

CDDH(2020)R93add2

18/10/2022

**STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)**

**Draft Recommendation CM/Rec(2021)...
of the Committee of Ministers to member States
on measures against the trade in goods used for the death penalty,
torture and other cruel, inhuman or degrading treatment or punishment**

Draft Recommendation CM/Rec(2021)...
of the Committee of Ministers to member States
on measures against the trade in goods used for the death penalty,
torture and other cruel, inhuman or degrading treatment or punishment

[[*adopted by the Committee of Ministers on ...2021*
at the ...th meeting of the Ministers' Deputies]]

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe (ETS No. 1),

Considering that the aim of the Council of Europe is to achieve a greater unity among its member States by, *inter alia* promoting common standards and carrying out activities in the field of human rights;

Recalling member States' obligation to secure to everyone within their jurisdiction the rights and freedoms defined in the European Convention on Human Rights (ETS No. 5) and the protocols thereto;

Reiterating its unwavering commitment to the abolition of the death penalty in accordance with Protocol No. 6 (ETS No. 114) and Protocol No. 13 (ETS No. 187) to the European Convention on Human Rights;

Recalling the member States' obligation to prohibit torture and inhuman or degrading treatment or punishment in accordance with Article 3 of the European Convention on Human Rights, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126) and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol;

Underlining the great importance of the initial and continued training of law-enforcement officials in the appropriate use of security equipment, in line with international and regional human rights' standards, and the consequent need to prevent the provision of training in abusive practices that contravene these standards;

Considering the jurisprudence of the European Court of Human Rights and standards developed by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on the use of certain law-enforcement equipment and devices;

Recalling Parliamentary Assembly Recommendation 2123 (2018) on strengthening international regulations against trade in goods used for torture and the death penalty, which called for technical guidance on how to establish and implement an effective regulatory regime;

Having regard to: i. the United Nations General Assembly resolutions A/RES/74/143 "Torture and other cruel, inhuman or degrading treatment or punishment", and A/RES/73/304 "Towards torture-free trade: examining the feasibility, scope and parameters for possible common international standards" as well as the subsequent report of the United Nations Secretary-General A/74/969, which found that most of the respondent States expressed support for the establishment of common international standards, and that a majority were in favour of a legally binding instrument establishing measures to control and restrict trade in goods used for capital punishment, torture and other forms of ill-treatment; ii. 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 and other cruel, inhuman or degrading treatment or punishment; and iii. the 2011 United Nations Guiding Principles on Business and Human Rights – Implementing the United Nations "Protect, Respect and Remedy" Framework;

Recalling Recommendation CM/Rec(2016)3 of the Committee of Ministers to member States on human rights and business, which underlines the need to ensure that business enterprises domiciled within member States' jurisdictions do not trade in goods which have no practical use other than for the purpose of capital punishment, torture and other cruel, inhuman or degrading treatment or punishment in third countries;

Emphasising the interest in establishing, based on a range of options, multilaterally agreed common international standards on the trade in inherently cruel, inhuman or degrading equipment, as well as law-enforcement equipment and weapons and other relevant goods which can be misused for the death penalty, torture and other cruel, inhuman or degrading treatment or punishment;

Deeply concerned by the fact that certain equipment and goods whose only practical use is for torture and other cruel, inhuman and degrading treatment or punishment can be produced, promoted or marketed in Council of Europe member States, including at European trade fairs or on the websites of European companies and companies based in Europe,

Recommends that the governments of the member States:

1. regularly review their national legislation and practice related to the trade in goods that are inherently abusive, as well as in goods which can be misused for the death penalty, torture and other cruel, inhuman or degrading treatment or punishment, in order to make sure that they comply with the measures set out in the appendix to this Recommendation;
2. ensure, by appropriate means and action, a wide dissemination of the principles set out in the appendix to this Recommendation among competent authorities, notably those implementing and overseeing regulation of the trade in goods that can be used for the death penalty, torture and other cruel, inhuman or degrading treatment or punishment, specifically including national human rights institutions, national preventive mechanisms, ombudsman institutions, relevant trade unions, civil society organisations, companies manufacturing, promoting and transferring law-enforcement equipment and other relevant goods, such as certain pharmaceutical chemicals and companies organising and operating trade fairs, as well as other relevant natural and legal persons domiciled in member States;
3. examine, within the Committee of Ministers, the implementation of this Recommendation no later than five years after its adoption.

Appendix to the Recommendation CM/Rec(2021)...

1. Measures regarding the trade in inherently abusive good and equipment

1.1. Member States should ensure that national legal frameworks and administrative measures are established and implemented to prohibit the import, export and transit of equipment and goods, and the supply of technical assistance and training relating to such equipment and goods, which have no practical use other than the infliction of the death penalty, torture and other cruel, inhuman or degrading treatment or punishment.

1.2. Member States should prevent and prohibit the import, export or transit, from, to or through their jurisdiction, of goods and equipment referenced in the list referred to in paragraph 1.3 which has no practical use other than the infliction of the death penalty, torture and other cruel, inhuman or degrading treatment or punishment. In addition, the brokering of all such goods and equipment by member State nationals or companies should be prohibited, irrespective of their origin. As an exception, member States may authorise the import, export or transit of goods and equipment referenced in the list referred to in paragraph 1.3 if it can be proved that such goods will be used for the exclusive purpose of public display in a museum in view of their historical significance.

1.3. Member States should establish a list of prohibited goods and equipment that should at least include the categories specified in Appendix 1. The list should be regularly reviewed and updated in order to take account of changes in the development and in the nature of use of such equipment as well as changes in the international markets thereof.

1.4. Member States should destroy any stock of equipment and goods referenced in the list referred to in paragraph 1.3 that remains within their jurisdiction, unless used for the exclusive purpose of public display in a museum in view of their historical significance.

1.5. Member States should ensure that advertising of equipment and goods referenced in paragraph 1.3 by any means, including information communication technologies and the internet, television, radio, in the print media and at trade fairs, is prohibited.

1.6. Provision of technical assistance related to any of the prohibited goods and equipment, including any technical support related to the repair, development, manufacture, testing, maintenance, assembly or any other technical service should be prohibited, except for procedures dedicated to conservation and preservation in museums. Such assistance may take the form of instruction, advice, training activities and the transmission of knowledge or skills. In addition, training in the use of any prohibited goods and equipment should be forbidden.

1.7. Member States should ensure that effective, proportionate and dissuasive sanctions exist for activities in breach of the prohibitions referred to in paragraphs 1.2, 1.5 and 1.6.

2. Measures regarding the export and transit of certain pharmaceutical chemicals

2.1. Member States should regulate and license the export and transit of certain pharmaceutical chemicals to ensure that they are not transferred for use in lethal injection executions in States still applying the death penalty. Member States' action should not limit the trade in such chemicals for medical, veterinary or other legitimate purposes.

2.2. Regulation should include those pharmaceutical chemicals listed in Appendix 2 and the list should be regularly reviewed, and, if appropriate, updated, in order to take account of changes in the production, trade in and use of such chemicals.

2.3. Member States should ensure that effective, proportionate and dissuasive sanctions exist for activities in breach of the regulations referred to in paragraph 2.1.

3. Measures regarding the trade in law-enforcement goods and equipment

3.1. Member States should establish effective national export and transit control measures with respect to law-enforcement goods and equipment that can have a legitimate function when used in a manner consistent with international and regional human rights standards and other relevant standards on the use of force, but which may be misused by law enforcement and other officials to inflict torture and other inhuman or degrading treatment or punishment. Such measures may include:

3.1.1. controlling the export and transit of such goods and equipment through a licensing system, as provided for in paragraph 3.2;

3.1.2. establishing a list of controlled goods and equipment which should at least include the categories specified in Appendix 3. The list should be regularly reviewed in order to take account of changes in the development and in the nature of the use of such goods and equipment, as well changes in their international markets;

3.1.3. controlling the provision of technical assistance and training in the use of goods and equipment referred to in paragraph 3.1.2;

3.1.4. controlling the provision of brokering services related to goods and equipment referred to in paragraph 3.1.2;

3.1.5. ensuring that effective, proportionate and dissuasive sanctions exist for activities in breach of the control measures set out in paragraphs 3.1.1, 3.1.3 and 3.1.4.

3.2. Member States should establish effective national measures on licensing the goods and equipment referenced in paragraph 3.1, such as:

3.2.1. licensing, on a case-by-case basis, the export of goods and equipment referred to in paragraph 3.1.2. The relevant licence authorisation should be issued only upon the provision of a detailed application from the prospective exporter that includes an end-use certificate or equivalent official written assurance from or about the intended recipient detailing the nature and volume of goods, the end-user and the nature of the intended use. A licence is not required for exports to third countries if the goods and equipment are to be used by military or civil personnel of a member State that is taking part in a peacekeeping or crisis management operation of the United Nations or a regional organisation in the third country concerned, or in an operation based on agreements between member States and third countries in the field of defence, for use by personnel of the member State concerned. The relevant authorities should verify whether this condition is met. Pending such verification, the export shall not take place;

3.2.2. ensuring that the evaluation of export licences or transit applications incorporates an assessment of the risk that the goods and equipment referenced in paragraph 3.1.2. will be diverted or used for torture and other cruel, inhuman or degrading treatment or punishment. The assessment should take into account relevant judgments of international courts and information provided by competent authoritative international and national bodies regarding the use and regulation of the goods and equipment by the proposed end-users; other relevant information that may be taken into account includes national court judgments, reports or other information prepared by civil society organisations and information on restrictions of exports of goods and equipment referred to in Appendices 1 and 3 applied by the country of destination;

3.2.3. ensuring that the export licence is withheld when there are reasonable grounds for believing that the equipment and goods applied for will be used for torture and other cruel, inhuman or degrading treatment or punishment;

3.2.4. revoking the licence of an ongoing export where there are reasonable grounds for believing that the goods and equipment being transferred have been, are being or risk being used for torture and other cruel, inhuman or degrading treatment or punishment, or where the diversion of such goods and equipment is likely;

3.2.5. ensuring that the transit of goods and equipment referred to in paragraph 3.1.2. is prohibited when the person, entity or body executing the transit knows that any part of a shipment of such goods and equipment is intended to be used for torture and other cruel, inhuman or degrading treatment or punishment;

3.2.6. maintaining records of all export licences, transit authorisations, authorisations of brokering services, related technical assistance and training;

3.2.7. publishing an annual national activity report providing information on the number of applications received, the goods and countries concerned by these applications and the decisions taken on these applications;

3.2.8. exchanging information with Council of Europe member States on licensing decisions (number of applications, type of goods and equipment and countries concerned) and, where available, actual exports.

4. Information exchange and dissemination, co-operation

Member States should use the Council of Europe online Platform for Human Rights and Business for information exchange and the sharing of best practices, specifically including the dissemination of relevant national legislation and associated administrative procedures, to facilitate both effective national implementation of the measures and cross-border co-operation. The Platform and associated measures can facilitate dissemination of information to the business community and other key stakeholders in order to raise awareness of their relevant obligations and the mechanisms and measures established to regulate trade in law-enforcement equipment and relevant goods in order to prevent their use for the death penalty, torture and other cruel, inhuman or degrading treatment or punishment.

5. Support for non-member States

5.1. Member States should encourage non-member States to implement measures such as those set out in this Recommendation and other relevant international standards regulating the trade in law-enforcement goods and equipment, to prevent their use for the death penalty, torture and other cruel, inhuman or degrading treatment or punishment, notably through developing partnerships or offering other forms of support in implementing these standards.

5.2. Member States should provide advice and support to non-member States wishing to strengthen their regulatory regime with respect to trade in law-enforcement goods and equipment to prevent their use for the death penalty, torture and other cruel, inhuman or degrading treatment or punishment.

5.3. Member States should provide information, through their diplomatic or consular missions in non-member States, on the human rights implications of trade in goods and equipment which can be used for torture and other cruel, inhuman or degrading treatment or punishment.

6. Action in other international organisations

6.1. Member States should promote action in relevant international forums against the trade in goods used for the death penalty, torture and other cruel, inhuman or degrading treatment or punishment. Particular attention should be given to the United Nations' processes aimed at exploring the feasibility and scope of a range of options to establish common international standards in this area, notably a legally binding instrument.

6.2. If they have not yet done so, member States should join the Alliance for Torture-Free Trade and make use of and contribute to the Alliance's global network of focal points for sharing information and best practice and, where appropriate, providing or receiving technical assistance on design and implementation of relevant national legislation.

Appendix 1

List of prohibited inherently abusive goods and equipment

Inherently abusive goods and equipment including, but not limited to:

- i. gallows, guillotines, blades for guillotines, gas chambers, electric chairs and automatic lethal injection systems designed for capital punishment;
- ii. thumb-cuffs; finger-cuffs; thumbscrews; bar fetters; cuffs for restraining human beings, designed to be anchored to a wall, floor or ceiling; weighted leg restraints; gang chains comprising bar fetters or weighted leg restraints; restraint chairs and shackle boards/beds with metal restraints; cage beds; and net beds;
- iii. spiked batons or truncheons and shields with metal spikes, whips comprising multiple lashes or thongs or 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;
- iv. body-worn electric shock devices such as belts, sleeves and cuffs designed for restraining human beings by the administration of electric shocks.

Appendix 2

List of pharmaceutical chemicals employed in lethal injection execution

Products which could be used for the execution of human beings by means of lethal injection, as follows.

Short and intermediate acting barbiturate anaesthetic agents including, but not limited to:

- i. amobarbital (CAS RN 57-43-2);
- ii. amobarbital sodium salt (CAS RN 64-43-7);
- iii. pentobarbital (CAS RN 76-74-4);
- iv. pentobarbital sodium salt (CAS 57-33-0);
- v. secobarbital (CAS RN 76-73-3);
- vi. secobarbital sodium salt (CAS RN 309-43-3);
- vii. thiopental (CAS RN 76-75-5);
- viii. thiopental sodium salt (CAS RN 71-73-8), also known as thiopentone sodium;
- ix. products containing one of the anaesthetic agents listed under short and intermediate acting barbiturate anaesthetic agents.

Appendix 3**List of controlled goods and equipment**

Controlled goods and equipment including, but not limited to:

- i. Shackles, gang chains, spit hoods, 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;
- ii. 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, and kits containing the essential components for assembly of such portable discharge weapons;
- iii. Fixed or mountable electric discharge weapons that cover a wide area and can target multiple individuals with electric shocks;
- iv. Riot control agents (RCAs) employed for law-enforcement purposes, such as:
 - a. 2-Chlorobenzylidenemalonitrile (CS) (CAS 2698- 41-1);
 - b. 2-Chloroacetophenone (CN) (CAS 532-27-4);
 - c. Dibenz-(b,f)-1,4-oxazepine, (CR) (CAS 257-07-8);
 - d. N-Nonanoylmorpholine, (MPA) (CAS 5299-64-9);
 - e. Oleoresin capsicum (OC) (CAS RN 8023-77-6);
 - f. Pelargonic acid vanillylamide (PAVA) (CAS RN 2444-46-4).
- v. RCA dispersal equipment targeting one individual or disseminating a limited dose over a small area;
- vi. Fixed RCA dispersal equipment intended for disseminating a limited dose of RCA over a small area inside a building;
- vii. RCA dispersal equipment intended for disseminating RCAs over a wide area, including water cannons.