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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

Report on export authorisation in 2019 pursuant to the Regulation concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment

1. Introduction

The objective of Regulation (EU) 2019/125 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment ([1]) (the Regulation) is to prevent capital punishment, on the one hand, and torture and other cruel, inhuman or degrading treatment or punishment in countries outside the EU, on the other. It distinguishes between goods that:

- are inherently abusive and should not be traded at all (Annex II), or
- can have legitimate uses, such as law enforcement equipment (Annex III) or goods for therapeutic use (Annex IV).

Trade in such goods is subject to certain restrictions.

Article 26(3) of the Regulation states that the Member States must draw up a public, annual activity report. The report must provide information on the number of applications received, the goods and countries concerned, and the decisions taken on the applications. Article 26(4) states that the Commission must draw up an annual report comprised of the annual activity reports published by the Member States. It must make the report publicly available.

This Commission report provides information on Member States' authorisation activities concerning exports of goods in 2019([2]). which could be used for torture or for capital punishment in 2019

All Member States have reported on the number of export authorisations granted and refused under Articles 11(1) and 16(1) and on the goods and countries of destination in question. In most cases, the competent authorities in the Member States have also reported on the numbers or quantities of goods authorised for export and the category of end-user to whom the goods were supplied.

Authorisations under Regulation (EU) 2019/125

Articles 11(1) and 16(1) of Regulation (EU) 2019/125 require an authorisation for exports ([3]) of goods listed in Annex III (11(1) and Annex IV (16(1).

Annex III lists certain goods that could be used for torture or other cruel, inhuman or degrading treatment or punishment. Goods in Annex III fall under the following headings: goods designed for restraining human beings; weapons and devices designed for the purpose of riot control or self-

1 OJ L 30, 31.1.2019, p. 1.

2 This report does not provide information on exporters' use of the Union General Export Authorisation for exports of goods listed in Annex IV (Annex V to Regulation (EU) 2019/125).

3 Article 2(d) of Regulation (EU) 2019/125 defines 'export' as 'any departure of goods from the customs territory of the Union, including the departure of goods that requires a customs declaration and the departure of goods after their storage in a free zone within the meaning of Regulation (EU) No 952/2013 of the European Parliament and of the Council'.

protection, and weapons and equipment disseminating incapacitating or irritating chemical substances for the purpose of riot control or self-protection, and certain related substances.

Annex IV lists certain chemicals that could be used in lethal injections.

Except where the Union General Export Authorisation set out in Annex V is used for exports of goods listed in Annex IV, the authorisation to export has to be obtained from the competent authorities of the Member State concerned, as listed in Annex I to the Regulation.

Exports to destinations listed in the Union General Export Authorisation can usually take place without obtaining an individual or global authorisation granted by a Member State. The approach so far has been to include a non-EU country in Annex V if it has ratified a relevant international agreement with a commitment to abolishing the death penalty for all crimes. For countries outside the Council of Europe, that means the country in question must have ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) without reservation.

However, if there is reasonable suspicion about the exporter's ability to comply with the terms of the authorisation or with export control legislation, the competent authority may prohibit the exporter from using the Union General Export Authorisation.

Article 20(2) of Regulation (EU) No 2019/125 states that an export authorisation granted by a Member State can be an individual authorisation (an authorisation for exports to one end-user or consignee in a non-EU country) or a global authorisation (an authorisation for exports to one or more specified end-users or distributors in one or more specified non-EU countries) ([4]).

Articles 3, 4 and 5 of the Regulation prohibit the export, import and transit of the goods listed in Annex II. Competent authorities may grant a derogation from the prohibition, but only if it is demonstrated that the goods concerned will be used exclusively for public display in a museum (either in a non-EU country or, in accordance with Article 4, in a Member State) given their historic significance.

2. Authorisations granted and refused

In 2019, the total number of reported authorisations amounted to 285 with 11 Member States reporting that they had granted authorisations. The remaining Member States informed the Commission that they had not received any applications for authorisations pursuant to the Regulation.

4 Article 2(p) fully defines 'individual authorisation'. Article 2(q) fully defines 'global authorisation'.

As the definition of an individual authorisation and a global authorisation in Article 2 of the Regulation does not include a quantitative component, an indication of the number of authorisations granted does not give an indication of the number or quantity of goods concerned by these authorisations. Nor does the information Member States provide to the Commission typically distinguish between individual authorisations and global authorisations.

The Regulation requires the competent authorities to check if an export authorisation has indications that, if exported, the goods in question might be used for torture or other cruel, inhuman or degrading treatment or punishment (Annex III) or for capital punishment (Annex IV). This is why Article 20(8) of the Regulation states that the competent authority should 'receive complete information in particular on the end-user, the country of destination and the end-use of the goods'.

In 2019, six applications ([5]) for an export authorisation were reported as denied. The reported cases of denial in 2019 concerned certain intended transactions with customers in Bosnia and Herzegovina, China, India, Israel, Nigeria and Niger. The unauthorised transactions primarily concerned goods listed in Annex III code 3.1 ([6]). The intended export to Nigeria concerned goods listed in Annex III code 3.6 ([7]) The intended export to India concerned goods listed in Annex IV (*thiopental*).

Articles 3, 4 and 5 of the Regulation prohibit the export, import and transit of the goods listed in Annex II, respectively. The Regulation allows the competent national authorities to grant a derogation from the prohibition, but only if it is demonstrated that the goods concerned will be used exclusively for public display in a museum (either in a non-EU country or, in accordance with Article 4, in a Member State) in view of their historic significance. The competent authorities reported that they had not granted such derogations in 2019.

Annex 1 to this report provides information on the number of export authorisations granted by the national competent authorities in 2019, by category of goods (Annex III and Annex IV). Exports pursuant to the Union General Export Authorisation (Annex V to Regulation (EU) 2019/125) are not included in the information on the number of authorisations granted.

Annex 2 provides information on the number of applications authorised and denied over the period 2017-2019.

Annex 3 provides information on the main reported destinations of authorised exports.

Annexes 4 and 5 provide an overview of the goods authorised for export, their destinations and their reported end-use.

3. End-users

5 The number of 'denials' for 2019 differs from the number in the review report (COM (2020) 343), as it takes into account data not available at the time of finalising the report.

6 Goods listed in Annex III under code 3.1: portable weapons and equipment for the administration or dissemination of a dose of an incapacitating or irritating chemical substance.

7 Goods listed in Annex III under code 3.6: fixed or mountable equipment for the dissemination of incapacitating or irritating agents over a wide area.

The information received by the Commission makes it possible to draw a distinction between end use for law enforcement, science and healthcare (in hospitals and for veterinary use) and end use by security and trading firms.

Annex 6 summarises the information provided to the Commission on the reported end-use of authorised exports in 2019.

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ANNEXES 1 to 6

ANNEXES

to the

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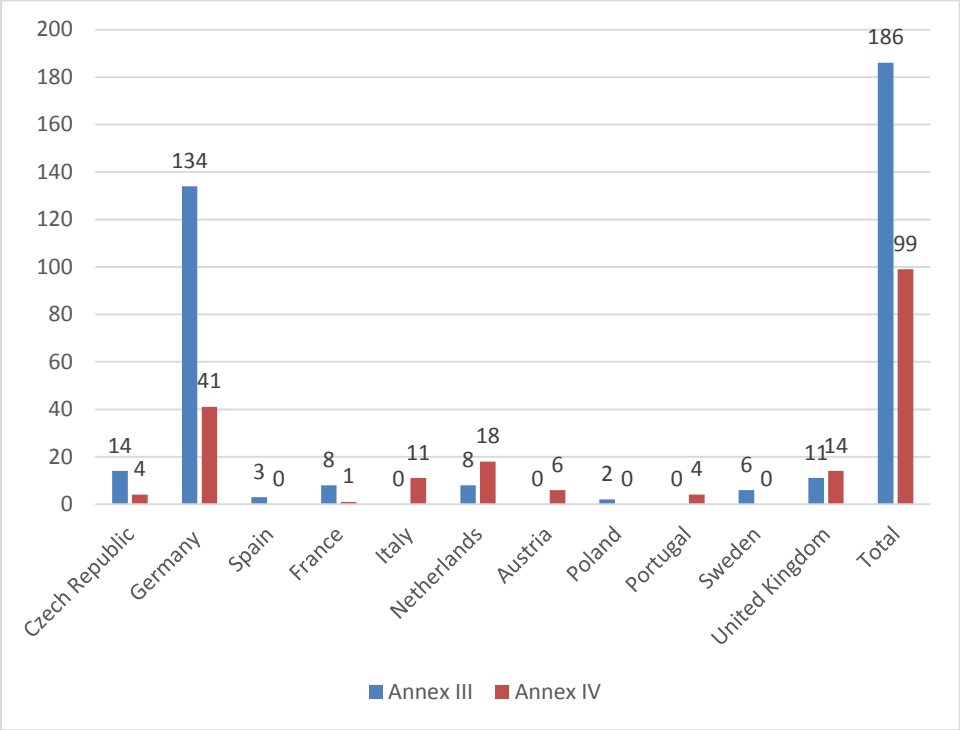
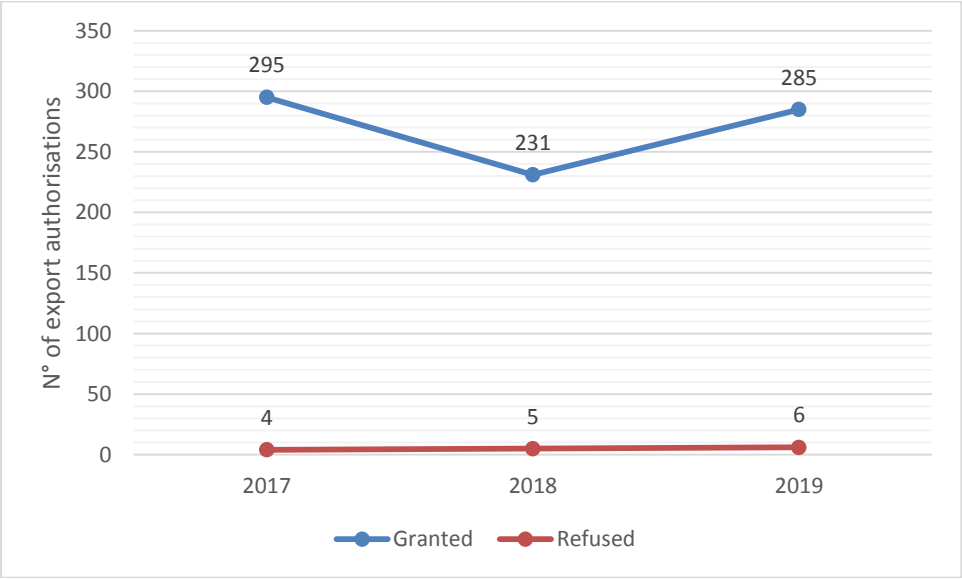
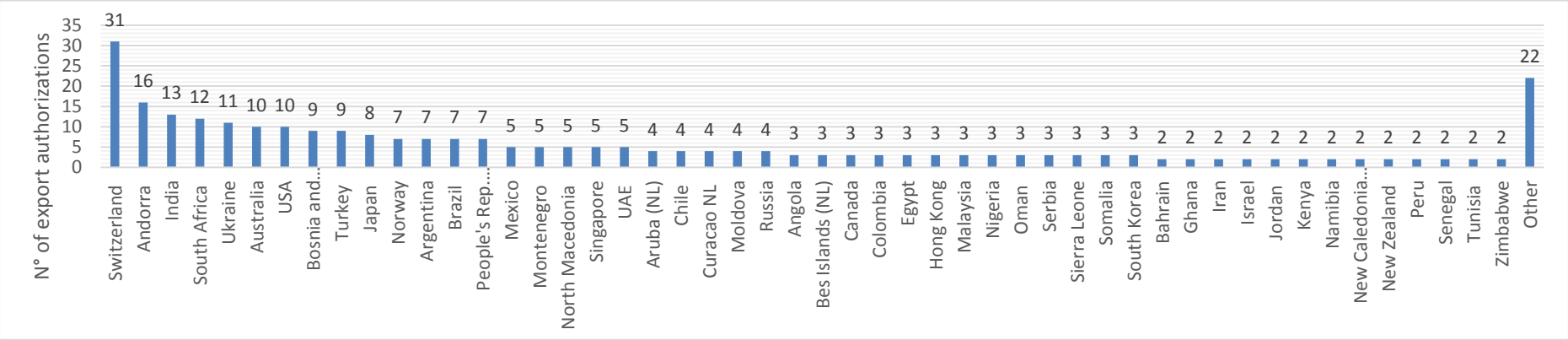
Annex 1:
Number of reported export authorisations issued by Member States pursuant to Article 20(2) of Regulation (EU) 2019/125 by Annex entry



Annex 2:
Number of reported export authorisations issued by Member States over the period 2017– 2019



Annex 3:
Reported destinations[1] of authorised exports in 2019[2]



[1] If a particular name is used in the list of destinations, it should not be construed as going beyond referring to a (customs) territory commonly known by that name.

[2] '*Other destinations'* include those to which one export authorisation only was reported, namely: Albania, Antarctic, Barbados, Belize, Central African Republic, Costa Rica, Cuba, Democratic Republic of the Congo, Falklands Islands, French Polynesia, Gibraltar, Iraq, Kosovo, Lebanon, Mali, Niger, Pakistan, Saudi Arabia, Saint Helena (UK), Sint Marteen, Sri Lanka, Thailand and Uruguay. One reported authorisation to one of the Channel Islands has not been accounted for the purposes of this report, as it does not qualify as an export within the meaning of Article 2(d) of Regulation (EU) 2019/125.

Annex 4:
Overview of reported authorised exports of Annex III goods in 2019

Code	Product Annex III	Destination	End use	Competent authority
1.1	Shackles and gang chains	Bahrain (2), Serbia (1), Argentina (1)	Law enforcement	CZ
		Montenegro (1), North Macedonia (4), Oman (1), Switzerland (1), United States (1)	End use not stipulated	DE
		Hong Kong (1), Australia (2), New Zealand (1)	Law enforcement	UK
1.2	Individual cuffs or rings fitted with a locking mechanism	Barbados (1)	Law enforcement	UK
2.1	Portable electric discharge weapons, including but not limited to electric shock batons, electric shock shields, stun guns and electric shock dart guns	Aruba (1), Moldova (1), Montenegro (1), Ukraine (1), UAE (1), Switzerland (1)	Law enforcement (Aruba), Traders	CZ
		New Caledonia (2), Central African Republic (1)	End use not stipulated	DE
		Andorra (1)	Law enforcement	ES
		Andorra (1), Senegal (1)	Private security firm	FR
		United States (1)	Other	UK

3.1	Portable weapons and equipment for administration or dissemination of a dose of an incapacitating or irritating chemical substance.	Aruba (1), Moldova (1), Montenegro (1), Ukraine (1), UAE (1), Switzerland (1)	Law enforcement (Aruba), Traders	CZ
		Andorra (9), Bosnia and Herzegovina (4), Chile (1), Democratic Republic of the Congo (1), French Polynesia (1), Japan (4), Kosovo (1), Cuba (1), Mali (1), Montenegro (2), Namibia (1), New Caledonia (2), North Macedonia (1), Pakistan (1), Moldova (1), Switzerland (11) Serbia (1), Somalia (3), South Africa (7), Tunisia (1), Uruguay (1), United States (1), China (2).	End use not stipulated	DE
		Andorra (2)	Law enforcement	ES
		Senegal (1), Andorra (2), Niger (1)	Private security firm, law enforcement (customs) (Niger)	FR
		United Arab Emirates (2)	Private security firm	PL
		Andorra, Australia, Switzerland, South Africa, United States (total 6)	Other	SE
		Australia (1)	Law enforcement	UK

3.2	Pelargonic acid vanillylamide (PAVA)	Brazil (4), India (13), Japan (1), South Korea (3), Singapore (1), Sri Lanka (1), South Africa (1), Thailand (1), Turkey (2), China (3) (30)	End use not stipulated	DE
		Costa Rica (1), Gibraltar (1), United States (1)	Clinical and laboratory use (Costa Rica and US), law enforcement (Gibraltar)	UK
3.3	Oleoresin capsicum (OC)	Egypt (1), Argentine (2), Australia (1), Japan (1), Kenya (1), Russia (2), Switzerland (5), South Africa (1), Tunisia (1), Ukraine (4), China (1)	End-use not stipulated	DE
		Aruba (1), BES Islands (3), Curaçao (2), Sint Marteen (1) and global licence to referred destinations	Law enforcement	NL
3.4	3.4 Mixtures containing at least 0.3 % of PAVA by weight or OC and a solvent (pepper spray)	Brazil (1), Japan (1), Russia (1), Switzerland (4), Ukraine (5), United States (1), China (1).	End-use not stipulated	DE
		Saint Helena (1)	Law enforcement	UK
3.6	Fixed or mountable equipment for the dissemination of incapacitating or irritating agents covering a wide area	Switzerland (2), United Arab Emirates (1).	End use not stipulated	DE

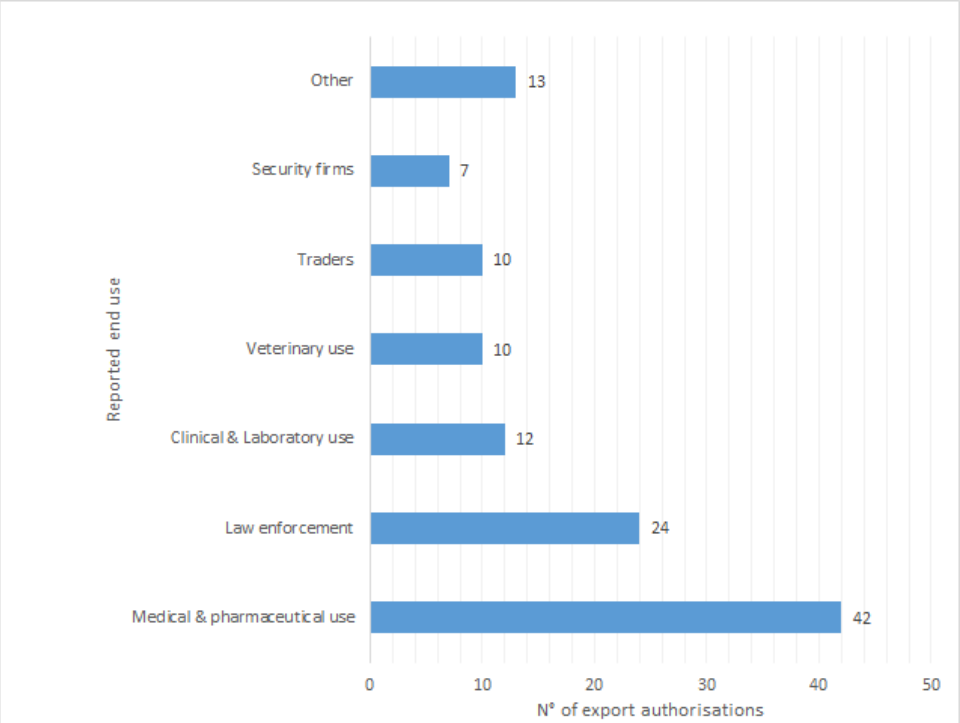
Annex 5:
Detailed overview of reported authorised exports of Annex IV goods in 2019

Code	Product Annex IV	Destination	End use	Competent authority
1.1 (a)	Amobarbital	Norway (1) (Same authorisation is used for all listed goods exported from the UK destined for Norway).	Clinical and laboratory use	UK
1.1 (c)	Pentobarbital	Norway	Clinical and laboratory use	UK
1.1 (d)	Pentobarbital sodium salt	Aruba (1), Canada (2), Curaçao (2), Hong Kong (2), Malaysia (1), Switzerland (2)	Veterinary use	NL
		United States (1)	Clinical and laboratory use	UK
1.1 (e)	Secobarbital	Jordan (1), Norway, United States (1)	Clinical and laboratory use	UK
1.1 (g)	Thiopental	Saudi Arabia (1), Iran (1), Albania (1), Iraq (1)	Medical use	CZ
		Bosnia and Herzegovina (5), Serbia (1)	Medical use	AT
		Angola (3)	Medical/pharmaceutical use	PT
		Norway	Clinical and laboratory use	UK

1.1 (h)	Thiopental sodium salt	Lebanon (1)	Medical use	FR
		Argentina (2)	Medical/pharmaceutical use	IT
		Brazil (2)	Medical/pharmaceutical use	IT
		Mexico (2)	Medical/pharmaceutical use	IT
		Moldova (1)	Medical/pharmaceutical use	IT
		Turkey (4)	Medical/pharmaceutical use	IT
		Ghana (2), Malaysia (1), Sierra Leone (2), Singapore (3)	Medical use	NL
		Nigeria (3)	Medical/pharmaceutical use	PT
		Sierra Leone (1), Australia (3), Falkland Islands (1), Singapore (1), Zimbabwe (1)	Health care/medical use	UK
1.1	Other short and intermediate acting barbiturate anaesthetic agents	Egypt (2),Antarctic (1), Argentina (2), Australia (2), Chile (3), Iran (1), Israel (2), Japan (1), Jordan (1), Canada (1), Kenya (1), Colombia (3), Malaysia (1), Mexico (3), Namibia (1), Norway (2), New	End use not stipulated	DE

		Zealand (1), Oman (2), Peru (2), Russia (1), Switzerland (2), Zimbabwe (1), South Africa (2), Turkey (3).		
		Norway, United States (2), Belize (1), Switzerland (1)	Clinical and laboratory use (Norway, United States, Switzerland), veterinary use (Belize)	UK

Annex 6:
Reported end-use of authorised exports to third countries in 2019[3]



[3] The number of export authorisation does not match the number referred to in in previous Annexes, as not all authorities in the Member States stipulate the end-use.