

Austrian Replies to the OHCHR's Questionnaire on Torture-Free Trade of 10 March 2020

1. *What are the regional and/or national instruments or policies guiding your country for the regulation of trade in goods used for a) capital punishment b) torture or other cruel, inhuman or degrading treatment or punishment? Please provide examples. Which government department/agency is responsible for monitoring the implementation of such regulations/policies, if any?*

The trade in goods used for a) capital punishment b) torture or other cruel, inhuman or degrading treatment or punishment is regulated by [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. It is legally binding and directly applicable in all EU Member States.

The EU Regulation is the most important and widely implemented control regime for this type of goods in the world.

The department responsible for the implementation of the EU legislation is the Federal Ministry for Digital and Economic Affairs.

The Austrian Foreign Commerce Act of 2011 (*Außenwirtschaftsgesetz 2011 – AußWG 2011*) governs the procedure and specifies inter alia the criminal offences necessary for the application of the Regulation (cf. Section 1 (1) no. 24 of the Foreign Commerce Act, in particular the reference in lit a which refers to “purposes of executing the death penalty, for torture or other inhumane or degrading treatment or punishment...”). Violations of the Regulation are subject to criminal sanctions according to Sections 79 and 80 of the Foreign Commerce Act. The Federal Act is accessible (in German) free of charge under

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20007221>.

The Federal Minister for Digital and Economic Affairs is responsible for monitoring the compliance with the provisions of this Act, the directly applicable law of the European Union within the meaning of Section 1(1) no. 24 (a) and (b) and the obligations under International law referred to in Section 4.

The recently published Council of Europe Feasibility study of a legal instrument concerning the trade in goods used for torture and other cruel, inhuman or degrading treatment or punishment and the death penalty (accessible under <https://rm.coe.int/cddh-2019-r92addendum3-en/1680995366>) is source of inspiration.

2. *Have there been any investigations, prosecutions and/or convictions for breaches of national regulations on the trade in goods indicated in paragraph 8 of the introduction to this questionnaire? If so, please provide details.*

The Austrian judicial registry of cases called “*Verfahrensautomation Justiz*” comprises all criminal cases of the courts and public prosecution offices. However, it evaluates only criminal offences (court proceedings and criminal convictions) under the Foreign Commerce Act *in toto*; data is not evaluated with regard to specific goods.

According to the information provided by the competent Federal Ministries there have not yet been any cases.

3. *Do you agree with the proposed categorization of goods used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment indicated in paragraph 8 of the introduction to this questionnaire (see above)? If not, which categories would you propose?*

The following categories of goods are proposed:

- i. goods which have no practical use other than for the purpose of capital punishment, torture and other cruel, inhuman or degrading treatment or punishment,
- ii. goods that could be used not only for the purpose of torture or other cruel, inhuman or degrading treatment or punishment, but also for legitimate purposes,
- iii. goods that could be used for the purpose of capital punishment (products which could be used for the execution of human beings by means of lethal injection).

4. *Please indicate whether you believe there should be an exhaustive list of goods under each category. If yes, should there be a mechanism for regular updating of the lists under each category?*

The list of goods under each of the three categories described above should be as exhaustive as possible.

In order to respond quickly when new goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, are developed, it would be appropriate to develop a mechanism to add goods where there is a clear and immediate risk that those goods will be used for purposes that entail such human rights abuses.

5. *Should the proposed common international standards prohibit trade in goods which have no practical use other than for the purpose of capital punishment or torture or other cruel, inhuman or degrading treatment or punishment? If not, please provide further explanations.*

Yes. It is considered necessary to prohibit exports and imports of goods which have no practical use other than for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment.

Respect for human rights and for human dignity are EU founding values, common to the EU Member States. These principles are also at the basis of the Council of Europe and the cooperation of its members.

Article 5 of the Universal Declaration of Human Rights, Article 7 of the International Covenant on Civil and Political Rights and Article 3 of the (European) Convention for the Protection of Human Rights and Fundamental Freedoms all lay down an unconditional, comprehensive prohibition on torture and other cruel, inhuman or degrading treatment or punishment.

Article 2(2) of the Charter of Fundamental Rights of the European Union (Charter) states that no one shall be condemned to the death penalty or executed. Article 4 of the Charter states that no one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Last but not least in Austria pursuant to Article 85 of the (Austrian) Constitutional Law death penalty has been abolished in 1968. Austria has also ratified the Second Optional Protocol to the Covenant on

Civil and Political Rights aiming at the abolition of death penalty as well as Protocol No. 13 to the (European) Convention for the Protection of Human Rights and Fundamental Freedoms, which abolishes the death penalty in all circumstances

The Global Alliance for Torture-Free Trade is a major concrete initiative to deliver on the EU's shared commitment to the eradication of torture and capital punishment.

6. *Should the proposed common international standards provide for strict control of trade in goods that could be used for the purpose of torture or other cruel, inhuman or degrading treatment or punishment and goods that could be used for the purpose of capital punishment? If not, please provide justification.*

Yes. It is also necessary to impose controls on exports of certain goods, which could be used not only for the purpose of torture and other cruel, inhuman or degrading treatment or punishment, but also for legitimate purposes. Those controls are instrumental in promoting respect for human dignity and for fundamental human rights.

7. *What types of activities linked to "import, export and transfer" should the proposed common international standards regulate? Please consider activities such as transit, promotion, technical assistance and training, brokering, sharing technology, manufacturing, production and commercial marketing, among others. Please also provide an explanation for why these activities should be regulated or not.*

The proposed international regulatory framework should include the following activities linked to import, export and transfer: brokering services, technical assistance, training in the use of the regulated goods, promotion in trade fairs or exhibitions, and advertising.

8. *Please indicate which risk assessment mechanisms and criteria should be considered for the import, export and transfer of a) goods that could be used for the purpose of torture or other cruel, inhuman or degrading treatment or punishment and b) goods that could be used for the purpose of capital punishment. Please consider, inter alia, the criteria for preventing diversion to third countries.*

Regarding goods which have no practical use other than for the purpose of capital punishment, torture and other cruel, inhuman or degrading treatment or punishment, trade should be prohibited.

Regarding the category (ii) of goods referred to in question 3, exports should be regulated, i.e. subject to an export authorisation requirement. Such authorisation should not be granted when there are reasonable grounds to assume that such goods 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 the country to which they are exported.

Regarding the category (iii) of goods referred to in question 3, exports should be regulated, i.e. subject to an export authorisation requirement. Such authorisation should not be granted when there are reasonable grounds to assume that such goods might be used for capital punishment in the country to which they are exported.

Criteria for granting authorisations shall apply to the verification of the intended end-use and the risk of diversion.

Inspiration and input for these risk management mechanisms must be in line with the UN Guiding Principles on Business and Human Rights and should be drawn from the OECD Guidelines for multinational enterprises and the OECDs work on due diligence. This work provides a usable tool not only for companies, but also for policy makers to consider the human rights risk and their mitigation.

9. *Please indicate what you consider to be the most suitable type of international instrument to establish common international standards for regulating goods used for capital punishment or torture or other cruel, inhuman or degrading treatment or punishment. Please provide further explanation.*

The most suitable type would be a legally binding instrument establishing measures to control and restrict trade in the goods referred to in answer to question 3. It could draw inspiration from the rules, principles and mechanisms established in the 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.

Only an international legally binding instrument could close the gap and put an end to the trade in these goods.