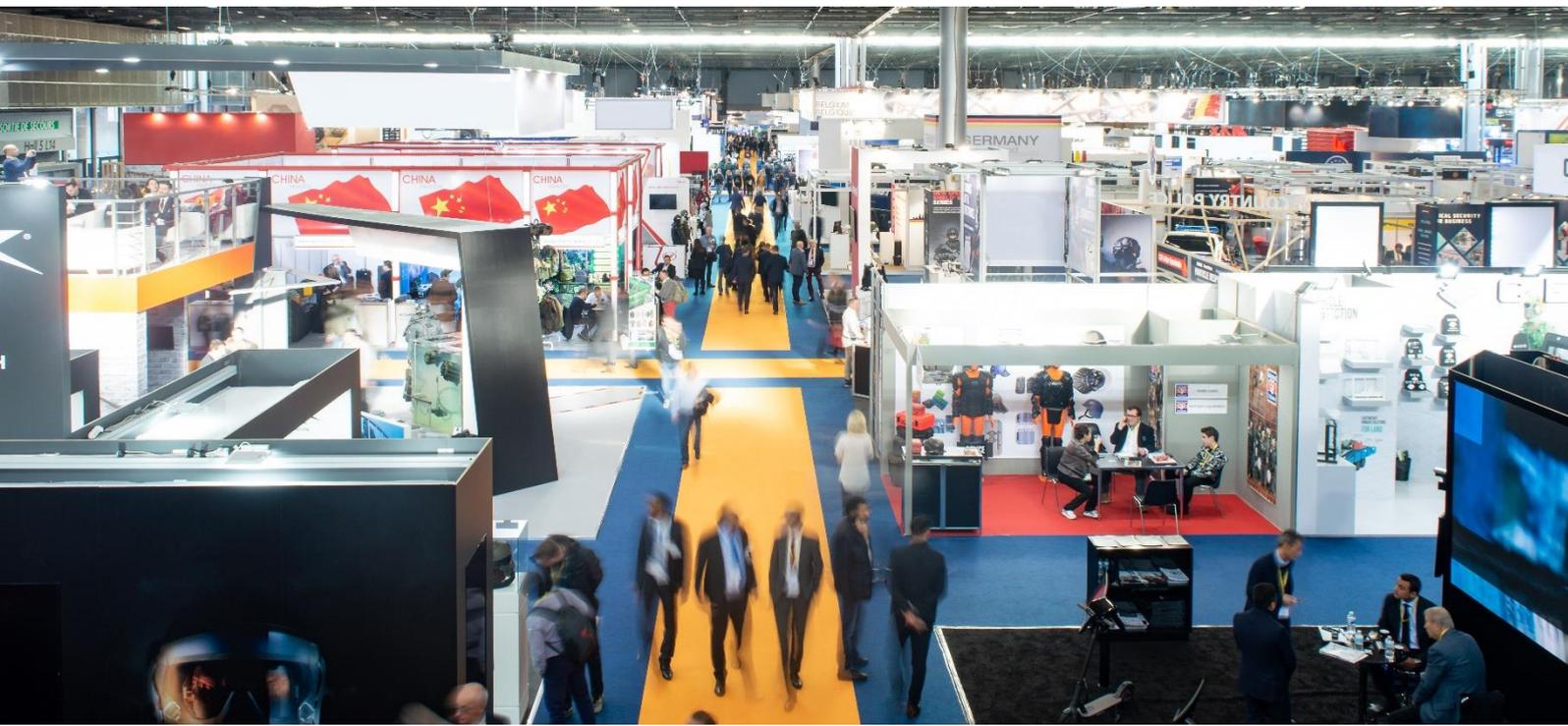


Review of EU Anti-Torture Regulation and its implementation

Executive Summary

November 2020



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.



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