

## II

(Non-legislative acts)

## REGULATIONS

## COMMISSION IMPLEMENTING REGULATION (EU) No 775/2014

of 16 July 2014

**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**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1236/2005 of 27 June 2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment <sup>(1)</sup>, and in particular Article 12(2) thereof, read together with Article 3 of Regulation (EU) No 37/2014 of the European Parliament and of the Council of 15 January 2014 amending certain regulations relating to the common commercial policy as regards the procedures for the adoption of certain measures <sup>(2)</sup>,

Whereas:

- (1) Regulation (EC) No 1236/2005 imposes a prohibition on exports of goods which have no practical use other than for the purpose of capital punishment, torture or other cruel, inhuman or degrading treatment or punishment and controls on exports of certain goods that could be used for such purposes. It respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in particular respect for and protection of human dignity, the right to life and the prohibition of torture and of inhuman or degrading treatment or punishment.
- (2) The lists of goods subject to the controls and to the prohibition have been reviewed in consultation with a group of experts.
- (3) It is generally accepted that ordinary handcuffs can be used as restraints in law enforcement and such handcuffs are regular equipment for law enforcement authorities. The UN Standard Minimum Rules for the Treatment of Prisoners prohibit using chains or irons as restraints and provide that handcuffs and other restraints shall never be applied as a punishment. Using restraints other than chains and irons is only allowed for certain specific purposes, in particular as a precaution against the escape of a prisoner during transfers, or in order to prevent a prisoner from injuring himself or others.
- (4) Thumb and finger cuffs and neck restraints are not considered admissible for use in law enforcement, whereas using leg restraints for law enforcement is usually not considered admissible. Serrated thumb and finger cuffs, thumb and finger screws, bar fetters and weighted leg restraints are more likely to cause severe pain or suffering than other thumb and finger cuffs and other leg restraints because of their characteristics.
- (5) Using a combination of mechanical restraints is more likely to cause severe pain or suffering, e.g. if handcuffs and ankle cuffs are linked together behind the back. Such restraining techniques often involve a risk of asphyxiation, especially if neck restraints are used.

<sup>(1)</sup> OJ L 200, 30.7.2005, p. 1.

<sup>(2)</sup> OJ L 18, 21.1.2014, p. 1.

- (6) It is therefore necessary to prohibit the trade in thumb and finger cuffs, thumb and finger screws, bar fetters and weighted leg restraints. Taking into account that their use may exceptionally be justified, exports of other shackles and cuffs which are not normal handcuffs should be controlled.
- (7) Such controls are also appropriate for exports of individual cuffs or rings, such as neck restraints or the rings of leg restraints.
- (8) The definition of ordinary handcuffs should provide more clarity on the range of handcuffs whose exports are not subject to control by defining the size of the individual cuffs.
- (9) Using mechanical restraints such as handcuffs in order to shackle a prisoner to a fixed object anchored to either a floor, wall or ceiling is not an acceptable restraining technique. It is therefore necessary to prohibit the trade in cuffs that are designed to be so anchored.
- (10) Like combinations of mechanical restraints, multipoint restraint devices are more likely to cause severe pain or suffering than, e.g. ordinary handcuffs. Restraint chairs, shackle boards and shackle beds restrict movement of the prisoner much more than simultaneous application of, e.g. handcuffs and ankle cuffs. The inherent risk of torture or inhuman treatment increases when this restraining technique is applied for longer periods. It is therefore necessary to prohibit the trade in restraint chairs, shackle boards and shackle beds.
- (11) Chairs, boards and beds fitted exclusively with straps or belts should be exempt from this prohibition as in certain circumstances their use may be justified for short periods of time, e.g. to prevent patients in a state of agitation from causing injury to themselves or to other persons. However, applying straps, belts or any other restraints on patients lacks any therapeutic or medical justification.
- (12) Cage beds and net beds are not an appropriate means for restraining patients or prisoners. It is therefore necessary to prohibit trade in cage beds and in net beds.
- (13) In order to protect staff and other people against spitting, prisoners are sometimes made to wear a so-called spit hood. As such a hood covers the mouth and often also the nose, it presents an inherent risk of asphyxiation. If it is combined with restraints, such as handcuffs, there is also a risk of neck injury. Exports of spit hoods should therefore be controlled.
- (14) It is generally accepted that batons or truncheons are regular equipment for law enforcement authorities and that shields are regular defensive equipment. Trade in so-called spiked batons is already prohibited as they are more likely to cause severe pain or suffering than ordinary batons. In the same vein it is necessary to prohibit trade in spiked shields.
- (15) Corporal punishment such as flogging constitutes torture or other cruel, inhuman or degrading punishment. Knouts and other whips having multiple lashes or thongs have been designed for flogging of human beings as a punishment and have no legitimate use. Whips that have a single lash or thong fitted with nails, barbs or similar devices present an inherent risk of causing severe pain or suffering and have no legitimate use either. It is therefore necessary to prohibit trade in such whips. However, whips having a single, plain lash or thong have both legitimate and non-legitimate uses and trade in them should, therefore, not be prohibited.
- (16) As regards electric shock weapons and devices of items 2.1 of Annex II and 2.1 of Annex III to Regulation (EC) No 1236/2005, it is appropriate to remove the 10 000 V discharge requirement in an effort to prevent that the prohibition on trade and the export controls would be circumvented by weapons and devices which are capable of administering an electric shock but have a slightly lower no-load voltage.
- (17) It is also essential to broaden the scope of the export controls to include, in addition to the portable weapons that are already controlled, fixed or mountable electric discharge weapons covering a wide area and targeting multiple individuals. Such weapons are often presented as so-called non-lethal weapons but present, at the very least, the same risk of causing severe pain or suffering as portable electric discharge weapons.
- (18) As regards portable weapons or devices disseminating incapacitating chemical substances, it is appropriate to broaden the scope of the export controls to include weapons and devices disseminating irritating chemical substances which qualify as riot control agents.

- (19) As fixed devices for dissemination of irritating chemical substances for use inside a building are being marketed, and indoor use of such substances presents a risk of causing severe pain or suffering not associated with traditional use outdoors, exports of such equipment should be controlled.
- (20) Export controls should also be applied to fixed or mountable equipment for the dissemination of incapacitating or irritating substances which covers a wide area, where such equipment is not yet subject to export controls in accordance with Council Common Position 2008/944/CFSP <sup>(1)</sup>. Such equipment is often presented as so-called non-lethal technology but presents at the very least the same risk of causing severe pain or suffering as portable weapons and devices. Although water is not one of the incapacitating or irritating chemical agents, water cannons may be used to disseminate such agents in liquid form and their exports should be controlled.
- (21) The export controls concerning oleoresin capsicum (OC) and pelargonic acid vanillylamide (PAVA) should be supplemented by export controls on certain mixtures containing these substances which can be administered as such as incapacitating or irritating agents or used for manufacturing of such agents. It is appropriate to clarify that, where appropriate, references to incapacitating or irritating chemical agents must be construed as including oleoresin capsicum and the relevant mixtures containing it.
- (22) The code of OC from the Combined Nomenclature should be replaced by another code and a number of codes should be added to the lists of goods in Annexes II and III to Regulation (EC) No 1236/2005.
- (23) The measures provided for in this Regulation are in accordance with the opinion of the Committee on common rules for exports of products,

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EC) No 1236/2005 is amended as follows:

- (1) Annex II is replaced by the text set out in Annex I to this Regulation.
- (2) Annex III is replaced by the text set out in Annex II to this Regulation.

*Article 2*

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

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

Done at Brussels, 16 July 2014.

*For the Commission*  
*The President*  
José Manuel BARROSO

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<sup>(1)</sup> Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment (OJ L 335, 13.12.2008, p. 99).

## ANNEX I

## ANNEX II

**List of goods referred to in Articles 3 and 4***Introductory Note:*

The “CN codes” in this Annex refer to codes specified in Part Two of Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff <sup>(1)</sup>.

Where “ex” precedes the CN code, the goods covered by Regulation (EC) No 1236/2005 constitute only a part of the scope of the CN code and are determined by both the description given in this Annex and the scope of the CN code.

*Notes:*

1. Items 1.3 and 1.4 in Section 1 concerning goods designed for the execution of human beings do not cover medical-technical goods.
2. The object of the controls contained in this Annex should not be defeated by the export of any non-controlled goods (including plant) containing one or more controlled components when the controlled component or components are the principal element of the goods and can feasibly be removed or used for other purposes.

**NB:** In judging whether the controlled component or components are to be considered the principal element, it is necessary to weigh the factors of quantity, value and technological know-how involved and other special circumstances which might establish the controlled component or components as the principal element of the goods being procured.

CN code	Description
	<b>1. Goods designed for the execution of human beings, as follows:</b>
ex 4421 90 97 ex 8208 90 00	1.1. Gallows and guillotines
ex 8543 70 90 ex 9401 79 00 ex 9401 80 00 ex 9402 10 00	1.2. Electric chairs for the purpose of execution of human beings
ex 9406 00 38 ex 9406 00 80	1.3. Airtight vaults, made of e.g. steel and glass, designed for the purpose of execution of human beings by the administration of a lethal gas or substance
ex 8413 81 00 ex 9018 90 50 ex 9018 90 60 ex 9018 90 84	1.4. Automatic drug injection systems designed for the purpose of execution of human beings by the administration of a lethal chemical substance
	<b>2. Goods which are not suitable for use by law enforcement authorities to restrain human beings, as follows:</b>
ex 8543 70 90	2.1. Electric shock devices which are intended to be worn on the body by a restrained individual, such as belts, sleeves and cuffs, designed for restraining human beings by the administration of electric shocks

<sup>(1)</sup> OJ L 256, 7.9.1987, p. 1.

CN code	Description
ex 7326 90 98 ex 7616 99 90 ex 8301 50 00 ex 3926 90 97 ex 4203 30 00 ex 4203 40 00 ex 4205 00 90	2.2. Thumb-cuffs, finger-cuffs, thumbscrews and finger-screws <i>Note:</i> This item includes both serrated and non-serrated cuffs and screws
ex 7326 90 98 ex 7616 99 90 ex 8301 50 00 ex 3926 90 97 ex 4203 30 00 ex 4203 40 00 ex 4205 00 90 ex 6217 10 00 ex 6307 90 98	2.3. Bar fetters, weighted leg restraints and gang chains comprising bar fetters or weighted leg restraints <i>Notes:</i> 1. Bar fetters are shackles or ankle rings fitted with a locking mechanism, linked by a rigid bar which is typically made of metal 2. This item includes bar fetters and weighted leg restraints which are linked to ordinary handcuffs by means of a chain
ex 7326 90 98 ex 7616 99 90 ex 8301 50 00 ex 3926 90 97 ex 4203 30 00 ex 4203 40 00 ex 4205 00 90 ex 6217 10 00 ex 6307 90 98	2.4. Cuffs for restraining human beings, designed to be anchored to a wall, floor or ceiling
ex 9401 61 00 ex 9401 69 00 ex 9401 71 00 ex 9401 79 00 ex 9401 80 00 ex 9402 10 00	2.5. Restraint chairs: chairs fitted with shackles or other devices to restrain a human being <i>Note:</i> This item does not prohibit chairs only fitted with straps or belts
ex 9402 90 00 ex 9403 20 20 ex 9403 20 80 ex 9403 50 00 ex 9403 70 00 ex 9403 81 00 ex 9403 89 00	2.6. Shackle boards and shackle beds: boards and beds fitted with shackles or other devices to restrain a human being <i>Note:</i> This item does not prohibit boards and beds only fitted with straps or belts
ex 9402 90 00 ex 9403 20 20 ex 9403 50 00 ex 9403 70 00 ex 9403 81 00 ex 9403 89 00	2.7. Cage beds: beds comprising a cage (four sides and a ceiling) or similar structure enclosing a human being within the confines of the bed, the ceiling or one or more of the sides of which are fitted with metal or other bars, and which can only be opened from outside

CN code	Description
ex 9402 90 00 ex 9403 20 20 ex 9403 50 00 ex 9403 70 00 ex 9403 81 00 ex 9403 89 00	2.8. Net beds: beds comprising a cage (four sides and a ceiling) or similar structure enclosing a human being within the confines of the bed, the ceiling or one or more sides of which are fitted with nets, and which can only be opened from outside
	3. <b>Portable devices which are not suitable for use by law enforcement authorities for the purpose of riot control or self-protection, as follows:</b>
ex 9304 00 00	3.1. Batons or truncheons made of metal or other material having a shaft with metal spikes
ex 3926 90 97 ex 7326 90 98	3.2. Shields with metal spikes
	4. <b>Whips as follows:</b>
ex 6602 00 00	4.1. Whips comprising multiple lashes or thongs, such as knouts or cats o'nine tails
ex 6602 00 00	4.2. Whips having one or more lashes or thongs fitted with barbs, hooks, spikes, metal wire or similar objects enhancing the impact of the lash or thong'

## ANNEX II

## ANNEX III

**List of goods referred to in Article 5***Introductory Note:*

The CN codes in this Annex refer to codes specified in Part Two of Annex I to Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff.

Where “ex” precedes the CN code, the goods covered by Regulation (EC) No 1236/2005 constitute only a part of the scope of the CN code and are determined by both the description given in this Annex and the scope of the CN code.

*Notes:*

1. The object of the controls contained in this Annex should not be defeated by the export of any non-controlled goods (including plant) containing one or more controlled components when the controlled component or components are the principal element of the goods and can feasibly be removed or used for other purposes.

**NB:** In judging whether the controlled component or components are to be considered the principal element, it is necessary to weigh the factors of quantity, value and technological know-how involved and other special circumstances which might establish the controlled component or components as the principal element of the goods being procured.

2. In some instances chemicals are listed by name and CAS number. The list applies to chemicals of the same structural formula (including hydrates) regardless of name or CAS number. CAS numbers are shown to assist in identifying a particular chemical or mixture, irrespective of nomenclature. CAS numbers cannot be used as unique identifiers because some forms of the listed chemical have different CAS numbers, and mixtures containing a listed chemical may also have different CAS numbers.

CN code	Description
	1. <b>Goods designed for restraining human beings, as follows:</b>
ex 7326 90 98	1.1. Shackles and gang chains
ex 7616 99 90	<i>Notes:</i>
ex 8301 50 00	1. Shackles are restraints consisting of two cuffs or rings fitted with a locking mechanism, with a connecting chain or bar
ex 3926 90 97	2. This item does not control the leg restraints and gang chains prohibited by item 2.3 of Annex II
ex 4203 30 00	3. This item does not control “ordinary handcuffs”. Ordinary handcuffs are handcuffs which meet all the following conditions:
ex 4203 40 00	— their overall dimension including chain, measured from the outer edge of one cuff to the outer edge of the other cuff, is between 150 and 280 mm when both cuffs are locked;
ex 4205 00 90	— the inside circumference of each cuff is a maximum of 165 mm when the ratchet is engaged at the last notch entering the locking mechanism;
ex 6217 10 00	— the inside circumference of each cuff is a minimum of 200 mm when the ratchet is engaged at the first notch entering the locking mechanism; and
ex 6307 90 98	— the cuffs have not been modified to cause physical pain or suffering.

CN code	Description
ex 7326 90 98 ex 7616 99 90 ex 8301 50 00 ex 3926 90 97 ex 4203 30 00 ex 4203 40 00 ex 4205 00 90 ex 6217 10 00 ex 6307 90 98	1.2. 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  <i>Note:</i> This item includes neck restraints and other individual cuffs or rings fitted with a locking mechanism, which are linked to ordinary handcuffs by means of a chain
ex 6505 00 10 ex 6505 00 90 ex 6506 91 00 ex 6506 99 10 ex 6506 99 90	1.3. Spit hoods: hoods, including hoods made of netting, comprising a cover of the mouth which prevents spitting  <i>Note:</i> This item includes spit hoods which are linked to ordinary handcuffs by means of a chain
	2. <b>Weapons and devices designed for the purpose of riot control or self-protection, as follows:</b>
ex 8543 70 90 ex 9304 00 00	2.1. Portable electric discharge 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  <i>Notes:</i> 1. This item does not control electric shock belts and other devices falling within item 2.1 of Annex II 2. This item does not control individual electronic shock devices when accompanying their user for the user's own personal protection
ex 8543 90 00 ex 9305 99 00	2.2. Kits containing all essential components for assembly of portable electric discharge weapons controlled by item 2.1  <i>Note:</i> The following goods are considered to be essential components: — the unit producing an electric shock, — the switch, whether or not on a remote control, and — the electrodes or, where applicable, the wires through which the electrical shock is to be administered
ex 8543 70 90 ex 9304 00 00	2.3. Fixed or mountable electric discharge weapons that cover a wide area and can target multiple individuals with electrical shocks

CN code	Description
	<p>3. <b>Weapons and equipment disseminating incapacitating or irritating chemical substances for the purpose of riot control or self-protection and certain related substances, as follows:</b></p>
<p>ex 8424 20 00 ex 8424 89 00 ex 9304 00 00</p>	<p>3.1. Portable weapons and equipment which either administer a dose of an incapacitating or irritating chemical substance that targets one individual or disseminate a dose of such substance affecting a small area, e.g. in the form of a spray fog or cloud, when the chemical substance is administered or disseminated</p> <p><i>Notes:</i></p> <ol style="list-style-type: none"> <li>1. This item does not control equipment controlled by item ML7(e) of the Common Military List of the European Union <sup>(1)</sup></li> <li>2. This item does not control individual portable equipment, even if containing a chemical substance, when accompanying their user for the user's own personal protection</li> <li>3. In addition to relevant chemical substances, such as riot control agents or PAVA, the goods controlled by items 3.3 and 3.4 shall be deemed to be incapacitating or irritating chemical substances</li> </ol>
<p>ex 2924 29 98</p>	<p>3.2. Pelargonic acid vanillylamide (PAVA) (CAS RN 2444-46-4)</p>
<p>ex 3301 90 30</p>	<p>3.3. Oleoresin capsicum (OC) (CAS RN 8023-77-6)</p>
<p>ex 2924 29 98 ex 2939 99 00 ex 3301 90 30 ex 3302 10 90 ex 3302 90 10 ex 3302 90 90 ex 3824 90 97</p>	<p>3.4. Mixtures containing at least 0,3 % by weight of PAVA or OC and a solvent (such as ethanol, 1-propanol or hexane), which could be administered as such as incapacitating or irritating agents, in particular in aerosols and in liquid form, or used for manufacturing of incapacitating or irritating agents</p> <p><i>Notes:</i></p> <ol style="list-style-type: none"> <li>1. This item does not control sauces and preparations therefor, soups or preparations therefor and mixed condiments or seasonings, provided that PAVA or OC is not the only constituent flavour in them</li> <li>2. This item does not control medicinal products for which a marketing authorisation has been granted in accordance with Union law <sup>(2)</sup></li> </ol>
<p>ex 8424 20 00 ex 8424 89 00</p>	<p>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, comprises a canister of irritating or incapacitating chemical agents and is activated using a remote control system</p> <p><i>Note:</i></p> <p>In addition to relevant chemical substances, such as riot control agents or PAVA, the goods controlled by items 3.3 and 3.4 shall be deemed to be incapacitating or irritating chemical substances</p>

<sup>(1)</sup> Latest version adopted by the Council on 11 March 2013 (OJ C 90, 27.3.2013, p. 1).

<sup>(2)</sup> See in particular Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ L 136, 30.4.2004, p. 1) and Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ L 311, 28.11.2001, p. 67).

CN code	Description
ex 8424 20 00 ex 8424 89 00 ex 9304 00 00	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  <i>Notes:</i> 1. This item does not control equipment controlled by item ML7(e) of the Common Military List of the European Union 2. This item also controls water cannons 3. In addition to relevant chemical substances, such as riot control agents or PAVA, the goods controlled by items 3.3 and 3.4 shall be deemed to be incapacitating or irritating chemical substances  4. <b>Products which could be used for the execution of human beings by means of lethal injection, as follows:</b>
ex 2933 53 90 ((a) to (f)) ex 2933 59 95 ((g) and (h))	4.1. Short and intermediate acting barbiturate anaesthetic agents including, but not limited to: (a) amobarbital (CAS RN 57-43-2) (b) amobarbital sodium salt (CAS RN 64-43-7) (c) pentobarbital (CAS RN 76-74-4) (d) pentobarbital sodium salt (CAS 57-33-0) (e) secobarbital (CAS RN 76-73-3) (f) secobarbital sodium salt (CAS RN 309-43-3) (g) thiopental (CAS RN 76-75-5) (h) thiopental sodium salt (CAS RN 71-73-8), also known as thiopentone sodium
ex 3003 90 00 ex 3004 90 00 ex 3824 90 97	<i>Note:</i> This item also controls products containing one of the anaesthetic agents listed under short or intermediate acting barbiturate anaesthetic agents.
ex 8208 90 00	5. <b>Components designed for goods designed for the execution of human beings, as follows:</b>  5.1. Guillotine blades'