuals are held by means of straps or restraints at points including the wrist, elbow, shoulder, chest, waist, thigh, or ankle. Similarly, a restraint board (or bed) consists of a board (or bed) on which an individual is held by means of a multiplicity of restraints. Whilst the restraint bed is normally fixed, a restraint board is designed to enable the restrained individual to be carried, stretcher-like.

The Omega Research Foundation recognises that the employment of specialist restraining devices – including chairs, beds, or boards – may be justified in specific limited medical contexts. In these instances, such devices should be specially designed for medical use and only employ fabric straps. They should be used only for short periods, and solely by trained medical personnel to prevent agitated patients from harming themselves or others, provided adequate safeguards are in place to prevent inappropriate use. Certain restraint devices have, however, been employed outside such limited medical contexts by non-medical personnel, including law enforcement or correctional officials, to enforce compliance from disobedient prisoners or detainees. The use of these restraint devices in non-medical contexts by law enforcement or correctional officials poses a heightened risk of abuse, including torture and other ill-treatment, particularly if the subject is left restrained and/or unattended for prolonged periods, or whilst under influence of drugs or alcohol. If additional force is used on the restrained person, if, for instance, pepper spray or electric shock devices are used, this could amount to torture.

In 2000, the United Nations Committee against Torture recommended to the US that they, “*Abolish ...restraint chairs as methods of restraining those in custody. Their use almost invariably leads to breaches of article 16 of the Convention [the prohibition against cruel, inhuman or degrading treatment]*.”<sup>248</sup> In addition, the CPT (and certain National Preventative Mechanisms) have recorded the presence and inappropriate use of restraint beds in prisons in certain European countries and have

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<sup>246</sup> EU Anti-Torture Regulation (2019) op.cit. Annex III, Article 1.3.

<sup>247</sup> Police forces in some States have increased or changed their use of spit hoods, in response to the pandemic. See, for example:

O’Neill, J. 2020. ‘Coronavirus: Amnesty says police spit hoods offer ‘no protection’. *The BBC*. 24 June 2020. Accessed 28 July 2020. Available at: <https://www.bbc.co.uk/news/uk-northern-ireland-53155638>.

Gallagher, C. 2020. ‘Covid-19: Large spike in use of spit hoods by gardá in past week’. *The Irish Times*. 12 May 2020. Accessed 28 July 2020. Available at: <https://www.irishtimes.com/news/crime-and-law/covid-19-large-spike-in-use-of-spit-hoods-by-garda%C3%AD-in-past-week-1.4251787>.

<sup>248</sup> United Nations, Conclusions and Recommendations of the Committee against Torture: United States of America. 15/05/2000. CAT/C/24/6. (Concluding Observations/Comments), 24th Session, 1-9 May 2000.

recommended that the relevant State authorities “put a definitive end to the use of restraint beds in non-medical settings”.<sup>249</sup>



Image of a metal “Inquest Chair” taken from marketing material distributed by China Xinxing Import & Export Corp. (China) at Eurosatory 2016 in June 2016 (right), © China Xinxing Import & Export Corp.



Image of a restraint chair with fabric straps, manufactured by a U.S. company, Safety Restraint Chair, Inc., and promoted on their website (left), © Safety Restraint, Inc.

### Promotion and/or transfer of restraint chairs, beds or boards

There do not appear to be any EU companies that have manufactured restraint chairs, shackle boards, or shackle beds during the 2015-2019 period. There are indications, however, that restraint chairs were previously imported into the EU and promoted by at least one EU company. According to the US-based manufacturer, Safety Restraint Chair, Inc.,<sup>250</sup> its “restraint chair has been sold across the U.S., in Canada, and internationally in countries like Australia, New Zealand, the Netherlands, and South Korea.” The restraint chair manufactured by this company was previously promoted by De Ridder Products<sup>251</sup>, which has offices in Belgium, France, Germany, and the Netherlands, as highlighted in a previous Amnesty International and Omega Research Foundation report.<sup>252</sup> On 29 April 2015, in response to an information request from Amnesty International and the Omega Research Foundation, De Ridder Products stated, “After reading your report we have decided to delete the mentioned chair out of our assortment and we have also removed it from our website. After taking everything in consideration we come to the conclusion that this product does not match our vision on safety for the prisoners when used wrongly.”<sup>253</sup>

<sup>249</sup> See for example: CPT, CPT/Inf (2019) 1 Report to the Norwegian Government on the visit to Norway carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 28 May to 5 June 2018, 17 January 2019; Norwegian Parliamentary Ombudsman (National Preventive Mechanism), Use of Restraint Beds in Norwegian Prisons, Thematic Report 2020, 14 May 2020.

<sup>250</sup> The Omega Research Foundation contacted Safety Restraint Chair, Inc with the information in this report, but has not, as yet, received a reply.

<sup>251</sup> The Omega Research Foundation contacted De Ridder Products with the information in this report, but has not, as yet, received a reply beyond the correspondence received in 2015.

<sup>252</sup> De Ridder Products. 2015. Accessed 13 February 2015. Available at:

[http://www.deridderproducts.com/index.php?route=product/product&product\\_id=1336](http://www.deridderproducts.com/index.php?route=product/product&product_id=1336). See Amnesty International and Omega Research Foundation. 2015. *Grasping the Nettle: Ending Europe’s Trade in Execution and Torture Technology*. As stated in its response to Amnesty International and the Omega Research Foundation, De Ridder Products subsequently removed all details of the safety restraint chair from its website.

<sup>253</sup> Email correspondence from representative of De Ridder Products, 29 April 2015.

Amnesty International and the Omega Research Foundation have uncovered evidence of the promotion of restraint chairs by non-EU companies at arms and security fairs and exhibitions in the EU. For example, at Eurosatory 2016 held in Paris, in June 2016, China Xinxing Import & Export Corp. distributed product catalogues that marketed its metal *“Inquest Chair”*, incorporating metal rings enabling prisoners to be attached with handcuffs and/or leg-cuffs.

### Current EU trade measures

Since December 2016, the revised EU Anti-Torture Regulation has prohibited the promotion and trade in *“restraint chairs”*<sup>254</sup> and *“shackle boards and shackle beds”*<sup>255</sup> from, into, or through the EU. In the Regulation, the goods covered were all described as being *“fitted with shackles or other devices to restrain a human being”*<sup>256</sup>. The EU Anti-Torture Regulation, does, however, specifically exempt restraint chairs, boards, or beds *“only fitted with straps or belts”* from such prohibitions.<sup>257</sup> Consequently, although the EU Anti-Torture Regulation prohibitions cover restraint chairs, boards, and beds employing metal restraints, the Regulation does not prohibit, or even control, the trade into or from the EU of the most common and widely employed types of restraint chair, bed, and boards, i.e. those employing leather, fabric, or other non-metallic restraints.

**Recommendation: The promotion and trade of all restraint chairs, beds, or boards (whether employing metallic or non-metallic restraints) intended for law enforcement purposes should be prohibited, and such goods should be placed on Annex II of the Regulation. Stringent controls on the trade and use of restraint chairs, beds, and boards utilising fabric straps, should be introduced to ensure they are only employed by trained health professionals solely for medical purposes. Consequently, such devices should be placed on Annex III of the Regulation.**

### 3.3. Equipment that should be controlled under the EU Anti-Torture Regulation

#### 3.3.1. Handcuffs

Standard handcuffs consist of two wrist cuffs, adjustable by a ratchet, joined together by a short chain that allows a limited degree of movement. Other types, including hinged and rigid handcuffs (those that are joined by a rigid bar, rather than a chain), allow less movement than standard handcuffs. Standard handcuffs are normally either single-locking handcuffs, which allow progressive tightening through the ratchet, or double-locking handcuffs, which are designed to prevent over-tightening. Although all handcuffs can be used abusively, rigid and single-locking handcuffs pose a greater risk of injury and abuse than other types.

Standard handcuffs can have a legitimate law enforcement use, provided that such use is strictly in line with regional and international standards, including the Nelson Mandela Rules. For example, if employed in compliance with human rights standards, such handcuffs could be used to stop prisoners harming themselves or others, and to prevent escape when being moved. They should be used in a manner that is not painful, only when absolutely necessary for a legitimate purpose, proportionately to the danger posed, and should only be applied for the minimum time necessary.

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<sup>254</sup> EU Anti-Torture Regulation. 2019. op.cit. Annex II, Article 2.5

<sup>255</sup> EU Anti-Torture Regulation. 2019. op.cit. Annex II, Article 2.6

<sup>256</sup> EU Anti-Torture Regulation. 2019. op.cit. Annex II, Articles 2.5 & 2.6

<sup>257</sup> EU Anti-Torture Regulation. 2019. op.cit. Annex II, Articles 2.5 & 2.6

## Misuse of handcuffs around the world – illustrative cases

UN and regional human rights monitors, as well as non-governmental human rights organisations, have documented the frequent misuse of handcuffs in all regions of the world, some examples of these cases are discussed below. In many instances, handcuffs are used to increase the level of suffering caused to individuals already under control. This may be through excessive tightening, attachment to fixed objects, employment in suspension of prisoners, or to place and maintain prisoners in stress positions. In other instances, they are used in conjunction with other means of force, including hand-held batons or pepper spray, for instance. Such use could amount to ill-treatment or torture.

### *Bosnia and Herzegovina*

In a 2016 report, the CPT documented alleged misuse of handcuffs with excessive force against individuals, either during arrest, or while they were held in detention at police stations or in prison.<sup>258</sup> A prisoner in Mostar Prison alleged, in late August 2015, *“he had been handcuffed by prison officers behind his back with his wrists hyperflexed, ankle-cuffed with a walking chain and placed in an empty cell on the second floor for two days; during this time, he did not receive food and was not allowed to comply with the needs of nature.”* Following examination of the prisoner on 7 October 2015, the CPT delegation’s doctor concluded that the injuries were *“compatible with the allegation.”*<sup>259</sup>

### *Chile*

Following large protests in Chile in November 2019, Human Rights Watch documented cases of abusive use of handcuffs. These included the case of 17-year-old Jaime Guevara (pseudonym), who was detained by police, who *“handcuffed one of his hands to his motorcycle, resulting in a burn on his hand, and drove away, forcing Guevara to run after the motorcycle”*.<sup>260</sup>

### *Iran*

In recent years, Amnesty International has highlighted the frequent excessive and unnecessary restraint of political prisoners receiving medical care in Iranian hospitals. On 20 April, 2016, Omid Kokabee, imprisoned for his refusal to work on military projects in Iran, underwent surgery to remove his kidney, after he was diagnosed with advanced kidney cancer. In the two and a half weeks prior to his surgery, Omid Kokabee was shackled by his hands and arms to his hospital bed, despite repeated objections from his doctors. The authorities refused to remove the restraints until after his surgery, and only when a picture of Omid Kokabee chained to his hospital bed went viral, triggering a global wave of outrage and sympathy.<sup>261</sup>

### *Nigeria*

Following visits across 2018 and 2019 to facilities across Nigeria, including hospitals and rehabilitation centres, Human Rights Watch reported the use of various restraints, including handcuffs, on patients with mental health conditions.<sup>262</sup>

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<sup>258</sup> CPT. 5 July 2016. op.cit., paragraphs 13, (i) – (iv).

<sup>259</sup> CPT. 5 July 2016. op.cit., paragraph 38.

<sup>260</sup> Human Rights Watch. 2019. *Chile: Police Reforms Needed in the Wake of Protests – Excessive Force Against Demonstrators, Bystanders; Serious Abuse in Detention*. 26 November 2019. Accessed 20 April 2020. Available at <https://www.hrw.org/news/2019/11/26/chile-police-reforms-needed-wake-protests>.

<sup>261</sup> Amnesty International, Health taken hostage: Cruel denial of medical care in Iran’s prisons, 18 July 2016.

<sup>262</sup> Human Rights Watch. 2019. *Nigeria: People With Mental Health Conditions Chained, Abused – Ban Chaining; Provide Mental Health Services*. 11 November 2019. Accessed 20 April 2020. Available at: <https://www.hrw.org/news/2019/11/11/nigeria-people-mental-health-conditions-chained-abused>.

## Tunisia

Amnesty International reports from 2016 cite prisoner testimonies alleging various misuse of handcuffs, including reports that some detainees in Tunisian police custody “were subjected to electric shocks, including on the genitals, or a stress position known as the “roast chicken” where their hands and feet are cuffed to a stick”.<sup>263</sup>

## Ukraine

Following a mission in 2017, the CPT reported, “In different regions, the delegation once again received a number of allegations from detained persons that they had been held in local police stations in the offices of operational police officers, on a stool or chair, whilst being handcuffed to fixed objects and without being offered anything to eat or drink, for periods ranging from a few hours to three days.”<sup>264</sup> In 2019, the UN Special Rapporteur on Torture reported that “several allegations were also received of excessive use of force at the time of or immediately following apprehension [by police], including kicks and truncheon blows after the apprehended person had been placed face down on the ground and handcuffed, of unduly tight handcuffing during transportation.”<sup>265</sup>

### Manufacture, promotion and transfer of standard handcuffs

The Omega Research Foundation has identified companies throughout the EU that have manufactured and/or promoted standard handcuffs for law enforcement purposes during the period 2015 to 2019. These companies have been based in Member States including Austria, Belgium, Bulgaria, Cyprus, Czechia, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Netherlands, Poland, Romania, Slovakia, Spain, Sweden, and the UK.<sup>266</sup> These include companies that claim to have transferred their products to law enforcement officials throughout the world. For example, a Spanish company, Larranaga Y Elorza S.A. [Alcyon]<sup>267</sup>, which manufactures the Alcyon brand of handcuffs and restraints, claims on its website that it has references from 90 (unnamed) countries, and that its “main law enforcement customers worldwide” include those of 69 named countries.<sup>268</sup> In addition to EU companies, standard handcuffs are regularly promoted by a number of non-EU-based companies at arms and security equipment trade fairs and exhibitions held throughout the EU.

### Regulation of trade in standard handcuffs

The Omega Research Foundation recognises that standard handcuffs are a potentially legitimate tool of restraint for law enforcement and correctional officials, provided their use is in strict conformity with international standards. Correspondingly, the trade (as well as the use) of such devices needs to be strictly regulated to ensure that they are not transferred to correctional or law enforcement end users who will misuse them for torture or other ill-treatment. Although there is very limited

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<sup>263</sup> Amnesty International. 2017. ‘We want an end to the fear’: Abuses under Tunisia’s state of emergency. P27. Accessed 20 April 2020. Available at: <https://www.amnesty.org/download/Documents/MDE3049112017ENGLISH.PDF>.

See also:

Amnesty International UK. 2016. *Press release – Tunisia: new evidence of torture five years on from ‘Jasmine Revolution’*. 14 January 2016. Accessed 20 April 2020. Available at: <https://www.amnesty.org.uk/press-releases/tunisia-new-evidence-torture-five-years-jasmine-revolution>.

<sup>264</sup> CPT, Report to the Ukrainian Government carried out by the CPT from 8 to 21 December 2017, 6 September 2018.

<sup>265</sup> UN, Human Rights Council, Visit to Ukraine: Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/ 40/59/Add.3, 17 January 2019.

<sup>266</sup> Details of relevant EU companies and marketing materials on file with Omega Research Foundation.

<sup>267</sup> The Omega Research Foundation contacted Larranaga Y Elorza S.A. [Alcyon] with the information in this report, but has not, as yet, received a reply.

<sup>268</sup> Larranaga Y Elorza S.A., 2020. *Alcyon references*. Accessed 16 April 2020. Available at: <http://www.alcyon.es/en/references/>.

information currently available concerning the regulation of the trade in such devices, certain States have introduced national controls.<sup>269</sup> The US, for example, regulates the trade in handcuffs under the US Export Administration Regulations. Its Commerce Control List includes handcuffs under Export Control Classification Number 0A982 *Law enforcement restraint devices and “specially designed” “parts,” “components” and “accessories,”* and a licence is required to export these “crime control” items, to all destinations except Canada.<sup>270</sup>

At present, EU Member States do not collectively control the trade of standard handcuffs for correctional or law enforcement purposes through the EU Anti-Torture Regulation. Nonetheless, certain EU Member States do have national controls. For example, under Royal Decree 679/2014 of 1 August 2014 “*establishing the control Regulation on external trade in defence material, other material and dual-use items and technologies*”, Spain controls the export of standard handcuffs, requiring prospective exporters to obtain a licence to export these restraint devices.<sup>271</sup> Spain provides some information on these exports in its national reports of Defence and Dual-Use Material, available on the Ministry of Industry, Commerce and Tourism website.<sup>272</sup> From these reports, it is evident that Spain undertakes to scrutinise, to some degree, the licences issued. In March 2014, for example, the Spanish Government suspended 15 licences for the export of certain types of law enforcement equipment, including “*chrome handcuffs with ratchet closure*” to Venezuela due to the “*situation of internal instability and risk of deviation of use*”.<sup>273</sup> In April 2016, the Spanish authorities informed the Omega Research Foundation that they had not approved any subsequent requests “*for the export of products which could be used in internal repression*”.<sup>274</sup>

**Recommendation: ‘Standard handcuffs’ should be treated in the same manner as other law enforcement devices covered by the EU Anti-Torture Regulation whose use may be legitimate if used appropriately and in accordance with international standards, but which have also regularly been misused for torture and other ill-treatment. We recommend that ‘standard handcuffs’ are added to Annex III and their trade controlled.**

### 3.3.2. Hand held kinetic impact devices

Hand-held kinetic impact weapons (also known as ‘striking weapons’) include batons and other clubs. They are usually made of rubber, wood, plastic, or metal, and can be short or long (20cm – 2m), telescopic, collapsible, or side-handled. They are one of the most common ‘less lethal’ weapons with which law enforcement officials are equipped. Hand-held kinetic impact weapons are used by law enforcement officials to strike a subject to cause physical pain, or to threaten physical pain in order to

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<sup>269</sup> See for example Australian export controls which regulate export of certain “*paramilitary equipment*” which includes “(c) *handcuffs, leg-irons and other devices used for restraining prisoners*”, as well as “*parts and accessories designed or adapted for use in, or with, [this] equipment*”, Australian Government, Federal Register of Legislation, Customs (Prohibited Exports) Regulations 1958, <https://www.legislation.gov.au/Details/F2020C00056> Accessed 17 April 2020.

<sup>270</sup> See: US Export Administration Regulations, Bureau of Industry and Security, 9 March 9,2020, <https://www.bis.doc.gov/index.php/documents/regulations-docs/2330-ccl0-to-9-10-24-18/file> Accessed 17 April 2020.

<sup>271</sup> Spain, Annex II.2 of Royal Decree 679/2014 of 1 August 2014 establishing the control Regulation on external trade in defence material, other material and dual-use items and technologies.

<sup>272</sup> Secretaría de Estado de Comercio, Ministerio de Industria, Comercio y Turismo. 2020. *Defence and Dual-Use Material*. Gobierno de España.. Available at: <http://www.comercio.mineco.gob.es/en/comercio-exterior/informacion-sectorial/material-de-defensa-y-de-doble-uso/pages/publicaciones-mddu.aspx> Accessed 17 April, 2020.

<sup>273</sup> Spanish Secretary of State for Trade, *Spanish Statistics on the Export of Defence Material, Other Material and Dual Use Items and Technologies, 2014*, Annex II, p. 74; Correspondence to the Omega Research Foundation from an official from the Directorate General for International Trade and Investments, Secretariat of State for Trade, Ministry of Economy and Competitiveness, 9 February 2016.

<sup>274</sup> Correspondence to the Omega Research Foundation from an official from the Directorate General for International Trade and Investments, Secretariat of State for Trade, Spanish Ministry of Economy and Competitiveness, 9 February 2016.



force a subject to comply or to deter them from an action. They can also be used defensively by law enforcement officials, including to protect themselves from blows from assailants.

Hand-held kinetic impact weapons are widely employed by law enforcement officials, notably in public order policing, as well as in places of detention. If employed in conformity with international human rights standards and use of force guidelines, certain types of hand-held kinetic impact weapons can have a legitimate role in law enforcement. Human rights organisations have, however, regularly documented their misuse to inflict unnecessary or excessive force through beating. In some instances, this has included their employment in ill-treatment and torture, which has, in certain cases, resulted in serious injury or death.

### [Misuse of hand-held kinetic impact weapons around the world – illustrative cases](#)

#### [Azerbaijan](#)

Following its 2017 mission, the CPT delegation reported numerous cases of the misuse of truncheons in torture and ill-treatment places of detention in Azerbaijan. Among the cases highlighted was that of Mr A. E., interviewed by the delegation at Zabrat Pre-trial Detention Facility on 24 October 2017, who alleged having been struck on his head with truncheons upon arrest in the port of the city of Lenkoran on 10 October 2017. According to the CPT *“He was then taken to Police Station No. 1 in Lenkoran and reportedly punched, kicked and struck with truncheons while he was handcuffed behind his back. He stated that he had been thrown on the ground and struck approximately 50 times with truncheons on the soles of his feet (“falaka”) and over his back, as a result of which he had lost consciousness. The purpose of the torture was reportedly to make him confess to a series of additional criminal offences. He told the delegation that he still suffered from constant headaches and impaired vision in his right eye.”*<sup>275</sup>

#### [Burundi](#)

Various human rights bodies have recorded the misuse of hand-held kinetic impact weapons in Burundi. Amnesty International documented various cases occurring in 2015, including the case of a prisoner who alleged police *“made us lie on the ground, with our arms stretched out in front of us and with our hands handcuffed. Policemen dressed in full blue uniforms beat the boy and myself with their batons. They beat us on our back, buttocks and feet for 20 minutes. They were six policemen and they took turns. I had problems walking for a week. I couldn’t put my shoes on, because my feet were so swollen. Even putting my feet on the ground was difficult”*.<sup>276</sup> In one case from May 2017, a man reported *“he was held in a tiny unlit room with three others [and] repeatedly beaten with batons”*.<sup>277</sup> The 2019 Report of the UN Human Rights Council Commission of Inquiry on Burundi also documented cases where *“victims were kicked or beaten with sticks or batons on different part of their bodies, while others were wounded with sharp objects”*.<sup>278</sup>

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<sup>275</sup> CPT, Report to the Azerbaijani Government on the visit to Azerbaijan carried out by the CPT from 23 to 30 October 2017, 18 July 2018.

<sup>276</sup> Amnesty International. 2015. *“Just tell me what to confess to”: Torture and other ill-treatment by Burundi’s police and intelligence service since April 2015*. AI Index: AFR 16/2298/2015. 24 August 2015. Accessed 21 April 2020. Available at: <https://www.amnesty.org/download/Documents/AFR1622982015ENGLISH.pdf>.

<sup>277</sup> Amnesty International. 2017. *Burundi: Thousands of refugees under pressure to return despite risk of torture and killings*. 29 September 2017. Accessed 21 April 2020. Available at: <https://www.amnesty.org/en/latest/news/2017/09/burundi-thousands-of-refugees-under-pressure-to-return-despite-risk-of-torture-and-killings/>.

<sup>278</sup> Human Rights Council. 2019. *Report of the Commission of Inquiry on Burundi*. A/HRC/42/49. 6 August 2019. P9.

## Tunisia

Amnesty International reports the May 2018 case of two Tunisian men, Aly and Youssef Bouzwida, who were caught by police, who *“immediately started beating them relentlessly with batons on their heads and all over their bodies, for around 20 minutes, until Youssef lost consciousness”*. In another case, Iheb alleges that, having been seized by police, *“at least six officers started beating him relentlessly on his head and all over his body with batons, shouting at him that he was insulting police, until he started bleeding from his head. Iheb said that he began feeling faint. He was put in a police van where officers handcuffed him and continued beating him”*.<sup>279</sup>

### Manufacture and promotion of hand-held kinetic impact weapons

The Omega Research Foundation has identified companies throughout the EU that, during the 2015 to 2019 period, have manufactured and/or promoted hand held kinetic impact weapons for use by law enforcement throughout the world. These companies are based in Member States including Austria, Belgium, Bulgaria, Cyprus, Czechia, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Lithuania, Poland, Romania, Slovak Republic, Slovenia, Spain, Sweden, and the UK.<sup>280</sup> In addition, a wide range of hand-held kinetic impact weapons have been promoted by non-EU companies in arms and security equipment trade fairs held throughout the EU.

#### 3.3.3. Launched kinetic impact devices

Kinetic impact ammunition has a cartridge case similar to conventional ammunition, but propel a range of mainly non-metallic projectiles to the target. Such ammunition can contain single or multiple projectiles, such as balls, segments, blocks or cylinders of wood, plastic, or rubber. The wide range of weapons used to fire kinetic impact projectiles includes conventional small arms such as shotguns, pistols, and assault rifles. In addition, however, there are generic ‘less lethal’ launchers/grenade launchers, which can fire many different types of ammunition of the same calibre. Common calibres include 37/38mm, 40mm, 56mm, 12 gauge and 9mm.

Kinetic impact projectiles are designed to cause blunt trauma, not to penetrate the body. Despite this, they can cause serious and sometimes life-threatening injuries, including lacerations, broken bones, concussion, head injuries, and internal organ damage, and their use has resulted in many deaths. The risk of serious injury or death is significantly increased when kinetic impact projectiles are fired at close range or are aimed at sensitive parts of the body, including the head, chest, and abdomen. Many launched kinetic impact projectiles are inherently inaccurate, increasing the risk of serious injury or death. Moreover, multiple projectiles are inherently indiscriminate, with a high risk of uninvolved bystanders being hit, and those rounds that contain small pellets also pose a significant risk of severe eye injuries. UN and regional human rights monitors, as well as non-governmental human rights organisations, have documented the misuse of such devices in all regions of the world, in both custodial settings and in crowd control situations.

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<sup>279</sup> Amnesty International. 2019. *Tunisia: Where running from police can be deadly*. Accessed 21 April 2020. Available at: <https://www.amnesty.org/en/latest/campaigns/2019/04/tunisia-where-running-from-police-can-be-deadly/>.

<sup>280</sup> Details of relevant EU companies and marketing materials on file with Omega Research Foundation.

## Misuse of launched kinetic impact weapons around the world – illustrative cases.

### Myanmar

In 2017, Amnesty International raised concerns about police use of force at a protest in Myanmar, noting that “At least 10 people were injured after police fired rubber bullets at the crowd. Photographs taken by villagers and shared with Amnesty International show protestors left with welts and open wounds. At least one person suffered from a head wound”.<sup>281</sup> Reuters also documented the use of rubber bullets to disperse a 2019 protest, stating that it had received reports that “More than 10 people suffered minor injuries in the police effort to disperse the protest”, noting “Images posted on social media showed circular wounds on the faces and torsos of young men”.<sup>282</sup>

### South Africa

Persistent and widespread instances of injuries caused by police use of kinetic impact projectiles have been documented in South Africa. In one such case from September 2017, 14-year-old Ona Dubula was “was shot at by police officers at close range with rubber bullets in his face and ribs at an informal settlement in Hout Bay town, Western Cape province, during protests over fishing licences; the injuries left him with speaking difficulties”.<sup>283</sup> The incident received significant media coverage, and prompted an Independent Police Investigative Directorate investigation.<sup>284</sup>

### Venezuela

Widespread misuse of kinetic impact projectiles by Venezuelan authorities have been documented by human rights monitors. In 2017, for instance, Amnesty International reported that “security forces repressed protestors using tear gas and rubber bullets”.<sup>285</sup> Colombia-based organisation, Dejusticia, also documents the case of Rufo Chacón, who was shot by police using kinetic impact projectiles in July 2019. He was shot in the face at close range, and has been blinded.<sup>286</sup>

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<sup>281</sup> Amnesty International. 2017. *Myanmar: Investigate police use of force against protestors at troubled mine*. Index: ASA 16/5983/2017. 28 March 2017. Accessed 21 April 2020. Available at: <https://www.amnesty.org/download/Documents/ASA1659832017ENGLISH.PDF>.

<sup>282</sup> Aung, T. T. 2019. *Myanmar police use rubber bullets to break up protest*. Reuters. 12 February 2019. Accessed 21 April 2020. Available at: <https://www.reuters.com/article/us-myanmar-protests/myanmar-police-fire-rubber-bullets-tear-gas-to-scatter-ethnic-minority-protest-idUSKCN1Q10N0>.

<sup>283</sup> Amnesty International. 2018. *Amnesty International Report 2017/2018: The state of the world’s human rights – South Africa*. P333.

<sup>284</sup> Hyman, A. 2017. ‘The rules are clear: Police can’t shoot rubber bullets at point-blank range’. *Times Live*. 14 September 2017. Accessed 21 April 2020. Available at: <https://www.timeslive.co.za/news/south-africa/2017-09-14-the-rules-are-clear-police-cant-shoot-rubber-bullets-at-point-blank-range/>.

Furlong, A. 2017. ‘IPID to investigate shooting of teenage boy’. *Mail & Guardian*. 14 September 2017. Accessed 21 April 2020. Available at: <https://mg.co.za/article/2017-09-14-ipid-to-investigate-shooting-of-teenage-boy/>.

<sup>285</sup> Amnesty International. 2017. *Venezuela: Excessive use of force towards protestors exacerbates humanitarian crisis*. 7 April 2017. Accessed 21 April 2020. Available at: <https://www.amnesty.org/en/latest/news/2017/04/venezuela-uso-excesivo-de-la-fuerza-hacia-manifestantes-agrava-la-crisis-humanitaria/>.

<sup>286</sup> Monsalve, E. 2019. *From repression to migration: The case of Rufo Chacón*. Dejusticia. 20 November 2019. Accessed 21 April 2020. Available at: <https://www.dejusticia.org/en/column/from-repression-to-migration-the-case-of-rufo-chacon/>.

See also:

Polanco, A. 2019. *Venezuelan teen blinded by police rubber bullets at protest*. Reuters. 2 July 2019. Accessed 21 April 2020. Available at: <https://www.reuters.com/article/us-venezuela-politics-protest/venezuelan-teen-blinded-by-police-rubber-bullets-at-protest-idUSKCN1TX2BUJ>.

### Manufacture and promotion of launched kinetic impact weapons

The Omega Research Foundation has identified companies throughout the EU that, during the 2015 to 2019 period, have manufactured and/or promoted kinetic impact projectiles, such as plastic and rubber bullets, as well as associated launching devices for use by law enforcement officials throughout the world. These companies have been based in Member States including Belgium, Bulgaria, Cyprus, Czechia, France, Germany, Greece, Hungary, the Netherlands, Portugal, Romania, Spain, Sweden and the UK.<sup>287</sup> In addition to those manufactured by EU-based companies, a wide range of kinetic impact projectiles or launchers have been promoted by non-EU-based companies at arms and security equipment trade fairs and exhibitions held throughout the EU.

### Regulation of the trade in hand-held and launched kinetic impact devices

The Omega Research Foundation recognises that certain hand-held and weapon-launched kinetic impact devices are potentially legitimate tools for law enforcement and correctional officials, provided their use is in strict conformity with international standards. Correspondingly, the trade (as well as the use) of such devices needs to be strictly regulated to ensure that they are not transferred to correctional or law enforcement end users who will misuse them for torture or other ill-treatment, or will use them in an excessive or arbitrary manner.

### Launched kinetic impact devices and projectiles

The EU Anti-Torture Regulation does not currently control the export of any launched kinetic impact projectiles or associated delivery mechanisms. Nonetheless, EU Member States do collectively control the export of a range of firearms that can be employed to launch certain kinetic impact projectiles, through an alternative regional instrument. In December 2008, the EU Member States adopted a legally binding EU Council Common Position 2008/944/CFSP, *“defining common rules governing control of exports of military technology and equipment”*.<sup>288</sup> The Common Position requires that each Member State *“assess the export licence applications made to it for items on the EU Common Military List... on a case-by-case basis against the criteria of Article 2”*. Article 2, Criterion 2, regarding human rights and international humanitarian law, is of particular relevance. Under this Criterion, Member States shall *“deny an export licence if there is a clear risk that the military technology or equipment to be exported might be used for internal repression.”* This specifically includes *“torture and other cruel, inhuman and degrading treatment or punishment”* within its coverage.

The EU Common Military List, which established the range of items covered, included *“ML1: Smooth-bore weapons with a calibre of less than 20 mm, other arms and automatic weapons with a calibre of 12,7 mm (calibre 0,50 inches) or less”* and *“ML2: Smooth-bore weapons with a calibre of 20 mm or more, other weapons or armament with a calibre greater than 12,7 mm (calibre 0,50 inches), projectors specially designed or modified for military use”*, as well as accessories and specially designed components;<sup>289</sup> and ML3 related ammunition<sup>290</sup>. The EU Military List does not contain any specific reference to ‘less lethal’ projectiles under the ML3 ammunition category, or to ‘less lethal’ launchers under the ML1 or ML2 weapons categories. It is therefore unclear whether such goods are

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<sup>287</sup> Details of relevant EU companies and marketing materials on file with Omega Research Foundation.

<sup>288</sup> European Union, EU Common Position 2008/944/CFSP, of 8 December 2008 defining common rules governing control of exports of military technology and equipment, Official Journal of the European Union L 335/99, 13 December 2008.

<sup>289</sup> European Union, Common Military List of the European Union, adopted by the Council on 17 February 2020 (equipment covered by Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment) (CFSP) (2020/C 85/01), Official Journal of the European Union, C85-1, 13 March 2020, ML1&ML2 [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020XG0313\(07\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020XG0313(07)&from=EN) (accessed 17 April 2020).

<sup>290</sup> European Union, Common Military List of the European Union. 13 March 2020. op.cit, ML3.

encompassed by the EU Military List and the Common Position, and if so, which specific types are thereby controlled.

**Recommendation: The European Commission and EU Member States should clarify whether the export of ammunition containing kinetic impact projectiles (such as plastic bullets, rubber bullets and similar ‘less lethal’ ammunition) and associated launchers is controlled by EU Council Common Position 2008/944/CFSP and the accompanying EU Military List. If so, the Commission should clarify which types of projectile and launcher are covered. If these projectiles and launchers are not covered by the Common Position/EU Military List, the Commission should bring forward recommendations for ensuring control of these goods, either through incorporation into the Common Position/EU Military List or through incorporation into the EU Anti-Torture Regulation.**

### *Hand-held kinetic impact devices*

Although there is very limited information currently available concerning the regulation of the trade in hand-held kinetic impact devices, certain non-EU States have introduced national controls.<sup>291</sup> The United States, for instance, regulates the trade in certain hand-held kinetic devices under its Export Administration Regulations. The US Commerce Control List includes the category “0A978: Law enforcement striking weapons, including saps, police batons, side handle batons, tonfas, sjamboks, and whips”, and export licences are required to export such goods to all destinations other than Australia, India, Japan, New Zealand, and members of the North Atlantic Treaty Organization (NATO).<sup>292</sup> The US also categorises “spiked batons” as “0A983 ‘Specially designed’ implements of torture”, with a *de facto* prohibition on their transfer to any end user.<sup>293</sup>

At present, through the EU Anti-Torture Regulation, EU Member States prohibit the import, export, and transit of metal spiked batons, shields with metal spikes, and certain whips. There is currently no regulation, however, of potentially legitimate hand-held kinetic impact weapons such as police batons, side handle batons, and tonfas, under the EU Anti-Torture Regulation or through any other collective EU measure. Although information is limited, it appears that at present only one EU Member State, Hungary, has introduced controls regulating the trade in potentially legitimate kinetic impact weapons at the national level.<sup>294</sup>

**Recommendation: Certain hand-held kinetic impact devices should be treated in the same manner as other law enforcement devices covered by the EU Anti-Torture Regulation, i.e. whose use may be legitimate if used in accordance with international standards, but which have also regularly been misused for torture and other ill-treatment. We recommend that batons, side-handled batons, tonfas and other similar devices are added to Annex III and their trade controlled.**

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<sup>291</sup> See for example Australian export controls which regulate export of certain “paramilitary equipment” which includes, “(a) batons, clubs, riot sticks and similar devices of a kind used for law enforcement purposes; (e) whips”, as well as “parts and accessories designed or adapted for use in, or with, [this] equipment”, Australian Government, Federal Register of Legislation, Customs (Prohibited Exports) Regulations 1958, <https://www.legislation.gov.au/Details/F2020C00056> Accessed 17 April 2020.

<sup>292</sup> See: 0A978, US Export Administration Regulations, Bureau of Industry and Security, 9 March 9,2020, <https://www.bis.doc.gov/index.php/documents/regulations-docs/2330-ccl0-to-9-10-24-18/file> Accessed 17 April 2020.

<sup>293</sup> See: 0A983, US Export Administration Regulations, Bureau of Industry and Security, 9 March 9,2020, <https://www.bis.doc.gov/index.php/documents/regulations-docs/2330-ccl0-to-9-10-24-18/file> Accessed 17 April 2020.

<sup>294</sup> Government of Hungary, Annex I, 156/2017. (VI. 16.) Government Decree laying down detailed rules for the authorization of military activities and the certification of undertakings. For further discussion see: Section 5.3 of this report.

## Section 4: Activities of EU Nationals Abroad

### 4.1. Introduction

During the last formal review of the EU Anti-Torture Regulation, completed in 2016, one important area of recognised ‘unfinished business’ was whether the Regulation should be amended to control the activities of EU nationals and EU established companies acting in third countries, and how this could be achieved. Indeed, the current Review of the Regulation has been specifically tasked with “*assess[ing] the need to include the activities of Union nationals abroad*”. The following section explores three areas where the activities of EU established companies, EU nationals, or residents of an EU Member State, acting in third countries, should be assessed and potentially regulated:

- brokering (i.e. arranging and facilitating [e.g. through transportation] the transfer of equipment between third countries outside of the EU, where the items do not enter the EU customs territory) where such activities are conducted by EU entities outside the EU;
- promotion/marketing of relevant goods and services by EU entities outside the EU, or the facilitation of such marketing, for example, through the organisation of arms, security, and related exhibitions in third countries; and
- provision of technical assistance and training in the use of law enforcement equipment or techniques, by EU entities to military, security, or police forces, or to non-State actors such as private security companies, in third countries.

Approaches to regulating the activities of EU nationals abroad are explored by the Commission in the July 2020 Review Report. Although it acknowledges the difficulties of applying extra-territorial jurisdiction to such cases, the Commission states, “*In the case of particularly serious crimes that have been made subject to universal jurisdiction either by a multilateral treaty or under customary international law such as genocide, war crimes, crimes against humanity **and torture**, a State may exercise jurisdiction in respect of crimes irrespective of the location of the crime and irrespective of the nationality of the perpetrator or the victim.*”<sup>295</sup> [Emphasis added].

Despite the potential scope for extra-territorial legislation in this area given the universal prohibition on torture, and certain (now former) EU Member States (i.e. the UK) having introduced extra-territorial legislation to prohibit such activities, the Commission rejects further exploration of the legislative regulatory route. Instead, the Commission notes, “*non-legislative measures could be explored to deter certain inappropriate activities of EU nationals and EU-based companies operating abroad (such as promoting or marketing goods and services and providing technical assistance and training for an inappropriate or abusive use of law enforcement equipment). Such measures could include, for instance, measures for increased transparency and awareness raising or measures to promote effective compliance with the UN Guiding Principles on Business and Human Rights.*”<sup>296</sup> Non-legislative measures have a potential utility in informing and influencing certain actors, but such measures will be insufficient to constrain the activities of determined and unscrupulous actors. Consequently, the Omega Research Foundation believes that the European Commission, Council and Parliament should consider examining the specific nature of EU national and company engagement in the three distinct areas of brokering, promotion and provision of training/technical assistance in third countries with a view to developing targeted responses, potentially including extra-territorial legislation, where appropriate.

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<sup>295</sup> European Commission. 30 July 2020. op.cit.p.11.

<sup>296</sup> European Commission. 30 July 2020. op.cit.pp.19-20.

## 4.2. Brokering services

### 4.2.1 Brokering services outside the EU

Article 6 of the EU Anti-Torture Regulation prohibits an EU broker, acting within the Union, from supplying Annex II goods to any person, entity, or body in a third country, irrespective of the origin of the goods. Article 15 of the Regulation requires government authorisation for the provision of brokering services, by EU brokers acting within the Union, related to the supply of Annex III goods to third countries. Article 15 also permits an EU Member State to maintain a national prohibition on the supply of brokering services related to leg irons, gang chains, and portable electric shock devices.

The EU Anti-Torture Regulation does not currently prohibit brokering activities related to Annex II goods, nor control brokering activities related to Annex III goods, when conducted by EU brokers operating outside of the EU. Whilst no EU-wide measures exist, at least one (now former) EU Member State has introduced such controls. Under its national trade controls, the United Kingdom prohibits most brokering activities of a range of goods that could be used to conduct torture or other ill-treatment or the death penalty. As well as goods listed under Annex II of the EU Anti-Torture Regulation, it also includes certain goods covered under Annex III, notably, “*portable devices designed or modified for the purpose of riot control or self-protection by the administration of an electric shock (e.g., electric-shock batons, electric-shock shields, stun-guns and electric-shock dart-guns)*”, as well as “*leg-irons, gangchains, shackles and individual cuffs or shackle bracelets*”. These items are all designated by the UK as “*Category A*” goods, and assigned the highest levels of control, i.e. a *de facto* ban on all activities connected with the trade in such equipment.<sup>297</sup>

According to the latest UK guidance in this area,

*“For goods in category A, or where the activity is to an embargoed destination, you can not supply or deliver, agree to supply or deliver or do any activity that will promote the supply or delivery of category A goods. This includes:*

- *arranging, or agreeing to, the transfer, acquisition or disposal of goods*
- *general advertising and promotion (for example placing advertisements)*
- *arranging or providing freight or transport services*
- *finance, financial services, insurance or reinsurance services*
- *arranging or negotiating contracts or contract promotion activity*

*A ‘contract promotion activity’ means any act calculated to promote the arrangement or negotiation of a contract for the acquisition, disposal or movement of goods or any agreement to do such an act.*

*This applies in cases where you know or have reason to believe that such action or actions will, or even may, result in the removal of those goods from one third country to another third country.*

*Restrictions on Category A goods apply to any company or a person from within the UK (whether or not they are a UK person) or by any UK person operating overseas, whether directly or indirectly.”<sup>298</sup>*

**Recommendation: The Commission and EU Member States should undertake research into the prevalence and nature of relevant commercial brokering activity conducted by EU nationals or companies operating outside of the EU. There should also be a review undertaken of existing national and multilateral legislation and associated measures, introduced within and beyond the**

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<sup>297</sup> UK Government, Category A Goods, Schedule 1, The Export Control Order 2008, UK Statutory Instruments 2008 No. 3231

<sup>298</sup> UK Government, Guidance, Export controls: military goods, software and technology, Goods for which you cannot arrange sales or movement, Published 6 September 2019 & Last updated 16 April 2020, Export Control Joint Unit and Department for International Trade, <https://www.gov.uk/guidance/export-controls-military-goods-software-and-technology> Accessed 7 May 2020.

**EU, that attempts to regulate the activities of such brokers, on an extra-territorial basis, with a view to bringing forward options for extending Regulation controls on brokering in this area.<sup>299</sup>**

#### 4.2.2. Scope of brokering services

In addition to the temporal limitation discussed above, the range of brokering services coming under the scope of the Regulation is also limited to:

- (i) negotiation or arrangement of transactions for the purchase, sale or supply of relevant goods from a third country to another third country, or
- (ii) selling or buying of relevant goods located in a third country for their transfer to another third country.

The “sole provision” of “ancillary services” (i.e. transportation, financial, insurance, re-insurance, general advertising or promotion) is explicitly excluded from coverage under the Regulation. The exclusion of these services under the Regulation is in contrast to, for example, the UK national controls discussed above, which explicitly include all these services under their rubric of brokering.

The Omega Research Foundation believes the exclusion of such activities, notably the provision of transportation services, from the scope of the Regulation’s coverage undermines the effectiveness of the Regulation to prevent activities facilitating transfer of law enforcement equipment and other goods likely to be used for torture and ill-treatment. An October 2020 *Danwatch* article detailing a Danish transportation company’s shipment of direct control shock weapons to Sudan illustrates why such activities need to be controlled.<sup>300</sup>

#### Danish transportation case study

According to investigative journalists at Danwatch, on 29 May 2019, a container ship owned by Danish transportation company, Maersk, left the port of Shanghai, China, bound for Port Sudan, carrying 5,000 direct contact electric shock batons within its cargo. Although the cargo was identified and red-flagged, it was mistakenly loaded, and shipment from the port of Shanghai commenced. En route to Sudan, however, the shipping company discovered the true nature of its cargo. It subsequently informed the Danish authorities of its discovery. The 5,000 electric shock batons were never delivered to the intended purchaser – an un-named Sudanese company – instead, according to Maersk, they were subsequently “re-exported out of Sudan and disposed of legally”.<sup>301</sup> Despite its commendable actions to prevent completion of the transfer, Maersk was found to have violated national Danish

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<sup>299</sup> Such a review should analyse potentially relevant instruments beyond a strict anti-torture or arms control context. For example, the EU Anti-Trafficking Directive 2011/36/EU provides a precedent for addressing the activities of EU entities in third countries. The Directive states, for example, “(16) In order to ensure effective prosecution of international criminal groups whose centre of activity is in a Member State and which carry out trafficking in human beings in third countries, jurisdiction should be established over the offence of trafficking in human beings where the offender is a national of that Member State, and the offence is committed outside the territory of that Member State”. See: Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

<sup>300</sup> Houmann Mortensen, Nikolaj, and Charlotte Aagaard. 2020. ‘Mærsk får bøde for at sejle 5000 torturinstrumenter til Sudan’. *Danwatch*. 1 October 2020. Accessed 2 October 2020. Available at: <https://danwatch.dk/undersoegelse/maersk-faar-boede-for-at-sejle-5000-torturinstrumenter-til-sudan/>.

<sup>301</sup> Houmann Mortensen, Nikolaj, and Charlotte Aagaard. 2020. ‘Mærsk får bøde for at sejle 5000 torturinstrumenter til Sudan’. *Danwatch*. 1 October 2020. Accessed 2 October 2020. Available at: <https://danwatch.dk/undersoegelse/maersk-faar-boede-for-at-sejle-5000-torturinstrumenter-til-sudan/>.



law<sup>302</sup> by transporting this equipment, and received a 75,000kr fine.<sup>303</sup> Although the identities of the manufacturer/trader and the recipient/intended end user of the shock batons are unknown, the use of electric shock batons for torture and ill-treatment by the Sudanese police and military has been reported by the media and human rights organisations.<sup>304</sup> The *Danwatch* article highlighted the case of a British journalist and his Sudanese colleague tortured by Sudanese military employing shock batons.<sup>305</sup> The British journalist stated: “*It does not just hurt where the stick touches your body. It is a pain that explodes throughout the body. From the top of your head to your toes. It makes your teeth chatter*”.<sup>306</sup>

**Recommendation: The scope of brokering activities covered by the Regulation should be expanded to include the provision by EU nationals or EU-based companies of transportation services between third countries, prohibiting transportation of Annex II goods, and regulating transportation of Annex III goods.**

#### 4.3. Facilitating the promotion of goods outside the EU

##### 4.3.1. EU companies organising international trade fairs and exhibitions

Several EU-based companies regularly hold or facilitate arms and security equipment trade fairs and exhibitions, outside of the EU. Unlike fairs examined in Section 2.3, events held outside of the EU are not addressed by the EU Anti-Torture Regulation, which only covers “*exhibition[s] or fair[s] taking place in the Union*” (Article 8). During the 2015-2019 period, companies that promote law enforcement equipment prohibited or controlled under the Regulation, exhibited in at least 26 arms and security equipment trade fairs and exhibitions that had been organised by EU companies outside of the EU region. The following section discusses French and UK companies organising such fairs, as examples of this behaviour. The Omega Research Foundation does imply that these are the only companies undertaking this practice, nor that they have been engaged in any inappropriate activities, rather, these examples illustrate the involvement of EU companies in this area.

The spread of the French Milipol family of fairs is demonstrated by Milipol Qatar (Doha, held 29-31 October 2018), Milipol Asia-Pacific (held in Singapore, most recently 2-4 April 2019), and upcoming inaugural ‘Insiders by Milipol’ event (scheduled to have been held July 2020 in Bordeaux, France), as well as the Milipol Paris event. Comexposium, the French exhibition company that runs events for

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<sup>302</sup> Relevant laws:

BEK nr 533 af 01/05/2019. 2019. Bekendtgørelse om transport af våben mv. mellem andre lande end Danmark. (Executive Order on the transport of weapons, etc. between countries other than Denmark). Accessed 11 September 2020. Available at: <https://www.retsinformation.dk/eli/lta/2019/533>.

LBK nr 920 af 29/08/2019. 2019. Bekendtgørelse af lov om våben og eksplosivstoffer m.v. (Promulgation of the Act on Weapons and Explosives, etc.). Accessed 11 September 2020. Available at: <https://www.retsinformation.dk/eli/lta/2019/920>.

<sup>303</sup> Houmann Mortensen, Nikolaj, and Charlotte Aagaard. 2020. ‘Mærsk får bøde for at sejle 5000 torturinstrumenter til Sudan’. *Danwatch*. 1 October 2020. Accessed 2 October 2020. Available at: <https://danwatch.dk/undersogelse/maersk-faar-boede-for-at-sejle-5000-toturinstrumenter-til-sudan/>.

<sup>304</sup> See for example Amnesty International, “They descended on us like rain”: Justice for victims of protest crackdown in Sudan, AFR 54/1893/2020, 10 March 2020; Middle East Eye, Sudanese teacher was ‘raped and killed by special torture unit’, 14 February 2019.

<sup>305</sup> Houmann Mortensen, Nikolaj, and Charlotte Aagaard. 2020. ‘Mærsk får bøde for at sejle 5000 torturinstrumenter til Sudan’. *Danwatch*. 1 October 2020. Accessed 2 October 2020. Available at: <https://danwatch.dk/undersogelse/maersk-faar-boede-for-at-sejle-5000-toturinstrumenter-til-sudan/>.

<sup>306</sup> Cited in Houmann Mortensen, Nikolaj, and Charlotte Aagaard. 2020. ‘Mærsk får bøde for at sejle 5000 torturinstrumenter til Sudan’. *Danwatch*. 1 October 2020. Accessed 2 October 2020. Available at: <https://danwatch.dk/undersogelse/maersk-faar-boede-for-at-sejle-5000-toturinstrumenter-til-sudan/>.

CIVIPOL, describes the Milipol network of fairs as “the world’s leading international network of exhibitions dedicated to solutions, technologies and innovations for homeland security”.<sup>307</sup> Milipol Qatar is described as the “best gateway to the Middle East’s market”, and “an opportunity to meet the region’s main industry “players””.<sup>308</sup> Milipol events are bound by compliance policies, which, in part, reflect French obligations under the EU Anti-Torture Regulation, even though some of the fairs in question are held outside of the EU. The compliance policies from Milipol Qatar (2018) like Milipol Paris (19-22 November 2019), provide detailed descriptions of prohibited equipment, very similar to those outlined in the Regulation itself. CIVIPOL has informed Amnesty International France and the Omega Research Foundation that it is exploring opportunities for applying some of its ‘good practice’ compliance procedures from Milipol France to the events held in Qatar and Singapore.

The UK-based company that organises the DSEI exhibition in London, Clarion Defence & Security Limited, also operates internationally, organising arms and security fairs in Bahrain, Egypt, Japan, and Vietnam. The Bahrain International Defence Exhibition & Conference (BIDEC), for example, is held every two years (the inaugural event was held 16<sup>th</sup>-18<sup>th</sup> October 2017). As a consequence of its “close proximity to Saudi Arabia”, this fair was marketed as an opportunity for attendees to engage with senior military and industry leaders from the Middle East and North Africa region.<sup>309</sup> In another recent expansion, Clarion held the inaugural Egypt Defence Expo (EDEX), Egypt’s first ever international defence exhibition, on 3<sup>rd</sup>-5<sup>th</sup> December 2018 (next scheduled for 7<sup>th</sup>-10<sup>th</sup> December 2020). The exhibition included a “Security & Counter-Terrorism Zone”, with the fair’s website stating, “the Egyptian Government are looking to equip their forces with the right tools and training in order to secure the population and control the borders”.<sup>310</sup>

Clarion Defence & Security Limited has adopted compliance policies for each of its fairs outside of the EU, which provide prospective exhibitors with an overview of those goods that are prohibited at the fair. The policies used for BIDEC, DSEI Japan, EDEX, and VIDSE (held in Vietnam) all explicitly reference “[g]oods banned by the EU because of evidence of their use in torture”. Each compliance policy also notes, “[s]ervices in respect of the list of prohibited equipment are also prohibited”, which appears to invoke the aspects of EU Anti-Torture Regulation that refer to training, brokering, and procurement.<sup>311</sup> The compliance policy from EDEX 2020 is of particular note for the explicit acknowledgement of the extraterritorial reach of UK law over UK entities (this is indirectly invoked in other policies): “UK companies or UK nationals involved in the promotion of Category A goods [the UK Export Control Order 2008] may also face enforcement action from the relevant UK authorities”.<sup>312</sup>

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<sup>307</sup> Comexposium. 2019. *Milipol Network*. Available at: <https://www.milipolasiapacific.com/milipol-network>. Accessed 17 December 2019.

<sup>308</sup> Comexposium. 2019. *Why exhibit?*. Available at: <https://en.milipolqatar.com/Exhibiting/Why-exhibit>. Accessed 17 December 2019.

<sup>309</sup> Clarion Defence & Security Limited. 2019. *About BIDEC*. Available at: <https://www.bahraindefence.com/about-BIDEC>. Accessed 12 November 2019.

<sup>310</sup> Clarion Defence & Security Limited. 2018. *Security & Counter-Terrorism Zone launched at EDEX*. Available at <https://www.egyptdefenceexpo.com/news/security--counter-terrorism-zone-launched-at-edex>. Accessed 16 December 2019.

<sup>311</sup> See for example Clarion Defence & Security Limited. 2019. *EDEX 2020. Compliance & Eligibility to Exhibit*. Available at: <https://www.egyptdefenceexpo.com/compliance-and-eligibility-to-exhibit>. Accessed 16 December 2019.

<sup>312</sup> Clarion Defence & Security Limited. 2019. *EDEX 2020. Compliance & Eligibility to Exhibit*. Available at: <https://www.egyptdefenceexpo.com/compliance-and-eligibility-to-exhibit>. Accessed 16 December 2019.

#### 4.3.2. Pavilions at fairs outside the EU

In some instances, EU-based companies may not be organising arms and security fairs outside of the EU, but instead organising and facilitating the involvement of EU-based companies exhibiting at international fairs. This largely involves the operation of national Member State pavilions. For example, in addition to the fairs it organises, both within and beyond France, a French exhibition company, COGES Events<sup>313</sup>, also provides assistance to French national pavilions at other fairs. As noted on its website, COGES offers “*French companies [support] to exhibit on the French pavilions*” at international exhibitions.<sup>314</sup> German fair organiser, NürnbergMesse, likewise organises national pavilions (as well as those representing regions within Germany) at international fairs.<sup>315</sup>

#### 4.3.3 EU Companies promoting inherently inappropriate law enforcement equipment at non-EU arms fairs

In a small number of cases, the Omega Research Foundation has uncovered examples of EU-based companies promoting – either directly or through non-EU companies – inherently abusive law enforcement equipment at arms and security fairs and exhibitions held outside of the EU. Such cases do not concern Annex II goods, but rather promotion of goods which the Omega Research Foundation asserts should be placed in this prohibited category. For example, HPE Holsters, a Polish company that manufactures direct contact electric shock shields, batons and stun guns, has previously promoted its products to correctional, police and military communities at arms and security fairs outside of the European Union including those held in Kazakhstan (KADEX 2014) and the United Arab Emirates (IDEX 2017). Similarly, Euro Security Products, a Czech company which promotes a range of law enforcement equipment including electric shock stun guns, has previously promoted its products at arms and security fairs in China (China Police Expo 2014), and Jordan (SOFEX 2012).



**An electric shock baton on display in a HPE Holsters catalogue distributed at IDEX 2017, 19-23 February 2017 in Abu Dhabi, UAE, © HPE Holsters**

<sup>313</sup> The Omega Research Foundation contacted COGES Events with the information in this report, but has not, as yet, received a reply.

<sup>314</sup> COGES Events. 2020. ‘International Defence & Security Exhibitions’. Accessed 22 July 2020. Available at: <https://www.cogesevents.com/?lang=en>.

<sup>315</sup> For company information, please contact the Omega Research Foundation.

#### **Recommendations:**

The current geographical restriction outlined in Article 8 that *“any natural or legal person, entity or body, including a partnership, whether resident or established in a Member State or not,”* from displaying or offering for sale any Annex II goods *“in an exhibition or fair taking place in the Union.”* should be removed. Consequently, any EU *natural or legal person, entity or body* should be prohibited from promoting Annex II goods at exhibitions or fairs irrespective of the country in which they are held.

The Omega Research Foundation recommends that Article 8 be amended to clarify the specific obligations of trade fair, exhibition, and pavilion organisers to prevent the display and promotion of Annex II goods. Such obligations should apply irrespective of the country in which the exhibition or fair is held. A range of proposed applicable operative measures are outlined in Section 2.4.

#### 4.4. Training

A number of EU Member State entities, as well as companies and academic institutions based within EU Member States, have provided a wide range of technical assistance, educational modules, or training to law enforcement or correctional officials from other Member States and third countries. Professional training of police and prison officers in the appropriate and safe use of law enforcement equipment can reinforce and operationalise human rights standards and good practice. Unfortunately, however, human rights NGOs have reported instances where law enforcement officials and others have been trained in potentially abusive methods.

Article 8 of the EU Anti-Torture Regulation prohibits a *“supplier of technical assistance or a broker”* from *“supplying or offering to any person, entity or body in a third country, training on the use of”* Annex II goods. In addition, under Article 15, States are required to specifically authorise the provision of *“technical assistance related”* to Annex III goods. Consequently, under the current wording of the EU Anti-Torture Regulation, the supply of technical assistance including training is only prohibited or controlled when it directly relates to (Annex II or Annex III) equipment covered by the Regulation. Technical assistance that could facilitate or be employed to commit torture or other ill-treatment may well be delivered independently of the supply of equipment currently falling under the scope of the Regulation.

##### 4.4.1. Provision of training by companies

A number of companies based within the EU region provide training and associated technical assistance to police and prison staff, as well as to other private entities, in many third countries. Such training and assistance address a range of skills and topics, both those involving equipment, and without.

The Regulation fails to address two important areas of training provision that are of potential concern:

- The provision of training in the inappropriate or abusive employment of law enforcement equipment not currently controlled by the EU Anti-Torture Regulation. Such concerns, for example, relate to training in the application of batons for neck-holds, or the use of handcuffs and/or other currently uncontrolled restraints in hog-tying prisoners.
- The provision of training in inherently abusive techniques that do not require any law enforcement equipment. These methods could potentially include abusive interrogation

methods, such as water-boarding, the infliction of ‘white noise’, enforced maintenance of uncomfortable positions for sustained periods, sleep deprivation, and disorientation techniques.

One EU-based company, Euro Security Products, located in Czechia, supplies law enforcement equipment, as well as related training, including in potentially abusive techniques. This training has included the use of batons in neck-holds, which is documented in images on the company’s website,<sup>316</sup> and is of particular concern. As noted, such training is not explicitly addressed under the Regulation. Nonetheless, the Council of Europe Committee for the Prevention of Torture (CPT) has previously raised concerns regarding this kind of technique. The CPT “*recommends that the use of techniques involving physical force which may impede airflow through the respiratory tract be prohibited*”.<sup>317</sup> The technique visible in the company’s promotional photographs appears to fall within the scope of that which the CPT called to be prohibited. Techniques resulting in the restraint of people in hyper-extended positions (hog-tying) also appear to feature in photographs on the Euro Security Products website.<sup>318</sup> In reports from its visits to States, the CPT raised concerns around use of hog-tying, noting “*the practice of restraining a person in a hyper-extended position, with hand and ankle cuffs linked*

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<sup>316</sup>The Omega Research Foundation has contacted Euro Security Products for clarification with regards to the training it provides, but we have not yet received a response.

See various images available at links from: Euro Security Products. 2020. *Photogallery – Courses of the ESP company for Law Enforcement*. Available at: <https://www.euro-security.info/en/training-courses-esp/photogallery-esp-courses.html>. Accessed 9 March 2020.

For instance, in EU:

Euro Security Products. 2020. *Course for instructors of the Municipal police in Prague*. Available at: <https://www.euro-security.info/en/training-courses-esp/photogallery-esp-courses/course-for-instructors-of-the-municipal-police-in-prague.html>. Accessed 9 March 2020.

Outside EU:

Euro Security Products. 2020. *Training course – police in the DR Congo*. Available at: <https://www.euro-security.info/en/training-courses-esp/photogallery-esp-courses/training-course-police-in-the-dr-congo.html>. Accessed 9 March 2020.

<sup>317</sup> Report to the Slovenian Government on the visit to Slovenia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 31 January to 6 February 2012, CPT/Inf (2013) 16, Strasbourg, 19 July 2013.

<sup>318</sup>For instance, in EU (copies are also held by the Omega Research Foundation):

Euro Security Products. 2020. *Course for instructors of the Municipal police in Brno*. Available at: <https://www.euro-security.info/en/training-courses-esp/photogallery-esp-courses/course-for-instructors-of-the-municipal-police-in-brno.html>. Accessed 9 March 2020.

Outside EU:

Euro Security Products. 2020. *Togo – course for instructors of the Gendarmerie nationale togolaise*. Available at: <https://www.euro-security.info/en/training-courses-esp/photogallery-esp-courses/togo-course-for-instructors-of-the-gendarmerie-nationale-togolaise.html>. Accessed 9 March 2020.

Images taken from:

Euro Security Products. 2020 *Course for instructors of the Indian police* Available at <https://www.euro-security.info/en/training-courses-esp/photogallery-esp-courses/course-for-instructors-of-the-indian-police.html>. Accessed 24 August 2020.

Euro Security Products. 2020. *Training course – police in the DR Congo*. Available at: <https://www.euro-security.info/en/training-courses-esp/photogallery-esp-courses/training-course-police-in-the-dr-congo.html>. Accessed 24 August 2020.

Euro Security Products. 2020. *China and Macau – courses for instructors of the special police units and prisone service’*. Available at: <https://www.euro-security.info/en/training-courses-esp/photogallery-esp-courses/china-and-macau-courses-for-instructors-of-the-special-police-units-and-prisone-service.html>. Accessed 7 October 2020.

Euro Security Products. 2020. *Togo – course for instructors of the Gendarmerie nationale togolaise*. Available at: <https://www.euro-security.info/en/training-courses-esp/photogallery-esp-courses/togo-course-for-instructors-of-the-gendarmerie-nationale-togolaise.html>. Accessed 24 August 2020.

together behind the back, is unacceptable”.<sup>319</sup> Amnesty International has previously cautioned that the use of such practices can severely restrict breathing, and can lead to death from ‘positional asphyxia’.<sup>320</sup> Images and videos on the Euro Security Products website appear to show the provision of training in such techniques to a range of prison and law enforcement organisations from States including Botswana, Bulgaria, China, Czechia, Democratic Republic of Congo, Georgia, India, Kosovo, Latvia, Mexico, Nigeria, Slovakia, Spain, Togo, Uganda, and Venezuela, as well as other security actors from Czechia and Slovakia.<sup>321</sup> The training provided by Euro Security Products is undertaken both within and outside of the EU region although it is not known whether those providing the training are EU nationals. That such training is not encompassed within the Regulation is a cause for concern.



Images of ESP training courses from the ESP website. These images demonstrate techniques of potential concern, including hog-tying and neck-holds involving batons, in the Democratic Republic of Congo (top left), China (bottom right), India (top right, bottom left), and Togo (top centre) © Euro Security Products (all images)



<sup>319</sup> Report to the Slovenian Government on the visit to Slovenia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 31 January to 8 February 2006 CPT/Inf (2008) 7, Strasbourg, 15 February 2008.

<sup>320</sup> Amnesty International, USA California. 2005. *Transgender woman ill-treated and raped in jail*, AMR 51/142/2005 – External. Available at: <https://www.amnesty.org/download/Documents/84000/amr511422005en.pdf>. Accessed 9 March 2020.

<sup>321</sup> Euro Security Products. 2020. *Photogallery – Courses of the ESP company for Law Enforcement*. Available at: <https://www.euro-security.info/en/training-courses-esp/photogallery-esp-courses.html>. Accessed 16 July 2020.

**Recommendation: The Regulation should be amended to prohibit the supply of technical assistance including instruction, advice, training, or the transmission of working knowledge or skills that could facilitate or be used to commit torture and other ill-treatment, independent of the supply of any equipment addressed under the Regulation. As a minimum, the transmission of all techniques that have been deemed to be inappropriate by the European Court of Human Rights, the CPT, the UN Committee Against Torture, UN Special Rapporteur for Torture, and other UN and European human rights bodies, should be prohibited.**

#### 4.4.2. Provision of training by State entities

In his 2005 report to the UN Commission on Human Rights, the then UN Special Rapporteur on Torture highlighted the need to control the provision of technical assistance and training that may be used to facilitate acts of torture and other ill-treatment. He noted that *“a number of States are important providers of training and assistance to the military, security or police forces of foreign States”*.<sup>322</sup> He warned that if this training was not *“stringently controlled and independently monitored, there is a danger that [the training would] be used to facilitate torture and other ill-treatment”*.<sup>323</sup>

Many States, as well as international organisations, provide law enforcement and correctional assistance, in various forms, to other States. The United Kingdom College of Policing, for instance, offers a range of *“information, evidence, guidance and support”* to *“international partners, departments and police organisations”*.<sup>324</sup> The College of Policing is the *“professional body for everyone who works for the police service in England and Wales”*.<sup>325</sup> Among its capabilities, the College advertises *“short in-country courses on request, including leadership courses for middle and senior managers, and “train the trainer”, quality assurance and evaluation courses”*.<sup>326</sup> The College has provided international policing assistance and training in 78 countries and regions, in all parts of the world.<sup>327</sup>

The Government of the United Kingdom has a system by which the UK works to *“ensure... overseas security and justice assistance work meets [the UK’s] human rights obligations and [the UK’s]*

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<sup>322</sup> Report of the UN Special Rapporteur on the question of torture, Theo Van Boven, Commission on Human Rights (E/CN.4/2005/62), 15 December 2004, paragraph 31.

<sup>323</sup> Report of the UN Special Rapporteur on the question of torture, Theo Van Boven, Commission on Human Rights (E/CN.4/2005/62), 15 December 2004, paragraph 31.

<sup>324</sup> College of Policing. 2020. *What do we offer international partners, departments and police organisations?* Available at: <https://www.college.police.uk/About/What-do-we-offer/what-do-we-offer-international-partners/Pages/what-do-we-offer-international-partners.aspx>. Accessed 17 March 2020.

<sup>325</sup> College of Policing. 2020. *About us*. Available at: <https://www.college.police.uk/About/Pages/default.aspx>. Accessed 11 March 2020.

<sup>326</sup> College of Policing. 2020. *What do we offer international partners, departments and police organisations?* Available at: <https://www.college.police.uk/About/What-do-we-offer/what-do-we-offer-international-partners/Pages/what-do-we-offer-international-partners.aspx>. Accessed 17 March 2020.

A 2016 report stated:

*“The College has provided policing assistance over a range of disciplines including: crime scene investigation, forensics, child abuse, counter-terrorism, organised crime, hi-tech crime, leadership, developing senior women, and anti-money laundering investigations”* (see: House of Commons Home Affairs Committee. 2016. *College of Policing: three years on – Fourth Report of Session 2016-17*. Available at: <https://publications.parliament.uk/pa/cm201617/cmselect/cmhaff/23/23.pdf>. Accessed 19 March 2020. Page 23).

<sup>327</sup> College of Policing. 2020. *International FAQ: What countries does the College provide international assistance to?* Available at: <https://www.college.police.uk/What-we-do/Learning/International-Academy/Pages/International-FAQ.aspx>. Accessed 18 March 2020.

values”.<sup>328</sup> The Overseas Security and Justice Assistance (OSJA) Human Rights Guidance states, the “British Government believes in helping other states’ justice and security systems when it is consistent with [its] domestic and international law obligations and useful, safe and in the national interest to do so”.<sup>329</sup> These Guidelines acknowledge the potential for training to both enhance human rights in other States, as well as noting “the assistance itself can sometimes present human rights or IHL risks, which in certain circumstances may give rise to legal, policy or reputational risks for the UK”.<sup>330</sup>

Considerations under the OSJA Human Rights Guidance will shape training offered by UK Government institutions and those national entities that closely liaise with the Government as part of their training provision. Nonetheless, concerns about the nature of training provided by the College of Policing have been raised as recently as 2019, by NGOs and media, notably with regards to the training provided to Saudi Arabia<sup>331</sup> and Bahrain.<sup>332</sup> In response to earlier questions as to whether the training provided to Saudi Arabia “may indirectly be helping to facilitate the human rights abuses perpetrated by those regimes”, a 2016 UK Government report noted, “this is a legitimate concern”.<sup>333</sup> Indeed, in a 2016 response to a freedom of information request from human rights organisation Reprieve about training in Saudi Arabia, the college itself acknowledged the risk that “the skills being trained are used to identify individuals who later go on to be tortured or subjected to other human rights abuses”.<sup>334</sup> As of April 2017, the College maintains an “Assessment process” based on the Human Rights Guidelines.<sup>335</sup>

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<sup>328</sup> Foreign & Commonwealth Office. 2020. *Guidance: Overseas Security and Justice Assistance Guidance*. HM Government. Available at: <https://www.gov.uk/government/publications/overseas-security-and-justice-assistance-osja-guidance>. Accessed 10 March 2020.

<sup>329</sup> Foreign & Commonwealth Office. 2017. *Overseas Security and Justice Assistance (OSJA): Human Rights Guidance*. HM Government. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/583304/OSJA\\_Guidance\\_2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/583304/OSJA_Guidance_2017.pdf). Accessed 10 March 2020. Page 4.

<sup>330</sup> Foreign & Commonwealth Office. 2017. *Overseas Security and Justice Assistance (OSJA): Human Rights Guidance*. HM Government. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/583304/OSJA\\_Guidance\\_2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/583304/OSJA_Guidance_2017.pdf). Accessed 10 March 2020. Page 4

<sup>331</sup> Hardy, Jack. 2019. ‘Hundreds of Saudi police officers trained in Britain ‘aiding regime to commit torture’’. *The Telegraph*. 27 January 2019. Available at: <https://www.telegraph.co.uk/news/2019/01/27/college-policing-training-aids-saudi-torture/>. Accessed 18 March 2020. Reprieve. 2016. *UK ‘has not checked’ whether Saudi police training led to torture*. Available at: <https://reprieve.org.uk/press/uk-has-not-checked-whether-saudi-police-training-led-to-torture/>. Accessed 18 March 2020. Reprieve. 2016. *UK training Saudi police in CSI techniques that risk torture*. Available at: <https://reprieve.org.uk/press/uk-training-saudi-police-in-csi-techniques-that-risk-torture/>. Accessed 18 March 2020. Vallance, Chris. 2016. ‘Torture fears as British police train Saudis’. *BBC News*. Available at: <https://www.bbc.co.uk/news/uk-36468268>. Accessed 19 March 2020.

<sup>332</sup> Deighton Pierce Glynn – DPG Law. 2016. *15 Aug: Torture victim seeks review of UK training to Bahrain police*. Available at: <https://dpglaw.co.uk/torture-victim-seeks-review-uk-training-bahrain-police/>. Accessed 18 March 2020.

Doward, Jamie. 2016. ‘Role of UK police in training Bahrain’s forces ‘ignores abuses’’. *The Observer*. 13 August 2016. Available at: [https://www.theguardian.com/uk-news/2016/aug/13/british-police-trainers-ignore-human-rights-abuses-bahrain?CMP=share\\_btn\\_tw](https://www.theguardian.com/uk-news/2016/aug/13/british-police-trainers-ignore-human-rights-abuses-bahrain?CMP=share_btn_tw). Accessed 18 March 2020.

Rawlinson, Kevin. 2016. ‘British police criticized for lack of transparency in Bahrain training deal’. *The Guardian*. 29 August 2016. Available at: <https://www.theguardian.com/law/2016/aug/29/british-police-criticised-for-lack-of-transparency-in-bahrain-training-deal>. Accessed 18 March 2020.

<sup>333</sup> House of Commons Home Affairs Committee. 2016. *College of Policing: three years on – Fourth Report of Session 2016-17*. Available at: <https://publications.parliament.uk/pa/cm201617/cmselect/cmhaff/23/23.pdf>. Accessed 19 March 2020. Page 23.

<sup>334</sup> National Police Chief’s Council, International Police Assistance Board, and Police Scotland. 2016. *IPAB Referral Form: Unique Reference Number 427*. Available at: [http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/07\\_06\\_16\\_saudi\\_foi.pdf](http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/07_06_16_saudi_foi.pdf). Accessed 19 March 2020.

<sup>335</sup> College of Policing. 2020. *International FAQ: How can the College be sure International policing assistance supports human rights?* Available at: <https://www.college.police.uk/What-we-do/Learning/International-Academy/Pages/International-FAQ.aspx>. Accessed 20 March 2020.



**Recommendation: EU-wide controls should be introduced (either as part of the EU Anti-Torture Regulation or through other appropriate measures) to regulate the provision of instruction, training and related technical assistance conducted by all State entities to ensure that such provision does not promote or include inappropriate or abusive policies, practices or techniques that could facilitate, or be employed in torture or other ill-treatment. All instruction or training of correctional and law enforcement officials (including in the employment of law enforcement equipment and broader use of force) should be in line with, and actively promote, adherence to regional and international human rights standards. Appropriate accountability, reporting, and impact assessment measures should be established to monitor adherence of State training programmes to these principles.**

#### 4.4.3. Provision of training by educational institutions

In addition to States and companies, EU-based educational institutions also provide security, law enforcement, and corrections-related courses and/or training.

A UK university, the University of Huddersfield, offers a masters of security science (MSc Security Science) to staff of the Royal Police Academy, Ministry of Interior, Kingdom of Bahrain.<sup>336</sup> The degree training is provided outside of the EU, in Bahrain, and the course is contracted to be taught until 2022.<sup>337</sup> The first cohort of students, which graduated in 2019, comprised 26 officers, who, as part of their MSc, studied in a range of areas, across investigative and forensic psychology, criminology, and cyber security.<sup>338</sup> The University notes that this forms “*part of the Royal [Police] Academy’s efforts to expose its officers to international police experiences, improve their leadership skills and to solve security issues effectively and at an advanced level*” and that the course is “*in line with the mission advocated by the UK Government’s Department of International Trade*”.<sup>339</sup> According to human rights activists from the UK-based Bahrain Institute for Rights and Democracy quoted in media reports, however, the Royal Police Academy in Bahrain is a “*torture hub*”, with one news report citing witness statements alleging a prison at the site was a “*scene of electrocutions, rape and beating of inmates*”.<sup>340</sup> While there is no suggestion that either the University of Huddersfield, or those it educated, committed acts of torture, institutions must ensure that any training provided is neither facilitating torture, nor profiting from those who torture. Of the course, an Amnesty International UK Section spokesperson stated that the university “*should immediately suspend its provision of these courses until there has been a full investigation into the possibility of links between graduates of the course and the torture of prisoners in Bahrain*”.<sup>341</sup>

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<sup>336</sup> University of Huddersfield. 2020. *Bahrain ceremony salutes first MSc Security Science graduates*. Available at: <https://www.hud.ac.uk/news/2019/march/bahrain-msc-security-science-huddersfield/>. Accessed 10 March 2020.

<sup>337</sup> Drury, Colin. 2020. ‘British university training Bahrain police based at ‘torture hub’ where electrocutions, rape and beatings all reported’. *Independent*. 19 February 2020. Available at: <https://www.independent.co.uk/news/uk/home-news/huddersfield-university-bahrain-police-torture-training-degree-a9344596.html>. Accessed 10 March 2020.

<sup>338</sup> University of Huddersfield. 2020. *Bahrain ceremony salutes first MSc Security Science graduates*. Available at: <https://www.hud.ac.uk/news/2019/march/bahrain-msc-security-science-huddersfield/>. Accessed 10 March 2020. A full list of modules was provided to the Omega Research Foundation in email correspondence from the University of Huddersfield (dated 8 July 2020).

<sup>339</sup> Email correspondence from the University of Huddersfield to the Omega Research Foundation, dated 8 July 2020.

<sup>340</sup> Drury, Colin. 2020. ‘British university training Bahrain police based at ‘torture hub’ where electrocutions, rape and beatings all reported’. *Independent*. 19 February 2020. Available at: <https://www.independent.co.uk/news/uk/home-news/huddersfield-university-bahrain-police-torture-training-degree-a9344596.html>. Accessed 10 March 2020.

<sup>341</sup> Cited in Drury, Colin. 2020. ‘British university training Bahrain police based at ‘torture hub’ where electrocutions, rape and beatings all reported’. *Independent*. 19 February 2020. Available at: <https://www.independent.co.uk/news/uk/home-news/huddersfield-university-bahrain-police-torture-training-degree-a9344596.html>. Accessed 11 March 2020.

The UK's Overseas Security and Justice Assistance Guidance applies to Government-provided "case specific assistance" as well as "broader, often longer-term capacity building assistance".<sup>342</sup> As a framework for security and policing training provision, this Guidance could be considered in the case of university training. In response to a written question in the House of Lords, however, the UK Government noted that the university in question is an "independent, autonomous body", and the training is "a private arrangement", the guidance is therefore not applicable.<sup>343</sup> The case highlights the lack of an effective UK regulatory framework incorporating applicable guidance, licensing processes, and oversight or evaluation of assistance and training for law enforcement officials provided by educational institutions.

Despite the absence of clear UK Government guidance for training and assistance provided by non-state bodies, including educational institutions, such bodies are still responsible for undertaking 'due diligence', and ensuring that their assistance and training activities are in compliance with human rights standards and do not facilitate torture or other ill-treatment. In its response to Omega, the University of Huddersfield noted, "As part of our monitoring of our involvement, we are in regular communication and consultation with the UK Embassy in Bahrain regarding our work in the region." Furthermore, the University stated that they had referred media and human rights organisations' concerns to "the National Institution for Human Rights, the Ministry of Interior Ombudsman, the Prisoners' and Detainees' Rights Commission and the Special Investigations Unit" in Bahrain.<sup>344</sup>

**Recommendation: EU-wide controls should be introduced (either as part of the EU Anti-Torture Regulation or through other appropriate measures) to regulate the provision of instruction or training conducted by all educational providers, so as to ensure that such provision does not promote or include inappropriate or abusive policies, practices, or techniques that could facilitate or be employed in torture or other ill-treatment. Furthermore, all instruction or training of correctional and law enforcement officials should be in line with, and actively promote, adherence to regional and international human rights standards. Appropriate accountability, reporting, evaluation, and impact assessment measures should be established to monitor adherence of these education and training programmes to these principles.**

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<sup>342</sup> Foreign & Commonwealth Office. 2017. *Overseas Security and Justice Assistance (OSJA): Human Rights Guidance*. HM Government. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/583304/OSJA\\_Guidance\\_2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/583304/OSJA_Guidance_2017.pdf). Accessed 10 March 2020. Page 4.

<sup>343</sup> Viscount Younger of Leckie. 2018. *Answer to: Police: Bahrain: Written question – HL7777, Asked by Lord Scriven*. Available at: <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2018-05-10/HL7777/>. Accessed 10 March 2020.

<sup>344</sup> Email correspondence from the University of Huddersfield to the Omega Research Foundation, dated 8 July 2020.

## Section 5: Additional measures to regulate the trade in law enforcement equipment and other relevant goods

### 5.1. Introduction

The formal Review of the EU Anti-Torture Regulation undertaken by the Commission and consequent Review Report sent to the Council and European Parliament have been intended to provide information on the “*relevance, EU added value, coherence and complementarity, effectiveness, and efficiency*” of the Regulation. In their subsequent analysis and discussion of the Commission findings, it is important that the Council and Parliament do not consider the Regulation in isolation, but rather within the context of wider EU torture prevention initiatives. This would include instruments, measures, and activities that are of relevance to controlling and/or prohibiting the transfer and (mis)use of both law enforcement weapons and equipment, as well as other relevant goods and technical assistance, which are intended, or could be misused, for torture, other ill-treatment and capital punishment. Consequently, this Section explores the interaction of the Regulation with existing EU trade measures, assessing whether additional strengthening of the EU trade control architecture is needed.

### 5.2. Regulating the import of law enforcement equipment into EU Member States and transfer between EU Member States

The Treaty on the Functioning of the European Union organises the operation of the Union and determines the areas of, delimitation of, and arrangements for exercising its competences. This includes its “*internal market*”<sup>345</sup>, which “*shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties.*”<sup>346</sup> Article 36 allows for the establishment, under certain circumstances, of “*prohibitions or restrictions on imports, exports or goods in transit*” between Member States. These must be “*justified on grounds of public morality, public policy or public security; the protection of health and life of humans*” and are permissible as long as “*such prohibitions or restrictions*” do not “*constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.*”<sup>347</sup>

Although seemingly falling within the scope of Article 36, the EU Anti-Torture Regulation does not, however, currently control the import into the EU, or the transfer between EU Member States, of law enforcement equipment and related goods that can have legitimate law enforcement purposes but that can be readily misused for torture and other ill-treatment. This is a serious and long-standing EU-wide regulatory gap, previously highlighted by the Omega Research Foundation and Amnesty International<sup>348</sup>. This gap should be examined and addressed by the Council and European Parliament as part of their current review of the Regulation.

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<sup>345</sup> European Union, Consolidated version of the Treaty on the Functioning of the European Union, Official EN Journal of the European Union C 326/47, 26 October 2012, Articles 1&3

<sup>346</sup> European Union, Consolidated version of the Treaty on the Functioning of the European Union, Official EN Journal of the European Union C 326/47, 26 October 2012, Articles 26.2.

<sup>347</sup> European Union, Consolidated version of the Treaty on the Functioning of the European Union, Official EN Journal of the European Union C 326/47, 26 October 2012, Articles 36.

<sup>348</sup> See for example: Amnesty International and the Omega Research Foundation, *From Words to Deeds: making the EU ban on the trade in 'tools of torture' a reality*, Index: EUR 01/004/2010, February 2010, p.30; Amnesty International and the Omega Research Foundation, *European Union: Stopping the Trade in Tools of Torture*, Index: POL 34/001/2007, February 2007, p.23

The original version of the EU Anti-Torture Regulation (EC Regulation 1236/2005)<sup>349</sup>, adopted by the Member States in July 2005, contained the following pre-ambulatory paragraph explaining the EU's rationale in limiting the scope of the Regulation: ***“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 goods 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 Member States will have adopted appropriate measures to outlaw and prevent torture and other cruel, inhuman or degrading treatment or punishment”***<sup>350</sup> [emphasis added].

All EU Member States have abolished capital punishment, and since 1996, no EU Member State has conducted an execution.<sup>351</sup> All EU Member States have also adopted legal prohibitions against torture and other ill-treatment, internationally, through adoption of the UN Convention against Torture, and regionally, including through the European Convention for the Protection of Human Rights and Fundamental Freedoms. Furthermore, States have introduced national and regional measures to operationalise these obligations, and have established regional mechanisms to facilitate and monitor such measures, notably through the European Committee for the Prevention of Torture (CPT). Unlike capital punishment, however, and despite measures to “outlaw and prevent” torture and ill-treatment, these practices have continued to be reported in many EU Member States. Furthermore, an analysis of reports by the CPT and respected international human rights organisations (selected examples described below), shows that a wide range of law enforcement equipment has been inappropriately employed by law enforcement or correctional officials in a significant number of EU Member States over the 2015-2019 period. In a number of cases such inappropriate use could be considered to be torture or other ill-treatment.

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<sup>349</sup> European Trade Regulation No. 1236/2005 concerning trade in goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, 27 July 2005

<sup>350</sup> European Union, paragraph 21

<sup>351</sup> European Parliament. 2019. *Death penalty: key facts about the situation in Europe and the rest of the world*. 25 February 2019. Accessed 28 April 2020. Available at:

<https://www.europarl.europa.eu/news/en/headlines/world/20190212STO25910/death-penalty-in-europe-and-the-rest-of-the-world-key-facts>.

## Misuse of electric shock devices in the EU

During the 2015-2019 period, reports by the CPT and Amnesty International documented the alleged use of direct contact electric shock weapons and/or projectile electric shock weapons for torture and other ill-treatment. This use, by correctional or law enforcement officials, was reported in Bulgaria<sup>352</sup>, Greece<sup>353</sup>, Italy<sup>354</sup>, Netherlands<sup>355</sup>, Poland<sup>356</sup>, and Romania.<sup>357</sup>

### Bulgaria

Following its mission in September-October 2017, the CPT's 2018 report highlighted the case of a person who, following his apprehension on the street by plainclothes police officers on 18 September 2017, alleged that he had been handcuffed behind his back, pushed into an unmarked car and taken to an unspecified location (possibly on the premises of District Police Directorate No. 4 in Sofia) where he was taken to a basement room. Following this, he was reportedly subjected to repeated physical ill-treatment (kicks, truncheon blows and applications of a "taser") during a period of approximately 10 hours. Upon examination by one of the CPT delegation's forensic doctors, the person concerned was found to display wounds consistent with such ill-treatment.<sup>358</sup>

### Italy

In a 2016 report, Amnesty International highlighted the employment by police of electric shock batons at certain Italian "hotspot" centres where refugees were being screened, identified, and their asylum applications initially assessed.<sup>359</sup> According to AI, electric shock weapons of any kind are not part of the official equipment of the Italian police, although legislation adopted in 2014 enabled the police to launch a testing phase, including through their distribution to a limited number of officers. AI's 2016 report documents numerous cases of electric shock batons being used against refugees, particularly by police seeking to forcibly fingerprint detainees, including children. Djoka, a 16-year-old boy from Sudan arrived in Italy as a refugee on 7 June 2016. When he was disembarked in Sicily, he was taken to a police station and detained there. He told AI:

*"After three days... they took me to the 'electricity room'. There were three policemen wearing uniforms, plus a woman without uniform ... The police then asked me to give fingerprints. I refused. Then they gave me electricity with a stick, many times on the left leg, then on the right leg, chest*

<sup>352</sup> CPT, Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 25 September to 6 October 2017, CPT/Inf (2018) 15, 28 March 2018, paragraph 22; Committee against Torture, Concluding observations on the sixth periodic report of Bulgaria, CAT/C/BGR/CO/6, December 2017

<sup>353</sup> CPT, Report to the Greek Government on the visit to Greece carried out by the CPT from 14 to 23 April 2015, 1 March 2016.

<sup>354</sup> Amnesty International, Hotspot Italy, How EU's flagship approach leads to violations of refugee and migrant rights, EUR 30/5004/2016, October 2016; Amnesty International, State of the World's Human Rights 2017/2018, Italy entry.

<sup>355</sup> Amnesty International, State of the World's Human Rights 2017/2018, Netherlands entry; Amnesty International, The Netherlands: Submission to the United National Committee Against Torture, 65<sup>th</sup> Session, 12 November – 7 December 2018; United Nations Committee Against Torture, Concluding observations on the seventh periodic report of the Netherlands, CAT/C/NLD/CO/7

<sup>356</sup> CPT, Report to the Polish Government on the visit to Poland carried out by the CPT from 11 to 22 May 2017, 27 July 2018.

<sup>357</sup> CPT, Report to the Romanian Government on the visit to Romania carried out by the CPT from 7 to 19 February 2018, 19 March 2019.

<sup>358</sup> CPT, Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 25 September to 6 October 2017, CPT/Inf (2018) 15, 28 March 2018, paragraph 22.

<sup>359</sup> Amnesty International (October 2016) op.cit.

*and belly. I was too weak, I couldn't resist and at that point they took both my hands and put them on the [fingerprint] machine. I couldn't resist.*"<sup>360</sup>

### Misuse of restraints in the EU

During the 2015-2019 period, there were reports from the CPT, Amnesty International, and Human Rights Watch, of handcuffs, leg-cuffs, or other restraints being used inappropriately in places of detention or at the moment of arrest in Bulgaria<sup>361</sup>, Czechia<sup>362</sup>, Greece<sup>363</sup>, Hungary<sup>364</sup>, Italy,<sup>365</sup> Netherlands<sup>366</sup>, Poland<sup>367</sup>, Romania<sup>368</sup>, Slovak Republic<sup>369</sup>, and the United Kingdom<sup>370</sup>. In certain States, such misuse included chaining to fixed objects, excessive tightening of restraints, and reports of prisoners being beaten whilst restrained.

#### Germany

Following its mission in December 2015, the 2017 CPT report highlighted concerns that *"persons were still being subjected to Fixierung in police establishments in several ... Länder, despite the specific recommendation repeatedly made by the Committee to put an end to the resort to Fixierung in police establishments throughout Germany."* It further noted with concern that, *"at Munich Police Headquarters, persons who were highly agitated or presented a risk of self-harm were on occasion shackled by metal cuffs on their left wrist or ankle to an iron ring fixed to the wall inside a security cell; in some cases, a body belt was applied to the person, the back of which was then attached with handcuffs to that ring"*.<sup>371</sup>

<sup>360</sup> Amnesty International (October 2016) op.cit., p.18.

<sup>361</sup> CPT, Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 25 September to 6 October 2017, CPT/Inf (2018) 15, 4 May 2018.

<sup>362</sup> CPT, Report to the Czech Government on the visit to the Czech Republic carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 2 to 11 October 2018. CPT/Inf (2019) 23, 4 July 2019

<sup>363</sup> CPT, Report to the Greek Government on the visits to Greece carried out by the CPT from 13 to 18 April and 19 to 25 July 2016, 26 September 2017; CPT Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 19 April 2018, CPT/Inf (2019) 4, 19 February 2019.

<sup>364</sup> CPT, Report to the Hungarian Government on the visit to Hungary carried out by the CPT from 21 to 27 October 2015, 3 November 2016.

<sup>365</sup> CPT, Report to the Italian Government on the visit to Italy carried out by the CPT from 8 to 21 April 2016, 8 September 2017.

<sup>366</sup> CPT, Report to the Government of the Netherlands on the visit to the Netherlands carried out by the CPT from 2 to 13 May 2016, 11 November 2016.

<sup>367</sup> CPT, Report to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 11 to 22 May 2017, CPT/Inf (2018) 39, 25 July 2018

<sup>368</sup> CPT, Report to the Romanian Government on the visit to Romania carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 7 to 19 February 2018, CPT/Inf (2019) 7, 19 March 2019

<sup>369</sup> CPT, Report to the Slovak Government on the visit to the Slovak Republic carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 19 to 28 March 2018, CPT/Inf (2019) 20, 19 June 2019

<sup>370</sup> CPT, Report to the Government of the United Kingdom on the visit to the United Kingdom carried out by the CPT from 30 March to 12 April 2016, 19 April 2017.

<sup>371</sup> Report to the German Government on the visit to Germany carried out by the CPT from 25 November 2015 to 7 December 2015, 1 June 2017.

## Slovak Republic

Following its mission in March 2018, the CPT's 2019 report stated, *"Since its very first visit in 1995, the CPT has repeatedly expressed its serious concern about the continued practice of handcuffing detained persons to wall fixtures or similar objects in police establishments. This practice is still allowed by law and persists in 2018. The delegation once again found such wall fixtures (e.g. rings, handles, special rails on benches) in a number of the police establishments visited, sometimes in corridors and, in several cases even inside the "designated areas". Their use was confirmed to the delegation by police officers, as well as by detained persons. Moreover, some detainees alleged having been handcuffed to a fixed object inside "designated areas" for up to four hours. In the CPT's view, the practice of handcuffing a person to a fixed object – especially within a secured area (such as a "designated area") – is particularly inappropriate and may be considered as amounting to degrading treatment."*<sup>372</sup>

## Misuse of hand-held kinetic impact weapons in the EU

During the 2015-2019 period, the CPT, Amnesty International, and Human Rights Watch reported the inappropriate use of striking weapons such as batons and truncheons by law enforcement and correctional officials in both custodial and non-custodial settings in EU Member States. Such practices were reported in Bulgaria<sup>373</sup>, France<sup>374</sup>, Greece<sup>375</sup>, Hungary<sup>376</sup>, Italy<sup>377</sup>, Latvia<sup>378</sup>, Netherlands<sup>379</sup>, Portugal<sup>380</sup>, Poland<sup>381</sup>, Romania<sup>382</sup>, Slovak Republic<sup>383</sup>, Spain<sup>384</sup>, and Sweden<sup>385</sup>. In certain cases, these practices amounted to ill-treatment or torture.

<sup>372</sup> CPT, Report to the Slovak Government on the visit to the Slovak Republic carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 19 to 28 March 2018, CPT/Inf (2019) 20, 19 June 2019, paragraph 15

<sup>373</sup> CPT, Report to the Bulgarian Government on the visit to Bulgaria carried out by the CPT from 25 September to 6 October 2017, 4 May 2018; Committee against Torture, Concluding observations on the sixth periodic report of Bulgaria, CAT/C/BGR/CO/6, December 2017

<sup>374</sup> Amnesty International, A right not a threat: Disproportionate restrictions on demonstrations under the State of Emergency in France, EUR 21/6104/2017, 2017; see also Cragg, S. and Mellon, G. Report: Camps at Calais and Grande-Synthe (France): Policing and Access to Justice, Bar Human Rights Committee of England & Wales (BHRC), July 2016.

<sup>375</sup> CPT, Report to the Greek Government on the visits to Greece carried out by the CPT from 13 to 18 April and 19 to 25 July 2016, 26 September 2017. CPT, Report to the Greek Government on the visit to Greece carried out by the CPT from 10 to 19 April 2018, 19 February 2019; Amnesty International, Greece: Authorities must investigate allegations of excessive use of force and ill-treatment of asylum-seekers in Lesbos, EUR 25/6845/2017, July 2017.

<sup>376</sup> CPT, Report to the Hungarian Government on the visit to Hungary carried out by the CPT from 21 to 27 October 2015, 3 November 2016; Human Rights Watch, Hungary: Failing to Protect Vulnerable Refugees, 20 September 2016.

<sup>377</sup> CPT, Report to the Italian Government on the visit to Italy carried out by the CPT from 8 to 21 April 2016, 8 September 2017; Hotspot Italy, How EU's flagship approach leads to violations of refugee and migrant rights, EUR 30/5004/2016, October 2016.

<sup>378</sup> CPT, Report to the Latvian Government on the visit to Latvia carried out by the CPT from 12 to 22 April 2016, 29 June 2017, paragraph 15.

<sup>379</sup> CPT, Report to the Government of the Netherlands on the visit to the Netherlands carried out by the CPT from 2 to 13 May 2016, 11 November 2016. Paragraph 85.

<sup>380</sup> Amnesty International, Amnesty International Report 2015/16: The State of the World's Human Rights, POL 10/2552/2016, 23 February 2016, p. 297.

<sup>381</sup> CPT, Report to the Polish Government on the visit to Poland carried out by the CPT from 11 to 22 May 2017, 27 July 2018.

<sup>382</sup> CPT, Report to the Romanian Government on the visit to Romania carried out by the CPT from 7 to 19 February 2018, 19 March 2019.

<sup>383</sup> Amnesty International, State of the World's Human Rights 2017/2018, Slovakia entry.

<sup>384</sup> CPT, Report to the Spanish Government on the visit to Spain carried out by the CPT from 14 to 18 July 2014, 9 April 2015. Paragraph 51; Amnesty International, Spain: Excessive use of force by National Police and Civil Guard in Catalonia, October 2017.

<sup>385</sup> CPT, Report to the Swedish Government on the visit to Sweden carried out by the CPT from 18 to 28 May 2015, 17 February 2016. Paragraphs 11 and 12.

## Bulgaria

In its 2017 report, the UN Committee against Torture highlighted its concerns that, in Bulgaria, “one out of every three persons detained in police stations is subjected to physical abuse in police stations, which may be of such severity as to amount to torture and may include [inter alia] the use of truncheons... and that the rate of physical abuse against persons belonging to the Roma community is allegedly double the rate of abuse against ethnic Bulgarians”.<sup>386</sup>

## Romania

Following its 2018 visit, the CPT delegation documented “a large number of allegations of physical ill-treatment (many of which corroborated by medical evidence) by police officers were received from detained persons. The allegations consisted primarily of slaps, punches, kicks and baton blows inflicted by police officers against criminal suspects either at the time of the arrest or during questioning at a police station, apparently for the primary purpose of coercing a confession”. The delegation highlighted the case of “A prisoner (AB) [who] alleged that in January 2018 he was subjected to baton blows, punches and kicks by three members of the intervention group, in the hallway and educational room on the ground floor. Upon examination by the delegation’s doctor, he had three pairs of tramline bruises, some of which had scarred, on his back; each pair was 2-3cm long and separated from each other by 0.5-0.75 cm wide, consistent with the allegation of having received baton blows.”<sup>387</sup>

## Misuse of launched kinetic impact devices in the EU

During the 2015-2019 period, reports by the CPT and Amnesty International indicate that kinetic impact projectiles have been used inappropriately in Finland<sup>388</sup>, France<sup>389</sup>, Slovak Republic<sup>390</sup> and Spain<sup>391</sup>.

## France

French police reportedly used kinetic impact projectiles against school children protesting outside suburban schools around Paris in December 2018. A teacher at Simone de Beauvoir high school stated that a student’s cheek had “burst open like a split pomegranate” when he was struck with a kinetic impact projectile while talking to friends and posing no threat.<sup>392</sup>

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<sup>386</sup> UN, Committee against Torture, Concluding observations on the sixth periodic report of Bulgaria, CAT/C/BGR/CO/6, December 2017

<sup>387</sup> CPT, Report to the Romanian Government on the visit to Romania carried out by the CPT from 7 to 19 February 2018, 19 March 2019.

<sup>388</sup> Amnesty International, Finland: Submission to the United Nations Committee Against Torture, 59<sup>th</sup> session, 7 November –7 December 2016, p. 14.

<sup>389</sup> Amnesty International, A right not a threat: Disproportionate restrictions on demonstrations under the State of Emergency in France, EUR 21/6104/2017, 2017; Amnesty International, State of the World’s Human Rights 2017/2018, France entry; Amnesty International, France: School children and protesters victims of excessive force by police, 14 December 2018.

<sup>390</sup> Amnesty International, Amnesty International Report 2015/16: The State of the World’s Human Rights, POL 10/2552/2016, 23 February 2016, p. 322.

<sup>391</sup> Amnesty International, State of the World’s Human Rights 2017/2018, Spain entry; Amnesty International, Spain: Excessive use of force by National Police and Civil Guard in Catalonia, October 2017.

<sup>392</sup> Amnesty International, France: School children and protesters victims of excessive force by police, 14 December 2018.



## Misuse of riot control agents in the EU

During the 2015-2019 period, the CPT, PACE, and Amnesty International reported on the inappropriate use of riot control agents, such as pepper spray and tear gas, in both custodial and non-custodial settings, variously in Croatia<sup>393</sup>, France<sup>394</sup>, Greece<sup>395</sup>, Hungary<sup>396</sup>, Malta<sup>397</sup>, Romania<sup>398</sup>, and the UK<sup>399</sup>.

### Croatia

Following a March 2017 mission, the CPT's 2018 report described how, "at Osijek County Prison an inmate who had been placed ankle- and hand-cuffed in a "rubber room" was in addition pepper sprayed by custodial staff after having thus been immobilised."<sup>400</sup> The CPT concluded that "to administer pepper spray to a prisoner trussed up in the manner described above can only be for punitive reasons and the CPT considers that the staff members responsible should be investigated for the ill-treatment of this prisoner."<sup>401</sup>

### Greece

Amnesty International documented allegations of police ill-treatment and use of excessive force against asylum seekers during a protest on 18 July 2017 in Moria camp near Mytilene, which included the reported discharge of chemical irritants inside a container where asylum seekers were accommodated. One of the asylum-seekers arrested that day, identified as "F", told Amnesty International: *'The police fired a lot of teargas and I felt like I was suffocating... Ten police officers beat me everywhere with their batons for three minutes. I was on the ground trying to protect myself, trying to make myself small.... They hit me on the righthand and on the head with their batons and kicked me with their boots... The police officer who took me to the car spat on my face and called me 'stupid African''*<sup>402</sup>

<sup>393</sup> CPT, Report to the Government of Croatia on the visit to Croatia carried out by the CPT from 14 to 22 March 2017, 2 October 2018.

<sup>394</sup> Amnesty International, A right not a threat: Disproportionate restrictions on demonstrations under the State of Emergency in France, EUR 21/6104/2017, 2017; Cragg, S. and Mellon, G. Report: Camps at Calais and Grande-Synthe (France): Policing and Access to Justice, Bar Human Rights Committee of England & Wales (BHRC), July 2016.

<sup>395</sup> Amnesty International, Amnesty International Report 2015/16: The State of the World's Human Rights, POL 10/2552/2016, 23 February 2016, p. 169; Amnesty International, Greece: Authorities must investigate allegations of excessive use of force and ill-treatment of asylum-seekers in Lesvos, EUR 25/6845/2017, July 2017.

<sup>396</sup> UN Office of the High Commissioner of Human Rights, Hungary violating international law in response to migration crisis: Zeid, 17 September 2015; CPT, Report to the Hungarian Government on the visit to Hungary carried out by the CPT from 20 to 26 October 2017, 18 September 2018.

<sup>397</sup> CPT, Report to the Maltese Government on the visit to Malta carried out by the CPT from 3 to 10 September 2015, 25 October 2016.

<sup>398</sup> Amnesty International, Policing Demonstrations in the European Union, October 2012, p. 5; CPT, Report to the Romanian Government on the visit to Romania carried out by the CPT from 7 to 19 February 2018, 19 March 2019.

<sup>399</sup> CPT, Report to the Government of the United Kingdom on the visit to the United Kingdom carried out by the CPT from 30 March to 12 April 2016, 19 April 2017.

<sup>400</sup> CPT, Report to the Government of Croatia on the visit to Croatia carried out by the CPT from 14 to 22 March 2017, 2 October 2018, paragraph 28.

<sup>401</sup> CPT, Report to the Government of Croatia on the visit to Croatia carried out by the CPT from 14 to 22 March 2017, 2 October 2018, paragraph 59.

<sup>402</sup> Amnesty International, Greece: Authorities must investigate allegations of excessive use of force and ill-treatment of asylum-seekers in Lesvos, EUR 25/6845/2017, July 2017.

The employment of law enforcement equipment in torture and other ill-treatment does not appear to be systematic or pervasive in the majority of European Union Member States. Nonetheless, its occurrence, however rare, underlines the need for all EU Member States to regulate the transfer of such law enforcement equipment into and within the EU. Ideally such regulation should be undertaken in a concerted co-ordinated manner through an appropriate EU-wide instrument, such as the EU Anti-Torture Regulation.

Since coming into force in 2006, revisions have been made to aspects of the EU Anti-Torture Regulation by the European Commission and EU Member States in 2011 and 2014, and a subsequent formal comprehensive overhaul of the instrument was completed in 2016. Despite this, the EU Anti-Torture Regulation has not been amended to include EU-wide measures effectively controlling, monitoring, and reporting on the import into, and transfer between, EU Member States of law enforcement equipment and other relevant goods that can be misused for torture and other ill-treatment (Annex III goods). Likewise, no alternative EU-wide mechanism has been introduced to address this continuing regulatory lacuna. Thus, any relevant trade controls that currently exist regulating transfers of such goods into and within the EU would have been introduced only by individual EU Member States at the national level. Although limited information is currently available regarding national controls, at least one (now former) EU Member State, the UK, has introduced some controls in this area (for applicable UK controls see Sections 4.2 and 5.3).

Without the establishment of EU-wide standard-setting measures, however, there is a danger of divergence among EU Member States as to the scope and nature of any import and/or intra-EU transfer controls introduced at the national level. Firstly, although certain EU Member States may introduce national control measures in this area, others may not. Secondly, even among those States that have or subsequently introduce such national controls, there may be important differences in the range of goods and activities controlled, and with regards to the criteria employed for licence authorisation. Consequently, certain EU Member States may currently be unable to effectively control this trade, others may be authorising inappropriate imports, and others may themselves have imported certain law enforcement equipment without adequate risk assessment. All such scenarios potentially allow the acquisition of Annex III equipment by either State actors (e.g. law enforcement or correctional agencies) or certain non-State actors (e.g. private security companies including those undertaking law enforcement- or correctional-style roles) who might subsequently employ such equipment to conduct or facilitate torture or other ill-treatment in an EU Member State.

In addition, the current failure of the EU Anti-Torture Regulation (or any other EU-wide instrument or standard-setting measure) to specifically address intra-EU transfer of Annex III law enforcement equipment makes it possible for State and non-State actors in Member States to acquire, without adequate oversight, Annex III goods previously imported into the Union by another EU Member State. It is also possible for these actors to acquire, again without adequate oversight, Annex III goods originally manufactured in another EU Member State. Without clear oversight of intra-EU transfers, there are risks that such goods could be acquired and then used by State or non-State actors to facilitate torture or other ill-treatment.

A further consequence of the lack of EU-wide controls in this area is that unscrupulous EU-based brokers or dealers could exploit differences between the national implementation of the Regulation in different Member States. Specifically, such individuals might transfer Annex III goods within the EU to those EU Member States that have less robust Regulation licencing and export processes in place. In so doing, they may facilitate the export of Annex III goods to third countries where there is a substantial risk of that equipment being misused for torture and other ill-treatment.

Similar concerns also relate to the intra-EU transfer of certain inherently inappropriate or abusive equipment (many of which are currently listed in Annex II of the Regulation). The EU Anti-Torture Regulation explicitly prohibits the import, export, transit, brokering, and training in the use of all Annex II goods. The Regulation definitions of “import” and “export” refer, respectively, to “any entry” or “any departure” of “goods” “into” or “from” the “customs territory of the Union”.<sup>403</sup> Such definitions appear to specifically exclude the prohibition of transfers of such goods within the customs territory of the Union, i.e. between EU Member States. Such intra-EU transfer could occur if, for instance, inherently abusive equipment was to be manufactured or stockpiled by a company based in one EU Member State, and then transferred to a recipient in another EU Member State. The Omega Research Foundation has previously documented the promotion of various Annex II goods by EU-based companies, including body-worn electric shock devices, thumbcuffs, weighted restraints, fixed restraints, cage beds, and net beds. In light of this, the apparent loophole regarding intra-EU transfer could undermine the effectiveness of the Regulation. In response to an information request from the Omega Research Foundation, the Commission stated that “the ATR[Anti-Torture Regulation] applies only to trade between the Union and third countries”. It therefore appears that intra-EU trade in Annex II goods does not fall within the scope of the Regulation and is not, therefore, currently prohibited on an EU-wide basis.<sup>404</sup> This regulatory limitation risks EU Member States failing to fulfil their international commitments under the UNGA torture omnibus resolution to “take appropriate effective legislative, administrative, judicial and other measures to prevent and prohibit the production, trade, export, import and use of equipment that has no practical use other than for the purpose of torture or other cruel, inhuman or degrading treatment or punishment.”<sup>405</sup>

During the formal review of the EU Anti-Torture Regulation, the Omega Research Foundation presented these concerns to the European Commission and called for the EU to address this dangerous regulatory lacuna through either amending the Regulation or through establishing other EU-wide measures. The Commission, in its July 2020 Review Report, rejected these recommendations, stating, “The Regulation clearly focuses on restricting trade with third countries. Therefore regulating the import of law enforcement equipment to the EU and its intra-EU transfer to address alleged instances of torture and other cruel, inhuman or degrading treatment or punishment within the EU through the Regulation does not appear to be coherent with the Regulation’s stated objectives. Other tools and means related to the protection of human rights currently at the disposal of the European Union and its Member States can be considered more appropriate in this regard.”<sup>406</sup>

Clearly EU Member States should utilise all relevant “tools” available to them to combat the continuing instances of torture and other ill-treatment within the EU. Given that controlling the EU trade in law enforcement equipment to third countries (through the Anti-Torture Regulation) has been recognised as an important “tool” to combat torture and ill-treatment outside the EU, similar attention should be given to applying this approach (i.e. by controlling trade into and within the EU) as one element of a coherent, effective and efficient strategy to combat torture and ill-treatment within the EU itself.

#### **Recommendations:**

**The European Council and Parliament should amend the EU Anti-Torture Regulation to:**

- **Explicitly prohibit any transfer of Annex II goods between EU Member States;**
- **Require importers of any item listed in Annex III to obtain an import authorisation on a case-by-case basis for such imports into that Member State. Such authorisations should be rigorously assessed to determine whether there are reasonable grounds to believe that the**

<sup>403</sup> European Union, EU Anti-Torture Regulation (2019) *op.cit.* Article 2 Definitions, (d) and (e).

<sup>404</sup> Email correspondence from European Commission official, to the Omega Research Foundation, 29 May 2020

<sup>405</sup> UN, Resolution adopted by the General Assembly on 18 December 2019, A/RES/74/143. Torture and other cruel, inhuman or degrading treatment or punishment, 22 January 2020, paragraph 20.

<sup>406</sup> European Commission. 30 July 2020. *op.cit.* p.15.

items will be used for torture or other ill-treatment in that Member State, and if so no authorisation should be given;

- Require exporters of any item listed in Annex III to obtain an export authorisation on a case-by-case basis for exports of such goods to other EU Member States. Such authorisations should be rigorously assessed to determine whether there are reasonable grounds to believe that the items will be used for torture or other ill-treatment, either in the EU, or once further traded outside the EU, and if so no authorisation should be given.

If it is not possible to amend the Regulation as proposed, the EU should bring forward alternative EU-wide measures to ensure that the import and intra-EU trade in Annex III goods and the intra-EU trade in Annex II goods is effectively regulated.

If EU-wide measures cannot be agreed, all EU Member States should introduce effective national import and intra-EU trade control measures for equipment addressed under the Regulation.

### 5.3. Additional national measures adopted by certain EU Member States

In addition to the common list of goods whose trade is to be controlled or prohibited (Annexes II and III), the EU Anti-Torture Regulation also contains provisions allowing EU Member States to autonomously introduce further national measures to regulate trade of certain additional goods. Under Article 14 of the Regulation, Member States “*may adopt or maintain a prohibition*” on a limited range of specified goods (leg irons, gang chains, and portable electric shock devices), and “*may impose an authorization on the export of*” certain oversized cuffs. Furthermore, Article 10 of the Regulation allows Member States to “*adopt or maintain national measures restricting transportation, financial services, insurance or re-insurance, or general advertising or promotion*” in relation to Annex II goods.

At least seven current EU Member States (Belgium, Finland, Greece, Hungary, Luxembourg, Slovakia and Spain) have reportedly adopted (or are in the process of adopting) measures at the national level instituting import and/or export controls or prohibitions beyond those established under the EU Anti-Torture Regulation. The national controls of Belgium, Finland, France, Greece, and Slovakia cover goods listed in Article 14. Hungary and Spain, however, have established national measures controlling goods beyond those expressly stated in Article 14, although these measures clearly adhere to the spirit of the Regulation. According to the 2020 Commission Review Report, Italy also has “*related measures in place*”, although no further details are available.<sup>407</sup>

In Belgium, the Flemish Arms Trade Law of 15th June 2012 prohibits the import of all portable electric shock devices that can make persons defenceless or which can inflict pain, except for medical or veterinary devices (exceptions apply to allow official use).<sup>408</sup> For the Walloon Region, according to the Arms Trade Decree of 21st June 2012, the import, export and transit of any type of portable electric shock devices, except for medical or veterinary tools, that might disable persons or inflict pain upon them, is prohibited.<sup>409</sup> According to the Public Order Act of Finland, the manufacture, importation, trading and possession in a public place and in a vehicle located in a public place of objects such as “*electric stunners, stun batons and spring batons*” are prohibited, unless otherwise provided for in the

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<sup>407</sup> European Commission, Report from the Commission to the European Parliament and the Council, on the review of Regulation (EU) 2019/125 of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, COM(2020) 343 final, 30 July 2020, p.7.

<sup>408</sup> Email correspondence from Belgian Government, Directorate-General for Economic Analyses and Global Economy, International Department – Licence service (Diamond) to the Omega Research Foundation, received 23 October 2019.

<sup>409</sup> Email correspondence from Belgian Government, Directorate-General for Economic Analyses and Global Economy, International Department – Licence service (Diamond) to the Omega Research Foundation, received 23 October 2019.

Public Order Act.<sup>410</sup> According to Liege University, in *France*, a prohibition has been maintained under the French weapon control regime for the import of electric shock devices.<sup>411</sup> In addition, *Greece* maintains a national measure to prohibit the export (and control the import) of handcuffs exceeding 24cm, portable electric shock devices and portable equipment for the dissemination of incapacitating chemical substances under National Law 2168/1993 for small arms (as amended).<sup>412</sup>

*Hungarian* Government Decree 156/2017. (VI. 16.): “*laying down detailed rules for the authorization of military activities and the certification of undertakings*”, incorporates controls on the import, export and transit of a wide range of “*military equipment and services*”, which are defined to include those used in “*law enforcement*”. Chapter 25 covers “*Coercive and criminal detection tools*”, including “*police sticks: deployment sticks; rubber sticks; telescopic batons; tonfas;*” “*electric shock devices;*” “*devices restricting freedom of movement*”: including “*handcuffs, plastic handcuffs and body clamps*”; and chemical irritants not controlled under the Regulation, notably CS, CR, and CN.<sup>413</sup>

In *Luxembourg*, under Article 36 (1) of the amended Law of 27 June 2018 on export control, the export and the import of shackles and multiple chains are prohibited.<sup>414</sup> Under the same Article, the export and import of portable electric shock devices is also prohibited, except when those accompany the user for the purpose of their personal protection. Furthermore, an authorisation is required for the export of handcuffs that have an overall dimension, including chains, exceeding 240 mm, when measured from the outer edge of one handcuff to the outer edge of the other cuff.<sup>415</sup>

Currently, the export or import of leg irons, gang chains, and portable electric shock devices is only allowed with permission from the *Slovak Republic* in the form of a licence from the Ministry of Economy of the Slovak Republic.<sup>416</sup> According to the 2020 Commission Review Report, in 2020, the Slovak Republic will initiate a “*legislative process to amend its 2007 act on trade in certain goods, which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment*”, although no further details are available as to the specific amendments proposed.<sup>417</sup>

In *Spain*, the export of standard handcuffs is controlled and licensed under Royal Decree 679/2014 of 1 August 2014 establishing the *Regulation on external trade in defence material, other material and dual-use items and technologies*<sup>418</sup>. Under this Decree, Spain assesses any export application, and requires an international import licence from the destination country, as well as an end user certificate.

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<sup>410</sup> Correspondence to the Omega Research Foundation from the Finnish Coordinator, Police Department, Ministry of the Interior, 18 October 2019.

<sup>411</sup> See: Michel, Q. & Caponetti, L. The European Union Trade Control Regime of items which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment Comment of the Legislation: article-by-article, Liege University, April 2020, Article 14, p.53.

<sup>412</sup> See: Michel, Q. & Caponetti, L. (April 2020) op.cit, Article 14, pp.53-4.. Confirmed in email correspondence from Director, Ministry of Development & Investments, Directorate of Trade Regimes and Defence Instruments, Government of Greece, to the Omega Research Foundation, received 31 October 2019.

<sup>413</sup> Government of Hungary, Annex I, 156/2017. (VI. 16.) Government Decree laying down detailed rules for the authorization of military activities and the certification of undertakings

<sup>414</sup> Journal officiel du Grand-Duché de Luxembourg. 2018. Loi du 27 juin 2018 relative au contrôle des exportations. Le Gouvernement du Grand-Duché de Luxembourg <http://data.legilux.public.lu/eli/etat/leg/loi/2018/06/27/a603/jo>

<sup>415</sup> Journal officiel du Grand-Duché de Luxembourg. 2018. Loi du 27 juin 2018 relative au contrôle des exportations. Le Gouvernement du Grand-Duché de Luxembourg <http://data.legilux.public.lu/eli/etat/leg/loi/2018/06/27/a603/jo>. Article 36 (2) of the amended Law of 27 June 2018 on export control.

<sup>416</sup> See: Michel, Q. & Caponetti, L. The European Union Trade Control Regime of items which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment Comment of the Legislation: article-by-article, Liege University, April 2020, Article 14, p.54.

<sup>417</sup> European Commission. 30 July 2020. op.cit., p.7.

<sup>418</sup> Royal Decree 679/2014 of 1 August 2014 establishing the *Regulation on external trade in defence material, other material and dual-use items and technologies* incorporates controls on the export of standard handcuffs.

The UK, a (now) former EU Member State, has also implemented trade controls in this area. Under Article 9 of the UK's Export Control Order 2008, a licence is required for the export of gang chains, leg irons, electric-shock belts and portable electric shock devices to a destination within the customs territory, as well as for the transit of gang chains, leg irons, and portable electric shock devices. The UK also regulates the export of "*Shackles designed for restraining human beings having an overall dimension including chain, when measured from the outer edge of one cuff to the outer edge of the other cuff, of between 240mm and 280mm when locked*".<sup>419</sup> For all such exports and transit, there is a presumption of denial (i.e. licences will not normally be approved for such goods). Furthermore, as described in Section 4.2 of this report, the UK imposes a *de facto* ban on all activities connected with the trade in "*Category A*" goods, which includes certain goods covered under Annex II and Annex III of the EU Anti-Torture Regulation.<sup>420</sup>

The Omega Research Foundation welcomes the introduction of appropriate additional national trade controls where a State determines this is necessary to prevent transfer of goods used for torture or capital punishment.

#### **Recommendations:**

**All EU Member States should consider introducing measures that, at a minimum, prohibit the import, export or transit of law enforcement direct contact electric shock devices, and regulate trade in standard handcuffs and kinetic impact devices used in law enforcement. Such measures could be introduced on an individual State basis through national legislation, or ideally, across the EU by amending the Annex II and Annex III provisions.**

**EU Member States and the Commission should consider whether the Regulation could be amended, through Article 14, to allow Member States to introduce national trade prohibitions or controls, as appropriate, on a wider range of law enforcement equipment and relevant goods.**

Consideration could also be given to previous Amnesty International and Omega proposals on introducing a targeted end use clause to the Regulation.<sup>421</sup> This clause would allow individual EU Member States to halt a specific transfer of a certain item that is not currently expressly listed in the Regulation's Annex II, but which is found to clearly have no practical use other than for the purposes of capital punishment, torture and other ill-treatment. This would also apply where there is evidence that certain law enforcement equipment not expressly listed in the Regulation's Annex III will potentially be transferred to an end user likely to employ it for torture or other ill-treatment. The targeted end use clause would enable individual Member States to act immediately at the national level.

#### [5.4. Ensuring synergies with the EU Anti-Torture Regulation and other EU-wide measures](#)

Of particular relevance are the inter-relationships between the implementation of the EU Anti-Torture Regulation and:

- the Council Common Position 2008/944/CFSP of 8 December 2008, defining common rules governing control of exports of military technology and equipment, and the related Common Military List of the European Union; and

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<sup>419</sup> See UK Government, UK's Export Control Order 2008, Article 9 & PL5001c, Schedule 2.

<sup>420</sup> UK Government, Category A Goods, Schedule 1, The Export Control Order 2008, UK Statutory Instruments 2008 No. 3231

<sup>421</sup> See for example: Amnesty International/Omega Research Foundation, *Grasping the Nettle* (2015); Amnesty International/Omega Research Foundation, *No More Delays*, (2012); Amnesty International/Omega Research Foundation, *From Words to Deeds* (2010).

- the EU Sanctions Regime, particularly regarding UN and EU mandated embargos on arms and related (para)military equipment.

#### 5.4.1. EU Common Position

In December 2008, the EU Member States adopted EU Council Common Position 2008/944/CFSP, *“defining common rules governing control of exports of military technology and equipment”*. The Common Position requires that each Member State *“assess the export licence applications made to it for items on the EU Common Military List ... on a case-by-case basis against the criteria of Article 2”*. Article 2, Criterion 2, regarding human rights and international humanitarian law, is of particular relevance to the Anti-Torture Regulation. Under this Criterion, Member States shall *“deny an export licence if there is a clear risk that the military technology or equipment to be exported might be used for internal repression”*. The Common Position specifically defines *“internal repression”* to include *“torture and other cruel, inhuman and degrading treatment or punishment”*. Member States are also required to *“exercise special caution and vigilance”* in issuing licences *“on a case-by-case basis”*, taking account of the nature of the military technology or equipment, to countries where serious violations of human rights have been established to be occurring by competent bodies of the UN, EU, or Council of Europe. The Common Position instituted operative provisions and criteria by which export applications will be judged, while the range of items covered is established in the EU Common Military List (and EC Regulation 1334/2000). This List includes a number of goods that reportedly have been, or could be, misused in serious human rights violations including torture and ill-treatment.

Certain riot control agents (e.g. CS, CR, CN, and MPA), and some related means of delivery, are encompassed within the Common Military List. When developing (and revising) the EU Anti-Torture Regulation, the Commission and EU Member States specifically excluded any goods already addressed under existing EU instruments from coverage under the EU Anti-Torture Regulation. In practice, this exclusion has led to a muddled approach to some categories of equipment, particularly in the control of riot control agents. Although the Regulation does cover (and control the export of) pepper spray and OC, it does not cover (and does not control the export of) riot control agents listed in the Common Military List, including the common tear gases (CS, CR and CN). This is despite the latter frequently, and globally, being employed to facilitate or conduct human rights violations including torture and other ill-treatment. The issues raised by this inconsistency in controls are compounded, as it is often not possible for human rights monitors to determine whether pepper spray or tear gas is being employed in any given situation.

During the formal review of the EU Anti-Torture Regulation, the Omega Research Foundation presented concerns about this inconsistency to the European Commission. In its July 2020 Review Report, the Commission acknowledged that *“some inconsistencies have emerged”* regarding the regulation of trade in riot control agents, with some RCAs, *“such as pepper spray and Oleoresin Capsicum (OC) ...included in the Regulation, while others listed in the common military list, such as common tear gases..., are not, even though these are frequently used to facilitate or conduct torture and other ill treatment.”* The Commission consequently stated, *“It would be appropriate to explore how best to ensure that both instruments are more consistent, that licence approval processes are uniform and that denial notifications are circulated under both control regimes.”*<sup>422</sup>

**Recommendation: The Omega Research Foundation welcomes the Commission’s statement in the July 2020 Review Report, acknowledging the overlap in these two EU regimes and the issues raised by this. Member States should ensure that licence authorisations for pepper spray and tear gas are treated in similar manner, particularly with regards to concerns that tear gas could be misused for torture and ill-treatment. The Commission, Council and Parliament should explore how best to**

<sup>422</sup> European Commission. 30 July 2020. op.cit., p.17.

**enhance consistency in both instruments, so as to ensure licence approval processes are uniform, and that denial notifications are circulated to both control regimes.**

#### 5.4.2. EU Arms Embargoes

To facilitate effective implementation of EU arms embargoes and other sanctions by all EU Member States, the European Commission developed Sanctions Guidelines, which were approved by the Council on 8 December 2003. These have subsequently been reviewed and updated, with the most recent version adopted by the Council on 4 May 2018.<sup>423</sup>

Paragraph 63 of the Guidelines recognises *“There is a need for a uniform EU regime when imposing an arms embargo.”* It notes that Common Position 2008/944/CFSP23, *“defines the criteria Member States apply for their exports control policy concerning arms”* and that *“for this purpose a common list of military equipment was agreed in 2000.”* It declares that *“Unless otherwise specified, arms embargoes should be interpreted as covering at least all goods and technology on the EU Common List of Military Equipment.”* Despite the implication that standard EU arms embargoes address more equipment than that listed in the Common Military List, these Guidelines make no explicit reference to the inclusion of goods covered by the EU Anti-Torture Regulation. Additionally, a review of the text of contemporary EU arms embargoes imposed to address *“internal repression”* – notably for Belarus, Iran, Libya, Myanmar, Syria, Venezuela and Zimbabwe<sup>424</sup> – could find no explicit reference to the Anti-Torture Regulation or related equipment.<sup>425</sup>

For certain countries, the EU has established arms embargoes to explicitly respond to instances of *“internal repression”*.<sup>426</sup> In such cases, the range of the goods covered by the embargo has been extended beyond only those goods covered by the EU Military List, to also prohibit the transfer of additional equipment that could be used for *“internal repression”*, as detailed on an *“internal repression list”*. This list, however, which was published by the Commission in 2018, does not include those items that are covered by the EU Anti-Torture Regulation.<sup>427</sup> In response to an information request from the Omega Research Foundation, the Commission clarified that *“the [European] Council autonomously decides what goods to include in a new sanctions regime, so as such there is no automatism extended to goods included in the [Anti-Torture] Regulation”*.<sup>428</sup> In light of various possible, as well as reported, incidents of misuse of law enforcement equipment addressed in the EU Anti-Torture Regulation for the purposes of internal repression, this is a strange omission. In practice, this could result in an inconsistent situation, where EU Member States licence the export of Annex III goods to countries where an EU arms embargo is in place, even in cases where an embargo has been extended to include equipment used in *“internal repression”*.

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<sup>423</sup> Council of the European Union, EU Guidelines – Update, 4 May 2018. 8519/18 <http://data.consilium.europa.eu/doc/document/ST-5664-2018-INIT/en/pdf> Accessed 27 April 2020.

<sup>424</sup> See EU Sanctions Map, created by the Estonian Presidency of the Council of the EU, which details all sanctions agreed by the EU Member States and adopted by the EU Council as well as all UN Sanctions imposed by the UN Security Council and implemented by the EU Council, available at <https://www.sanctionsmap.eu/#/main> Accessed 20 July 2020.

<sup>425</sup> See for example, Council of the European Union, Consolidated text: Council Decision 2012/642/CFSP of 15 October 2012 concerning restrictive measures against Belarus, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02012D0642-20200219> Accessed 11 May 2020.

<sup>426</sup> Council of the European Union, Sanctions Guidelines – Update, 4 May 2018. 5664/18. <https://data.consilium.europa.eu/doc/document/ST-5664-2018-INIT/en/pdf>. Accessed 28 April 2020, Article 73.

<sup>427</sup> Council of the European Union, Sanctions Guidelines – Update, 4 May 2018. 5664/18. <https://data.consilium.europa.eu/doc/document/ST-5664-2018-INIT/en/pdf>. Accessed 28 April 2020, Annex II.

<sup>428</sup> Email correspondence from European Commission official, to the Omega Research Foundation, 29 May 2020.



During the formal review of the EU Anti-Torture Regulation, the Omega Research Foundation presented its concerns regarding this gap to the European Commission. In its July 2020 Review Report, the Commission acknowledged that *“although the EU has established arms embargoes to explicitly respond to instances of ‘internal repression’ and for that purpose has developed a list of equipment used for ‘internal repression’, that list does not include items covered by the Regulation. The possibility of expressly including certain Annex III goods controlled by the Regulation within the scope of embargoes specifically referencing concerns relating to ‘internal repression’ could be explored.”*<sup>429</sup>

**Recommendation:** The Omega Research Foundation welcomes the Commission’s statement in the July 2020 Review Report acknowledging the gaps in the list of equipment used for *“internal repression”*. Consequently, EU embargoes specifically referencing concerns relating to *“internal repression”*, should expressly include all Annex III goods controlled by the EU Anti-Torture Regulation within their scope. This should be clarified in the next revision of the EU Sanctions Guidelines. Similar language should also be included in the EU Anti-Torture Regulation. Consideration should also be made as to whether these measures should be extended to all countries where an embargo is being considered or already exists.

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<sup>429</sup> European Commission. 30 July 2020. op.cit., p.17.

## Section 6: Summary of Recommendations

### Member State Implementation of the EU Anti-Torture Regulation

#### *State export authorisation and reporting*

- All EU Member States should prepare a “*public, annual activity report*” of export authorisation decisions, which should be sent to the Commission, a copy of which should be made publicly available (e.g. posted on the Government website). All States should adopt the good practices incorporated into the Commission’s standard reporting template, and ensure that their public reports include details of applications received, goods and countries concerned, and the decisions made, in addition to the quantities/financial value of the goods, and details of the specific end users. Where a licence has been refused, the reason for such refusal should be noted in the State report. To ensure full transparency and accountability all States should prepare such reports even if they did not receive applications, and therefore did not authorise export licences.
- All Member States must refuse the authorisation of any export of an item under Annex III where there are “*reasonable grounds*” to believe that such equipment might be used for torture or other ill-treatment. In the process of making such export decisions, the competent authority must take into account available international court judgements, findings of the competent bodies of the UN, the Council of Europe and the EU, and reports of the Council of Europe’s Committee for the Prevention of Torture, and of the UN Special Rapporteur on Torture. Credible reports or other information prepared by civil society organisations should also be considered, as is permitted under Article 12.2. In order to promote and facilitate effective and consistent practice, the European Commission should develop guidance concerning license authorisation procedures, including risk assessment mechanisms.

#### *Commission reporting of State export authorisations*

- All future activity reports of State export authorisations prepared by the Commission should be released annually.
- Any Member States that do not fulfil their obligations under Article 26 should be named in the Commission activity report.
- The primary information provided by all EU Member States (based on the Commission’s standardised reporting template) should be published in full in the Commission’s annual activity report.

#### *EU Trade fairs*

- The Regulation should be amended to clarify the specific obligations of companies organising trade fairs and exhibitions within the EU, so as to prevent the display and promotion of Annex II goods.
- Organisers of EU-based arms and security trade fairs or exhibitions should ensure that all companies exhibiting at their events are made aware of the EU Anti-Torture Regulation provisions. This should be undertaken as part of the registration process, and Regulation provisions should clearly be displayed in all exhibition materials and on the exhibition website.

- All marketing material (including online material) to be displayed by the exhibitors at EU fairs should be screened by the organisers to ensure compliance with such prohibitions. Marketing material found to be promoting Annex II goods, should be removed.
- Should prohibited promotional activity be discovered, the fair organisers should, where appropriate, close the stall and remove the company from the fair. If such prohibited promotional activities are serious, extensive, or the company has engaged in such activity previously, the offending company should be banned from exhibiting or attending any future exhibitions or trade events held by the organisers.
- Fair organisers should inform the relevant authority of the EU Member State where the fair is held, of any instances of promotion of Annex II goods. If deemed appropriate, the authorities should investigate the case, and determine whether and how the companies should be sanctioned. Should Annex II goods be found to be physically displayed at an event held within the EU, these must be seized by State authorities and destroyed.

#### *The Anti-Torture Coordination Group (ATCG)*

- The ATCG should explore the scope for greater public transparency with regards to the substance of its discussions and other activities. This could be achieved, without compromising confidentiality concerns, in its annual Report to the European Parliament, or through other means.
- The working practices of the ATCG should be reviewed by that Group to explore how civil society organisations with expertise could more effectively interact with the Group on a proactive basis.
- Analysis of State implementation of Article 23 should be an essential element of the ATCG's monitoring role and should be undertaken on a regular basis, in a systematic manner, and its findings should be publicly reported.

#### *Commission oversight and facilitation measures*

- The Commission should be specifically tasked with monitoring Member State implementation of the Regulation, and its responsibilities and scope for proactive independent response should be clarified. The Commission should bring specific implementation concerns to the attention of individual Member States for clarification and resolution, and, if unresolved, raise such issues with the ATCG. The Commission should also establish mechanisms to receive, analyse, and act upon reliable public information provided by concerned stakeholders including, for example, civil society and the media, indicating breaches of the Regulation had occurred or State implementation was incomplete. The Omega Foundation supports the Commission's proposed establishment of a group of experts, and believes it could act as one potential forum for such issues to be raised.
- The Commission should ensure that all Annexes are regularly reviewed and updated, as appropriate, and as a minimum on an annual basis. This should be combined with active monitoring of developments in the manufacture, promotion, trade, and (mis)use of relevant law enforcement equipment and other goods.
- The Commission could play a more pro-active role in strengthening EU Member State implementation of the Regulation by facilitating the sharing of existing good Member State practice with a view to harmonisation amongst all EU Member States; facilitating the discussion of, and making proposals for, effective measures for States to introduce to address existing challenging areas of implementation or prospective new areas; and developing Member State

implementation guidance, guidelines, templates, tools, or training to facilitate effective implementation of the Regulation in key or challenging areas.

- The Commission (and individual EU Member States) should consider providing advice and technical assistance to non-EU States wishing to, or currently in the process of, joining the EU. This would facilitate the development of national legislation in line with the EU Anti-Torture Regulation provisions. Similarly, the Commission and all EU Member States should collectively explore the feasibility of developing measures for appropriate information sharing with non-EU States that have national controls closely aligned to the EU Anti-Torture Regulation (e.g. the UK, North Macedonia, Montenegro) to facilitate continued alignment particularly with regard to goods and activities covered by these controls.

The Omega Research Foundation supports the Commission's proposed establishment of a group of experts to aid and advise the Commission in strengthening compliance and facilitating more effective implementation of the Regulation by all Member States, and recommends that the relevant EU bodies (i.e. the Council and Parliament) endorse this proposal.

- The membership, mandate and working practices of this group of experts should be clearly defined by the Commission and could be informed by the previous group of experts established by the Commission in 2014 to facilitate its comprehensive review of the Regulation.
- In order to function effectively, the group should meet virtually or in person on a regular basis (i.e. at least semi-annually).
- The group of experts could be tasked with providing information, expertise and advice to the Commission regarding *inter alia*:
  - Developments in the manufacture, promotion, trade, use and misuse of law enforcement equipment, relevant equipment, and goods including pharmaceutical chemicals, to inform and facilitate regular and responsive updating of the Regulation Annexes;
  - Failures of State implementation or potential breaches of the Regulation, to facilitate an appropriate response by the Commission and Member States;
  - Compilation of good State practice and/or development of guidance on the practical application of the Regulation in certain difficult or emerging areas;
  - Development of standardised reporting methodologies and templates, notably in annual activity reports;
  - Development of proposals for regulation in new areas, such as regulation of the activities of EU companies or individuals in third countries.

## **Law enforcement equipment not adequately covered by the Regulation**

### *Equipment that should be prohibited under the Regulation*

- Direct contact electric shock weapons and devices including stun guns, shock batons, shock shields, and stun gloves intended for law enforcement, should be added to Annex II, and their promotion and trade (import, export, and transit) be prohibited.
- Projectile electric shock weapons and devices, intended for law enforcement, that incorporate direct contact capabilities, should have such capabilities permanently disabled. Where this is not possible, such weapons, where intended for law enforcement, should be added to Annex II their promotion and trade prohibited.

- Projectile electric shock weapons, intended for law enforcement, which do not incorporate direct contact capability, or that have such capability permanently disabled, should be retained in Annex III and their trade controlled.
- Blindfolds, 'prisoner hoods', and related restraint systems that are designed to block the vision of a human being, and are intended for law enforcement purposes, should be added to Annex II, and their promotion and trade prohibited. Spit guards and spit masks should be added to existing controls on spit hoods, to reflect the nature of goods on the marketplace.
- The promotion and trade of all restraint chairs, beds, or boards (whether employing metallic or non-metallic restraints) intended for law enforcement purposes should be prohibited, and such goods should be placed on Annex II of the Regulation. Stringent controls on the trade and use of restraint chairs, beds, and boards utilising fabric straps, should be introduced to ensure they are only employed by trained health professionals solely for medical purposes. Such devices should be placed on Annex III of the Regulation.

#### *Equipment that should be controlled under the Regulation*

- 'Standard handcuffs' should be treated in the same manner as other law enforcement devices covered by the Regulation whose use may be legitimate if used appropriately and in accordance with international standards, but which have also regularly been misused for torture and other ill-treatment. 'Standard handcuffs' should therefore be added to Annex III and their trade controlled.
- The European Commission and EU Member States should clarify whether the export of plastic bullets, rubber bullets and related kinetic impact projectiles and associated launchers is controlled by EU Council Common Position 2008/944/CFSP and the accompanying EU Military List. If so, the Commission should clarify which types of projectile and launcher are covered. If these projectiles and launchers are not covered by the Common Position/EU Military List, the Commission should bring forward recommendations for ensuring control of these goods, either through incorporation into the Common Position/EU Military List or through incorporation into the EU Anti-Torture Regulation.
- Certain hand-held kinetic impact devices should be treated in the same manner as other law enforcement devices covered by the Regulation, i.e. whose use may be legitimate if used in accordance with international standards, but which have also regularly been misused for torture and other ill-treatment. Batons, side-handled batons, tonfas and other similar devices should be added to Annex III and their trade controlled.

#### **Activities of EU Nationals Abroad**

##### *Brokering services outside the EU*

- The Commission and EU Member States should undertake further research into relevant EU commercial brokering activity conducted outside of the EU. There should be further analysis of the implementation of existing good national and multilateral practice, with a view to bringing forward options for extending Regulation controls in this area.
- The scope of brokering activities covered by the Regulation should be expanded to include the provision by EU nationals or EU-based companies of transportation services between third countries, prohibiting transportation of Annex II goods, and regulating transportation of Annex III goods.

### *Promotion of relevant goods outside the EU*

- The current geographical restriction outlined in Article 8 should be removed. Any EU *natural or legal person, entity or body* should be prohibited from promoting Annex II goods at exhibitions or fairs irrespective of the country in which they are held.
- Article 8 should be amended to clarify the specific obligations of trade fair, exhibition, and pavilion organisers to prevent the display and promotion of Annex II goods. Such obligations should apply irrespective of the country in which the exhibition or fair is held.

### *Provision of Training*

- The Regulation should be amended to prohibit the supply of technical assistance including instruction, advice, training, or the transmission of working knowledge or skills that could facilitate or be used to commit torture and other ill-treatment, independent of the supply of any equipment addressed under the Regulation. As a minimum, the transmission of all techniques that have been deemed to be inappropriate by the European Court of Human Rights, the CPT, the UN Committee Against Torture, UN Special Rapporteur for Torture, and other UN and European human rights bodies, should be prohibited.
- EU-wide controls should be introduced (either as part of the EU Anti-Torture Regulation or through other appropriate measures) to regulate the provision of instruction, training and related technical assistance conducted by all State entities, as well as companies and educational establishments based in EU Member States, and EU nationals, to ensure that such provision does not promote or include inappropriate or abusive policies, practices or techniques that could facilitate, or be employed in torture or other ill-treatment. All instruction or training of correctional and law enforcement officials (including in the employment of law enforcement equipment and broader use of force) should be in line with, and actively promote, adherence to regional and international human rights standards. Appropriate accountability, reporting, and impact assessment measures should be established to monitor adherence of these training programmes to these principles.

### **Additional measures to regulate the trade in law enforcement equipment and other relevant goods**

#### *Regulating the import of law enforcement equipment into EU Member States and transfer between EU Member States*

The European Council and Parliament, in close consultation with the Commission, should amend the EU Anti-Torture Regulation to:

- Explicitly prohibit any transfer of Annex II goods between EU Member States.
- Require importers of any item listed in Annex III to obtain an import authorisation on a case-by-case basis for such imports into that Member State. Such authorisations should be rigorously assessed to determine whether there are reasonable grounds to believe that the items will be used for torture or other ill-treatment in that Member State, and if so no authorisation should be given.
- Require exporters of any item listed in Annex III to obtain an export authorisation on a case-by-case basis for exports of such goods to other EU Member States. Such authorisations should be rigorously assessed to determine whether there are reasonable grounds to believe

that the items will be used for torture or other ill-treatment, either in the EU, or once further traded outside the EU, and if so no authorisation should be given.

- If it is not possible to amend the Regulation as proposed, the EU should bring forward alternative EU-wide measures to ensure that the import and intra-EU trade in Annex III goods and the intra-EU trade in Annex II goods is effectively regulated.
- If EU-wide measures cannot be agreed, all EU Member States should introduce effective national import and intra-EU trade control measures for equipment addressed under the Regulation.

#### *Additional national measures adopted by certain EU Member States*

- Building on existing good practice, all EU Member States should consider introducing measures that, at a minimum, prohibit transfer of law enforcement direct contract electric shock devices, and regulate trade in standard handcuffs used in law enforcement. Such measures could be introduced on an individual State basis through national legislation, or ideally, across the EU by amending the Annex II and Annex III provisions.
- EU Member States and the Commission should consider whether the Regulation could be amended, through Article 14, to allow Member States to introduce national trade prohibitions or controls, as appropriate, on a wider range of law enforcement equipment and relevant goods.
- Consideration could be given to introducing a targeted end use clause to the Regulation. This clause would allow individual EU Member States to halt a specific transfer of a certain item that is not currently expressly listed in the Regulation's Annex II, but which is found to clearly have no practical use other than for the purposes of capital punishment, torture and other ill-treatment. This would also apply where there is evidence that certain law enforcement equipment not expressly listed in the Regulation's Annex III will potentially be transferred to an end user likely to employ it for torture or other ill-treatment. The targeted end use clause would enable individual Member States to act immediately at the national level.

#### *Ensuring synergies with the EU Anti-Torture Regulation and other EU-wide measures*

- The Omega Research Foundation welcomes the Commission's statement in the July 2020 Review Report, acknowledging the overlap in EU Anti-Torture Regulation and the EU Common Position on military technology and equipment exports, and the issues raised by this. Consequently, Member States should ensure that licence authorisations for pepper spray and tear gas are treated in similar manner, particularly with regards to concerns that tear gas could be misused for torture and ill-treatment. The Commission should explore how best to enhance consistency in both instruments, so as to ensure licence approval processes are uniform, and that denial notifications are circulated to both control regimes.
- The Omega Research Foundation welcomes the Commission's statement in the July 2020 Review Report acknowledging the gaps in the list of equipment used for "*internal repression*". Consequently, EU embargoes specifically referencing concerns relating to "*internal repression*" should expressly include all Annex III goods controlled by the EU Anti-Torture Regulation within their scope. This should be clarified in the next revision of the EU Sanctions Guidelines. Similar language should also be included in the EU Anti-Torture Regulation. Consideration should also be made as to whether these measures should be extended to all countries where an embargo is being considered or already exists.

## Appendix 1: Details from Member State reporting

(compiled by the Omega Research Foundation)

Exporting country	Year	Number of authorisations	Destination(s)	Equipment	Other information
Austria	2018	6	Email: no public report released, reports submitted to Commission		
	2017	6	Email: no public report released, reports submitted to Commission		
	2016	?	Email: no public report released, reports submitted to Commission		
	2015	?	Email: no public report released, reports submitted to Commission		
Belgium	2018	0	Email: no public report released, reports submitted to Commission		
	2017	0	Email: no public report released, reports submitted to Commission		
	2016	0	Email: no public report released, reports submitted to Commission		
	2015	0	Email: no public report released, reports submitted to Commission		
Bulgaria	2018	0	-	-	-
	2017	0	-	-	-
	2016	0	-	-	-
	2015	0	-	-	-
Croatia	2018	0	Email: no public report released, reports submitted to Commission		
	2017	0	Email: no public report released, reports submitted to Commission		
	2016	0	Email: no public report released, reports submitted to Commission		
	2015	0	Email: no public report released, reports submitted to Commission		
Cyprus	2018	0	Email: no public report released, reports submitted to Commission		
	2017	0	Email: no public report released, reports submitted to Commission		
	2016	0	Email: no public report released, reports submitted to Commission		
	2015	0	Email: no public report released, reports submitted to Commission		



Czechia <sup>430</sup>	2018	17	Reports submitted to the commission		
		1	Albania	Thiopental	
		1	Azerbaijan	'Electric stun guns' Pepper spray	Discusse d above
		2	Bahrain	'Handcuffs'	
		2	Bosnia and Herzegovina	'Electric stun guns' Pepper spray	
		1	Botswana	'Handcuffs'	
		1	Georgia	Thiopental	
		1	Iraq	Thiopental	
		1	Iran	Thiopental	
		2	Moldova	'Electric stun guns' Pepper spray	
		1	Nigeria	'Electric stun guns' Pepper spray	Discusse d above
		2	Saudi Arabia	'Electric stun guns' Pepper spray	
		1	Serbia	'Electric stun guns' Pepper spray	
		1	Switzerland	Thiopental	
	2017	11	Reports submitted to the Commission		
		2	Bosnia and Herzegovina	'Electric stun guns' Pepper spray	
		1	Serbia	'Electric stun guns' Pepper spray	
		1	Nigeria	'Electric stun guns' Pepper spray	Discusse d above
		1	Montenegro	'Electric stun guns' Pepper spray	
		1	Jordan	Thiopental	
		1	Iran	Thiopental	
		1	Algeria	Thiopental	
		1	Argentina	'handcuffs'	
		1	Iraq	Thiopental	
		1	Switzerland	Thiopental	
	2016	1	Bosnia and Herzegovina	'Electric stun guns' Pepper spray	
		1	Serbia	'Electric stun guns' Pepper spray	
		2	Moldova	'Electric stun guns'	

<sup>430</sup> Authorisations denied:

2017: 1 for export of thiopental to Hong Kong owing to "risk of using exported goods"

2016: 1 for export of pepper spray to Kosovo owing to "risk of using exported goods"

2015: 1 for export of thiopental to Vietnam owing to "risk of using exported goods for torture"

Additionally: 2015 (administrative proceedings terminated) 1 for export of thiopental to Vietnam owing to "the party to the proceedings did not remove the material defects of the application"

				Pepper spray	
		1	Georgia	'Electric stun guns' Pepper spray	
		1	Ukraine	'Electric stun guns' Pepper spray	Discusse d above
		2	Iran	Thiopental sodium	
		2	Algeria	Thiopental sodium	
		2	Albania	Thiopental sodium	
	2015	2	Bosnia and Herzegovina	'Electric stun guns' Pepper spray	
		1	Switzerland	Thiopental	
		2	Nigeria	'Electric stun guns' Pepper spray	Discusse d above
		1	Lebanon	'Electric stun guns' Pepper spray	
		1	Albania	Thiopental	
Denmark	2018	1	No public report found, reports submitted to Commission		
	2017	1	No public report found, reports submitted to Commission		
	2016	?	No public report found, no response to Omega request		
	2015	?	No public report found, no response to Omega request		
Estonia	2018	0	No public report found, assumption based on Commission report		
	2017	0	No public report found, assumption based on Commission report		
	2016	?	No public report found, no response to Omega request		
	2015	0	-	-	-
Finland	2018	0	-	-	-
	2017	0	-	-	-
	2016	0	-	-	-
	2015	0	-	-	-
France	2018	5	Reports submitted to Commission		
	2017	8	Reports submitted to Commission		
	2017	Approx. 20	Reporting under arms export report is vague, no response to Omega or Amnesty request		
	2016	Approx. 20	Reporting under arms export report is vague, no response to Omega or Amnesty request		
Germany  <b>*see Appendix 2</b>	2018	142	Reports submitted to the Commission		
			Report accessible online (copy held by Omega Research Foundation)		
	2017	187	Reports submitted to the Commission		
			Report accessible online (copy held by Omega Research Foundation)		
2016		Report accessible online (copy held by Omega Research Foundation)			

	2015		Report accessible online (copy held by Omega Research Foundation)		
Greece	2018	0	Email: no public report released, reports submitted to Commission		
	2017	0	Email: no public report released, reports submitted to Commission		
	2016	0	Email: no public report released, reports submitted to Commission		
	2015	0	Email: no public report released, reports submitted to Commission		
Hungary	2018	0	No public report found, assumption based on Commission report		
	2017	0	No public report found, assumption based on Commission report		
	2016	?	No public report found, no response to Omega request		
	2015	?	No public report found, no response to Omega request		
Ireland	2018	0	-	-	-
	2017	0	-	-	-
	2016	0	-	-	-
	2015	0	-	-	-
Italy	2018	2	No public report found, reports submitted to Commission		
	2017	5	No public report found, reports submitted to Commission		
	2016	?	No public report found, no response to Omega request		
	2015	?	No public report found, no response to Omega request		
Latvia	2018	0	Email: no public report released		
	2017	0	Email: no public report released		
	2016	0	Email: no public report released		
	2015	0	Email: no public report released		
Lithuania	2018	0	-	-	-
	2017	0	-	-	-
	2016	0	-	-	-
	2015	0	-	-	-
Luxembourg	2018	0	No public report found, assumption based on Commission report		
	2017	0	No public report found, assumption based on Commission report		
	2016	?	No public report found, no response to Omega request		
	2015	?	No public report found, no response to Omega request		
Malta	2018	0	No public report found, assumption based on Commission report		
	2017	0	No public report found, assumption based on Commission report		
	2016	?	No public report found, no response to Omega request		
	2015	?	No public report found, no response to Omega request		

Netherlands	2018	37	No public report found, reports submitted to Commission		
	2017	46	No public report found, reports submitted to Commission		
	2016	?	No public report found, no response to Omega request		
	2015	?	No public report found, no response to Omega request		
Poland	2018	0	No public report found, reports submitted to Commission		
	2017	3	No public report found, reports submitted to Commission		
	2016	?	No public report found, no response to Omega request		
	2015	?	No public report found, no response to Omega request		
Portugal	2018	1	No public report found, reports submitted to Commission		
	2017	3	No public report found, reports submitted to Commission		
	2016	?	No public report found, no response to Omega request		
	2015	?	No public report found, no response to Omega request		
Romania	2018	0	No public report found, assumption based on Commission report		
	2017	0	No public report found, assumption based on Commission report		
	2016	?	No recent public report found, no response to Omega request		
	2015	?	No recent public report found, no response to Omega request		
Slovakia	2018	0	Email: no public report released, no reports submitted to Commission		
	2017	0	Email: no public report released, no reports submitted to Commission		
	2016	0	Email: no public report released, no reports submitted to Commission		
	2015	0	Email: no public report released, no reports submitted to Commission		
Slovenia	2018	0	Email: no public report found, reports submitted to Commission		
	2017	1	Reports submitted to Commission		
		1	India End user: Private security firm	<a href="#">Annex III. 3.1</a> Quantity listed: 2	
	2016	1	Vietnam End user: Private security firm	<a href="#">Annex III. 3.1</a> Quantity listed: 1	
		2015	1	Saudi Arabia End user: Police	<a href="#">Annex III. 3.1</a> Quantity listed: 120
	1		Thailand End user: Private security firm	<a href="#">Annex III. 3.1</a> Quantity listed: 1	

		1	Turkey End user: Private security firm	<u>Annex III. 3.1</u> Quantity listed: 2	
Spain	2018	3	Reports submitted to Commission		
	2017	1	Reports submitted to Commission		
	2016	?	No public report found, no response to Omega request		
	2015	?	No public report found, no response to Omega request		
Sweden	2018	2	Reports submitted to Commission		
		2	USA End user: 'Consumers'	<u>Annex III. 3.1</u> Quantity listed: 7500 units of pepper spray.	
	2017	0	Reports submitted to Commission		
		0	-	-	-
	2016	0	-	-	-
	2015	0	-	-	-
United Kingdom	2018	12	Reports submitted to Commission		
		11	Strategic Export Controls: Country Pivot Report 2018		
		1	Belize	Barbiturate anaesthetic agents for injection Value: £1,980	
		1	Channel Islands	Tear gas/riot control agents Value: £8,600	
		1	Gibraltar	Portable riot control electric-shock devices Value: £19,800	
		3	New Zealand	Shackles Value: £11,028	
		3	Saudi Arabia	Barbiturate anaesthetic agents for injection (2 licences) Barbiturate anaesthetic agents for injection. Deuterium compounds (1 licence) Value: £8,725	
		1	Serbia End user: civilian/ commercial	Barbiturate anaesthetic agents for injection Value: £34	
		1	USA	Barbiturate anaesthetic agents for injection Value: £132	
	2017	23	Reports submitted to Commission		
		21	Strategic Export Controls: Country Pivot Report 2017		
1		Anguilla	Tear gas/riot control agents		

			Value: £1,720	
	4	Australia	Handcuffs Shackles (2 licences) Tear gas/riot control agents Value: £8,845	
	1	Bermuda	Tear gas/riot control agents Value: £4,300	
	1	Channel Islands	Portable riot control electric-shock devices Value: £12,000	
	1	Costa Rica	Barbiturate anaesthetic agents for injection Value: £189	
	1	Falkland Islands	Tear gas/riot control agents Value: £430	
	2	Hong Kong Special Administrative Region	Barbiturate anaesthetic agents for injection Value: £7,375	Discussed above
	2	Mexico End user: civilian/commercial	Barbiturate anaesthetic agents for injection Value: £171	
	1	Norway	Barbiturate anaesthetic agents for injection Value: £171	
	1	Qatar	Barbiturate anaesthetic agents for injection Value: £150	
	1	Saudi Arabia	Barbiturate anaesthetic agents for injection Value: £52	
	1	South Africa	Barbiturate anaesthetic agents for injection Value: £65	
	3	Switzerland	Barbiturate anaesthetic agents for injection Value: £107	
	1	USA	Shackles Value: £524	
2016	20	Strategic Export Controls: Country Pivot Report 2016		
	3	Australia	Handcuffs Shackles (2 licences) Value: £9,217	
	1	Bahamas	Barbiturate anaesthetic agents for injection Value: £1,959	

		1	Bermuda	Tear gas/riot control agents Value: £8,600	
		2	Gibraltar End user: law enforcement agency	Portable incapacitating substance riot control devices Value: £2,670	
		1	Hong Kong Special Administrative Region End user: law enforcement agency	Shackles Value: £7,566	Discussed above
		1	Mexico End user: civilian/commercial	Barbiturate anaesthetic agents for injection Value: £123	
		2	New Zealand	Cuffs Handcuffs Value: £8,594	
		6	Switzerland End user: civilian/commercial	Barbiturate anaesthetic agents for injection Value: £213	
		3	USA	Handcuffs Portable incapacitating substance riot control devices (2 licences) Value: £89,364	
	2015	23	Strategic Export Controls: Country Pivot Report 2015		
		1	Bahamas	Barbiturate anaesthetic agents for injection Value: £872	
		1	British Virgin Islands	Handcuffs Value: £2,927	
		4	Channel Islands	Portable anti-riot devices (2 licences) Portable incapacitating substance riot control devices (2 licences) Value: £23,656	
		1	Falkland Islands	Electric-shock devices Value: £8,500	
		2	Hong Kong Special Administrative Region End user: government	Handcuffs Value: £15,241	Discussed above

		1	Mexico	Barbiturate anaesthetic agents for injection Value: £356	
		2	New Zealand	Handcuffs Tear gas/riot control agents Value: £35,008	
		1	Norway	Barbiturate anaesthetic agents for injection Deuterium compounds Value: £261	
		2	St Helena	Portable anti-riot devices Value: £9,445	
		7	Switzerland	Barbiturate anaesthetic agents for injection (6 licences) Barbiturate anaesthetic agents for injection. Deuterium compounds (1 licence) Value: £252	
		1	USA	Electric shock devices Value: £1	



## Appendix 2: German reporting under the Regulation

2018<sup>431</sup>

Summary of authorizations and refusals granted under Council Regulation (EC) No 1236/2005 of 27 June 2005

Period: 1 January 2018 - 31 December 2018

Authorizations under Article 5				
Item number of Annex III	Descriptions	Country	Number of permits	Other information
1.1	Shackles, including multi-person shackles	Montenegro	1***	
		Switzerland	5	
		United States	2	
3.1	Portable weapons and equipment that emit disabling or irritating chemical substances	Andorra	7	
		Argentina	1	
		Armenia	1	
		Ethiopia	1*	
		Bosnia and Herzegovina	2	
		India	2 (from that 1**)	
		Israel	1	
		Japan	5	
		Jordan	1**	
		Kosovo	1*	
		Montenegro	1***	
		Switzerland	15	
		Serbia	2	
		Somalia	1*	
		South Africa	7	
		Taiwan	1	
		Ukraine	1	
United Republic of Tanzania	1			
Central African Republic	1			
3.2	Pelargonic acid	Australia	2	
		Brazil	2	Discussed above
		India	6	
		Republic of Korea	3	
		Russian Federation	1	

<sup>431</sup> \* Recipients: United Nations agencies / missions

\*\* Recipient: Embassy of the Federal Republic of Germany

\*\*\* Double mention of a transaction with different goods items in Annex III

		Switzerland	2	
		South Africa	1	Discussed above
		United Arab Emirates	1	
3.3	Oleoresin Capsicum	Argentina	1	
		Australia	1	
		Japan	2	
		Kenya	1	Discussed above
		Russian Federation	2	
		Switzerland	4	
		South Africa	3	
		Tunisia	1	
		Ukraine	4	
3.4	Mixtures with PAVA or OC	Russian Federation	2	
		Switzerland	5	
		Singapore	1	
		Ukraine	1	
		United States	2	
		PRC	1	
Authorizations under Article 7b				
Item number of Annex IIIA	Description	Country	Number of permits	Other information
1.1.	Products that could be used to execute people by lethal injection	Argentina	5	
		Ethiopia	1	
		Australia	2	
		Chile	3	
		Iran	1	
		Canada	2	
		Kenya	2	
		Colombia	3	
		Cuba	1	
		Malaysia	1	
		Norway	1	
		Peru	1	
		Republic of Korea	1	
		Switzerland	3	
		Zimbabwe	2	
		South Africa (with endings in Kenya,	1	

		Namibia, Zimbabwe)		
		South Africa	1	
		Suriname	1	
		Turkey	1	
Approval under Article 7e				
Item number of Annex IIIA	Description	Country	Number of permits	Other information
1.1	Products that could be used to execute people by lethal injection	Peru		
Refusals under Article 5 in conjunction with Article 6				
Item number of Annex III	Description	Country	Number of rejections	Other information
3.1	Portable weapons and equipment that emit disabling or irritating chemical substances	Republic of Moldova	1	
		Vietnam	1	
3.6	For the application of incapacitating or irritating chemical substances, fixed or mountable equipment with a large area of use, which is not designed for attachment to a wall or ceiling in a building.	Macau	1	

2017<sup>432</sup>

General overview of the according to Council Regulation (EC) No. 1236/2005 of 27 June 2005 granted approvals and rejections

Period: January 1, 2017 - December 31, 2017

Authorizations under Article 5				
Item number of Annex III	Descriptions	Country	Number of permits	Other information
1.1	Shackles, including multi-person shackles	Andorra	1***	
		Costa Rica	1***	
		Switzerland	2	
3.1	Portable weapons and equipment that emit disabling or irritating chemical substances	Andorra	6 (from that 1***)	
		Bangladesh	1	
		Venezuela	1**	
		Bosnia and Herzegovina	1	
		Chile	1	
		Costa Rica	1***	
		Democratic Republic of Congo	1**	
		Ghana	2	
		Japan	8	
		Cambodia	1*	
		Lebanon	1**	
		Montenegro	1	
		Namibia	1	
		Switzerland	18	
		Serbia	1	
		Taiwan	2	
		South Africa	3	
		Ukraine	1	
		Uruguay	1	
United States	1			
Vietnam	1**			
3.2	Pelargonic acid	Australia	3	
		Brazil	4	Discussed above
		India	14	
		Republic of Korea	4	
		Russian Federation	1	

<sup>432</sup> \* Recipients: United Nations agencies / missions

\*\* Recipient: Embassy of the Federal Republic of Germany

\*\*\* Double mention of a transaction with different goods items in Annex III

		Switzerland	1	
		Singapore	1	
		South Africa	1	Discussed above
		Taiwan	1	
		Turkey	1	
		United Arab Emirates	2	
3.3	Oleoresin Capsicum	Argentina	2	
		India	2	
		Kenya	1	Discussed above
		Nigeria	2	
		Norway	1	
		Switzerland	7	
		Singapore	1	
		South Africa	1	Discussed above
		Ukraine	5	
		United States	2	
		PRC	1	
3.4	Mixtures with PAVA or OC	Russian Federation	1	
		Switzerland	1	
		Turkey	6	
		United States	7	
Authorizations under Article 7b				
Item number of Annex IIIA	Description	Country	Number of permits	Other information
1.1.	Products that could be used to execute people by lethal injection	Egypt	2	
		Argentina	5	
		Australia	2	
		Bangladesh	1	
		Chile	1	
		Ecuador	1	
		Ghana	1	
		Indonesia	1	
		Iran	3	
		Israel	2	
		Japan	1	
		Jordan	2	
		Canada	2	
		Kenya	2	

		Colombia	2	
		Cuba	2	
		Libya	1	
		Mexico	2	
		New Zealand	1	
		Norway	1	
		Oman	2	
		Pakistan	1	
		Peru	2	
		Republic of Korea	2	
		Saudi Arabia	1	
		Switzerland	1	
		South Africa	3	
		Sudan	1	
		Turkey	2	
		Uganda	2	
		Uruguay	1	
Approval under Article 7e				
Item number of Annex IIIA	Description	Country	Number of permits	Other information
1.1	Products that could be used to execute people by lethal injection	Peru	1	
Refusals under Article 5 in conjunction with Article 6				
Item number of Annex III	Description	Country	Number of rejections	Other information
3.1	Portable weapons and equipment that emit disabling or irritating chemical substances	Republic of Moldova	1	
		Kazakhstan	1	

2016<sup>433</sup>

General overview of the according to Council Regulation (EC) No. 1236/2005 of 27 June 2005 granted approvals and rejections

Period: January 1, 2016 - December 31, 2016

Authorizations under Article 5				
Item number of Annex III	Descriptions	Country	Number of permits	Other information
1.1	Shackles, including multi-person shackles	Switzerland	5	
		United States	5	
3.1	Portable weapons and equipment that emit disabling or irritating chemical substances	Afghanistan	1*	
		Andorra	5	
		Bosnia and Herzegovina	2	
		Democratic Republic of Congo	1*	
		Georgia	1	
		Japan	9	
		Lebanon	1*	
		Libya	1*	
		Montenegro	1	
		Namibia	1	
		Moldova	1	
		Switzerland	11	
		Serbia	3	
		Somalia	1*	
South Africa	3			
Ukraine	1			
3.2	Pelargonic acid	Australia	2	
		Brazil	3	
		India	6	
		Israel	1	
		Kyrgyzstan	1	
		Republic of Korea	1	
		Russian Federation	1	
		Switzerland	5	
		South Africa	1	Discussed above
		Turkmenistan	1	
		United Arab Emirates	2	
United States	1			

<sup>433</sup> \* Recipients: United Nations agencies / missions

		Vietnam	1	
3.3	Oleoresin Capsicum	Brazil	1	Discussed above
		Japan	3	
		Kenya	1	
		Russian Federation	4	
		Switzerland	6	
		Singapore	4	
		South Africa	2	Discussed above
		Tunisia	1	
		PRC	4	
3.4	Mixtures with PAVA or OC	Russian Federation	1	
3.6	For application incapacitating or irritating chemical substances certain, fixed or mountable equipment with large spatial area of application	Oman	1	
4.1	Products for execution of people through deadly injection could be used	Egypt	1	
		Argentina	5	
		Australia	1	
		Chile	3	
		Iran	2	
		Israel	1	
		Japan	1	
		Jordan	1	
		Canada	2	
		Kenya	3	
		Colombia	2	
		Cuba	1	
		Mexico	2	
		Mongolia	1	
		New Zealand	1	
		Norway	1	
		Peru	2	
		Republic of Korea	1	
		Saudi Arabia	2	
		Switzerland	5	
Singapore	1			
South Africa	2			
Turkey	2			
Uganda	1			



		Uruguay	1	
Refusals under Article 5 in conjunction with Article 6				
Item number of Annex III	Description	Country	Number of rejections	Other information
3.1	Portable weapons and equipment that emit disabling or irritating chemical substances	Bolivia	1	

2015<sup>434</sup>

General overview of the according to Council Regulation (EC) No. 1236/2005 of 27 June 2005 granted approvals and rejections

Period: January 1, 2015 - December 31, 2015

Authorizations under Article 5				
Item number of Annex III	Descriptions	Country	Number of permits	Other information
1.1	Shackles, including multi-person shackles	United States	2	
1.2	Single clamps or rings with a locking mechanism	United States	1	Discussed above
2.1	Portable impulse weapons	Costa Rica	1	
3.1	Portable weapons and equipment that emit disabling or irritating chemical substances	Algeria	1**	
		Andorra	5	
		Bosnia and Herzegovina	5	
		Japan	1	
		Kenya	1*	
		Kosovo	1*	
		Mali	1*	
		Montenegro	1	
		Namibia	2	
		Switzerland	17	
		South Africa	5	
		Taiwan	1	
		Central African Republic	2*	
3.2	Pelargonic acid	Azerbaijan	1	
		Australia	1	
		Belarus	1	
		Brazil	7	Discussed above
		India	7	
		Japan	1	
		Republic of Korea	3	
		Russian Federation	3	
		Singapore	1	
		South Africa	1	Discussed above
		Turkey	2	
		United States	1	

<sup>434</sup> \* Recipients: United Nations agencies / missions

\*\* Recipient: Embassy of the Federal Republic of Germany

3.3	Oleoresin Capsicum	India	1	
		Iran	1	
		Japan	1	
		Kazakhstan	1	
		Russian Federation	2	
		Switzerland	5	
		Tunisia	1	
		United States	1	
3.4	Mixtures with PAVA or OC	United States	1	
3.6	For application incapacitating or irritating chemical substances certain, fixed or mountable equipment with large spatial area of application	Switzerland	1	
		United Arab Emirates	2	
4.1	Products for execution of people through deadly injection could be used	Egypt	2	
		Argentina	3	
		Australia	4	
		Eritrea	1	
		Indonesia	1	
		Iran	3	
		Israel	1	
		Jordan	1	
		Canada	1	
		Kenya	4	
		Colombia	3	
		Cuba	1	
		Malawi	1	
		Malaysia	1	
		Mexico	2	
		New Zealand	2	
		Nigeria	2	
		Pakistan	1	
		Peru	1	
		Switzerland	6	
South Africa	1			
Suriname	1			
Turkey	3			
Uruguay	1			
Refusals under Article 5 in conjunction with Article 6				

Item number of Annex III	Description	Country	Number of rejections	Other information
3.1	Portable weapons and equipment that emit disabling or irritating chemical substances	Kazakhstan	1	
		Malaysia	1	
		Turkey	1	
3.6	For application incapacitating or irritating chemical substances certain, fixed or mountable equipment with large spatial field of application	Malaysia	1	

## Appendix 3: Commission reporting template



**EUROPEAN COMMISSION**  
Service for Foreign Policy Instruments  
Foreign Policy Regulatory Instruments & Election Observations

### ANNUAL REPORT UNDER 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 (as amended by Commission Implementing Regulation (EU) No 775/2014)*

YEAR COVERED:

REPORTING MEMBER STATE:

Date of notification:

#### Granted Export Authorizations (Art.5)

Please indicate the **total** number of granted authorizations under Article 5:   
(If no authorization was granted please insert "0")

Annex III Reference	Product Description	Destination	Quantity	End User	Comments
1.1	Shackles				
1.1	Gang chains				
1.2	Individual cuffs or rings				
1.3	Spit hoods				
2.1	Electric shock batons				
2.1	Electric shock shields				
2.1	Stun guns and Electric shock dart guns				
2.1	Other portable electric discharge weapons				

-1-

Annex III Reference	Product Description	Destination	Quantity	End User	Comments
4.1	Amobarbital sodium salt (CAS RN 64-43-7)				
4.1	Pentobarbital (CAS RN 76-74-4)				
4.1	Pentobarbital sodium salt (CAS 57-33-0)				
4.1	Secobarbital (CAS RN 76-73-3)				
4.1	Secobarbital sodium salt (CAS RN 309-43-3)				
4.1	Thiopental (CAS RN 76-75-5)				
4.1	Thiopental sodium salt (CAS RN 71-73-8), also known as thiopentone sodium				
4.1	Other barbiturate anaesthetic agent				
4.1	Products containing a barbiturate anaesthetic agent				
5.1	Gullotine blades				

**Denied Export Authorizations (Art.5)**

Please indicate the **total** number of denied authorizations under Article 5:   
 (If no authorization was denied please insert "0")

Annex III Reference	Product Description	Destination	Quantity	End User	Comments
1.1	Shackles				
1.1	Gang chains				

-3-

Annex III Reference	Product Description	Destination	Quantity	End User	Comments
1.2	Individual cuffs or rings				
1.3	Spit hoods				
2.1	Electric shock batons				
2.1	Electric shock shields				
2.1	Stun guns and Electric shock dart guns				
2.1	Other portable electric discharge weapons				
2.2	Kits containing all essential components for assembly of portable electric discharge weapons (controlled by item 2.1)				
2.3	Fixed or mountable electric discharge weapon that cover a wide area and can target multiple individuals with electrical shocks				
3.1	Portable weapons and equipment for the purpose of riot control or self-protection by the administration or dissemination of an incapacitating or irritating chemical substance affecting a small area				
3.2	Pelargonic acid vanillylamide (PAVA) (CAS RN 2444-46-4)				
3.3	Oleoresin capsicum (OC) (CAS RN 8023-77-6)				
3.4	Mixtures containing at least 0,3 % by weight of PAVA or OC and a solvent (such as ethanol, 1-propanol or hexane)				

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Annex III Reference	Product Description	Destination	Quantity	End User	Comments
3.5	Fixed equipment for the dissemination of incapacitating or irritating chemical substances, which can be attached to a wall or to a ceiling inside a building and activated using a remote control system				
3.6	Fixed or mountable equipment for the dissemination of incapacitating or irritating chemical agents that covers a wide area and is not designed to be attached to a wall or to a ceiling inside a building				
4.1	Amobarbital (CAS RN 57-43-2)				
4.1	Amobarbital sodium salt (CAS RN 64-43-7)				
4.1	Pentobarbital (CAS RN 76-74-4)				
4.1	Pentobarbital sodium salt (CAS 57-33-0)				
4.1	Secobarbital (CAS RN 76-73-3)				
4.1	Secobarbital sodium salt (CAS RN 309-43-3)				
4.1	Thiopental (CAS RN 76-75-5)				
4.1	Thiopental sodium salt (CAS RN 71-73-8), also known as thiopentone sodium				
4.1	Other barbiturate anaesthetic agent				
4.1	Products containing a barbiturate anaesthetic agent				

-5-

Annex III Reference	Product Description	Destination	Quantity	End User	Comments
5.1	Guillotine blades				

**Additional questions:**

Did you authorise – in derogation of Article 3 or 4 - an export or import of products listed in Annex II (prohibition list) to or from a country where they are or were **intended to be publicly displayed in a museum** in view of their historical significance? Yes  No  If yes, please indicate:

Annex II Reference	Product Description	Destination(export) /Origin (import)	Quantity	Museum	Export/Import

**Any other remarks/comments:**

**Important information on how to fill in the tables for the report:**

The table should provide the information according to each country of destination as well as according to the product category to enable further processing of the member states data. For example:

- Wrong way of providing information

Annex III Reference	Product Description	Destination	Quantity	End User	Comments
2.1	stun guns	Azerbaijan, Canada, Uruguay	675	Private security firm, police	

- Correct way of providing information

Annex III Reference	Product Description	Destination	Quantity	End User	Comments
2.1	stun guns	Azerbaijan	375	Police	
2.1	stun guns	Canada	100	Private security firm	
2.1	stun guns	Uruguay	200	Private security firm	

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