**Questionnaire**

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 EU has relevant legal framework: 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.

The trade in goods used for a) capital punishment b) torture or other cruel, inhuman or degrading treatment or punishment is regulated in the [Regulation (EU) 2019/125 of 16 January 2019](https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32019R0125) 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 of this type of goods in the world.

Estonia hereby provides an overview of our national legislation. The Strategic Goods Act was passed in 2011 and entered into force on 1 January 2012. The act and other regulations referred in the text have been regularly amended since adoption. English translation of the Strategic Goods Act is available online:

<https://www.riigiteataja.ee/en/eli/ee/511072014011/consolide/current>

The law establishes a strategic goods control system, regulating the transfer of strategic goods, provision of services related to strategic goods, control over import and end-use of strategic goods, handling of strategic goods, including demilitarisation, liability and implementation of state supervision in the areas specified (§ 1).

“Strategic goods” mean military goods, defence-related products, the goods used to commit human rights violations and dual-use items (§ 2(1)). According to § 2(6), “goods used to commit human rights violations” mean goods which cannot be used for practical purposes other than capital punishment, torture or other cruel, inhuman or degrading treatment or punishment within the meaning of EU regulation.

The list of strategic goods shall include a list of military goods, defence-related products, goods used for violation of human rights and dual-use items and shall be established by a regulation of the Government of the Republic (§ 2(10)). In 2011 the Government adopted a regulation of goods used for violation of human rights and corresponds to the list of goods of the relevant EU regulation.

Also the goods that are not listed in the list of strategic goods are considered to be strategic goods if the Strategic Goods Commission is of the opinion and has informed the exporter, holder, owner of the goods or the declarant thereof that the goods have the characteristics of strategic goods for their qualities, end-use or end-user or for the considerations related to public security or human rights (§ 2(11)).

Transfer of strategic goods is the import, export, transit and transfer of defence-related products within the European Union and the transfer of dual-use items **(§ 3).**

### The transfer of goods used for human rights violations and the related service regardless of the country of destination is prohibited unless the goods are used for public exhibition in a museum due to their historical significance (§ 5(1)(5)).

According to **§** 6(2), a valid special authorisation or the right of use thereof which shall have been acquired before the goods or service cross the border shall be required for the transfer of goods entered in the list of strategic goods and of goods considered as strategic goods by the decision of the Strategic Goods Commission pursuant to **§** 2(11). Special authorisation is a licence or general authorisation (**§** 6(1)).

### **§ 11. Licence**

 (1) An individual licence or a global licence are licences required for the transfer of strategic goods or the provision of service under the conditions provided for in this Act.

 (2) An individual licence is a document which grants the person specified in the document the right to import military goods and defence-related products into Estonia or export strategic goods from Estonia and provide a service to a single consumer and a single country or place of destination under the conditions set out in the licence.

 (3) A global licence which grants the person specified in the document the right to import military goods and defence-related products into Estonia from one or several countries or places of consignment and from one or several suppliers or to export strategic goods from Estonia to one or several countries or places of destination and to one or several consumers under the conditions set out in the licence.

 (4) An individual licence or a global licence, which is issued for transit, shall grant the principal the right to carry strategic goods or service in transit under the conditions set out in the licence.

### The issues related to strategic goods shall be discussed and resolved by the Strategic Goods Commission which has been formed within the Ministry of Foreign Affairs for ensuring a strategic goods control system **(§ 8(1)).**

### **§ 70.** **Membership and rules of procedure of commission**

 (1) The commission shall consist of the representatives of the Ministry of Foreign Affairs, the Ministry of Defence,the Estonian Internal Security Service, the Ministry of Economic Affairs and Communications, the Tax and Customs Board and the Police and Border Guard Board. The commission may involve representatives of other authorities and experts in its work.

 (2) The minister responsible for the area, fulfilling the functions of the chairman of the commission, shall be responsible for the work of the commission.

 (3) If the minister responsible for the area is unable to participate in the work of the commission, he or she shall appoint a member of commission who is an official of the Ministry of Foreign Affairs to substitute for him or her.

 (4) The governmental authorities listed in subsection (1) shall appoint at least two representatives, one of whom is an alternate member.

 (5) The commission shall be formed and the rules of procedure shall be established by a regulation of the Government of the Republic

**§ 71. Competence of commission**

**(1)** The commission shall perform the following duties assigned to the commission by this Act and other legislation:

 1) discuss and decide the issues related to the strategic goods control system;

2) discuss and update the lists of strategic goods regularly;

3) decide on the issue, amendment, revoke, suspension and annulment of licences;
 4) decide on the registration of general authorisation users, the revocation of the right to use general authorisation, the suspension of validity or annulment and the amendment of the entry of the user of general authorisation in the database;
 5) decide on the certification of the undertaking, the compliance checks, the revocation of the certification of undertaking, the suspension of validity of certification or annulment and the amendment of the data of certification of an undertaking, in the database;

### 6) decide on the registration of a military goods broker, the amendment of the data concerning the registered broker and the deletion of the registered broker from the database;

### 7) decide on the issue and revocation of an International Import Certificate, an End-User Certificate and the Delivery Verification Certificate;

### 8) co-operate with the appropriate authorities in foreign states and the international export control organisations;

### 9) issue necessary documents on the basis of its decisions;

### 10) perform other duties assigned to the commission by law, other legislation or treaty.

The Government formed the Commission and adopted its rules of procedure with a regulation no 162 of 2 November 2011.

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### The data of proceedings relating to the transfer of strategic goods and the provision of service shall be entered into the database of proceedings relating to strategic goods in compliance with this Act (**§ 9).** The purpose of the database is keeping record of the transfer of strategic goods, provision of service and undertakings engaged in strategic goods and the processing of data for the conduct of proceedings provided for in this Act in order to organise the strategic goods control system, execute strategic goods control policies and ensure efficient state supervision **(§ 73(1)). In accordance of § 73(2), the Minister of Foreign Affairs has in 2011 passed a relevant regulation to found a d**atabase of proceedings related to strategic goods and established its statutes. **According to § 73(3), t**he controller of the database is the Ministry of Foreign Affairs.

### **§ 84. State supervisory authorities**

1. The state supervision over the compliance with the requirements provided for in this Act or legislation established on the basis thereof shall be exercised by:

 1) the commission;

 2) the Estonian Internal Security Service;

 3) the Tax and Customs Board;

 4) the Police and Border Guard Board.

1. The Estonian Internal Security Service and the Tax and Customs Board shall notify the commission immediately of any detected offences relating to strategic goods and of violations of international sanctions or sanctions of the Government of the Republic.

An offence is a punishable act provided for in the Penal Code. English translation of the Penal Code is available online:

<https://www.riigiteataja.ee/en/eli/ee/522012015002/consolide/current>

The Penal Code includes division 6 for offences relating to Strategic Goods, which entered into force on 1.01.2015 and make punishable the illegal carriage of strategic goods or illegal provision of services relating to strategic goods (§ 4211) by a pecuniary punishment or up to five years’ imprisonment. If committed 1) by a group; or
 2) if committed at least twice, it is punishable by two to ten years’ imprisonment; if committed by a legal person, it is punishable by a pecuniary punishment. A court may apply confiscation of a substance or object which was the direct object of the commission of an offence; the court may impose extended confiscation of assets or property acquired by the criminal offence pursuant to the provisions of § 832 of this Code.

Carriage of prohibited strategic goods or provision of services relating to prohibited strategic goods (§ 4212) is punishable by three to twelve years’ imprisonment. The same act: 1) by a group; or 2) if committed at least twice, is punishable by five to twenty years’ imprisonment. The same act if committed by a legal person, is punishable by a pecuniary punishment. The court shall confiscate the substance or object which was the direct object of commission of an offence provided for in this section. The court may impose extended confiscation of assets or property acquired by the criminal offence.

1. *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.***

Based on the relevant provisions of the Penal Code the number of registered offences relating to Strategic Goods is the following:

Illegal carriage of strategic goods or illegal provision of services relating to strategic goods (§ 4211) 2015-15 registered offences; 2016-3; 2017-12; 2018-10; 2019-16.

Carriage of prohibited strategic goods or provision of services relating to prohibited strategic goods (§ 4212) 2015-1 registered offence; 2019-1.

1. *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:

1. goods which have no practical use other than for the purpose of capital punishment, torture and other cruel, inhuman or degrading treatment or punishment,
2. 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,
3. 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.

1. *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.

#### 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.

#### 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.

1. *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.

1. *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 could 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.

1. *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 believe that such 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 believe 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.

1. *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.

#### Estonia, together with other EU countries, is a member of the Alliance for Torture-Free Trade, which aims at ending global trade in goods used for torture and capital punishment and work towards a United Nations instrument – such as a binding convention with concrete proposals for further actions.

The Global Alliance for Torture-Free Trade, a cross-regional effort bringing together more than 60 countries is committed to ending trade in goods used for torture and capital punishment globally. On 28 June 2019, the UN General Assembly adopted resolution 73/304 on ‘Torture-Free Trade: examining the feasibility, scope and parameters for possible common international standards’ with 81 votes in favour. This resolution paves the way for future work at UN level towards establishing common international standards in this field, starting with a report on the subject that was submitted by the UN Secretary-General to the UNGA during its 74th session in September 2019.

Estonia supports the implementation of GA resolution 73/304. This resolution paves the way for future work at UN level towards establishing common international standards in this field, starting with a report on the subject that was submitted by the UN Secretary-General to the UNGA during its 74th session in September 2019.