

GRASPING THE NETTLE:

ENDING EUROPE'S TRADE
IN EXECUTION AND
TORTURE TECHNOLOGY



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The Omega Research Foundation (Omega) is an independent UK-based research organisation.



First published in 2015 by
Amnesty International Ltd
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom
© Amnesty International 2015
Index: ACT 01/1632/2015
Original Language: English
Printed by Amnesty International,
International Secretariat, United Kingdom

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EXECUTIVE SUMMARY

The prohibition on torture and other cruel, inhuman or degrading treatment or punishment is absolute. It applies in all circumstances and, as part of customary international law, to all States.¹ Despite such obligations, torture is still variously perpetrated in countries in all regions of the world, and capital punishment is still carried out in several countries. According to Amnesty International's research, 82% (131 out of 160) of countries tortured or otherwise ill-treated people during 2014, whilst 607 people were executed in 22 countries and at least 2,466 men and women were sentenced to death in 55 countries in that year alone.² UN and regional human rights monitors and mechanisms, and non-governmental human rights organizations have documented the trade and use of different types of equipment to commit torture and other ill-treatment, and to carry out executions.

In 2006 the European Union (EU) introduced the world's first multilateral trade controls to prohibit the international trade in equipment which has no practical use other than for the purposes of executions, torture or other cruel, inhuman or degrading treatment or punishment³; and to control the trade in a range of policing and security equipment misused for such violations of human rights. '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' (the Regulation) fills a major gap in human-rights-based export controls. It introduced unprecedented, binding trade controls on a range of equipment which is often used to carry out judicial executions or in torture and other ill treatment, but which has not usually been included on EU Member States' military, dual-use or strategic export control lists.⁴

On 16 July 2014, the European Commission introduced a Commission Implementing Regulation (EU) No. 775/2014, significantly expanding the lists of prohibited (Annex II) goods and controlled (Annex III) goods covered by the Regulation.⁵ The European Commission adopted the legal changes to the lists after consultation with Member State officials in the 'Committee on common rules for exports of products', and followed a year-long review of the Regulation by a Commission group of independent experts. This process had been greatly informed by previous research into the EU trade in security equipment published by Amnesty International/ Omega⁶ and by Reprieve concerning pharmaceutical chemicals; and by specific policy proposals made by these organizations to the Commission and the expert group during the review process. The new lists entered into force on 20 July 2014, and are legally binding and directly applicable now in all 28 EU Member States.

The introduction of Commission Implementing Regulation (EU) No. 775/2014 was an important first step in a wide-ranging overhaul of the Regulation. The EU Commission, Council and Parliament are now engaged in a substantive review of the 2005 Regulation's operative mechanisms.

In January 2014 the Commission presented proposals to the Council of Member States and the European Parliament for strengthening the Regulation.⁷ Amnesty International and Omega are supportive of many of the Commission's proposals which focus on long-standing limitations which the two organisations have previously highlighted – and we recommend that these elements be adopted and implemented by Member States.

¹ See Article 5 of the Universal Declaration of Human Rights, adopted and proclaimed by General Assembly resolution 217 A (III), 10 December 1948. This prohibition has been articulated in a number of international human rights and regional instruments, most notably the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted by General Assembly resolution 39/46 of 10 December 1984, entered into force 26 June 1987). Prohibition of torture is a norm of jus cogens; fundamental and overriding principle of international law from which no derogations are permitted. See: Questions Relating to the Obligation to Prosecute or Extradite (Belgium v Senegal), International Court of Justice, Judgment of 20 July 2012, ICJ Reports 2012, para. 99.

² Examples can be found in the following report, Amnesty International, Annual Report 2014/2015, available at <https://www.amnesty.org/en/annual-report-201415> (accessed 18 May 2015).

³ Hereafter, the phrase "torture and other ill-treatment" is used to denote torture and other cruel, inhuman and degrading treatment and punishment.

⁴ 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, published in Official Journal of the European Union, L200/1, 30 July 2005 (<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:200:0001:0019:EN:PDF>).

⁵ European Commission, 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.

⁶ Amnesty International & Omega Research Foundation, No more delays: putting an end to the EU trade in "tools of torture", ACT 30/06/2012, June 2012; Amnesty International & Omega Research Foundation, From Words to Deeds: making the EU ban on the trade in 'tools of torture' a reality, EUR 01/004/2010, Amnesty International, February 2010; Amnesty International, European Union: Stopping the Trade in Tools of Torture POL 34/001/2007.

⁷ European Commission, Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1236/2005 concerning the trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, COM (2014) 1 final, 2014/0005 (COD), 14 January 2014.

Whilst the Commission proposals are significant, they fail to effectively address a number of crucial weakness and loopholes in the Regulation and its attendant control regime. If these issues are not tackled directly now by the EU Member States and the European Parliament, this rare opportunity to comprehensively strengthen the control regime and close loopholes that can be exploited by unscrupulous traders will be missed. It is now time for the European Union to “grasp the nettle” and end Europe’s trade in execution and torture technology for good. This report, co-authored by Amnesty International and the Omega Research Foundation, is intended to inform this process, by highlighting existing failings of the control regime through contemporary case studies and by providing realistic and workable policy solutions to these often complex technical issues.

The report highlights:

- The promotion at EU trade fairs and exhibitions in France, Germany and the United Kingdom, and by companies in the Czech Republic and Germany of equipment banned under the Regulation or Member State national law;
- The promotion by companies in the Czech Republic, France, Germany, Poland, Portugal and Slovenia a range of goods not currently prohibited by the Regulation but which are totally inappropriate for use by law enforcement officials and which could facilitate torture or other ill-treatment, including certain direct contact electric shock devices; and the failure of the Regulation to adequately control a further range of goods including restraint chairs, acoustic devices and millimetre wave weapons;
- The current lack of EU regulatory control upon brokering activities, the transit of Annex III goods and the provision of technical assistance and training in the use of security equipment by EU companies.

Consequently Amnesty International and Omega have developed a range of policy recommendations to close such loopholes and address existing limitations in the control regime, including:

- The introduction of effective mechanisms to regulate brokering and related activities undertaken by EU nationals or registered companies (and their subsidiaries) of all goods covered by the Regulation, where-ever such activities occur;
- The prohibition on the commercial promotion and marketing within the EU of all Annex II items by EU and non-EU registered companies and individuals;
- The introduction of appropriate measures to control the supply of technical assistance including the instruction and training in skills that could aid the commission of judicial executions or torture and other ill-treatment;
- The adoption of a targeted end-use control mechanism which would require Member States to suspend or halt a specific transfer of relevant items covered under the scope of the Regulation but which are not listed in the Regulation Annexes, where there is evidence that the specific transfer would be used to carry out the death penalty, torture or other ill-treatment.

CHAPTER 1 / MECHANISMS TO CONTROL BROKERING AND TRANSIT

BROKERING AND ASSOCIATED ACTIVITIES

The Regulation does not currently control the activities of companies or individuals within the EU engaged in brokering - arranging the transfer of equipment between third countries outside the EU, where the items do not enter the EU customs territory. Such brokering activities could involve either the trade of items listed in Annex II (prohibited goods) or other items where their transfer is intended for capital punishment, torture and other ill-treatment in third countries.

Amnesty International and Omega are concerned that without a requirement in the Regulation for Member States to effectively control the brokering of items covered by the Regulation, and given the existing lack of national brokering trade controls in some EU Member States, the EU's efforts to ban the international trade in "*torture equipment*" beyond Europe, and to control the EU trade in other security and law-enforcement equipment to prevent that trade from contributing to torture and other ill-treatment, will be undermined.

UNITED KINGDOM

The United Kingdom is one of the few EU Member States that prohibits most (but not all) brokering of a range of goods that could facilitate torture or other ill-treatment, such as electric shock batons, electric-shock belts, leg irons and batons or truncheons made of metal or other material having a shaft with metal spikes.⁸ These items are amongst those designated by the UK as 'Category A' goods and assigned the highest levels of control, i.e. a de facto ban, on all activities connected with the trade in such equipment. In March 2010 the Export Control Organisation published a Review of Export Control Legislation (2007) Supplementary Guidance Note on Trade ("Trafficking and Brokering") in Controlled Goods, which stated that:

"...For category A goods a trade licence is required for any of the following activities, where undertaken by any company or person from within the UK (whether or not they are a UK person) or by any UK person operating overseas... and whether directly or indirectly: Supplying or delivering, agreeing to supply or deliver, or doing any act calculated to promote the supply or delivery of Category A goods where that person knows or has reason to believe that their action or actions will, or may, result in the removal of those goods from one third country to another.

Unlike trading in category C and B goods, there are no exemptions for those whose sole involvement is in transportation services, financing or financial services, insurance or reinsurance services or general advertising and promotion (such as displaying category A goods at trade fairs or advertising them in periodicals). Therefore, anyone involved in the provision of these services requires a licence.

These strict controls reflect the fact that the supply of many of these goods is inherently undesirable. Licences will not normally be granted for any trade in paramilitary goods listed because of evidence of their use in torture..."⁹

Amnesty International and Omega commend the UK for the introduction of legislation in this area. However, both organisations are concerned about certain limitations in its scope and implementation to date. Firstly, the UK Government's application of controls on the promotion and advertising of certain Category A goods (including electroshock weapons) has been unsatisfactory (as explored in section 2 of this report). Secondly, whilst the UK Government Export Control Organisation has confirmed that the majority of goods listed in Annex II and III of the Regulation are subject to UK

⁸ For further discussion see: Department for Business, Innovation & Skills and Export Control Organisation Guidance pages on: Trade controls (trafficking and brokering), Export Control Order 2008, and Controls on Torture Goods available via <https://www.gov.uk/controls-on-torture-goods>

⁹ UK Government, Department for Business, Innovation and Skills, Review of Export Control Legislation (2007) Supplementary Guidance Note on Trade ("Trafficking and Brokering"), March 2010 available via https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/15216/Trafficking_and_Brokering_Guidance_-_URN_10-664_-_new_logo_-_2012.pdf (accessed 6 January 2015).

brokering controls,¹⁰ the scope and nature of such controls regarding certain Regulation goods are unclear. Although controls on Category A goods are fully extra-territorial and also relate to other closely associated activities such as transportation, advertising and marketing and the provision of financial or insurance services, it is unclear whether such coverage extends in relation to those Category B and C goods that fall within the Regulation's scope. In addition, the UK Government Export Control Organisation has confirmed that, "a UK company incorporated under the jurisdiction of a foreign country is not subject to UK export or trade controls."¹¹ The implications of such limitation in scope are exemplified by the case study below.

ILLUSTRATIVE CASE STUDY – SINGAPORE SUBSIDIARY OF UK COMPANY BROKERING A SHIPMENT OF PEPPER SPRAY, TEAR GAS AND OTHER RIOT CONTROL EQUIPMENT TO THE MALDIVES

On 7 February 2012, the Maldives President Mohamed Nasheed resigned from office, but subsequently claimed that he had been forced to resign at gun point in a coup organised by his opponents. The consequent protests organised by his Maldivian Democratic Party (MDP) were met by political repression across the archipelago.

In its Annual Report entry on the Maldives, Amnesty International stated:

*"Throughout the year, security forces frequently attacked peaceful demonstrators, including MPs, journalists and bystanders, in the capital Malé or in Addu, both MDP strongholds. Officers clubbed them, kicked them and pepper-sprayed them directly in the eyes. Around the time of Mohamed Nasheed's resignation, from 7 to 9 February, police targeted senior MDP members for attack and tracked down and assaulted injured protesters in hospitals."*¹²

MDP Member of Parliament, Mariya Ahmed Didi, was among those arrested and ill-treated following the violent dispersal of a peaceful MDP rally on 8 February 2012. She described her treatment to Amnesty International:

*"They... continued beating me with my handcuffs on," she said. "They were beating me with batons. Police and military officers then forcefully opened my eyelids. They went for the eye that had been injured the day before [in a previous attack by police]. They sprayed pepper spray directly into my eye. Then they did the same with my other eye. They then sprayed into my nose as they were also beating me. They then took me to a police station and continued to beat me there. I have bruises all over my body. At one point when they were beating me one of them shouted, 'Is she still not dead?'"*¹³

In November 2013, the UK Department for Business, Innovation and Skills (BIS) is reported as stating that, "The British government remains deeply concerned about the ongoing political situation in Maldives, including the reports of intimidation, violence and arrests that have taken place in recent months." Consequently the Department of BIS stated, "We have not issued any licences for the export or trade of crowd control equipment to the Maldives in at least the last year. Under current circumstances, we would not do so."¹⁴

However investigations by UK newspaper, *The Guardian*, uncovered details of a large shipment of riot control equipment worth \$100,000 that were sent to the Maldives police force.¹⁵ The shipment contained 250 smoke grenades and 200 stun grenades, 900 tear gas projectiles and grenades, 100 pepper spray refills, 800 rubber bullets and projectiles, including 300 multiple projectile cartridges. The equipment was shipped to the Maldives by the Brazilian arms supplier Condor Industries on 25 September 2013. The deal was brokered by a Singapore-based and—registered company, WH Brennan Pte. Ltd. This company is a foreign subsidiary of the UK company, Survitec Group, which is based in Southampton.

The Department of BIS reportedly stated that Survitec did not require a UK export licence because the shipment was sold by its subsidiary. It was therefore considered to be outside the UK's legal jurisdiction.¹⁶

In its July 2014 report, the UK Parliament's Quadripartite Committee subsequently highlighted this case and stated that, "It is a significant loophole in UK arms export controls that a UK company can circumvent those controls by exporting military and dual-use goods using an overseas subsidiary."¹⁷ The Quadripartite

¹⁰ Email correspondence to Amnesty International and Omega from Policy Advisor to the UK Export Control Organisation, 11 May 2015.

¹¹ Email correspondence to Amnesty International and Omega from Policy Advisor to the UK Export Control Organisation, 11 May 2015.

¹² Maldives entry, Amnesty International Report 2013: The State of the World's Human Rights, Amnesty International, 23 May 2013.

¹³ The Other Side of Paradise: A Human Rights Crisis in the Maldives, Amnesty International, September 2012, p.5-6.

¹⁴ Maldives police buy weapons shipment from UK-owned firm, *The Guardian*, 3 November 2013.

¹⁵ Maldives police buy weapons shipment from UK-owned firm, *The Guardian*, 3 November 2013.

¹⁶ Maldives police buy weapons shipment from UK-owned firm, *The Guardian*, 3 November 2013.

¹⁷ UK Parliament, House of Commons, Committees on Arms Export Controls - First Report - Volume II - Memorandum Scrutiny of arms Exports and Arms Control, 14 July 2014, paragraph 68.

Committee recommended that, *“The Government states whether it will close this loophole, and, if so, by what means and in what timescale.”*¹⁸

On 5 May 2015, in his response to Amnesty International and Omega, the Chief Executive Officer of the Survitec Group stated that:

*“Every one of our global offices is required to vet a potential export order against a “world list” of countries and organisations subject to trading embargoes. **This process further confirmed, before the order was agreed, that neither the Maldives nor the Maldives Police Force appeared on any wider international embargo list.***

*“Although our system of ensuring export embargo compliance applies to any order, no matter how small, Survitec, as is usual with any global company, allows appropriate autonomy to its subsidiaries to handle, along pre-agreed guidelines, the management of contracts below a certain value, without reference to head office. The relatively low value of the contract allowed the order to be processed in Singapore and we can confirm that no one from Survitec in the UK was involved in the transaction. **There was no element of brokering or other promotional activity from the UK falling within the scope of the UK trafficking and brokering rules.***

*Whilst Survitec did not infringe any kind of export restriction in the sale of this type of merchandise to the Government of the Maldives, we subsequently considered the implications of the Foreign & Commonwealth Office’s statement on 31 October 2013 regarding the democratic process in the country. **As a result we immediately suspended the sale of these products to the Maldives by any of our companies until further notice.***¹⁹

COMMISSION PROPOSALS TO STRENGTHEN THE REGULATION

In its January 2014 Proposals, the Commission recognised the need to regulate brokering activities. It stated that, *“Since the only use to which equipment or goods listed in Annex II can be put is forbidden, a prohibition on the provision of brokering services is a necessary and proportionate measure to protect public morals.”*²⁰

Consequently, under Article 4a of its Proposals, the Commission recommended that, *“A broker shall be prohibited from providing to any person, entity or body in a third country brokering services in relation to goods listed in Annex II, irrespective of the origin of such goods.”*²¹

Furthermore Article 7a of the Proposals states:

*“A broker shall be prohibited from providing to any person, entity or body in a third country brokering services in relation to goods listed in Annex III, irrespective of the origin of such goods, if the broker knows or has grounds for suspecting that any part of a shipment of such goods is or may be intended to be used for torture or other cruel, inhuman or degrading treatment or punishment in a country that does not belong to the customs territory of the Union.”*²²

The Commission has also proposed a similar amendment under Article 7d which would extend such provisions to Annex IIIa goods.²³

Amnesty International and Omega are supportive of these proposals as they seek to address a loophole we have repeatedly highlighted in our reports²⁴ and during the Expert Group process. However, we are concerned that the effectiveness of these provisions will be limited due to the restricted definition of the brokering entities and the activities to be regulated by the Regulation. And consequently Amnesty International and Omega believe the Commission proposals should be strengthened accordingly.

¹⁸ UK Parliament, House of Commons, Committees on Arms Export Controls - First Report - Volume II - Memorandum Scrutiny of arms Exports and Arms Control, 14 July 2014, paragraph 68.

¹⁹ Email correspondence from CEO of Survitec Group to Amnesty International and Omega, 5 May 2015.

²⁰ European Commission Proposal (14 January 2014) op.cit., Section 3.2.1.

²¹ European Commission Proposal (14 January 2014) op.cit., Article 4a, paragraph 1.

²² European Commission Proposal (14 January 2014) op.cit. Article 7a, paragraph 1.

²³ European Commission Proposal (14 January 2014) op.cit. Article 7d, paragraph 1.

²⁴ See for example: Amnesty International and Omega Research Foundation, From Words to Deeds: Making the EU ban on the trade in “tools of torture” a reality, Index: EUR 01/004/2010, April 2010.

The Commission Proposal defines “*brokering services*” as: “(a) the negotiation or arrangement of transactions for the purchase, sale or supply of relevant goods from a third country to any other third country, or (b) the selling or buying of relevant goods that are located in a third country for their transfer to another third country.”²⁵

The Proposals explicitly exclude the “*sole provision of ancillary services*” from the definition of brokering. Consequently the sole provision of “*transportation, financial services, insurance or re-insurance, or general advertising or promotion*” will not be controlled by these proposals.²⁶ In contrast, certain EU Member States have national controls in this area which explicitly include such ancillary services in relation to certain goods.²⁷

Amnesty International and Omega Recommendation: We recommend that the scope of these provisions should also explicitly include, “*transportation, financial services, insurance or re-insurance, or general advertising or promotion*” services for Annex II goods and for Annex III and Annex IIIa where the agent knows or has grounds for suspecting that a transfer of such goods is or may be intended to be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment in a country that does not belong to the customs territory of the EU.

The Commission Proposal defines a “*broker*” as, “*any natural or legal person or partnership resident or established in a Member State of the Union that carries out services defined under point (k) from the Union into the territory of a third country.*”²⁸ This definition appears to restrict application of control solely to brokering activities occurring from within the EU. In contrast, certain EU Member States have national controls in this area which explicitly incorporate elements of extra-territoriality.²⁹

Amnesty International and Omega Recommendation: Amnesty International and Omega support the Commission proposals to introduce controls covering brokering activities undertaken from the EU by a legal or natural person or partnership resident or established within the EU. In addition, we recommend that the provisions should also specifically cover instances where:

- the brokering activity is conducted outside the EU by an EU registered company, EU national or resident of an EU Member State;
- the brokering activity is conducted outside the EU by a non-EU-based subsidiary of an EU company.

TRANSIT CONTROLS

Under a combined reading of Articles 3 and 4 of the Regulation, any import or export of “*goods listed in Annex II shall be prohibited, irrespective of the origin of such goods.*”³⁰ Commission officials have confirmed that this comprehensive prohibition would cover the transit of Annex II goods through the European Union.³¹

In contrast however, Article 5 of the Regulation, which details the export authorization requirement for Annex III goods, states, “[N]o authorization shall be required for goods which only pass through the customs territory of the Community, namely those which are not assigned a customs-approved treatment or use other than the external transit procedure within Article 91 of Regulation (EEC) No 2913/92, including storage of non-Community goods in a free zone of control type I or a free warehouse.”³²

Consequently under the Regulation, export authorizations for items currently listed in Annex III are not required for those goods which transit through the EU without remaining there – potentially even if companies are suspected of sending Annex III equipment in transit through the EU to countries where there is a substantial risk they will be used for the death penalty, torture or other ill-treatment. This introduces a significant potential lacuna into the Regulation's control regime.

²⁵ European Commission Proposal (14 January 2014) op.cit. Article 1.2.(k).

²⁶ European Commission Proposal (14 January 2014) op.cit. Article 1.2.(k).

²⁷ See: UK Government, Department for Business, Innovation and Skills, March 2010 op.cit.

²⁸ European Commission Proposal (14 January 2014) op.cit. Article 1.2.(l).

²⁹ See: UK Government, Department for Business, Innovation and Skills, March 2010 op.cit.

³⁰ EC Regulation 1236/2005, Articles 3 & 4.

³¹ Meeting between Commission officials and representatives of Amnesty International and the Omega Research Foundation, 23 April 2015.

³² EC Regulation 1236/2005, Article 5.

EXAMPLES OF THE TRANSIT OF ANNEX III GOODS THROUGH THE NETHERLANDS WERE HIGHLIGHTED IN A 2010 REPORT BY DUTCH NGO, CAMPAGNE TEGEN WAPENHANDEL.³³

In August 2008, the Dutch Government introduced a licencing requirement for the transit of military goods (including certain Annex III goods) from a non EU/NATO+ country to another non-EU/NATO+ country via the Netherlands. In contrast, no licence was required for the transit of such goods from EU/NATO+ countries, although such transit was subject to a prior notification requirement.³⁴ The Campagne tegen Wapenhandel report, which analysed information from the Dutch Government, reported the transit through Rotterdam of 1,000 undefined units of pepper spray originating from the U.S. and destined for Uganda.³⁵ The report stated that, "...It's a mystery why the Netherlands let through a shipment of pepper spray to Uganda, where security forces have become increasingly repressive in recent years."³⁶ Indeed the media and human rights organisations subsequently documented the unnecessary and abusive use of force, including the inappropriate employment of tear gas and pepper spray, by the Ugandan police, against opposition supporters in April 2011.³⁷ Amnesty International described the misuse of pepper spray by police and unidentified law enforcement personnel in the "brutal arrest" of the opposition leader Dr. Kizza Besigye on 28 April 2011:

*"...Following a scuffle with the political leader's aides, government security personnel forced him out of his car on one of Kampala's roads. The officers broke the car's windows using gun butts and a hammer, and sprayed cans of tear gas and pepper spray into the politician's vehicle and directly into the politician's eye in order to force him and his aides out of the car. The officers then beat the politician and his aides before violently pushing them into a police van and driving them to a Kampala police station. Dr. Besigye suffered various serious injuries, including to his eyes..."*³⁸

The Campagne tegen Wapenhandel report also highlighted the apparent transit of 38kg of electroshock weapons, originating in South Africa, through the Netherlands to Germany.³⁹ As the report noted this transit was "remarkable." For, "although electroshock weapons are freely traded in Germany [and indeed in South Africa], they are "banned for private ownership in the Netherlands."⁴⁰

In June 2011 the Dutch Government subsequently informed the Dutch Parliament of its intention to strengthen controls over the transit of certain military goods from EU/NATO+ countries.⁴¹ However it is unclear whether this would apply to all goods covered by EC Regulation 1236/2005.

Amnesty International and Omega Recommendation: We recommend that the Regulation be amended to remove the exemption for the transit of items falling under Annex III of the Regulation, and that this be replaced by a provision inserted to require specific transit authorization for all items listed in Annex III.

³³ Analysis of Dutch arms exports 2010, Campagne tegen Wapenhandel Slijper, F. and de Vries, W. December 2011. See also: Vrij Verkeer, Campaign Against Arms Trade, Slijper, F. January 2011.

³⁴ The term EU/NATO+ countries refers to Australia, Japan, New Zealand and Switzerland in addition to all EU and NATO members.

³⁵ According to the Dutch Government's 2010 report of the transit of military goods, notification of this transit was made on 12 May 2010. See: <http://www.rijksoverheid.nl/bestanden/documenten-en-publicaties/rapporten/2010/12/08/maandrapportage-doorvoer-militaire-goederen-mei-2010/mei-2010.pdf> (accessed 27 April 2015).

³⁶ Campagne tegen Wapenhandel (December 2011) op.cit.

³⁷ Ugandan opposition leader temporarily blinded in tear gas raid, The Guardian, 28 April 2011.

³⁸ "Stifling Dissent" Restrictions on the Rights to Freedom of Expression and Peaceful Assembly in Uganda, Amnesty International, AFR 59/016/2011, November 2011.

³⁹ According to the Dutch Government's 2010 report of the transit of military goods, notification of this transit was made on 21 October 2010. See: <http://www.rijksoverheid.nl/bestanden/documenten-en-publicaties/rapporten/2011/11/23/maandrapportage-doorvoer-militaire-goederen-oktober-2010/oktober-2010.pdf> (accessed 27 April 2015).

⁴⁰ Campagne tegen Wapenhandel (December 2011) op.cit.

⁴¹ Letter to the Chairman of the House of Representatives, Netherlands Parliament, from Directorate-General for Foreign Economic Relations, Trade Policy and Globalization Management, 10 June 2011.

CHAPTER 2 / MECHANISMS TO CONTROL THE PROMOTION OF SECURITY EQUIPMENT

Although the Regulation specifically prohibits the import and export of equipment listed in Annex II, it currently contains no provisions restricting the commercial promotion and marketing in EU Member States of such items which could be used for torture, ill-treatment or for capital punishment.⁴²

PROMOTION OF SECURITY EQUIPMENT AT EU TRADE FAIRS AND EXHIBITIONS

Amnesty International and Omega have previously documented the promotion at EU trade fairs and exhibitions of equipment banned under the Regulation or national law, or of equipment which is inappropriate for use by law enforcement officials and which could facilitate torture or other ill-treatment.⁴³ Further examples of this continuing practice are documented in the illustrative case studies detailed below and elsewhere in this report.⁴⁴ Amnesty International and Omega are concerned that such promotional activities undermine the object and purpose of the Regulation because they can facilitate the import, export or brokering of equipment currently prohibited or of equipment which the organisations believe should be prohibited under the Regulation.

FRANCE - EUROSATORY 2012

The Eurosatory 2012 exhibition was held in Paris from 11–15 June 2012. Amnesty International and Omega obtained promotional material distributed at this exhibition by China XinXing Import and Export Corporation which advertised a range of restraints including an “*inquest chair*,” leg-fetters, and handcuff and leg-fetter combinations. Although not then-prohibited under the Regulation, Amnesty International is concerned that these products are inappropriate for use by law enforcement officials and could facilitate ill-treatment.



Far left: Inquest chair,
Bottom centre: legfettters,
Top right: handcuff and
legfetter combination,
all taken from the China
Xingsing Import and
Export Corporation
catalogue distributed at
Eurosatory 2012.

⁴² Certain EU Member States do have controls in this area. For example, the UK includes promotion within the scope of its national control on brokering of Category A goods. See UK Government, Department for Business, Innovation and Skills, March 2010 op.cit

⁴³ Amnesty International and the Omega Research Foundation, No More Delays: putting an end to the EU trade in “tools of torture”, ACT 30/062/2012, April 2012, pp.31-34.

⁴⁴ See for example pp.34-41, highlighting the promotion of direct contact electric shock devices, prisoner hoods and prisoner control pliers.

FRANCE - MILIPOL 2013

The Milipol 2013 worldwide exhibition of internal State security was held in Paris from 19–22 November 2013.⁴⁵ Amnesty International and Omega obtained promotional material distributed at this exhibition from the Chinese company Yuanfar International that promoted spiked metal batons, whilst a company brochure distributed by the Jiangsu Wuwei Police Equipment Manufacturing Co. Ltd promoted “*electronic shackles*,” the trade in both of these items was prohibited under the Regulation. On 19 May 2015, Jiangsu Wuwei informed Amnesty International and Omega that: “*If the “Electronic Shackles” is prohibited under the regulation, we will not export the electronic shackles to your country in the future.*”⁴⁶

In addition, material obtained from Jiangsu Wuwei at Milipol 2013 promoted what appeared to be weighted leg restraints, whilst a catalogue from another Chinese company, Senken Tactical & Armor Products promoted weighted “*leg fetters*.” Finally, material distributed by Jiangsu Anhua Police Equipment Manufacturing Co. Ltd advertised: leg irons weighing 990 grammes, leg fetters weighing between 1.5 and 2kgs, and a handcuff linked to a leg fether – these restraints appear to be similar, if not identical, to those promoted by China XinXing Import and Export Corporation at Eurosatory 2012.

Although “weighted leg restraints” were added to the Regulation prohibited list after this exhibition, in July 2014; the promotion at Milipol 2013 (and previously at Eurosatory 2012) of such equipment, which is clearly inappropriate for use by law enforcement officials, is of concern.



Above: Spiked baton from Yuanfar International catalogue, Left: legcuffs, Centre: “electronic shackles”, taken from Jiangsu Wuwei Police Equipment Manufacturing Co.Ltd catalogue, and Right: legfetters taken from Jiangsu Anhua Police Equipment Manufacturing Co. Ltd catalogue, all distributed at Milipol 2013.



⁴⁵ For further details of the event and exhibitors list see the organiser’s website, available on: <http://en.milipol.com/> (accessed 14 January 2015).

⁴⁶ Email correspondence to Amnesty International and Omega from a representative of Jiangsu Wuwei Police Equipment Manufacturing Co. Ltd, 19 May 2014.

THE UK - DSEI 2013

The Defence and Security Equipment International (DSEI) exhibition was held in London from the 13–16 September 2013.⁴⁷ Amnesty International and Omega obtained promotional material distributed at this exhibition by French company, Magforce International, which included an “electric-defense truncheon,” (below, top right) an “electrical impulse gun” (bottom right) and a “riot control stun shield” (below left). In addition company materials also promoted “restraints” which appear to be for attachment to a prisoners ankles.⁴⁸



Similarly, Amnesty International and Omega obtained material from the stall of a Chinese company, Tianjin MyWay International Trading Co. that clearly promoted a weighted leg restraint “fetter” (below left) and “electric batons (below right).”



The material from both companies appeared to promote products that were classed as Category A goods and thus prohibited under the UK Export Control Act 2002 and the attendant secondary legislation, the Export Control Order 2008 (as discussed in Section 2).

Once evidence of such promotional activities had been obtained, a UK Parliamentarian, Caroline Lucas, immediately raised this case in Parliament and in correspondence with the event organiser, Clarion, and with the Secretary of State for Business. Clarion subsequently closed the two stalls concerned and expelled both companies from DSEI.⁴⁹

Amnesty International and Omega welcome the speedy action taken by the event organiser to terminate the two companies' activities, and also acknowledge that the organisers did endeavour to inform prospective exhibitors of their obligations under UK export controls.⁵⁰ This Compliance and Eligibility to Exhibit

⁴⁷ For further details see the organiser's website, available on: <http://www.dsei.co.uk/> (accessed 14 January 2015).

⁴⁸ Magforce International product catalogue, distributed at DSEI 2013, September 2013 (Copy held by the Omega Research Foundation).

⁴⁹ DSEI 2013, Statement on compliance breach, September 2013 <http://www.dsei.co.uk/page.cfm?action=Press/libID=1/libEntryID=184/listID=4>; see also BBC News, UK, London arms fair organisers eject two companies, 15th September 2013, <http://www.bbc.co.uk/news/uk-24058609> (Accessed 20 May 2015).

⁵⁰ DSEI, Compliance and Eligibility to Exhibit, http://www.dsei.co.uk/page.cfm/Link=36/t=m/goSection=15_28 (accessed 11 September 2013).

guidance has subsequently been updated in preparation for the forthcoming DSEI 2015, and includes the following statements:

"The Organisers of DSEI work with and act in support of ECO to ensure that all Exhibitors' equipment, services, documentation and all other forms of visual promotion and display, exhibited or proposed, must comply with:

1. English law and the UK's international undertakings

2. EU/UN Law and EU/UN international undertakings

...The promotion of Category A items is prohibited at all Clarion Defence & Security Events. This restriction applies to all forms of promotion, including the distribution of brochures or other promotional material from your stand which features images or details of any category A goods, even if your company does not intend to market these goods at the event. Category A goods include:

- *Goods designed for the execution of human beings.*
- *Goods banned by the EU because of evidence of their use in torture.*
- *Restraints specially designed for restraining human beings.*
- *Riot control or self-protection devices designed or modified to administer an electric shock.*
- *Certain cluster munitions, including components.*

If you are caught promoting category A goods without a relevant UK licence, you will be ejected from the event and could face enforcement action from relevant authorities."⁵¹

Furthermore Clarion state that:

"Compliance audits will take place before and throughout DSEI to ensure that equipment, services, documentation and all other forms of visual promotion and display exhibited comply with the above-mentioned undertakings.

Exhibitors promoting or exhibiting prohibited items, either overtly or covertly during the exhibition will be in breach of their contract with the Organisers and will forfeit their right to exhibit at DSEI. The Organisers will take appropriate action which may involve the removal of equipment, documentation and/or visual promotional material from the stand into safe custody. The ECO and other relevant authorities will be informed by the Organiser of any breach which may result in legal action being taken against the exhibitor by these authorities. The stand may be closed immediately and the exhibitor will have no claim for redress against the Organisers, nor any refund for loss of fees."⁵²

Despite these undertakings, Amnesty International and Omega remain concerned about the effectiveness of the proposed mechanism for compliance monitoring to be carried out by the DSEI organiser prior to and during DSEI 2015 to ensure that no company promotes or trades any equipment prohibited by the Regulation or by UK law. These concerns are exacerbated by the previous instances of companies promoting prohibited goods at this exhibition, specifically at DSEI 2009, DSEI 2011 and DSEI 2013, as documented in this and previous Amnesty International and Omega reports.⁵³

In an evidence session given to the UK Parliamentary Committee on Arms Export Controls in December 2014, the UK Government committed to re-examine the relevant UK laws in this area to see if they needed strengthening.⁵⁴

⁵¹ DSEI, Compliance and Eligibility to Exhibit, <http://www.dsei.co.uk/Content/Compliance-and-Eligibility-to-Exhibit/3/> (accessed 14 January 2015).

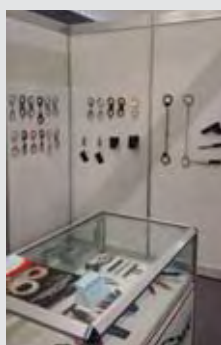
⁵² DSEI, Compliance and Eligibility to Exhibit, <http://www.dsei.co.uk/Content/Compliance-and-Eligibility-to-Exhibit/3/> (accessed 14 January 2015).

⁵³ See for example: Amnesty International/Omega Research Foundation, *From Words to Deeds* (2010) op.cit., Amnesty International/Omega Research Foundation, *No More Delays*, (2012) op.cit.

⁵⁴ House of Commons, Committees on Arms Export Controls, *Scrutiny of Arms Exports and Arms Control* (2015), <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmquad/608/608iii.pdf> (accessed 18 April 2015)

GERMANY IWA 2015

The IWA Outdoor Classics Event was held during 6–9 March 2015 in Nuremburg, Germany. A range of equipment controlled by the Regulation was on display at the event including direct contact electric shock devices, kinetic impact devices and mechanical restraint devices. In addition, at least two companies were displaying and attempting to market Annex II goods. General Star Trading Corporation from Taiwan, manufactures a range of police equipment including batons and mechanical restraint devices. The image below left shows the equipment on display on the company's stand at IWA, including two sets of thumb cuffs. The image below right, taken from the company's marketing materials distributed at IWA, includes thumb cuffs as part of the range of mechanical restraint devices promoted by the company.



The German Company, Clemen & Jung, were found to be displaying a restraint device on their stall visually identical to the Nr. 8/17 "leg-iron with anchor" and which appears to be intended for attaching prisoners to fixed objects. More information on this product has been provided by the company on its website, as discussed below.

PROMOTION AND MARKETING OF PROHIBITED GOODS VIA THE INTERNET

Promotion of prohibited goods also occurs via the distribution of information through intangible sources, most notably the internet. The illustrative cases below describe the internet promotion by EU companies of goods that are listed in Annex II of the Regulation and whose import and export from the EU is prohibited. Promotion of goods by these means is not currently controlled, such promotion could facilitate the trade of prohibited Annex II goods both within the EU and externally.

Furthermore whilst the illustrative cases detailed below describe promotional activities, in certain cases the companies may also undertake additional activities of concern notably manufacture or assembly of Annex II goods. Although the control of manufacturing and assembly is beyond the scope of the Regulation, such activities should be controlled by member States and, where relevant, prohibited at either the national level or through an appropriate EU-wide mechanism.

GERMANY – ELECTRIC SHOCK STUN CUFFS

The German company PKI Electronic Intelligence GmbH has marketed an extensive range of security and surveillance products, including a range of electric-shock equipment via the internet. Of particular concern are its "Stun-Cuffs for Hand" which, as of 14 May 2015, were still being displayed on its website (see below). According to a 2010 company product catalogue:

"PKI 9360 stun-cuffs for hands find their application when taking a prisoner to the court or hospital. In case he attempts to escape the stun-cuffs are activated by remote control and transmit an electric shock of 60.000 Volt. Voltage can be adjusted according to demands of staff. You never saw an escaping person stop so quickly!"⁵⁵

55 PKI Electronic Intelligence GmbH website, http://www.pki-electronic.com/catalogue/downloads_en/PKI_Anti_Terror_Equipment_2010.pdf (accessed 26 June 2012) p.155

Stun-Cuffs for Foot, Stun-Cuffs for Hand

PKI 9355 / PKI 9360 | [Print](#)

Modern electronic technologies resulted in the development of stun-cuffs, of which we offer 2 different versions. PKI 9355 continuously transmits signals via built-in GPS transmitter which are captured by a receiver (security staff). The receiver is programmable i.e. in case the prisoner leaves certain areas an automatic alarm will be released. The position of the prisoner can be located at any time and he can be arrested immediately if he tries to escape. PKI 9355 is designed for so-called day-release prisoner. PKI 9360 stun-cuffs for hands find their application when taking a prisoner to the court or hospital. In case he attempts to escape the stun-cuffs are activated by remote control and transmit an electric shock of 60.000 Volt. Voltage can be adjusted according to demands of staff. You never saw an escaping person stop so quickly!

Above: "PKI 9360 stun-cuffs for hands" which has been promoted by PKI Electronic Intelligence GmbH.

According to the catalogue the handcuffs have a maximum range of 300 metres and the "electric shock will only be released if it is activated by the security personnel with the encoded remote transmitter." They can only be removed by security staff.⁵⁶

Following enquiries by Amnesty International and Omega, in January 2012 a representative from PKI Electronic Intelligence GmbH stated that the company had "never sold PKI 9355 / PKI 9360 [stun-cuffs]".⁵⁷ Although the PKI representative also stated that, "We have deleted electric shock batons from our product range and replaced [them with] non electric devices,"⁵⁸ the company gave no indication of whether it produced stun cuffs, nor detailed the number of devices it possessed (if any) nor provided any details of whether it would continue to promote such devices.

On 27 April 2015 in further correspondence to Amnesty International and Omega regarding the PKI 9360 stun cuffs, the company stated that:

*"PKI Electronic Intelligence GmbH has neither manufactured nor sold the products in question, although these products are displayed on our website. We are still working on a new catalogue, these items won't be offered anymore."*⁵⁹

Subsequent analysis of PKI's website shows that although the PKI catalogue is no longer available, the company has continued to promote these devices – employing essentially the same descriptive text and images on its website - up until at least 14 May 2015.⁶⁰

Correspondence from the Federal Office for Economic Affairs and Export Control (BAFA) dated 8 May 2015, in response to Amnesty International and Omega's request for information regarding the promotional activities of PKI Electronic Intelligence GmbH, (and Clemen & Jung - see below), stated that, "BAFA enforces the prevailing legal norms and is bound by them. Right now neither the European nor the German export control law prohibits the promotion of goods controlled by annexes II or III of Council Regulation (EC) No 1236/2005. Hence, as of now BAFA has no means to interfere with the promotional activities of the mentioned companies... Only when the company attempts to export the goods in question beyond the borders of the customs territory of the European Union BAFA will get involved."⁶¹

⁵⁶ PKI Electronic Intelligence GmbH website, http://www.pki-electronic.com/catalogue/downloads_en/PKI_Anti_Terror_Equipment_2010.pdf (accessed 26 June 2012) p.155

⁵⁷ Email correspondence from a representative of PKI Electronic Intelligence GmbH, 9 January 2012 (copy on file with the authors)

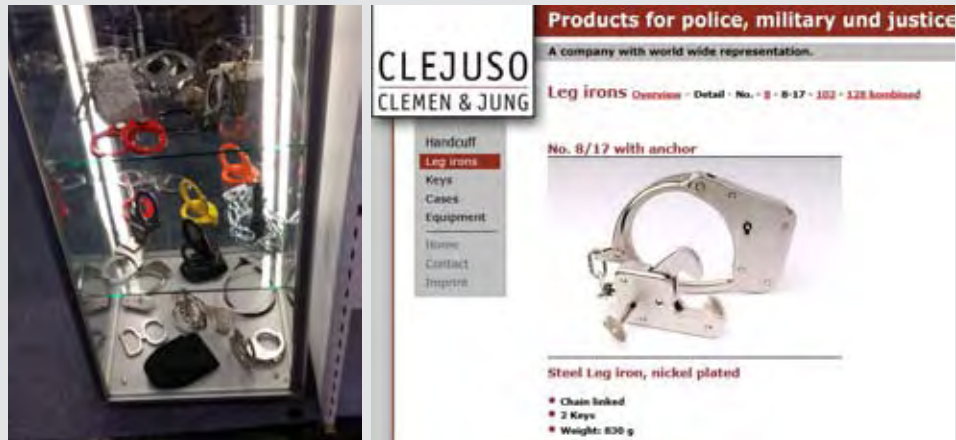
⁵⁸ Email correspondence from a representative of PKI Electronic Intelligence GmbH, 9 January 2012 (copy on file with the Omega Research Foundation).

⁵⁹ Email correspondence from a representative of PKI Electronic Intelligence GmbH, 27 April 2015.

⁶⁰ <http://www.pki-electronic.com/products/police-customs-and-military-equipment/stun-cuffs-for-foot-stun-cuffs-for-hand/> (accessed 14 May 2015).

⁶¹ Email correspondence from the German Federal Office of Economics and Export Control (BAFA), 8 May 2015.

GERMANY – WEIGHTED LEG RESTRAINTS APPARENTLY FOR ATTACHMENT TO FIXED OBJECTS



Left: Restraint devices on display on the Clemen & Jung stand at IWA 2015 trade event in Germany.
Right: No 8/17 Steel Leg Iron with Anchor.

The German company Clemen & Jung, “Deliver their products to police, military, justice institutions, and correctional facilities worldwide.”⁶² Among their product range is a handcuff described as the “No.17 heavy cuff with anchor” which weighs 1,055 grams⁶³ and appears to be designed for attachment to a fixed object. The company has also promoted a single “steel leg iron” weighing 830 grams.⁶⁴ This is described as “No. 8/17 with anchor” and also seems designed for attachment to a fixed object.⁶⁵ As neither the “No.17 heavy cuff” nor the “steel leg iron” have any linking chain between the restraint and the attachment device, the restrained individual would be severely restricted in their movements potentially adding to their discomfort. Until at least 19 April 2015, both products were advertised on the company’s website and in March 2015 a device visually similar to the Nr 8/17 leg iron with anchor was on display at the company’s stand at the IWA trade event.”⁶⁶

On 17 April 2015, Amnesty International and Omega wrote to Clemen & Jung informing them of the forthcoming report and requesting further information on their products and activities. On 22 April 2015 the Clemen & Jung website was updated. Changes to the website included the removal of all reference to the “steel leg iron”, although the “No.17 [hand]cuff with anchor” was retained.

On 30 April 2015, in response to the information request from Amnesty International and Omega, the company stated that: “Clemen & Jung manufactures no goods which are subject to Annex II of the EU Council Regulation No.1236/2005.”⁶⁷ The company further stated that those “few Clemen & Jung goods” which could be considered as Annex III items “are only ever exported out of the EU by Clemen & Jung after the proper authorization has been received from BAFA.”⁶⁸

Previously, on 16 July 2014, the European Commission adopted Commission Implementing Regulation (EU) No 775/2014 amending Council Regulation (EC) No 1236/2005.⁶⁹ This Regulation expanded the list of Annex II goods to include, inter alia “2.3. Bar fetters, weighted leg restraints and gang chains comprising bar fetters or weighted leg restraints;” and also, “2.4. Cuffs for restraining human beings, designed to be anchored to a wall, floor or ceiling.”⁷⁰

It would appear that the “No.17 heavy cuff with anchor” and the “No. 8/17[steel leg iron] with anchor” promoted by Clemen & Jung fall within the categories of 2.3 and/or 2.4 outlined in Commission Implementing Regulation (EU) No 775/2014 and consequently their import and export would be prohibited under the Regulation. However at present the promotion of such goods is not controlled under the Regulation.

⁶² Clemen & Jung website, <http://www.clejus.de/en/index.html> (accessed 6 January 2015).

⁶³ Clemen & Jung products, http://www.clejus.de/en/handfesseln_detail_17.html (accessed 6 January 2015).

⁶⁴ Clemen & Jung products, http://www.clejus.de/en/fussfesseln_detail_8-17.html (accessed 6 January 2015).

⁶⁵ Clemen & Jung products, http://www.clejus.de/en/fussfesseln_detail_8-17.html (accessed 6 January 2015).

⁶⁶ See p.16 of this report for further details and image.

⁶⁷ Email correspondence to Amnesty International and Omega from Clemen & Jung legal advisor, 30 April 2015.

⁶⁸ Email correspondence to Amnesty International and Omega from Clemen & Jung legal advisor, 30 April 2015.

⁶⁹ European Commission, 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.

⁷⁰ European Commission, Commission Implementing Regulation (EU) No 775/2014 of 16 July 2014, Articles 2.3 and 2.4.

CZECH REPUBLIC – RESTRAINTS FOR ATTACHMENT TO FIXED OBJECTS

The Czech company ALFA - PROJ spol. s r.o., manufactures and promotes a range of small arms and restraint equipment.⁷¹ Among the products advertised on the company website as of 12 May 2015 are a range of



Above: The Ralkem 9923 single cuff, manufactured by the Czech Company Alfa Proj.

“handcuffs and leg-irons” including the *“Ralkem 9923.”*⁷² This constitutes a single cuff connected to a 20 cm chain linked to a large rectangular end piece. Although the product has been marketed for attachment to suitcases,⁷³ the manufacturer on its website has described the product as *“Handcuffs - Business - police handcuffs – 9923”*⁷⁴ and stated a potential use was *“to confine persons in detention.”*⁷⁵ On 20 May 2015, in response to an information request from Amnesty International and Omega, ALFA-PROJ stated that the information on its website was *“faulty”* and subsequently removed reference to use of the 9923 handcuffs to confine detainees.⁷⁶ As of 20 May 2015, this product was still promoted on the company website.

CZECH REPUBLIC – ‘NETWORK BED’



Above: A net bed promoted by the Czech based company, “laboratory and medical equipment opting service.”

Following the adoption of Commission Implementing Regulation (EU) No 775/2014 in July 2014, a range of goods was added to Annex II of EC Regulation 1236/2005 including:

*“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.”*⁷⁷ The import and export of such items is consequently prohibited in all EU Member States.

The Czech company, Audy s.r.o., has previously manufactured and promoted the *“network bed for restless*

71 Alfa Proj website, <http://www.alfa-proj.cz/en/about-alfa-proj/about-us/> (accessed 14 May 2015).

72 Alfa Proj brochure, undated, distributed at IWA 2014 exhibition, Nuremberg, 7-14 March, 7 2014, p.10.

73 Alfa Proj brochure, undated, distributed at IWA 2014 exhibition, Nuremberg, 7-14 March, 7 2014, p.10.

74 Original Czech wording: “Pouta - služební - policejní pouta – 9923”. See Czech language version of Alfa Proj website, <http://www.alfa-proj.cz/pouta-sluzebni-policejni-pouta/9923-s289415> (accessed 12 May 2015).

75 Original Czech wording: “Pouta policejní služební ralkem kufříková slouží pro spoutání osob po zadržení. Pouta využijí příslušníci policejních složek. Pouta policejní služební ralkem využijí i příslušníci vojenské policie a dalších bezpečnostních složek. Unofficial English translation: “Handcuffs police service RALK suitcase used to confine persons in detention. Handcuffs utilize law enforcement agencies. Handcuffs police service RALK use members of the Military Police and other security forces”. See Czech language version of Alfa Proj website, <http://www.alfa-proj.cz/pouta-sluzebni-policejni-pouta/9923-s289415> (accessed 14 May 2015).

76 Email correspondence to Amnesty International and Omega from Vie Manager, ALFA-PROJ spol.s.r.o.

77 European Commission, Commission Implementing Regulation (EU) No 775/2014 of 16 July 2014.

patients.”⁷⁸ According to information – originally in Czech – that was available on an Audy s.r.o website until at least January 2015, the network bed has the following dimensions: length: 204cm, width: 88cm and height: 170cm. According to the company website:

“The structure is made of high quality steel material with powder coated finish... The whole bed is strung nets with high strength. The network in the front part is mounted on two guide rods and on the slider, which forms the input. The rider is on both ends bearings for easy opening and closing beds. A simple lock with hidden latch that can be released tipped pens, it is possible to insure a padlock.”⁷⁹

On 22 May 2015, in response to an information request from Amnesty International and Omega, Audy s.r.o. stated that the company had ceased manufacturing net-beds several years ago and that the information highlighted was from an out of date catalogue that was replaced in 2009. The information highlighted has subsequently been removed from the company website.

A “network bed” has also been promoted on the website of a second Czech company, the “laboratory and medical equipment opting service.”⁸⁰ According to information – originally in Czech – on the company website, the bed has the following dimensions: width: 880mm, length: 1975mm, height: 1705mm.⁸¹ The bed is promoted for the, “physical isolation of restless patients for psychiatric departments, institutes, home care...” and the bed is described as “non-lockable” and a “healthy person is able to dismantle the front and leave the bed.”⁸² It is, however, unclear whether a very young, elderly, infirm or disturbed patient could release themselves from this bed. The manufacturer of the “network bed” is not identified on the website. Information about this “network bed” was available until 11 May 2015. However, following a request for further information from Amnesty International and Omega, the company has removed all information concerning the “network bed” from its website.

Serious concerns about the use of net-beds in psychiatric hospitals have previously been raised by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and medical rights organisations. On 31 March 2015 the CPT published a report of its most recent visit to the Czech Republic,⁸³ in which it stated that, “The CPT has repeatedly expressed its serious misgivings about the use of net-beds and recommended that the Czech authorities pursue a policy of putting an end to their use in psychiatric hospitals as soon as possible. Regrettably, the findings of the 2014 visit indicate that there has been no progress in this respect.”⁸⁴

The CPT report highlights the use of net-beds at Kosmonosy Psychiatric Hospital which “give rise to particular concern.” According to the CPT there were some 30 net-beds used in seven of the establishment’s 15 wards. As a rule, between four and six net-beds were located in one room in each of the wards concerned, and patients were thus restrained in full view of each other. In addition the CPT noted that there was, “no possibility of direct visual contact with staff, let alone continuous, direct and personal supervision by staff. Regular inspections by staff of patients placed in net-beds carried out every two hours cannot substitute for this measure.”⁸⁵

The Committee also highlighted the excessive duration of placement of certain patients in net-beds. For example, according to the registers examined by the delegation, one patient has been restrained in a net-bed for a total of almost 2,600 hours (i.e. the equivalent of 108 days) during some 180 days since 18 October 2013. Another patient was placed in a net-bed between 22 September 2013 and 4 March 2014 (163 days) for more than 1,800 hours (i.e. the equivalent of 75 days). The risks linked with the use of net-beds and the need for supervision were illustrated by another case, namely that of a 51-year old woman who died in a net-bed at Dobřany Psychiatric Hospital in January 2012. According to the CPT, “The patient concerned was reportedly placed in a net-bed on the day of her admission to the hospital and, after having spent several hours therein, she tore the net and strangled herself in the loop. Allegedly, this happened despite constant CCTV-coverage of the net-bed where the patient was placed.”⁸⁶

⁷⁸ Original Czech wording: “Sítové lůžko pro neklidné pacienty” See Czech language version of Audy s.r.o website, <http://www.audy.cz/katalog/luzka/> (accessed 17 April 2015).

⁷⁹ See Czech language version of Audy s.r.o website, <http://www.audy.cz/katalog/luzka/> (accessed 17 April 2015).

⁸⁰ Laboratorní a zdravotnická technika OPTING servis website, <http://www.optingservis.cz/index.php/odstrana-mainmenu-27> (accessed 11 May 2015).

⁸¹ Laboratorní a zdravotnická technika OPTING servis website <http://www.optingservis.cz/index.php/nabidka-zboi/649-sovlko-pro-neklidn-pacienty> (accessed 11 May 2015).

⁸² Laboratorní a zdravotnická technika OPTING servis website, <http://www.optingservis.cz/index.php/nabidka-zboi/649-sovlko-pro-neklidn-pacienty> (accessed 11 May 2015).

⁸³ CPT, Report to the Czech Government on the visit to the Czech Republic carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 10 April 2014, CPT/Inf (2015) 18, 31 March 2015.

⁸⁴ CPT (March 2015) op.cit., paragraph 169.

⁸⁵ CPT (March 2015) op.cit., paragraph 170.

⁸⁶ CPT (March 2015) op.cit., paragraph 170.

CASE OF GOOD PRACTICE: UK AND U.S. WORK TOGETHER TO CONTROL THE PROMOTION AND TRANSFER OF ELECTROSHOCK EQUIPMENT VIA THE INTERNET

The UK authorities have shown a willingness to take action against companies based outside of the UK who promote and transfer electroshock equipment into the UK for criminal use.⁸⁷ The 2011/2012 Annual Report by the Serious Organised Crime Agency (SOCA) states that:

*"In November, in response to the continued seizures of stun guns and self-defence sprays by UKBA [UK Border Agency], SOCA developed intelligence regarding the importation of such items via the postal and fast parcel system from a U.S.-based company responsible for sending over 70% of the items intercepted. The parcels were destined for addresses throughout the UK. The items are legal in the USA, but they are prohibited in the UK and require an export licence. After successful intervention by SOCA and U.S. law enforcement partners, the U.S. supplier ceased all its international trading and closed its websites in January."*⁸⁸

The increasing use of the internet by companies to market security equipment poses challenges for States to ensure that such activities do not facilitate the trade in prohibited goods or the transfer of controlled goods to inappropriate end users. However, this example shows that it is possible to control the transfer of equipment, promoted and facilitated via the internet, if authorities in either recipient and/or exporting States wish to do so.

Amnesty International and Omega Recommendations: Although the promotion of Regulation goods was not addressed by the Commission in its January 2014 Proposals, Amnesty International and Omega consider this a significant lacuna in the current regime, potentially facilitating the transfer or brokering of goods that will be used to facilitate torture and other ill-treatment or the death penalty.

Consequently, we recommend that the coverage of the Regulation is extended to prohibit the commercial marketing and promotion within the EU of Annex II items by EU and non-EU registered companies and individuals.

In addition to these changes to the Regulation, we recommend that Member States should conduct appropriate promulgation activities so as to ensure that all companies promoting security equipment and also those companies organising trade fairs and other events where such equipment is promoted, are made aware of the Regulation and their obligations under it.

Furthermore, Member States should require organisers of trade fairs and similar promotional events to inform all potential exhibitors of the Regulation's restrictions, and undertake thorough screening and risk assessment of all potential exhibitors to determine the likelihood that they will trade in or promote equipment prohibited by the Regulation. Where a potential exhibitor poses a substantial risk of engaging in such activities the exhibitor should be denied permission to participate, and their details brought to the attention of the relevant national licensing authority.

⁸⁷ The use of certain electroshock devices in the UK is only authorised for specific law enforcement purposes. Civilian possession of a range of electroshock devices is prohibited.

⁸⁸ Serious Organised Crime Agency, Annual Report and Accounts 2011/12, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/229080/Q291.pdf (accessed 18 May 2015).

CHAPTER 3 / MECHANISMS TO CONTROL THE PROVISION OF “TECHNICAL ASSISTANCE”

In his 2005 report to the Commission on Human Rights, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment highlighted the need to control the provision of technical assistance and training that is used to facilitate acts of torture and other ill-treatment:

“A number of States are important providers of training and assistance to the military, security or police forces of foreign States. This training and assistance may have the potential to benefit recipient communities by providing better-skilled military or law enforcement officers who respect the rule of law and seek to promote and protect the rights of the civilian population. However, unless such transfers are stringently controlled and independently monitored, there is a danger that they will be used to facilitate torture and other ill-treatment.”⁸⁹

Amnesty International and Omega have discovered a number of EU based companies providing technical assistance and/or associated training related to security equipment. Whilst such technical assistance and training can play an important role in facilitating the appropriate use of equipment in line with human rights standards; if not adequately regulated, there is a danger that the provision of certain training may promote and legitimise inherently abusive practices.

ILLUSTRATIVE CASE OF CONCERN: PROVISION OF TRAINING BY EURO SECURITY PRODUCTS

An example of an EU based company that provides equipment, some of which is controlled by the Regulation, and delivers training of concern is Euro Security Products. This Czech company manufactures and supplies electric shock devices, mechanical restraint devices and chemical irritant dispersal devices for law enforcement, correctional and military personnel as well as civilian use. Euro Security Products also designs and delivers training for law enforcement and security personnel worldwide. The company has delivered training to police forces including those in Botswana, Bulgaria, China, D.R. Congo, Georgia, India, Kosovo (UN), Latvia, Mexico, Nigeria, Spain, Uganda, and Venezuela.⁹⁰

Images of the company's training sessions in a range of countries show students being instructed in different types of law enforcement equipment including restraint devices and batons. Instruction on the use of police batons is of particular concern, with students being taught to use the baton in a neck-hold position. The Council of Europe Committee for the Prevention of Torture (CPT) has previously raised concerns regarding this technique. For example in its report following a visit to Slovenia in 2012, the CPT reported that:

“Already in the report on the 2006 visit, the CPT expressed its misgivings on the “professional grip of strangulation,” a technique which involved tackling an agitated or violent prisoner from behind and applying a baton across his throat with the aim of bringing him under control. During the 2012 visit, prison staff confirmed to the visiting delegation that they continued to be trained in the use of this technique. The CPT recommends that the use of techniques involving physical force which may impede airflow through the respiratory tract be prohibited.”⁹¹

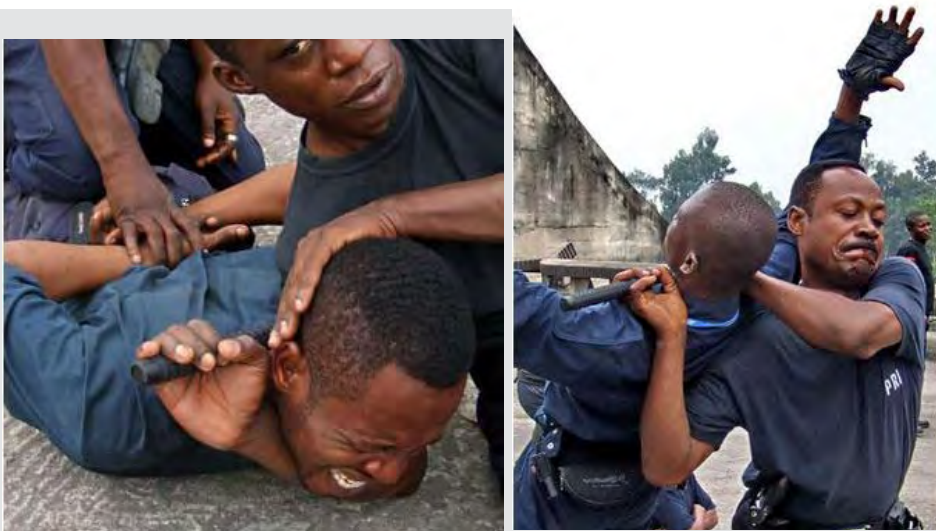
The technique described by the CPT appears identical to the one that is regularly taught by Euro Security Products personnel. It features in a number of the baton training courses shown on their website, examples of which are illustrated in company photographs reproduced below.⁹²

⁸⁹ Report of the UN Special Rapporteur on the question of torture, Theo Van Boven, Commission on Human Rights (E/CN.4/2005/62), 15 December 2004, paragraph 31, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/104/83/PDF/G0510483.pdf?OpenElement> (accessed 5 March 2015).

⁹⁰ See Euro Security Products website, (in particular photo-gallery), <http://www.euro-security.info/en/photogallery.html> (accessed 14 May 2015) and Training courses ESP, References <http://www.euro-security.info/en/training-courses-esp/references.html> (accessed 14 May 2015).

⁹¹ Report to the Slovenian Government on the visit to Slovenia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 31 January to 6 February 2012, CPT/Inf (2013) 16, Strasbourg, 19 July 2013.

⁹² DR Congo training: <http://www.euro-security.info/en/2013-10-04-08-19-35/batons-photogallery/police-photogallery/congo.html>, China Training: <http://www.euro-security.info/en/2013-10-04-08-19-35/batons-photogallery/police-photogallery/china.html>, India: <http://www.euro-security.info/en/2013-10-04-08-19-35/batons-photogallery/police-photogallery/india.html>



Images from the ESP website.

Above: Images of ESP training of police officers in the use the baton in a neck-hold position. Training was conducted in the Democratic Republic of Congo. [date unknown]



Images from the ESP website.

Above: Images of ESP training of police officers in the use the baton in a neck-hold position. Training was conducted to police units and the prison service in China (above left) and to the police in India (above right). [date unknown]

Euro Security Products also appears to provide training to law enforcement personnel in restraint techniques that potentially may facilitate ill-treatment, such as the use of plastic or fabric restraints in the application of 'hogtying'.



Images from the ESP website.

Above: Images of ESP training prison service and police officers in the application of the hogtying technique. Training was conducted in the Czech Republic (above left) and India (above right). [dates unknown]

Amnesty International has previously raised concerns regarding the use of hogtying, for example in the United States, highlighting the danger that such practices can severely restrict breathing and can lead to

euro-security.info/en/2013-10-04-08-19-35/batons-photogallery/police-photogallery/india.html, Czech Prison Service Training <http://www.euro-security.info/en/training-courses-esp/photogallery-esp-courses/courses-for-esp-instructors-of-the-prison-service-of-the-czech-republic.html> (accessed 14 May 2015).

death from “positional asphyxia.”⁹³ Amnesty International also reported on the use of such techniques in a penal institution in Turkey, stating that it “considers that restraint of this kind in a prison cell may amount to torture.”⁹⁴

The employment of similar techniques – utilising metal hand and foot restraints – resulting in painful ‘leg-lock’ or ‘hog-tie’ positions, has been recorded by the CPT in Germany⁹⁵ and Slovenia.⁹⁶ In its 2008 Slovenian report the CPT stated that:

*“Several allegations were received of detained persons being placed in a cell for several hours in the so-called “banana” position (i.e. a hyper-extended position with hand and ankle cuffs linked together behind the back), apparently to “calm them down”. The Committee would like to stress that the practice of restraining a person in a hyper-extended position, with hand and ankle cuffs linked together behind the back, is unacceptable; it recommends that police officers receive a clear message in this respect.”*⁹⁷

Similarly, in a 2006 report following its 2005 visit to Germany, the CPT recorded its, “serious misgivings about the **combined use of hand- and ankle-cuffs** (so-called “hogtie Fesselung”), which, according to police officers met by the delegation, was, on occasion, resorted to.”⁹⁸ Furthermore, the CPT noted that, “This painful and potentially harmful technique of restraining a violent/recalcitrant person is prohibited by an internal order of the police in the Land of Berlin. **It recommends that this positive approach be followed by the Federal Police and the police services of all other Länder.**”⁹⁹

On 28 April 2015, in response to a request for further information by Amnesty International and Omega about its training activities, Euro Security Products stated:

*“ESP runs trainings and courses in order to assure correct use of its defensive products (not only in a technically but also legislatively correct way) . . . When it comes to educational activities, we present various approaches. Either way, however, we always adhere to principle of “proportionate and adequate” with respect to using firstly only the minimum force by the protecting side. The range of enforcement means is however quite wide and there are cases where peaceful means are simply not enough. The range of enforcement means starts from the least harmful to those that could be used only in the most extreme cases of offensive brutality and criminal aggressiveness. Those would be such extreme cases where police are left with no other option but to use a gun. The use of the firearm by the police is the extreme case with significantly worse consequences for the aggressor (permanent disability or even a loss of life). Where the [Amnesty International/Omega] report intends to address the issue of specific law and order enforcement techniques it should with no doubts compare possible alternatives for resolving extreme cases and the likelihood of grave consequences and tragic incidents in case of using the firearms by the police officers. It is our belief that the trainings given by our instructors help to save lives as well as health of individuals and at the end we eliminate fatal outcomes of inadequate solutions.”*¹⁰⁰

EFFECTIVE CONTROL OF TECHNICAL ASSISTANCE INCLUDING TRAINING

Article 3 of EC Regulation 1236/2005 prohibits, “[t]he supply of technical assistance related to items listed in Annex II [i.e. goods which have no practical use other than for the purpose of capital punishment, torture or other ill-treatment], whether for consideration or not, from the customs territory of the Community, to any person, entity or body in a third country,” as well as the import of such technical assistance into the EU.¹⁰¹

Scope of definition: Under the Regulation, the definition of “technical assistance” encompasses a wide a range of activities including the supply of “any other technical service” taking the form of “instruction, advice, training, transmission of working knowledge or skills” “related to items listed in Annex II, . . .”¹⁰² Although there is some ambiguity in the wording of the definition, common sense dic-

⁹³ Amnesty International, USA California: Transgender woman ill-treated and raped in jail, AMR 51/142/2005 – External; Amnesty International, Human Rights Violations: a Summary of Amnesty International’s Concerns, 1 March 1995, AMR/51/25/95.

⁹⁴ Amnesty International, Europe and Central Asia: Summary of Amnesty International’s Concerns in the Region: July-December 2006, (AI Index: EUR 01/001/2007).

⁹⁵ Report to the German Government on the visit to Germany carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 20 November to 2 December 2005, CPT/Inf (2007) 18, Strasbourg, 18 April 2007.

⁹⁶ Report to the Slovenian Government on the visit to Slovenia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 31 January to 8 February 2006 CPT/Inf (2008) 7, Strasbourg, 15 February 2008.

⁹⁷ CPT, Visit Report: Slovenia (2006) (CPT/Inf (2008) 7), paragraph 11.

⁹⁸ CPT, Visit Report: Germany (2005) (CPT/Inf (2007) 18), paragraph 15.

⁹⁹ CPT, Visit Report: Germany (2005) (CPT/Inf (2007) 18), paragraph 15.

¹⁰⁰ Email correspondence to Amnesty International and Omega from the Chief Executive Officer of Euro Security Products, 28 April 2015.

¹⁰¹ EC Regulation 1236/2005, Article 3.1.

¹⁰² EC Regulation 1236/2005, Article 2(f).

tates that technical assistance can and should be interpreted as applying to the **use** of equipment. This would clearly be relevant and important to meet the object and purpose of the Regulation, and it would be beneficial if all Member States explicitly regulated such technical assistance.

Amnesty International and Omega Recommendation: We recommend that, to remove ambiguity and to ensure effective and consistent implementation by all Member States, the definition of technical assistance should be amended to explicitly include training in the **use** of equipment covered by the Regulation. Consequently *“technical assistance” should be defined as, “Any technical support related to repairs, development, manufacture, testing, maintenance, assembly, **use** or any other technical service, and may take forms such as instruction, advice, training, transmission of working knowledge or skills or consulting services. Technical assistance includes verbal forms of assistance and assistance provided by electronic means;”* [Additional text in bold].

Technical assistance including training related to Items listed in Annex III or IIIa: Under Article 7a of its Proposals, the Commission has recommended that the control of technical assistance be extended to Annex III goods, so that, *“A supplier of technical assistance shall be prohibited from supplying to any person, entity or body in a third country technical assistance in relation to goods listed in Annex III, irrespective of the origin of such goods, if the supplier of such assistance knows or has grounds for suspecting that some or all of the relevant goods are or may be intended to be used for torture or other cruel, inhuman or degrading treatment or punishment in a country that does not belong to the customs territory of the Union.”*¹⁰³

The Commission has also proposed a similar amendment under Article 7d that would extend such provisions to Annex IIIa goods.

Amnesty International and Omega Recommendation: We support the Commission proposals to extend control of the provision of technical assistance relating to Annex III goods, as they seek to address a loophole we have highlighted in our previous reports¹⁰⁴ and during the expert group process. Furthermore, we reiterate the need for these proposals to **explicitly** include a prohibition on the provision of instruction, advice, training or the transmission of working knowledge or skills in the **use** of Annex III or Annex IIIa goods intended to facilitate the commission of judicial executions or torture or other ill-treatment.

Technical assistance including training unrelated to Items listed in Annex II, III or IIIa: Under the Commission proposals, the supply of technical assistance would only be controlled when it was *directly related to equipment* covered by the Regulation. However, technical assistance that could potentially aid the commission of judicial executions, torture or other ill-treatment may well be delivered *independently of the supply of equipment* currently falling under the scope of the Regulation.

Whilst a wide range of technical assistance may potentially have benign and malign application depending on how it is employed by the end-user, certain forms of training appear to be inherently inappropriate. For example, technical training of law enforcement or correctional facility personnel in the application of certain abusive restraint techniques and procedures – such as hyper-extended restraint positions or neck-holds – risks facilitating and promoting torture or other ill-treatment by such personnel against detainees or prisoners under their care. Similarly, the provision of training in certain interrogation methods: such as water-boarding, the infliction of *“white noise”*, enforced maintenance of uncomfortable positions for sustained periods, sleep deprivation and disorientation techniques, would be wholly unacceptable. The provision of any such technical assistance would contradict the object and purpose of the Regulation.

Amnesty International and Omega Recommendation: We recommend the introduction of appropriate measures to control the supply of technical assistance including instruction, advice, training or the transmission of working knowledge or skills that could aid the commission of judicial executions or torture and other ill-treatment independently of the supply of any equipment falling under the scope of the Regulation.

¹⁰³ European Commission Proposal (14 January 2014) op.cit, Article 7a, paragraph 2.

¹⁰⁴ See for example: Amnesty International and Omega Research Foundation, *From Words to Deeds: Making the EU ban on the trade in “tools of torture” a reality*, Index: EUR 01/004/2010, April 2010.

CHAPTER 4 / MECHANISMS TO CONTROL THE TRANSFER OF PHARMACEUTICAL CHEMICALS THAT COULD BE USED FOR THE PURPOSE OF JUDICIAL EXECUTIONS/ IMPLEMENTATION OF THE DEATH PENALTY

Lethal injection is the practice of executing a person to implement a judicial sentence of death using a lethal combination and/or dosage of drugs administered intravenously. This method of execution is allowed by law in China,¹⁰⁵ Guatemala,¹⁰⁶ the Maldives,¹⁰⁷ Papua New Guinea,¹⁰⁸ Taiwan,¹⁰⁹ Thailand,¹¹⁰ United States of America (U.S.),¹¹¹ and Vietnam.¹¹²

Lethal injection is the most common method of execution in the United States.¹¹³ Until 2010-2011, the majority of U.S. States that carried out executions employed a three-drug protocol comprising: sodium thiopental (also known by the trade name Pentothal) to induce general anaesthesia; pancuronium bromide to cause muscle paralysis, including of the diaphragm; and potassium chloride to stop the heart. Doctors have expressed concern that if inadequate levels of sodium thiopental are administered (for example, through incorrect doses of thiopental, faulty attachment of the line, or precipitation of chemicals) proper anaesthetic depth will not be achieved or the anaesthetic effect can wear off rapidly and the prisoner will experience severe pain as the lethal potassium chloride enters the veins and he or she goes into cardiac arrest. Due to the paralysis induced by pancuronium bromide, they may be unable to communicate their distress to anyone.

An alternative protocol favoured by a small number of U.S. States utilises one large dose of a barbiturate, normally either sodium thiopental or pentobarbital.

However, Hospira, the sole U.S. manufacturer of sodium thiopental, suspended production of the drug in 2010. As a result, a number of U.S. death penalty States started to import quantities of the drug from a small wholesaler in London. Following a judicial review of the UK government's export policy brought by Reprieve, an export control was put in place across the UK to prevent further exports of sodium thiopental to the U.S. for use in lethal injection executions in late September 2010.

In order to prevent US death penalty States from seeking supplies of execution drugs from elsewhere in Europe, Reprieve, Amnesty International and Omega called on individual EU Member States and

¹⁰⁵ Amnesty International, Execution by lethal injection – a quarter century of state poisoning, ACT 50/007/2007, October 2007, <http://www.amnestyusa.org/document.php?lang=e&id=engact500072007> (Accessed 12 April 2015).

Amnesty International, Death Sentences and Executions in 2014, ACT 50/001/2015, April 2015. <https://www.amnesty.org/en/documents/act50/0001/2015/en/>, p.7.

¹⁰⁶ Amnesty International, Execution by Lethal Injection – a quarter century of state poisoning, ACT 50/007/2007, October 2007, <https://www.amnesty.org/en/documents/ACT50/007/2007/en/> (Accessed 12 April 2015). The last execution in Guatemala was carried out in 2000.

¹⁰⁷ Amnesty International, Death Sentences and Executions in 2014, ACT 50/001/2015, April 2015, p.34. The last execution in the Maldives was carried out in 1954.

¹⁰⁸ Amnesty International, Papua New Guinea plans for executions, ASA 34/003/2013, 4 June 2013, available at: Amnesty International, Death Sentences and Executions in 2013, ACT 50/001/2014, March 2014, <https://www.amnesty.org/en/documents/act50/001/2014/en/>, pp.37-38. The last execution in Papua New Guinea was carried out in 1954.

¹⁰⁹ Amnesty International, Execution by Lethal Injection – a quarter century of state poisoning, ACT 50/007/2007, October 2007, <https://www.amnesty.org/en/documents/ACT50/007/2007/en/> (Accessed 12 April 2015). Although national legislation indicate lethal injection as the method of execution in Taiwan, Amnesty International has only recorded executions by shooting including most recently in 2014. Amnesty International, Death Sentences and Executions in 2014, AI Index ACT 50/001/2015 (April 2015), <https://www.amnesty.org/en/documents/act50/0001/2015/en/pp.7and39>.

¹¹⁰ Amnesty International, Death Sentences and Executions in 2009, AI Index ACT 50/001/2010 (March 2010), p. 6. The last executions in Thailand were carried out in 2009.

¹¹¹ Amnesty International, Death Sentences and Executions in 2014, ACT 50/001/2015, April 2015, available at <https://www.amnesty.org/en/documents/act50/0001/2015/en/>, p.21.

¹¹² Amnesty International, Lethal Injection Looms for 117 Prisoners, Urgent Action, UA 161/13, 24th June 2013. Amnesty International, Death Sentences and Executions in 2014, ACT 50/001/2015, April 2015. <https://www.amnesty.org/en/documents/act50/0001/2015/en/>, pp.7. After changing its method of execution from firing squad to lethal injection, the authorities of Viet Nam were compelled to suspend executions as they could not source the chemicals needed in lethal injection protocols. The production of these drugs began domestically and executions resumed in 2013.

¹¹³ Death Penalty Information Centre (DPIC), Lethal Injection, <http://www.deathpenaltyinfo.org/lethal-injection-moratorium-executions-ends-after-supreme-court-decision> (accessed 14 May 2015); DPIC, State by State Lethal Injection <http://www.deathpenaltyinfo.org/state-lethal-injection> (accessed 14th May 2015). Amnesty International, Death Sentences and Executions in 2014, ACT 50/001/2015, April 2015, <https://www.amnesty.org/en/documents/act50/0001/2015/en/>, p.21.

the Commission to introduce effective controls to ensure that medicinal products made in the EU were not exported for use in lethal injection. In addition, 168 MEPs signed a Written Declaration on the export of drugs used for the death penalty in third countries which called, *“on the Commission to immediately place on Annex III of Council Regulation (EC) No 1236/2005 drugs, including but not limited to Sodium Thiopental and Pentobarbital, that are sourced in the EU and that can be used in executions in third countries.”*¹¹⁴

Subsequently on 20 December 2011, the Commission introduced binding measures extending the scope of Annex III of the Regulation to include, and thereby control the export of, certain dual-use drugs which have legitimate medical uses but that could also be employed for the execution of human beings, such as sodium thiopental and pentobarbital.¹¹⁵ These measures subsequently appear to have been reflected in the licensing practices of at least certain Member States. For example, according to its annual reports, whilst Germany granted 66 licences in 2012,¹¹⁶ and 49 in 2013¹¹⁷ for the export of such dual-use drugs to States with no record of lethal injection, it refused two license applications for these drugs in 2013, to China and Vietnam.

In its paper of January 2014,¹¹⁸ the Commission built upon these binding measures, by proposing the introduction of a system of Union General Export Authorizations for EU exports to States that have abolished the death penalty, and individual or global export authorizations to non-abolitionist States.

Amnesty International and Omega believe that these proposals are a proportionate and measured response to the risk – allowing effective regulation of the transfer of certain pharmaceutical chemicals that could be used in lethal injection protocols but which have a widespread medical utility – provided EU States establish effective reporting, monitoring and revocation provisions. However, the Commission Proposals as they are currently drafted, particularly Annex IIIa and IIIb, have certain limitations which should be addressed.

Firstly, Amnesty International and Omega are concerned that the list of Goods that could be used for the purpose of the death penalty referred to in Article 7b, as listed in the proposed amended version of Annex IIIa, includes only *“short and intermediate acting barbiturate anaesthetic agents”*.¹¹⁹ In practice other substances that are not classed as barbiturates have been used or explored following recent and ongoing changes in lethal injection protocols in some U.S. States. For example, in their recent analysis of lethal injection policy and practice, the Death Penalty Information Centre (DPIC) stated that, *“One state ... Missouri...had planned to use propofol (Diprivan), in a single-drug protocol, but has since revised its lethal injection procedure.”*¹²⁰ Furthermore, DPIC, stated that:

“Two states have used midazolam as the first drug in a three-drug protocol: Florida and Oklahoma. Two states have used midazolam in a two-drug protocol: Ohio and Arizona. Both of their executions in 2014 were prolonged, accompanied by the inmate’s gasping. Three states have proposed using midazolam in a two-drug protocol: Louisiana, Kentucky, and Oklahoma. Two states have proposed using midazolam in a three-drug protocol: Alabama and Virginia. Some states have proposed multiple protocols. Missouri administered midazolam to inmates as a sedative before the official execution protocol began.”

Other chemicals that U.S. executing States have been resorting to are hydromorphone, pancuronium bromide, rocuronium bromide and vecuronium bromide.¹²¹

Amnesty International and Omega Recommendation: It is important that these additional toxic

¹¹⁴ European Parliament, Written Declaration, pursuant to Rule 123 of the Rules of Procedure on the export of drugs used for the death penalty in third countries, 0029/2011, tabled by Ludford, S., Busuttill, S., Gomes, A., and Lochbihler, B. on 6 June 2011.

¹¹⁵ European Commission, Commission Implementing Regulation (EU) No: 1352/2011 of 20 December 2011, amending Council Regulation (EC) No 1236/2005 concerning the trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, Official Journal of the European Union, 21st December 2011, L338/31, (Annex III (4)).

¹¹⁶ Tätigkeitsbericht der Bundesrepublik Deutschland, gemäß Artikel 13 Absatz 3 der Verordnung (EG) Nr. 1236/2005 vom 27. Juni 2005, http://www.ausfuhrkontrolle.info/ausfuhrkontrolle/de/arbeitshilfen/sonstiges/sechster_taetigkeitsbericht.pdf (accessed 18 May 2015)

¹¹⁷ Tätigkeitsbericht der Bundesrepublik Deutschland, gemäß Artikel 13 Absatz 3 der Verordnung (EG) Nr. 1236/2005 vom 27. Juni 2005, http://www.ausfuhrkontrolle.info/ausfuhrkontrolle/de/arbeitshilfen/sonstiges/siebenter_taetigkeitsbericht.pdf (accessed 18 May 2015)

¹¹⁸ European Commission, COM (2014) 1 final, 2014/0005 (COD) (14 January 2014) op.cit.

¹¹⁹ European Commission, COM (2014) 1 final, 2014/0005 (COD) (14 January 2014) op.cit.

¹²⁰ Death Penalty Information Centre, State by State Lethal Injection, <http://www.deathpenaltyinfo.org/state-lethal-injection> (accessed 14 May 2015).

¹²¹ Amnesty International, Death Sentences and Executions in 2014, Act 50/001/2015, April 2015, available at <https://www.amnesty.org/en/documents/act50/0001/2015/en/>, p.21.

chemicals be included within the scope of coverage and that further chemicals that could potentially be employed in revised lethal injection protocols are also considered. We recommend that the Commission consider amending the list of goods that could be used for the purpose of capital punishment (as listed in Annex IIIa) to include: hydromorphone, midazolam, pancuronium bromide, rocuronium bromide and vecuronium bromide. Given the rapidly evolving situation in the U.S. with a number of States actively exploring new lethal injection protocols, the range of toxic chemicals covered by this Regulation procedure should be regularly reviewed by the Commission and changes made to Annex IIIa as and when required.

However, Amnesty International and Omega recognize the utmost importance of ensuring that transfers of pharmaceutical chemicals are not delayed or impeded in any way to health practitioners who would utilize these chemicals for legitimate and potentially life-saving medical practices. Consequently we recommend that our proposed expansion of Annex IIIa should not take place until the Commission proposals in this area have been agreed and introduced i.e. a system of Union General Export Authorizations for EU exports to abolitionist States, and individual or global export authorizations to non-abolitionist States.

Secondly, whilst Amnesty International and Omega support the Commission's proposed urgency procedures (see Chapter 5), we are concerned that there may in certain cases be delays in reaching agreement to add specific pharmaceutical chemicals to Annex IIIa in order to control their transfer under the Regulation. There may even be a refusal to do so, as a result of the inability of relevant sections of the Commission to agree such action. This could occur even where a Member State wishes to halt a specific transfer of such chemicals from their own territory concluding that the specific transfer is intended for use in the death penalty.

Amnesty International and Omega Recommendation: We recommend that individual EU Member States should be granted the authority to immediately suspend a specific transfer of a pharmaceutical chemical to a particular end user in a case where the Member State has evidence that the chemicals will be employed for inflicting the death penalty. Amnesty International and Omega believe that this is best enacted through the introduction of a targeted end-use clause (see Chapter 6 of this report for further discussion).

Amnesty International and Omega would like to seek clarification about the consistency of applying the criteria used to select countries to be included in the list of destinations under Annex IIIb, i.e. countries covered by a Union General Export Authorization.

Specifically, Annex IIIb includes certain countries that still retain the death penalty in their legislation. One of these countries – Liberia – has, for instance, expanded the scope of the death penalty after becoming a State Party to the Second Optional Protocol to the International Covenant on Civil and Political Rights, in stark opposition to that instrument's goal of the abolition of the death penalty.

Amnesty International and Omega Recommendation: We recommend that those countries presently on Annex IIIb and potentially covered by a Union General Export Authorization, despite retaining the death penalty in their legislation - namely Benin, Liberia, Madagascar and Mongolia – be excluded from this Annex.

CHAPTER 5 / MECHANISMS TO HALT INAPPROPRIATE EXPORTS, IN URGENT SITUATIONS, OF GOODS NOT LISTED IN ANNEX II OR III

Like many trade control systems, EC Regulation 1236/2005 is list-based, containing categories of specifically named items whose international trade is either prohibited or controlled. Although list-based systems can provide clarity for exporters and importers, such control systems have inherent weaknesses - especially when intended to regulate evolving or new products. Weaknesses or limitations in list-based systems include:

- (a) Not controlling a range of harmful products (even though they fall within the intended scope of the agreement), because they are not specifically named on the control lists;
- (b) The delay experienced between the manufacture, transfer and use of a newly designed type of equipment, and the time then taken for it to be added to a control list;
- (c) The potential for suppliers to evade controls simply by re-naming or re-specifying their products and their uses.

Amnesty International and Omega believe that these shortfalls should be addressed by two complementary processes:

- (a) urgency procedures allowing the Commission to quickly amend Annexes;
- (b) targeted end-use control, allowing individual Member States to halt or suspend a specific transfer until a decision is made by the Commission.

COMMISSION POWER TO AMEND THE ANNEXES IN URGENT CASES

As part of its Proposals, the Commission has argued for the inclusion of an urgency procedure that could be applied for amendments of certain Annexes to the Regulation. The Commission considers that such a procedure would be appropriate where the lists of prohibited and controlled goods are amended, *“Especially if new equipment or goods enter the market and it is imperative to apply the relevant measure immediately to prevent building of stocks during the period of two months (assuming it is not extended) that is allotted to the European Parliament and to the Council for expressing any objection they may have to the measure.”*¹²²

Consequently, the Commission Proposals under Article 12 state that, *“Where, in the case of amendment of Annex II, III or IIIa, imperative grounds of urgency so require, the procedure provided for in Article 15b shall apply to delegated acts adopted pursuant to this Article.”*¹²³

Article 15b states, *“Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.”*¹²⁴

Amnesty International and Omega are supportive of these proposals as they seek to address a previous long-standing limitation in the Regulation to react speedily to developments in the international security markets, which we have highlighted in our reports and during the Expert Group process. We believe that this urgency procedure will complement the proposed targeted end use control mechanism outlined below.

¹²² European Commission Proposal (14 January 2014) op.cit., Section 3.4, implementation of delegated powers.

¹²³ European Commission Proposal (14 January 2014) op.cit., Article 12, paragraph 1.

¹²⁴ European Commission Proposal (14 January 2014) op.cit., Article 15b, paragraph 1.

MEMBER STATE TARGETED END-USE CONTROL

Certain end-use controls or functionally similar mechanisms that enable sensible action to be taken by States to prevent very harmful and expressly prohibited outcomes have been incorporated into a number of national, regional and multi-lateral arms control and disarmament regimes. Of particular relevance in this regard are the mechanisms adopted by the Australia Group¹²⁵ and the EU dual-use export controls.¹²⁶

Amnesty International and Omega have previously urged the European Commission and Member States to add a targeted end use clause to the Regulation.¹²⁷ Such a clause would allow individual EU Governments to halt a specific transfer of certain goods covered under the scope of the Regulation that are not specifically listed in the Regulation Annexes that clearly have no practical use other than for the purposes of capital punishment, torture and other ill-treatment; or where there is evidence that such items would be used for the purposes of judicial execution, torture and other ill-treatment. The provision would enable individual States to act immediately at the national level to halt a specific potential transfer of grave concern that comes to their attention, irrespective of subsequent actions which may or may not be taken at an EU level.

Under international human rights law, specifically the UN Convention against Torture, all States are obliged to prohibit torture and other ill-treatment and to ensure they do not facilitate such prohibited practices.¹²⁸ Similarly, EU Member States have undertaken obligations to actively combat the practice of capital punishment where-ever it occurs.¹²⁹ Amnesty International and Omega believe that only by the introduction of targeted end use controls will EU Member States, confronted with a specific proposed transfer of non-listed goods they know is intended to be used for torture or capital punishment, be able to immediately stop such a transfer taking place, and thereby fulfil their obligations under international human rights law.

UK Government proposal: Following a review of its national export controls, which included an extensive public consultation exercise, the UK stated that it would seek, *“To introduce an end use control on torture equipment, enabling the UK to licence – and thus refuse – the export of any goods from the UK which were destined for use in torture or similar inhumane or degrading acts.”*¹³⁰ The UK Government stated its intention to seek the introduction of such an end use control clause at EU level, rather than nationally, in order to ensure that the EU as a whole operates to the same standards, and that UK exporters are not able to circumvent the control simply by exporting via other Member States. The UK government subsequently proposed a draft text for such an end use control clause which was transmitted to the Commission for consideration in September 2009.¹³¹

European Parliament resolution: In June 2010, the European Parliament adopted a resolution on the implementation of Council Regulation (EC) No 1236/2005 calling on the Commission and Member States to implement a range of measures to strengthen the Regulation and ensure its full adherence.¹³² The resolution specifically:

*“Urge[d] the Commission to come forward with a proposal to insert into the Regulation as soon as practicable a ‘torture end-use’ clause, which would allow Member States, on the basis of prior information, to license and thus refuse the export of any items which pose a substantial risk of being used for capital punishment, torture or other ill-treatment by their destined end-users.”*¹³³

¹²⁵ Further provisions applicable to Australia Group Participants: Catch-All, Guidelines for Transfers of Sensitive Chemical or Biological Items, June 2012. See in particular Article 1 and Article 2. <http://www.australiagroup.net/en/guidelines.html> (accessed 1 July 2013).

¹²⁶ Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, (Recast). See in particular Article 4 and Article 8.

¹²⁷ See for example: Amnesty International/Omega Research Foundation, *From Words to Deeds* (2010) op.cit. Amnesty International/Omega Research Foundation, *No More Delays*, (2012) op.cit.

¹²⁸ United Nations, *Convention against Torture* (December 1984) op.cit.

¹²⁹ Council of the European Union, *EU Guidelines on Death Penalty*, 8416/13, COHOM 64, PESC 403, OC 213, 12 April 2013.

¹³⁰ UK Department of Business, Enterprise and Regulatory Reform, *Export Control Act 2002. Review of export control legislation (2007): Government's initial response to the public consultation* (February 2008).

¹³¹ United Kingdom Foreign and Commonwealth paper: *Torture End-Use Control*, handed to Commission staff in bilateral meeting, September 2009.

¹³² PE441.942 European Parliament resolution of 17 June 2010 on implementation of 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, 17 June 2010, P7_TA-PROV(2010)0236.

¹³³ European Parliament (17 June 2010) op.cit. Paragraph L.16.

Amnesty International and Omega Recommendation: Following a round of consultation with the Commission, EU Member States and relevant human rights organisations, we recommend that two complementary procedures be introduced:

Firstly, urgency procedures allowing the Commission to quickly amend the Regulation Annexes and thereby control or prohibit the transfer of certain goods, as detailed in the Commission Proposal of January 2014.

Secondly a targeted end-use control mechanism which would require Member States to:

(a) suspend or halt a specific transfer of relevant items that are covered under the scope of the Regulation but which are not currently listed in the Regulation Annexes, that clearly have no practical use other than for the purposes of capital punishment, torture and other ill-treatment or where there is evidence that the specific transfer of items would be used to carry out the death penalty, torture and other ill-treatment;

(b) report such transfer suspensions to the Commission and for the Commission (in consultation with Member States) to determine whether such goods should be added to the relevant Regulation Annex and their trade controlled or prohibited.

CHAPTER 6 / MECHANISMS TO REVIEW REGULATION SCOPE AND IMPLEMENTATION

Article 15 of the Regulation provides that when the Commission is dealing with matters relating to the Regulation, *“The Commission shall be assisted by the committee on common rules for exports of products, set up by Article 4(1) of Regulation (EEC) No 2603/69.”*¹³⁴ Article 16 provides that the Committee *“shall examine any question concerning the implementation of this Regulation”* raised by either the Committee chair or a Member State.¹³⁵

Although this Committee procedure would, in theory, have dealt with general matters arising from the operation of the Regulation, in practice the Committee met very irregularly and it was unclear how rigorous its monitoring of the Regulation's implementation had been. Since 2007, Amnesty International and Omega have highlighted these failures and have recommended the introduction of an effective mechanism to formally review the Regulation and its implementation by Member States at regular periods.¹³⁶

The continuing need for such a regular and effective review mechanism is highlighted by the current failure of the existing control regime to address ongoing limitations in the scope of the Regulation, and adequately monitor, analyse and respond to:

- technological changes and market developments in the field of security equipment;
- evidence from intergovernmental and non-governmental human rights monitors demonstrating the misuse of certain types of security equipment;
- limitations and failures of individual Member State implementation of the Regulation;
- systemic failures in the design and operation of the existing Regulation procedures.

EQUIPMENT THAT SHOULD BE PROHIBITED UNDER THE REGULATION

ELECTRIC SHOCK DEVICES FOR DIRECT CONTACT

Amnesty International and Omega have concluded that any use of electric shock stun guns, stun batons and stun shields by law enforcement personnel carries an unacceptable risk of arbitrary force due to the intrinsic nature and design of such weapons that could amount to torture and other ill-treatment. If and when they are employed, the officers applying such shocks would usually not know if the victim has an underlying medical condition. Nor can officers reasonably ascertain the degree of pain or incapacitation they inflict with such a weapon since that pain can vary significantly from person to person depending on a range of physical and psychological factors, as well as different environmental factors such as the presence of moisture.

Furthermore, it is evidently easy for a law enforcement officer to use a direct contact electrical weapon to apply extremely painful shocks by hand at the push of a button, including to very sensitive parts of the body, such as on their neck, throat, ears, underarms, groin and genitals, without long-lasting physical traces. Moreover, such weapons can be used to inflict repeated or prolonged shocks on an individual. International and regional human rights monitors have documented the use of electric shock stun equipment to torture and ill-treat detainees in many parts of the world (as illustrated by the cases below).

¹³⁴ EC Regulation 1236/2005, Article 15.

¹³⁵ EC Regulation 1236/2005, Article 16.

¹³⁶ See for example: Amnesty International and Omega Research Foundation, European Union: Stopping the Trade in Tools of Torture, POL 34/001/2007, February 2007.

CHINA

Amnesty International has documented a series of cases where electric shock stun equipment was used to torture detainees in various places of detention in China. For example, Yu Zhenjie, a Falun Gong practitioner from Mudanjiang, Heilongjiang province, was detained in China's Re-education Through Labour system. She was tortured with an electric baton for resisting the "transformation" process – the forced renunciation of her spiritual beliefs. In August 2012, she recounted her experiences to Amnesty International, *"The head of my brigade, which had around 200-300 Falun Gong members – director Li – had been using the electric baton on my face – it's a kind of torture the police call 'bengbao popcorn', because your face splits open and looks like popped corn. It smelled horrible, the smell of burning skin."*¹³⁷

RUSSIAN FEDERATION

In its 2011 visit report, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) documented the reported employment of direct contact electroshock devices in the torture of two individuals:

*"Mr A said that he was apprehended on 13 April 2011 in a village in the south of the Republic and subsequently brought to Makhachkala...He alleged that he was made to sit on an armchair and that his arms were attached to the arm rests by means of adhesive tape. Subsequently, an electric wire was attached to the finger of each of his hands, and he was subjected to electric shocks. Reportedly, he was left in this position overnight and was then subjected to further electric shocks the following day, including to his hands, tongue and genitals, by means of a hand-held device."*¹³⁸

Since 2009, the alleged use of direct contact electric shock weapons by law enforcement personnel or prisoner officers in torture or ill-treatment has been documented by the CPT within the EU, notably in Bulgaria,¹³⁹ Greece,¹⁴⁰ Poland,¹⁴¹ Romania,¹⁴² and the Slovak Republic.¹⁴³ The CPT has also reported the alleged employment of electroshock ill-treatment in Portugal although the nature of the device used is not recorded.¹⁴⁴

POLAND

In its 2011 report, the CPT highlighted the alleged use of an electric shock weapon against a detainee held by police for questioning at Biała Podlaska detention centre which it considered, *"Was of such a severity that it could well be considered as amounting to torture."*¹⁴⁵ In its visit to the detention centre, the CPT delegation discovered *"a large arsenal of security devices (including pepper spray, electric body-contact stun devices, and firearms)"*. The CPT delegation stated, *"Electrical discharge weapons can cause acute pain and lend themselves to misuse. The CPT has serious reservations about the use of such weapons in the setting of a secure detention facility, such as a Guarded Centre for Foreigners. These reservations are particularly strong as regards weapons of the kind found at Biała Podlaska; they were small hand-held stun devices (approximately the size of an electric shaver) which could only be employed through direct contact with the person who is the target."*¹⁴⁶

¹³⁷ Amnesty International interviews, August 2012 as cited in: Amnesty International, China's Trade in Tools of Torture and Repression, ASA 17/042/2014, November 2014.

¹³⁸ Report to the Russian Government on the visit to the North Caucasian region of the Russian Federation carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 April to 6 May 2011, CPT/Inf (2013) 1, Strasbourg, 24 January 2013.

¹³⁹ Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 March to 3 April 2014, CPT/Inf (2015) 12, Strasbourg, 29 January 2015.

¹⁴⁰ Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 19 to 27 January 2011, CPT/Inf (2012) 1, Strasbourg, 10 January 2012.

¹⁴¹ CPT/Inf (2014) 21 Report to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 17 June 2013, Strasbourg, 25 June 2014.

¹⁴² Rapport au Gouvernement de la Roumanie relatif à la visite effectuée en Roumanie par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 5 au 16 septembre 2010, CPT/Inf (2011) 31, Strasbourg, le 24 novembre 2011.

¹⁴³ Report to the Government of the Slovak Republic on the visit to the Slovak Republic carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 September to 3 October 2013, CPT/Inf (2014) 29, Strasbourg, 25 November 2014.

¹⁴⁴ Report to the Portuguese Government on the visit to Portugal carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 17 May 2013, CPT/Inf (2013) 35, Strasbourg, 26 November 2013.

¹⁴⁵ CPT/Inf (2011) 20 Report to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 26 November to 8 December 2009, Strasbourg, 12 July 2011.

¹⁴⁶ CPT/Inf (2011) 20 Report to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 26 November to 8 December 2009, Strasbourg, 12 July 2011.

ROMANIA

In its 2011 report, the CPT delegation highlighted its concerns regarding the alleged infliction of electric shocks with a direct contact electric shock weapon upon two people who had been held at the Police Inspectorate Ilfov Department in August 2010. On visiting the interrogation room indicated by the two victims, the delegation observed the presence of objects the victims had described precisely (including an electric shock baton). The electric shock baton photographed by the CPT delegation appears to be visually similar, if not identical, to electric shock batons manufactured by Chinese companies, most notably the CB50306 which has been widely promoted by China Best Industrial, including at the Eurosatory 2014 arms and security exhibition.¹⁴⁷ Consequently it appears that such electric shock weapons have been previously imported into Romania, directly or indirectly, from China.



Left: image of direct contact electric shock weapon photographed by the CPT delegation at the Police Inspectorate Ilfov Department on 8 September 2011; Right: image of visually similar, if not identical electric shock baton taken from promotion material distributed by China Best Industrial, at the Eurosatory 2014 arms and security exhibition.

Amnesty International and Omega recognise that there is an existing trade in certain direct contact electric shock devices (particularly electric shock stun guns marketed to individuals for self-defence). However research by the two organisations has uncovered EU companies promoting direct contact electric shock devices to the law enforcement or military communities (as summarised in the table below).



Left: Shock4shield manufactured and promoted by ISRP [Portugal]; Right: the Spitting Cobra electroshock shield with pepper spray promoted by GER d.o.o. [Slovenia].

¹⁴⁷ China Best Industrial marketing materials including the CB50306 electric shock baton were distributed by the company at Eurosatory 2014 arms exhibition held in Paris, France 16-20 June 2014. (Copy held by the Omega Research Foundation). A similar if not identical baton described as the "809 type stun gun" is also currently being promoted by a second Chinese company, Anyway Electronics and Technology Co. Limited, on its website. http://www.anyway-tech.com/sdp/968866/4/pl-4794100/0-1894376/Self-defense_equipment.html (accessed 14 May 2015).

TABLE OF EU COMPANIES MANUFACTURING AND/OR PROMOTING DIRECT CONTACT ELECTRIC SHOCK DEVICES FOR USE BY LAW ENFORCEMENT OFFICIALS

Country	Company	Equipment	Further information
CZECH REPUBLIC	Euro Security Products	A range of stun guns, including two models with combined pepper spray ¹	The company promoted its products to the law enforcement community on its website² and through arms and security equipment fairs.³ The company also conducted training programmes for law enforcement personnel (see Section 3 of this report for further discussion). The company manufactured a 200,000 Volt model of stun gun which it stated was for use by the general public and higher voltage models capable of generating 500,000 Volts “suitable for the professional use.”⁴
FRANCE	Magforce International	Electric shock stun shield and stun baton	According to the company website, their, “<i>comprehensive civil defense and defensive military equipment line has made MagForce the supplier of choice for the public services end users.</i>”⁵ The company has promoted its products at an arms and security exhibition closed to the general public.⁶
FRANCE	GK Professional	Electric shock batons	According to the company catalogue, “<i>GK Professional was founded in 1983 to design, manufacture, market and distribute equipment to the French and foreign law enforcement and security authorities.</i>” The company has promoted its products at an arms and security exhibition closed to the general public.⁷
FRANCE	Dépot SD Equipements	A range of electric shock stun batons and stun guns	The company website stated that, “<i>..SD-Equipment is an online gun shop selling safety equipment and defense to security professionals, law enforcement or individuals. We offer a wide selection of CS tear gas and pepper bombs and freezing or gases format batons and electric shockers, and tear gas guns or Flashball.</i>”⁸ The company claimed to have the endorsement of the French Police Nationale, Police Municipale and Gendarmerie Nationale as well as the Ministry of the Interior and the Ministry of Defence.⁹
GERMANY	PKI Electronic Intelligence GmbH	Electric shock stun cuff	The company promoted “<i>Stun-Cuffs for Hand</i>” under the “<i>police, customs and military equipment</i>” products section of its website.¹⁰ The restraints on activation deliver 60,000 volts to the already restrained prisoner. (See Section 2 of this report for further discussion).
POLAND	Eltraf Bis	A range of stun guns and stun batons	The company manufactured and promoted a wide range of electric shock stun guns and stun batons. Some of these appeared to be specifically promoted for use by law enforcement personnel, such as the “<i>URP 1000 Police professional.</i>”¹¹ The company has promoted its products on its website and at EU arms and security equipment exhibitions.¹²

Country	Company	Equipment	Further information
POLAND	HPE Holsters	An electric shock stun shield, stun batons and stun guns.	The company stated that it, “ <i>produces a wide range of military products</i> ” though it is not clear whether it manufactured the electric shock devices or only promoted these. ¹³ An “ <i>electric shield</i> ” was advertised in its “ <i>Anti-riot division</i> ” product range under “ <i>plastic shields for prison guards</i> ”. ¹⁴ Stun batons were advertised under the “ <i>Tactical & Military accessories division</i> ” of goods. The promotional material showed images of a baton and stun gun being used to shock a handcuff. ¹⁵
PORTUGAL	Inventarium Security, Research & Development	Electric shock shield	According to its website, ISRD was an “ <i>industrial manufacturer</i> ” that is “ <i>committed to develop new products in the security and defense sector for Law Enforcement, Military and Private security applications.</i> ” ¹⁶ Its products include the: “ <i>SHOCK4-SHIELD [which] is an electrified riot shield design[ed] to provide added protection for police and military personnel in hazardous crowd control situations.</i> ” ¹⁷
SLOVENIA	GER d.o.o.	Range of “Spitting Cobra” electric shock shields which also incorporate a pepper spray dispenser	The company appeared to be the manufacturer as well as the promoter of these products which were clearly intended for use by police or military personnel. The company promoted its products on its website ¹⁸ and cited USA Army REF; UAE Police; and Croatia Police as “reference customers.” ¹⁹

REFERENCES for table above

- 1 Euro Security Products, <http://www.euro-security.info/en/stun-guns.html> (accessed 14 May 2015).
- 2 Euro Security Products, <http://www.euro-security.info/en/> (accessed 14 May 2015).
- 3 For example see ESP attendance at China Police Expo 2014, IWA 2015, SOFEX 2012. (Information held by Omega Research Foundation)
- 4 Euro Security Products catalogue, distributed at IWA 2015 (Copy held by the Omega Research Foundation).
- 5 Magforce International website <http://www.magforce.fr/magforce/magforce-en.php> (accessed 6 February 2015).
- 6 Magforce International product catalogue, distributed at DSEI 2013, September 2013, London, UK. (Copy held by the Omega Research Foundation).
- 7 GK Professional, Catalogue No.17, distributed at the Eurosatory 2014 exhibition, Paris, France, 16-20 June 2014, (Copy held by the Omega Research Foundation).
- 8 Dépôt SD Equipements, <http://www.boutique-sd-equipements.fr/content/4-qui-sommes-nous-> (accessed 15 April 2015).
- 9 Dépôt SD Equipements <http://www.boutique-sd-equipements.fr/content/4-qui-sommes-nous-> (accessed 14 May 2015).
- 10 PKI Electronic Intelligence GmbH, <http://www.pki-electronic.com/products/police-customs-and-military-equipment/stun-cuffs-for-foot-stun-cuffs-for-hand/> (accessed 14 May 2015).
- 11 Eltraf Bis, http://www.eltraf.com.pl/master_eltrafbis.html (accessed 14 May 2015).
- 12 Eltraf Bis promoted its materials at Milipol 2013, Paris, France. A copy of the company product brochure distributed is held by Omega Research Foundation.
- 13 HPE Holsters, http://hpe.pl/img/cms/5_accessories_division.pdf (accessed 14 May 2015).
- 14 HPE Holsters, http://hpe.pl/img/cms/2_anti-riot_division.pdf (accessed 14 May 2015).
- 15 HPE Holsters, http://hpe.pl/img/cms/5_accessories_division.pdf (accessed 14 May 2015).
- 16 Inventarium Security, Research & Development, <http://inventarium-srd.com/thecompany.html> (accessed 14 May 2015).
- 17 Inventarium Security, Research & Development, <http://inventarium-srd.com/page31x.html> (accessed 14 May 2015).
- 18 GER d.o.o., <http://www.shield-sc.com/index.html> (accessed 5 February 2015).
- 19 GER d.o.o., <http://www.shield-sc.com/concept-police-anti-riot-shield.html> (accessed 14 May 2015).

Amnesty International and Omega Recommendation: Amnesty International and Omega have called for a ban in the production, promotion, trade, transfer and use of direct contact electric shock stun batons, stun guns and stun shields for law enforcement purposes.

At present, “*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*” are placed in Annex III of the Regulation and their trade is controlled.

We recommend that direct contact electric shock guns, batons and shields specifically intended for law enforcement be added to Annex II of the Regulation and their trade be prohibited. Electric shock dart guns specifically intended for law enforcement purposes should be retained in Annex III and their trade controlled.

Direct contact electric shock batons and guns specifically intended for personal protection should also be placed in Annex III of the Regulation and their trade controlled.

PRISONER HOODS

The UN Committee against Torture has stated that blindfolding can constitute torture or other ill-treatment.¹⁴⁸ The UN Special Rapporteur on Torture has recommended that “blind-folding and hooding should be forbidden.”¹⁴⁹ The CPT has noted that blindfolding, “will frequently amount to psychological ill-treatment”, and that the practice should be abolished.¹⁵⁰ In 2011 the CPT stated, “Rules should expressly prohibit the blind-folding or hooding of persons who are in police custody, including during interviews.”¹⁵¹ The European Court of Human Rights has determined that blindfolding a prisoner constitutes cruel or inhuman treatment when used in combination with other interrogation or detention methods,¹⁵² and can constitute torture when used with other techniques.¹⁵³

Amnesty International and Omega have uncovered evidence of the manufacture by non-EU companies of prisoner hoods designed to completely block vision by covering the entire prisoner’s head (including nose and mouth); and which are attached to plastic or metal handcuffs. These hood-handcuff restraint systems have been promoted for use in law enforcement at EU arms exhibitions. For example, at Milipol 2011 (held in Paris, France, 18-21 October 2011), the Chinese company, Jiangsu Anhua Police Equipment Manufacturing Co. Ltd promoted the “WM-01 Mask – for arresting.” This device includes a cloth hood to fully enclose the face attached to handcuffs. In addition to concerns about the risk of asphyxiation, there are concerns that such systems restrict the prisoner’s movements and increase the risk of neck injury.

Amnesty International and Omega Recommendation: There appears to be no legitimate law enforcement use for any form of individual hood or hood-handcuff restraint system, which could not be accomplished by other means. In July 2014, the Commission amended Annex II (controlled goods) to include, “Spit hoods: hoods, including hoods made of netting, comprising a cover of the mouth which prevents spitting,”¹⁵⁴ however no mention was made of other prisoner hoods such as those previously found to be promoted at EU security fairs. We recommend that ‘prisoner hoods’ intended for law enforcement purposes, designed to enclose the head and block the vision of a human being, should be added to Annex II, and their trade prohibited.



Above: “Mask for arresting”: image taken from promotional material distributed by Chinese company Jiangsu Anhua Police Equipment Manufacturing Co. Ltd at Milipol 2011, Paris, France.

PRISONER CONTROL PLIERS

A limited range of “niche” restraint devices for use by law enforcement officials have been marketed by European companies. For example the German Company, Clemen & Jung, has developed and promotes the “Detainee/Prisoner Control Pliers”. This device is intended to be used by an accompanying officer to hold and restrain a prisoner by their wrist and lead them or force them to move. The

¹⁴⁸ Concluding observations of the Committee against Torture: Israel, Sept. 5, 1997, Committee Against Torture, 258, U.N. Doc. A/52/44; Report on Mexico produced by the Committee under article 20 of the convention, and reply from the government of Mexico: Mexico, 05/26/2003. U.N. Doc. CAT/C/75 (2003).

¹⁴⁹ Civil and political rights, including the question of: torture and detention, report of the special rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights Resolution 2001/62, U.N. ESCOR, 58th Sess., Annex 1, Agenda Item 11(a), (f), U.N. Doc. E/CN.4/2002/76 (2001). [As cited in IRCT (2011) op.cit].

¹⁵⁰ Report to the Turkish government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)CPT, from 19 September to 1 October 2007, CPT/Inf (2011) 11, p.21.

¹⁵¹ Report to the Spanish Government on the visit to Spain carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)CPT, from 19 September to 1 October 2007, CPT/Inf (2011) 11, p.21.

¹⁵² Ireland v. United Kingdom, 25 Eur. H.R. Rep. (ser. A) (1978); Ocalan v. Turkey, 37 Eur. Ct. H.R. 238, 222 (2003). [As cited in IRCT (2011) op.cit].

¹⁵³ Aksoy v. Turkey, 1996-VI Eur. Ct. H.R. 2260 (1996); Aydin v. Turkey, 1997-VI Eur. H.R. Rep. 1866 (1997). [As cited in IRCT (2011) op.cit].

¹⁵⁴ European Commission., Commission Implementing Regulation (EU) No 775/2014 of 16 July 2014.

nature of its application – employing force to an individual's wrists with possible twisting movement – raises concerns about the attendant risks of injury and also potential misuse that could amount to torture or other ill-treatment. Clemen & Jung promotes these devices through their website and recently displayed and has promoted them on their stall at the IWA security equipment exhibition held in Nuremberg in March 2015.

On 17 April 2015 Amnesty International and Omega wrote to Clemen & Jung informing them of the forthcoming report and requesting further information on their products and activities. On 22 April 2015 the Clemen & Jung website was updated. Changes to the website included the transfer of “*Detainee/Prisoner Control Pliers*” to the “*history and retro-section*” of the website designed for products intended for “*collectors and law enforcement museums.*”



Left: “*Detainee/Prisoner Control Pliers*” from Clemen and Jung catalogue and Right: on display on Clemen and Jung stall at IWA 2015 security exhibition held in Nuremberg

On 30 April 2015, in response to the information request from Amnesty International and Omega the company stated that, “*Clemen & Jung manufactures no goods which are subject to Annex II of the EU Council Regulation No.1236/2005.*” The company further stated that those “*few Clemen & Jung goods*” which could be considered as Annex III items, “*are only ever exported out of the EU by Clemen & Jung after the proper authorization has been received from BAFA.*”

Amnesty International and Omega Recommendation: At present the “*Detainee/Prisoner Control Pliers*” and functionally similar devices are not listed under Annex II or Annex III of the Regulation and consequently the trade in such devices is neither prohibited nor controlled by this instrument. Given the nature of their application and the attendant risks of injury, and their potential use in ill-treatment, Amnesty International and Omega believe that such devices should be added to Annex II and their trade prohibited.

EQUIPMENT THAT SHOULD BE CONTROLLED UNDER THE REGULATION

HANDCUFFS

Rule 33 of the UN Standard Minimum Rules for the Treatment of Prisoners states: “*Instruments of restraint, such as **handcuffs**, chains, irons and strait-jacket, shall never be applied as a punishment.*”¹⁵⁵ [Emphasis added]. Rule 34 states that instruments of restraint “*must not be applied for any longer time than is strictly necessary.*”¹⁵⁶ Furthermore, Rule 68 of the European Prison Rules constrains the use of handcuffs.¹⁵⁷

Handcuffs and other restraints can be designed and used legitimately in accordance with international standards, that is, used in a manner that is not painful, when absolutely necessary for a legitimate purpose and proportionately to the danger posed, and for the shortest duration possible, for instance to stop prisoners harming themselves or others, and to prevent escape when being moved.

However, international and regional human rights mechanisms have documented the misuse of handcuffs for shackling prisoners to fixed objects,¹⁵⁸ as well as their employment for abusive

¹⁵⁵ United Nations, Standard Minimum Rules for the Treatment of Prisoners (SMRTP) Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, Article 33.

¹⁵⁶ United Nations, SMRTP (1955) op.cit. Rule 34.

¹⁵⁷ Recommendation on the Committee of Ministers to Member States on the European Prison Rules, Adopted by Committee of Ministers on 11th January 2006 at 952nd meeting of the Ministers' Deputies.

¹⁵⁸ “Further, in IVS No. 1 in Kazan, the delegation noted the occasional use of handcuffs fixed to the wall (in front of the facility's duty

restraint techniques and ill-treatment in many parts of the world.^{159,160,161,162,163,164}

The alleged misuse of handcuffs by law enforcement personnel or prisoner officers in torture or ill-treatment has been documented by the CPT within the EU. A review of CPT reports from 2009 onwards has found allegations of their use for extended periods in Croatia,¹⁶⁵ the Czech Republic,¹⁶⁶ and Bulgaria;¹⁶⁷ their attachment to fixed objects in Bulgaria,¹⁶⁸ the Czech Republic,¹⁶⁹ Germany,¹⁷⁰ and Greece;¹⁷¹ their excessive tightening in Denmark,¹⁷² Estonia,¹⁷³ France,¹⁷⁴ and Poland;¹⁷⁵ and the beating or spraying of chemical irritants upon handcuffed prisoners in Malta.¹⁷⁶

BULGARIA

In its 2012 visit report the CPT stated that it was, *"Seriously concerned to note that apart from the introduction of a cursory recording system, no other follow-up has been given to the Committee's recommendation as regards the practice of fixation of prisoners with handcuffs to a bed at Varna Prison. As regards the 20 cases recorded between November 2010 and April 2012, fixation had frequently been applied for periods of days. In one case, it had lasted for 27 days, and in 16 other cases it had lasted between five and 18 days."*¹⁷⁷

In its 2014 visit report, the CPT stated that, *"In some isolated cases, it heard allegations of ill-treatment of such a severity that it would amount to torture, such as truncheon blows on the soles of the feet, blows with truncheons inflicted to a person attached with handcuffs to hooks fixed to a door frame (and thus immobilised in a hyperextended position)."*¹⁷⁸

office)." Report of the Council of Europe Committee for the Prevention of Torture (CPT) following their trip to the Russian Federation (2012) <http://www.cpt.coe.int/documents/rus/2013-41-inf-eng.pdf> (Accessed 13 February 2014).

¹⁵⁹ "In some cases, the alleged ill-treatment was of such a severity that it could be considered as amounting to torture (e.g. suspension by handcuffs and infliction of repeated and severe truncheon blows while in a suspended position" [Emphasis added] Report of the Council of Europe Committee for the Prevention of Torture (CPT) following their trip to the Ukraine (2013) <http://www.cpt.coe.int/documents/ukr/2013-34-inf-eng.pdf> (Accessed 13 February 2014).

¹⁶⁰ "In Bizerte, however, the Special Rapporteur found that a group of detainees had been held, while handcuffed, in an isolation cell for at least 15 days before being released a few minutes before his visit. "Report of the UN Special Rapporteur on Torture following his visit to Tunisia. (2011) <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/103/22/PDF/G1210322.pdf?OpenElement> (Accessed 13 February 2014).

¹⁶¹ "Specific mention should be made of the case of a life-sentenced prisoner interviewed by the delegation who alleged that, in August 2008, he had been beaten by several prison officers who had kicked and hit him with truncheons while his ankles and hands were cuffed together." Report of the Council of Europe Committee for the Prevention of Torture (CPT) following their visit to Azerbaijan (2008). <http://www.cpt.coe.int/documents/aze/2009-28-inf-eng.pdf> (Accessed 13 February 2014).

¹⁶² "The SPT is particularly concerned about the handcuffing of detainees on a big iron chair in one IVS, which IVS authorities claimed to use to calm down "violent detainees" or detainees with mental health problems" The United Nations Sub Committee for the Prevention of Torture following their visit to Kyrgyzstan (2014) <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRICAqhKb7yhsq2drLEhBmGjilBAZD4C6vnyJAjtiVUw%2b%2fkfBH7Gd3lJ9GzUfkWPFrzgizRCZSa1NT4639YzD40IvDbSoB%2b%2bJPWF88ch7gQzPQmbq8h21o2> (accessed 16 March 2015).

¹⁶³ "The SPT was also concerned by allegations of severe ill-treatment and inhumane conditions of transportation in vehicles of the Special Operations Services (Serviços de Operações Especiais, SOE). The alleged methods used by SOE personnel included: locking-up a high number of detainees in uncomfortable positions, handcuffed, and with no ventilation, opening the vehicle and spraying pepper spray on them and then locking up the vehicle. Beatings, insults and threats were also alleged." The United Nations Sub Committee for the Prevention of Torture following their visit to Brazil (2013)

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRICAqhKb7yhsq2drLEhBmGjilBAZD4C6vnyJAjtiVUw%2b%2fkfBH7Gd3lJ9GzUfkWPFrzgizRCZSa1NT4639YzD40IvDbSoB%2b%2bJPWF88ch7gQzPQmbq8h21o2> (accessed 16 March 2015)

¹⁶⁴ "At the Gendarmerie in Séhoué, the delegation spoke to an adolescent detainee who had been brought to the police station the previous evening; he reported not having received any water or food since he had been placed in the cell, and having been handcuffed behind his back the whole night until earlier that morning. The SPT views this restraining of an adolescent detainee with handcuffs overnight, while locked in the cell as inhuman and degrading treatment and punishment." The United Nations Sub Committee for the Prevention of Torture following their visit to Brazil (2013) <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRICAqhKb7yhsq2drLEhBmGjilBAZD4C6vnyJAjtiVUw%2b%2fkfBH7Gd3lJ9GzUfkWPFrzgizRCZSa1NT4639YzD40IvDbSoB%2b%2bJPWF88ch7gQzPQmbq8h21o2> (accessed 16 March 2015).

¹⁶⁵ Report to the Croatian Government on the visit to Croatia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 19 to 27 September 2012, CPT/Inf (2014) 9, Strasbourg, 18 March 2014.

¹⁶⁶ CPT/Inf (2014) 3 Report to the Czech Government on the visit to the Czech Republic carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 7 to 16 September 2010; Strasbourg, 18 February 2014.

¹⁶⁷ Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 March to 3 April 2014, CPT/Inf (2015) 12, Strasbourg, 29 January 2015; Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 4 to 10 May 2012, CPT/Inf (2012) 32, Strasbourg, 4 December 2012.

¹⁶⁸ CPT (2015) op.cit; CPT (2012) op.cit.

¹⁶⁹ CPT (2010) op.cit.

¹⁷⁰ Report to the German Government on the visit to Germany carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 25 November to 2 December 2013, CPT/Inf (2014) 23, Strasbourg, 24 July 2014

¹⁷¹ Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 4 to 16 April 2013, CPT/Inf (2014) 26, Strasbourg, 16 October 2014.

¹⁷² Report to the Danish Government on the visit to Denmark carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 4 to 13 February 2014, CPT/Inf (2014) 25, Strasbourg, 17 September 2014.

¹⁷³ Report to the Estonian Government on the visit to Estonia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 30 May to 6 June 2012, CPT/Inf (2014) 11.

¹⁷⁴ Rapport au Gouvernement de la République française relatif à la visite effectuée en France par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 28 novembre au 10 décembre 2010, CPT/Inf (2012) 13, Strasbourg, le 19 avril 2012.

¹⁷⁵ CPT/Inf (2014) 21 Report to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 17 June 2013, Strasbourg, 25 June 2014.

¹⁷⁶ Report to the Maltese Government on the visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 26 to 30 September 2011, CPT/Inf (2013) 12, Strasbourg, 4 July 2013.

¹⁷⁷ CPT (2012) op.cit.

¹⁷⁸ CPT (2014) op.cit.

The European Commission has recognised that “*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.*”¹⁷⁹ The Commission consequently amended the Regulation to prohibit the transfer of restraints specifically designed for shackling prisoners to fixed objects. However the Commission has, to date, refrained from regulating the transfer of “*ordinary handcuffs*” under the Regulation, despite their ongoing misuse by law enforcement and prison officials.

EU-based companies that specifically promote handcuffs to the law enforcement community include the French company, Riolier Securite Defense, which manufactures a range of metal, textile and plastic handcuffs/restraints (as well as leg restraints) which are marketed to police and military professionals on its website¹⁸⁰ and at arms and security fairs.¹⁸¹ Similarly, the Spanish company Larrangaga Y Elorza S.A. which manufactures the Alcyon brand of handcuffs and restraints claims on its website that it has “*law enforcement customers*” in at least 68 countries.¹⁸²

On 22 April 2015, in response to an information request from Amnesty International and Omega, Larrangaga Y Elorza S.A. [Alcyon] stated:

*“We support your efforts to control the use of various restraints for abusive and cruel purposes. We ourselves no longer manufacture leg restraints and we take a responsible attitude when marketing our handcuffs, to ensure that they go only to official organizations. The question of the end user is naturally, out of our hands. All our handcuffs are made with consideration for the person under restraint, with a double lock system to protect the wearer from harming himself and they have rounded edges.”*¹⁸³

Amnesty International and Omega recognise that handcuffs are a legitimate tool of restraint if their use is regulated in accordance with international standards. However, their supply to serious and persistent human rights abusing end-users should be restricted. Although EU States do not currently control the transfer of handcuffs, Australia,¹⁸⁴ the U.S.¹⁸⁵ and Taiwan¹⁸⁶ do regulate the trade.

Amnesty International and Omega Recommendation: We believe that “*ordinary handcuffs*” should be treated in the same manner as other law enforcement devices covered by the Regulation whose use may be legitimate if used appropriately and in accordance with international standards, but which have also regularly been misused for torture and other ill-treatment. Consequently, we recommend that “*ordinary handcuffs*” are added to Annex III and their trade controlled, so as to ensure that the supply of handcuffs to end-users engaged persistently in torture and other ill-treatment using restraint devices is prevented.

RESTRAINT CHAIRS, SHACKLE BOARDS AND SHACKLE BEDS

A restraint chair usually consists of a metal framed chair into which individuals are restrained by means of a multiplicity of straps or restraints at points including the wrist, elbow, shoulder, chest,

¹⁷⁹ European Commission, Commission Implementing Regulation (EU) No 775/2014 of 16 July 2014

¹⁸⁰ Riolier Securite Defense website, <http://www.riolier.com/administration/menottes-et-etuis.html> (accessed 6 March 2015).

¹⁸¹ Riolier Securite Defense promoted their products and distributed marketing materials at the Eurosatory 2014 arms and security exhibition, held in Paris, France from 16-20 June 2014; a copy of the company products catalogue (displaying range of handcuffs and leg restraints) which was distributed at this event is held by the Omega Research Foundation.

¹⁸² Larrangaga y Elorza, S.A., <http://www.alcyon.es/referencias.php> (accessed 14 May 2015). See also the company product catalogue http://www.alcyon.es/down/CATALOGO_ALCYON_2013.pdf (accessed 14 May 2015). It should be noted, that the company provides no further information on the amount and nature of the products provided, when such transactions occurred nor of the identity of its “law enforcement customers”.

¹⁸³ Email correspondence from representative of Larrangaga y Elorza, s.a. [Alcyon], 22 April 2015.

¹⁸⁴ Australia, Customs (Prohibited Exports) Amendment Regs 2001 (No 1), 5 Jul 2001. Schedule 1 Amendments, (regulation 3) [1] Regulation 2, after definition of licensed exporter, insert, paramilitary equipment means any of the following: (a) batons, clubs, riot sticks and similar devices of a kind used for law enforcement purposes; (b) body armour, including: (i) bullet-resistant apparel; and (ii) bullet-resistant pads; and (iii) protective helmets; (c) handcuffs, leg-irons and other devices used for restraining prisoners; (d) riot protection shields; (e) whips; (f) parts and accessories designed or adapted for use in, or with, equipment mentioned in paragraphs (a) to (e). <http://fril.law.gov.au/s97.vts?action=View&VdkVgwKey=2001B00252&Collection=FRLI&ViewTemplate=frlview.htm>

¹⁸⁵ The United States Commerce list includes handcuffs under OA982 “Law enforcement restraint devices...and parts and accessories, n.e.s. United States, Bureau of Industry and Security, Department of Commerce, Revisions to the Commerce Control List to update and clarify Crime Control License Requirements, Federal Register, Vol. 75, No.135, 15 July 2010, http://www.bis.doc.gov/news/2010/fr_07152010.pdf, p. 41082.

¹⁸⁶ Taiwan, <https://fbfh.trade.gov.tw/rich/text/indexfhE.asp> Import regulation: https://fbfh.trade.gov.tw/rich/text/fhj/asp/FHJI090L2.asp?id=I&code_id=363&tran_no=000347 Export regulation: https://fbfh.trade.gov.tw/rich/text/fhj/asp/FHJI090L2.asp?id=E&code_id=552&tran_no=000347

waist, thigh or ankle. Similarly, a shackle board (or bed) consists of a board (or bed) on which an individual is restrained by means of a multiplicity of restraints. Whilst the shackle bed is normally fixed, a shackle board is designed to enable the restrained individual to be carried, stretcher like.

These restraint devices pose a heightened risk of abuse, including torture and other ill-treatment, if the subject is left restrained and/or unattended for prolonged periods or whilst under influence of drugs or alcohol. If additional force is used on the restrained person e.g. employing pepper spray or electric-shock devices this could amount to torture.



Above: Image of “Emergency Restraint Chair” manufactured by U.S. company, Safety Restraint Chair, Inc.

In 2000, the United Nations Committee against Torture recommended to the U.S. that they should, “Abolish ...restraint chairs as methods of restraining those in custody. Their use almost invariably leads to breaches of article 16 of the Convention [the prohibition against cruel, inhuman or degrading treatment].”¹⁸⁷ Despite this recommendation, restraint chairs have continued to be widely used in the United States. In 2006, Amnesty International reported that, “At least 18 people have died in U.S. detention facilities after being immobilized in four-point restraint chairs, including several people who had also been pepper-sprayed and shocked with stun weapons.”¹⁸⁸

In 2009, Amnesty International documented how detainees on hunger strike in Guantanamo Bay, “Were alleged to have been subjected to cell extractions, force-feeding and the use of restraint chairs in ways which have amounted to excessive force and violations of the prohibition of torture and other ill-treatment.”¹⁸⁹

In June 2013, the UK newspaper, the *Daily Mail*, documented the continuing employment of restraint chairs as an intrinsic part of the practice of force-feeding at Guantanamo Bay.

“The U.S. military is still using the chair to cope with a hunger strike by 104 of the 166 prisoners which has lasted more than three months. Each day, up to 40 of them are strapped down and kept alive with a liquid nutrient mix fed through a nasal tube.”¹⁹⁰ In July 2014, the UK newspaper, The Guardian, detailed the continuing employment of a restraint chair in force-feeding at Guantanamo Bay.¹⁹¹

Images of the restraint chair used in force-feeding at Guantanamo Bay from both newspaper articles appear to be very similar if not identical to the “Emergency Restraint Chair” manufactured by the U.S. company, Safety Restraint Chair, Inc.¹⁹² Furthermore a 2006 New York Times article reported that Emergency Restraint Chairs had been sent to the Guantanamo Bay.¹⁹³ However to date this has not been confirmed by Safety Restraint Chair, Inc. The company has stated that:

“The **Safety Restraint Chair** is intended to help control combative, self destructive, or potentially violent detainees. If used properly it can reduce the risk of physical harm to both the detainee and staff. Violent behavior may mask dangerous medical conditions; therefore detainees must be monitored for and provided with medical treatment if needed. Detainees should not be left in the Safety Restraint Chair for more than two hours. The Safety Restraint Chair should never be used as a means of punishment.”¹⁹⁴

There do not appear to be any EU companies manufacturing restraint chairs. However there are indications that restraint chairs have previously been imported into the EU. According to Safety Restraint Chair Inc., “The restraint chair has been sold across the U.S., in Canada, and internationally in countries like Australia, New Zealand, **the Netherlands**, and South Korea.”¹⁹⁵ [Highlighted

¹⁸⁷ United Nations, Conclusions and Recommendations of the Committee against Torture: United States of America. 15/05/2000. CAT/C/24/6. (Concluding Observations/Comments), 24th Session, 1-9 May 2000.

¹⁸⁸ Amnesty International, United States of America: Briefing to the Human Rights Committee with respect to its review of the state party's combined second and third periodic report on the implementation of the International Covenant on Civil and Political Rights, February 2006, p.38.

¹⁸⁹ Amnesty International, USA: Detainees continue to bear costs of delay and lack of remedy, Minimal judicial review for Guantánamo detainees 10 months after Boumediene, 9 April 2009, AI Index: AMR 51/050/20.

¹⁹⁰ Leonard, T. Inside Guantanamo Bay: Horrifying pictures show the restraint chairs, feeding tubes and operating theatre used on inmates in terror prison, 27 June 2013, *Daily Mail*.

¹⁹¹ A nurse at Gitmo refuses to force feed any more prisoners. Others should too, Crider, C. The Guardian, 18 July 2014.

¹⁹² Safety Restraint Chair, Inc. website, <http://restraintchair.com/index.php> (accessed 14 May 2015).

¹⁹³ Tough U.S. Steps in Hunger Strike at Camp in Cuba, New York Times, 9 February 2006, <http://www.nytimes.com/2006/02/09/politics/09gitmo.html?pagewanted=all> (accessed 17 March 2015)

¹⁹⁴ Safety Restraint Chair, Inc. website, <http://restraintchair.com/safety-restraint-chair.php> (accessed 14 May 2015).

¹⁹⁵ Safety Restraint Chair, Inc. company information, <http://restraintchair.com/our-company.php> (accessed 14 May 2015).

for emphasis]. No further information is available regarding the quantity of restraint chairs imported into the Netherlands nor whether they were for use in the Netherlands and if so for what purpose, or whether they were intended for subsequent re-export. The chair manufactured by Safety Restraint Chair Inc., has been promoted for sale by a range of companies in the U.S. and elsewhere, including the EU-based company, De Ridder Products, which has offices in Belgium, France, Germany and the Netherlands.¹⁹⁶

On 29 April 2015, in response to an information request from Amnesty International and Omega, De Ridder stated:

"De Ridder Products is a company that has the vision to become a European Detention Supplier and to make staying in a prison or police cell a safe place for inmates and staff of the detention centers. On our search to new products we are always looking for good, safe and innovative products that are in line with our vision.

*After reading your report we have decided to delete the mentioned chair out of our assortment and we have also removed it from our website. After taking everything in consideration we come to the conclusion that this product does not match our vision on safety for the prisoners when used wrongly."*¹⁹⁷

This important statement from De Ridder is welcomed by Amnesty International and Omega. The recognition by the company that the Safety Restraint Chair (which employs fabric straps) can be misused underlines the need for such chairs to be controlled under the Regulation.

In addition to restraint chairs employing fabric or leather straps, other forms of restraint chair manufactured by non-EU companies utilise handcuffs, leg-cuffs or other metal restraints.

Amnesty International and Omega have previously uncovered evidence of the promotion of such restraint chairs by non-EU companies at EU arms and security fairs and exhibitions in 2011.¹⁹⁸

The European Commission has recognised that 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."*¹⁹⁹ However, the Commission also argued that chairs, boards and beds, *"Fitted exclusively with straps 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."*²⁰⁰

Consequently, in July 2014, the Commission added restraint chairs, shackle boards and shackle beds to the list of prohibited goods under the Regulation. However, *"chairs fitted with straps"* and *"boards and beds fitted with straps"* were specifically excluded from such prohibitions, and are not currently controlled at all under the Regulation.²⁰¹

Amnesty International and Omega believe these exemptions have introduced a serious loophole into the control regime and consequently allow the uncontrolled transfer of such restraint chairs, boards and beds into or from the EU. This loophole needs to be urgently addressed.

Amnesty International and Omega Recommendation: Amnesty International and Omega recognise that the employment of certain restraint devices utilising fabric straps for short periods may be justified to prevent agitated patients from harming themselves or others. We believe that the trade in devices for such limited purposes must be explicitly defined to ensure they are not employed for ill-treatment and torture.

¹⁹⁶ De Ridder Products, http://www.deridderproducts.com/index.php?route=product/product&product_id=1336 (accessed 13 February 2015). As stated in its response to Amnesty International and Omega, De Ridder has subsequently removed all details of the safety restraint chair from its website.

¹⁹⁷ Email correspondence from representative of De Ridder Products, 29 April 2015.

¹⁹⁸ No more delays: putting an end to the EU trade in "tools of torture", ACT 30/06/2012, Amnesty International & Omega Research Foundation.

¹⁹⁹ European Commission, Commission Implementing Regulation (EU) No 775/2014 of 16 July 2014

²⁰⁰ European Commission, Commission Implementing Regulation (EU) No 775/2014 of 16 July 2014

²⁰¹ European Commission, Commission Implementing Regulation (EU) No 775/2014 of 16 July 2014

Consequently, we recommend that the current prohibition on the trade in restraint chairs, boards and beds be retained, but that the existing explanatory notes should be removed. Furthermore, we recommend that, *"chairs, boards and beds" that are "fitted with straps"* should be controlled items under Annex III of the Regulation.

LONG-RANGE ACOUSTIC DEVICES

A range of acoustic devices have been developed and marketed for long range communication. They produce high volume sounds at various frequencies, with limited ability to target the sound to an individual or group. Currently, some of the most commonly deployed models are the different varieties of the Long Range Acoustic Device (LRAD), manufactured by the LRAD Corporation.²⁰²

The LRAD can potentially be employed in a variety of situations by a number of different end-users. It is reported to have been used by U.S. military forces in Afghanistan and Iraq,²⁰³ and to repel pirates off the coast of Somalia.²⁰⁴ In a July 2013 *"white paper"*, the LRAD Corporation has stated that, *"LRAD systems are being safely used in more than 60 countries around the world,"* among those end-users specifically highlighted were the police forces of Australia, Canada, Colombia, Georgia, Germany, India, Israel, Morocco, the Netherlands, Oman, Poland, Saudi Arabia, Senegal, Spain and Turkey. In addition, the company stated that LRAD has been employed in Iraq, *"to communicate in villages and push back crowds"*; in Kazakhstan by the army for crowd control; and the device has also been deployed on military trucks in Turkmenistan for border security and infrastructure protection.²⁰⁵

A number of EU companies have promoted LRAD. For example the Spanish company, Technorobot has a webpage devoted to LRAD products. It states that, *"LRAD has two main functions; communicate over long range distances (up to 3000 meters) clearly, but we can also define LRAD device as a "NON- LETHAL acoustic weapon." The acoustic output power can reach more than 150 decibels so it allows us to solve or deter some particular situations without using the force."*²⁰⁶ The company also highlights past promotion of LRAD at Milipol 2009, Milipol 2011 and during demonstrations of its products to the Spanish and Portuguese police in 2010.²⁰⁷

In addition, a Polish company, Delta sp.j.,²⁰⁸ has marketed LRAD for use in security or law enforcement and a UK company has marketed LRAD primarily for maritime communication.²⁰⁹ LRAD has been acquired and deployed by the Polish police force²¹⁰ and the UK Royal Marines.²¹¹

In October 2014, Amnesty International raised concerns regarding the inappropriate use of LRAD by St Louis police force in response to wide spread public disorder in Ferguson, Missouri, following the fatal shooting of an 18-year old unarmed African American teenager by a white police officer. According to a report by Amnesty International USA,²¹² on the night of 18 August 2014, at approxi-

²⁰² "The Global Leader in Long Range Acoustic Hailing Devices" <http://www.lradx.com>.

²⁰³ Bradford Non-Lethal Weapons Research Project, Research Report No. 8. Bradford: Department of Peace Studies, University of Bradford 2006.

²⁰⁴ 'I beat pirates with a hose and sonic cannon, BBC News Channel, 17 May 2007, <http://news.bbc.co.uk/1/hi/uk/6664677.stm> (accessed 5 March 2015); Is There a Sound Defense Against the Somali Pirates? Time, Thompson, M. 19 November 2009 <http://content.time.com/time/world/article/0,8599,1940536,00.html> (accessed 5 March 2015).

²⁰⁵ LRAD Corporation, White Paper, LRAD – humanely resolving public safety situations and saving lives, July 2013, http://www.lradx.com/pdf/LRAD_whitepaper_Humanely_Resolving_Public_Safety_Situations.pdf (accessed 14 May 2015).

²⁰⁶ Technorobot: Technological and Robotics Systems, LRAD, available at: <http://www.technorobot.eu/en/lrad.htm> (accessed 14 May 2015).

²⁰⁷ Technorobot: Technological and Robotics Systems, Media/events, available at: <http://www.technorobot.eu/en/media.htm> (accessed 14 May 2015).

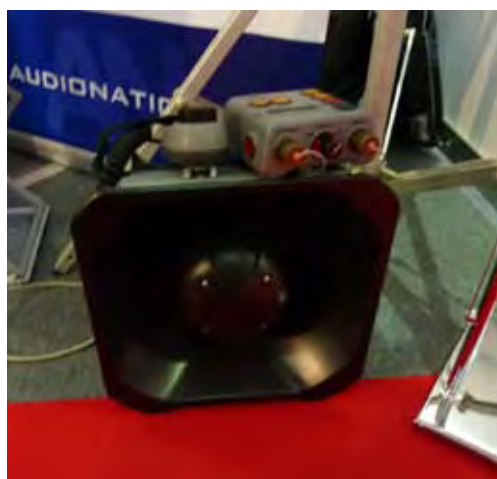
²⁰⁸ The Polish company, Delta sp.j. on its company website states that: "Delta offers a unique acoustic device LRAD (Long Range Acoustic Device). This is mobile or stationary mounting & remotely operated mega-source of long range sound. LRAD provide sending messages, combat and warning signals as well as appeals for the distance up to even 1 km in the form of concentrated beam of acoustic wave!" [Emphasis added] http://www.delta-av.com.pl/strona.lrad_technology.88.0.88.html (accessed 14 May 2015).

²⁰⁹ Audionation-UK, LRAD Acoustic Hailing Device, <http://antactical.com/product-category/tactical/lrad/> (accessed 14 May 2015). In email correspondence to Amnesty International and Omega, the company stated that: "Audionation-UK as an appointed UK dealer for LRAD Corporation, supplies systems only in accordance to manufacturer's recommendations. Primary business is to the Marine Security Industry for long range communications only...This effective means of communication poses no danger to operator nor target, just clear verbal messages that commands appropriate action or responses during maritime vessel movements." [Email received from Sales Director, Audionation-UK, 28 April 2014].

²¹⁰ Poland's Anti-Hooligan Police Ready for Euro 2012 Troublemakers, Krakow Post, 7 June 2012, <http://www.krakowpost.com/article/5209> (accessed 4 February 2015); The super-sized loudspeaker Poland hopes will blast away brawling hooligans, Daily Mail, 8 May 2012, <http://www.dailymail.co.uk/news/article-2141299/The-supersized-loudspeaker-Poland-hopes-blast-away-brawling-hooligans.html#ixzz3Qm7G8ffY> (accessed 4 February 2015).

²¹¹ BBC News, Sonic device deployed in London during Olympics, 12 May 2012, <http://www.bbc.co.uk/news/uk-england-london-18042528> (accessed 4 February 2015).

²¹² On the Streets of America: Human Rights Abuses in Ferguson, Amnesty International USA Section, 24 October 2014.



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Left: LRAD-RX, Right: portable LRAD

mately 10:00 p.m., following the reported throwing of bottles at police and the refusal of a group of protesters to move away from the police line, law enforcement personnel activated a LRAD that was mounted on top of an armoured truck at the intersection of W. Florissant and Ferguson Avenues.²¹³ The LRAD was pointed at a group of stationary protestors on the street approximately 15 feet away. Law enforcement personnel gave no warning to protesters that an LRAD would be used. After providing earplugs to a member of Amnesty International, a St. Louis County police officer said, *"This noise will make you sick."* Certain members of the media and observers who were about the same distance from the device as the targets reported feeling nauseous from the noise of the LRAD until it was turned off at approximately 10:15 p.m.²¹⁴

Amnesty International further stated that, *"Used at close range, loud volume and/or excessive lengths of time, LRADs can pose a serious health risk which range from temporary pain, loss of balance and eardrum rupture, to permanent hearing damage. LRADs also target people relatively indiscriminately, and can have markedly different effects on different individuals and in different environments... Further research into the use of LRADs for law enforcement is urgently needed."*²¹⁵

The LRAD Corporation has subsequently contested the concerns raised by Amnesty International, stating that, *"LRAD broadcast levels are purposely kept below the threshold that could cause permanent hearing damage from instantaneous exposure. When activated at close range, people experience audible discomfort and cover their ears or move away. Just the act of covering the ears with hands reduces the sound pressure level (SPL) by approximately 25 decibels. By covering their ears, the maximum SPL protestors or members of Amnesty International's delegation could have been exposed to would've been approximately 95 decibels, 10 decibels less than an MP3 player at maximum volume."*²¹⁶

At least one U.S. city, Pittsburgh, has previously been sued by a claimant for alleged hearing loss caused by exposure to an LRAD.²¹⁷ In 2010 a Canadian court limited the use of a sound cannon by the Toronto Police Department prior to that year's G-20 summit in that city, due to concerns about the lack of training received by law enforcement on its use and the lack of studies on its effects.²¹⁸

²¹³ Amnesty International USA Section (24 October 2014) op.cit., p.14.

²¹⁴ Amnesty International USA Section, (24 October 2014) op.cit., p.14.

²¹⁵ Amnesty International USA Section (24 October 2014) op.cit., p.14.

²¹⁶ LRAD Response to the Amnesty International 24 October 2014 report 'On the Streets of America: Human Rights Abuses in Ferguson', 29 October 2014.

²¹⁷ ACLU of Pennsylvania, City of Pittsburgh Settles G-20 Lawsuits, Press release, 14 November 2012, available at <http://www.aclupa.org/news/2012/11/14/city-pittsburgh-settles-g-20-lawsuits> (accessed 1 February 2015). The case was brought by an academic who claimed to have suffered hearing loss as a result of LRAD use against her and others protesting at the time of the G20 summit in September 2009. The case was reportedly settled out of court with the city of Pittsburgh paying the professor \$72,000 but not accepting liability. See: Bowling, B. Pittsburgh to pay researcher who suffered hearing loss during G-20 summit, *Tribe Live*, 14 November 2012, <http://tribelive.com/home/2957914-74/summit-police-protesters-agreed-lawsuit-settle-pay-civil-claims-lrad#axzz3QfulrDoS> (accessed 6 February 2015).

²¹⁸ CCLA v. Toronto Police Service, 2010 ONSC 3525, 25 June 2010, and report by the Canadian Civil Liberties Association, 'CCLA welcomes court ruling further restricting LRAD use', 25 June 2010.

OTHER ACOUSTIC DEVICES

Although LRAD is currently the most widely deployed acoustic device by police forces, at least two European companies promote (and apparently manufacture) alternative acoustic devices which have been promoted for use by law enforcement personnel.

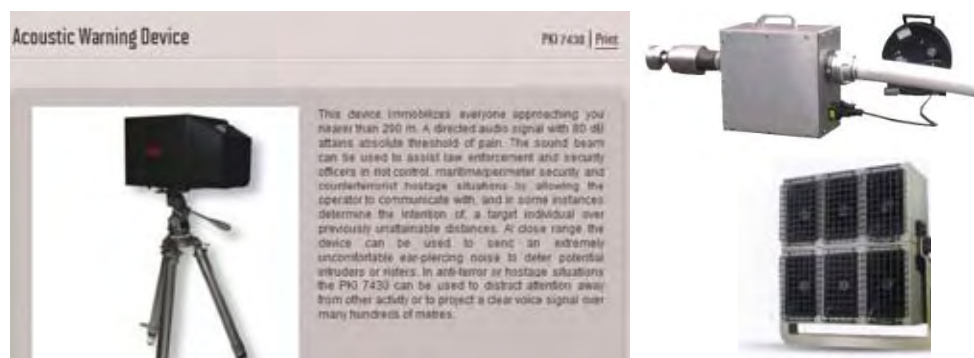
The “police, customs and military equipment” section of the product catalogue for German company PKI Electronic Intelligence GmbH, includes the “Acoustic Warning Device”. The company material highlights the range of potential law enforcement and security applications of the device including, “riot control, maritime/perimeter security and counterterrorist hostage situations.”²¹⁹

As well as facilitating communication to targets over distances, the material also states that, “This device immobilizes everyone approaching you nearer than 200 m. A directed audio signal with 80 dB attains absolute threshold of pain... At close range the device can be used to send an extremely uncomfortable ear-piercing noise to deter potential intruders or rioters...” According to the company information, the device has a “maximum continuous output” of “148 dB SPL at 1 meter.”²²⁰

A second German company, Hugin Group International, manufactures and promotes the Distance-Acoustic Defence System, “Herbertzhorn”. The system can be configured as a mobile system and has been marketed for attachment to both military and police vehicles. According to the company's marketing materials, the “Herbertzhorn” can fulfil a variety of functions including the, “cancellation, interruption and hindering of violent action sequences by...creating disorientation, confusion and distraction.” The “Herbertzhorn” can generate a “sound pressure level: up to 188 dB.”²²¹ In addition a portable Herbertzhorn has been developed for application in “amok and hostage situations.”²²²

PKI's “Acoustic Warning Device” and HGI's “Herbertzhorn” raise some concerns as the sound levels produced by both apparently exceed the threshold of pain in humans (140dB) and are above the threshold for potential hearing damage (120dB).²²³

In addition to acoustic devices manufactured and/or promoted by EU companies, acoustic devices have also been marketed by non-EU companies to law enforcement agencies at EU arms and security exhibitions. For example the Israeli company, Tar Ideal, distributed materials promoting its “Acoustic Non Lethal System” at the Eurosatory 2014 exhibition held in Paris, France between 16-20 June 2014 (see above).



Above: Image of “Acoustic Warning Device” taken from PKI brochure; Top right: image of “Acoustic Non Lethal System” taken from Tar Ideal brochure; Bottom right: image of “herbertzhorn” taken from HGI brochure.

²¹⁹ PKI, Anti-Terror Equipment, Acoustic Warning Device, PKI 7430, <http://www.pki-electronic.com/products/police-customs-and-military-equipment/acoustic-warning-device/> (accessed 14 May 2015).

²²⁰ PKI, Anti-Terror Equipment, Acoustic Warning Device, PKI 7430, <http://www.pki-electronic.com/products/police-customs-and-military-equipment/acoustic-warning-device/> (accessed 15th April 2015). It should be noted that although the company itself states that the device “attains the absolute threshold of pain” at 80db, the technical literature indicates that the pain threshold is normally around 140dB.

²²¹ Hugin Group International, The “HERBERTZHORN” A world's first distance acoustic defence system” “Swap Body System - SBS - for police and military, available from: http://www.huegin.de/fileadmin/user_upload/PDF_s/Herbertzhorn_information_sheet_SBS_Swap_Body_System.pdf (accessed 15 April 2015).

²²² Hugin Group International, <http://www.huegin.de/en/products/distance-acoustic-defence-system-herbertzhorn/portable-police-version/> (accessed 14 May 2015).

²²³ Altmann, J. (2001), Acoustic Weapons - A Prospective Assessment. Science & Global Security, Volume 9 pp 165-234, 2001 Taylor and Francis <http://scienceandglobalsecurity.org/archive/sgs09altmann.pdf> (accessed 16 March 2012).

Amnesty International and Omega Recommendation: As certain acoustic devices appear to be promoted in part to enforce compliance in an individual or group through the application of a painful stimulus, such devices could be misused for ill-treatment, some potentially on a large scale. Consequently, controlling the trade in such devices would come within the object and purpose of EC Regulation 125/2006 and such goods should therefore be added to Annex III.

MILLIMETRE WAVE WEAPONS

Millimetre wave weapons are a class of directed energy weapons designed to heat the skin and thereby enforce compliance through pain in the target. The best known of these devices is the Active Denial System (ADS) developed in the U.S. by a team of researchers from the air force and private contractors over the last 20 years.²²⁴

Although Raytheon, the current manufacturers of ADS, claims it is safe,²²⁵ potentially serious medical effects have been reported. The system is designed to produce nothing more than pain, or possibly short term redness of the skin or blistering.²²⁶ However, the difference between a painful exposure and a potentially damaging exposure has been contested. And a longer exposure, especially one at higher power could potentially lead to second or third degree burns. If such burns were to occur over 20% or more of the body area they could potentially become life threatening and require specialist burns treatment.²²⁷ At least one serious exposure was reported during official testing.²²⁸

Original versions of the ADS were large vehicle-mounted weapons either on a Humvee or flat-bed truck and promoted for use in the open air. Raytheon has subsequently developed a range of smaller devices with potential applicability for indoor as well as outdoor employment.

In 2010, it was reported that a smaller version of the ADS, manufactured by Raytheon and referred to as a “7½ foot tall Assault Intervention Device,” was due to be installed in a dormitory at Pitchess Detention Center in Los Angeles County as part of a trial by the National Institute of Justice (NIJ).²²⁹ In February 2011, it was announced that the NIJ would review the trial further before



Left: Silent Guardian, and Right the Silent Guardian SG-R50 taken from Raytheon publications

²²⁴ Research on millimetre wave devices began in the early 1990s. Raytheon is the prime contractor for system integration for the Active Denial System.

²²⁵ According to Raytheon, “Substantial government testing has been conducted to characterize the effects of millimeter waves on the human body. These tests have confirmed the technology’s safety and have established there is a significant margin between safe and harmful exposure levels.” See: Silent Guardian™ Protection System Less-than-Lethal Directed Energy Protection, Raytheon marketing material, <http://www.atmarine.fi/ckfinder/userfiles/files/Silent%20Guardian%20Protection%20System%281%29.pdf> (accessed 14 May 2015).

²²⁶ JNLWP (Joint Non-Lethal Weapons Program) Active Denial System Frequently Asked Questions, <http://jnlwp.defense.gov/About/FrequentlyAskedQuestions/ActiveDenialSystemFAQs.aspx> accessed 13 November 2013.

²²⁷ Altman, J (2008) Millimetre Waves, Lasers, Acoustics for Non Lethal Weapons? Physics Analyses and Inferences, <http://www.bundesstiftung-friedensforschung.de/pdf-docs/berichtaltmann2.pdf> accessed 16 March 2012.

²²⁸ Osborn, K (2007) Airman Injured in Heat Beam Test, Army Times, 5 April 2007 http://www.armytimes.com/news/2007/04/defense_burnedairman_070405/ accessed 16 March 2012.

²²⁹ Lin, CJ (2010) Authorities at Castaic Jail Poised to Use Assault Intervention Device, The Daily News, 20 August 2010 http://www.dailynews.com/ci_15845458 accessed 16 March 2012; Zapping Inmates To Control Them: Harmless Or Torture? National Public Radio, 10th September 2010, available at: <http://www.npr.org/templates/story/story.php?storyId=129630188> (accessed 15 April 2015).

commencing,²³⁰ and in 2013, the *New Scientist* reported that the pilot project was cancelled due in part to public opposition and concerns about the potential for abuse of the technology. It was also reportedly determined that the technology needed further evaluation before moving forward.²³¹

Further research and development of this technology appears to have taken place, for example in May 2012, Raytheon, “*For the first time anywhere*” displayed and demonstrated, “*its entire suite of non-lethal Silent Guardian® systems at the 2012 SOFEX trade show*” in Jordan.²³² To date, at least one EU company, AT-Marine Oy²³³ which is based in Finland, has sought to market these devices. According to the Raytheon marketing material on the AT-Marine Oy website, Silent Guardian has, “*Various applications for **law enforcement**, facility protection and homeland security.*”²³⁴ [Emphasis added].

The Raytheon brochure states that:

*“The system’s antenna emits a focused beam of millimeter wave energy. The beam travels at the speed of light and penetrates the skin to a depth of 1/64 of an inch, **producing an intolerable heating sensation that causes the targeted individuals to instinctively flee or take cover.** The sensation ceases immediately when an individual moves out of the beam or the operator steers the beam away.”*²³⁵ It also states that, “*Silent Guardian does not cause injury because of the shallow penetration depth of the millimeter wave.*”²³⁶ [Emphasis added].

In addition to the original Silent Guardian, Raytheon has also developed the Silent Guardian SG-R50 which is described as a “*point defense short-range deterrent.*”²³⁷ According to Raytheon material promoted on the AT-Marine Oy website, “*Silent Guardian SG-R50 can be used at sea or on land for commercial high-value asset and personnel protection, industrial security, **and law enforcement and corrections.***”²³⁸ [Emphasis added].

On 28 April 2015, in response to an information request from Amnesty International and Omega, AT-Marine Oy stated, “*We have not marketed... the ADS system in Finland for many years because there was no interest for it ... unfortunately we forgot to remove all text ... from our website. Now we have removed all Silent Guardian material from our website.*”²³⁹

Amnesty International and Omega Recommendations: Amnesty International and Omega have concerns about the potential use of Silent Guardian and related ADS technology, particularly if it were to be employed for law enforcement purposes or in a correctional setting. Whilst some testing of ADS has been reported, a full, open and transparent testing and evaluation regime is needed to allay such concerns. Although the ADS is targetable and in certain smaller models the beam can be focused down on to a spot on an individual, the beam can also be widened resulting in either full body exposure, the targeting of more than one person at a time, or the targeting, in larger models, of a crowd indiscriminately. Such indiscriminate force would be contrary to Article 3 of the Basic Principles on the Use of Force & Firearms by Law Enforcement Officials. Such concerns are exacerbated as the directed energy beam is silent and invisible making avoidance difficult. Consequently the target or targets may not be able to escape the effects of the beam, either because they are restricted or confined in a crowd or by physical structures.

Furthermore, as the device is specifically designed to enforce compliance in an individual or group through the application of a painful (though allegedly non-harmful) stimulus, the device could be misused for ill-treatment or torture, potentially on a large scale. Consequently, controlling the trade

²³⁰ Hadhazy, A (2011) America's Prisoners: Should we shoot them with a giant Ray Gun? The Christian Science Monitor, 3 February 2011 <http://www.csmonitor.com/Science/2011/0203/America-s-prisoners-Should-we-shoot-them-with-a-giant-ray-gun> accessed 16 March 2012.

²³¹ Pain ray: The US military's new agony beam weapon, *New Scientist*, Issue 2916, Hambling, D. 16th May 2013; See also: Less-than-Lethal Active Denial Systems, *Correctional News*, 26th February 2014. Available at: <http://www.correctionalnews.com/articles/2014/02/26/less-lethal-active-denial-systems> (accessed 27 April 2015).

²³² Raytheon (2012) Raytheon Unveils Family of Non-Lethal Solutions at SOFEX, <http://www.icn.com/en/pressreleases/2012/05/08/Raytheon-unveils-nonlethal-solutions/> (accessed 4 February 2015).

²³³ According to its website: “AT-Marine Oy imports and exports technical equipment and systems for both marine and industrial use and provides engineering, installation and service for these equipment and systems,” <http://www.atmarine.fi/index.php?id=2> (accessed 14 May 2015).

²³⁴ Silent Guardian Protection System, Raytheon, undated, available from: <http://www.atmarine.fi/ckfinder/userfiles/files/Silent%20Guardian%20Protection%20System%281%29.pdf> (accessed 14 May 2015).

²³⁵ Silent Guardian Protection System, Raytheon (undated) op.cit.

²³⁶ Silent Guardian Protection System, Raytheon (undated) op.cit.

²³⁷ Silent Guardian SG-R50 Raytheon, undated, available from: <http://www.atmarine.fi/ckfinder/userfiles/files/Silent%20Guardian%20SG-R50.pdf> (accessed 14 May 2015).

²³⁸ Silent Guardian SG-R50, Raytheon (undated) op.cit.

²³⁹ Email correspondence from Managing Director, AT-Marine Oy, 28 April 2015.

in such devices would come within the object and purpose of EC Regulation 1236/2005 and such goods should therefore be added to Annex III.

REVIEW OF MEMBER STATE IMPLEMENTATION OF THE REGULATION

In addition to ensuring that the Regulation and the attendant control regime are evolving to meet changes in security equipment development and patterns of (mis)use, a regular and comprehensive review mechanism (as proposed by Amnesty International and Omega) should also monitor Member State implementation of the Regulation and specifically analyse Member State licensing activities for goods covered under the scope of the Regulation.

Article 6 of the Regulation obliges Member States to regulate the export of controlled items, and to deny authorizations for exports of such items, *"When there are reasonable grounds to believe that goods listed in Annex III might be used for torture or other cruel, inhuman or degrading treatment or punishment."*

Under Article 6.1:

"[d]ecisions on applications for authorization for the export of goods listed in Annex III shall be taken by the competent authority on a case by case basis, taking into account all relevant considerations, including in particular, whether an application for authorization of an essentially identical export has been dismissed by another Member State in the preceding three years."

Full information about all licences granted and denied under the Regulation across the EU is not publicly available. However, certain States do provide public information on licensing activities.²⁴⁰ Some of this data raises serious concerns that certain Member States are not consistently assessing the risk that items covered by the Regulation may be misused for torture or other ill-treatment in specific recipient States, as required by Article 6 of the Regulation. Certain Member States (such as the Czech Republic) have granted export licences for particular categories of goods to a number of countries where the same category of goods appear to have been used for torture and other ill-treatment, according to recent reports by Amnesty International and other human rights organisations. These concerns cannot be confirmed or allayed without further information regarding the intended end-user of the items in each case: information which is also not systematically available.

²⁴⁰ For further discussion see: Amnesty International & Omega Research Foundation, Europe: From words to deeds: Making the EU ban on the trade in 'tools of torture' a reality", EUR 01/004/2010, 17 March 2010.

CASE STUDY: CZECH REPUBLIC LICENCES OF CONCERN GRANTED DURING 2013 AND 2012²⁴¹

Destination country	Number of licenses granted and year	Equipment	Reports of torture or other cruel, inhuman or degrading treatment or punishment in destination countries
Angola	1 (2013)	Electric Shock and Pepper Spray	"On 25 May [2011] there was a large police presence at the Independence Square in Luanda, where the demonstration was to be held, including helicopters overhead. One participant later told Amnesty International delegates that there were about 300 demonstrators in the area and police ordered them to disperse stating that it was for public security reasons....Neither the Provincial Governor nor the police authorities provided the organisers with any written document justifying the refusal to allow the demonstration. Nevertheless police reportedly used batons, Tasers and dogs in attempt to disperse them." (Page 11) Source: Amnesty International, Punishing Dissent Suppression of freedom of association and assembly in Angola, AFR 12/004/2014 http://www.amnesty.org/en/library/asset/AFR12/004/2014/en/64333e0d-bc42-4fd5-855a-90e53ef03d07/af120042014en.pdf
Bosnia and Herzegovina	2 (2013) 1 (2012)	Electric Shock and Pepper Spray Combined shackles and handcuffs	"The delegation again received a considerable number of detailed, coherent and consistent allegations of serious physical ill-treatment by the police and other law enforcement officials in the Republika Srpska. The alleged ill-treatment mostly took the form of slaps, punches and kicks as well as blows with hard objects (such as baseball bats) to various parts of the body. Several consistent allegations of the use of small hand-held electroshock devices during interrogations were also received. Further, detailed allegations were received of handcuffing in stress positions for hours on end and of the placing of plastic bags over the heads of suspects. Several persons stated that they had been subjected to a mock execution with a pistol pointed at their temple and the trigger pulled or they had had the barrel of a pistol inserted into their mouth. A number of allegations of verbal abuse and threats by police officers were also heard. The majority of allegations concerned the time when suspects were being questioned by crime inspectors, prior to being transferred to the prosecutor's offices." Source: Report to the Government of Bosnia and Herzegovina on the visit to Bosnia and Herzegovina carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 11 December 2012, Strasbourg, 12 September 2013 http://www.cpt.coe.int/documents/bih/2013-25-inf-eng.htm#_Toc352674911

²⁴¹ Information taken from Czech Republic, Ministry of Trade web site: Licences granted during 2013, <http://www.mpo.cz/dokument54368.html> (accessed 12 February 2015), Licences granted during 2012, <http://download.mpo.cz/get/32380/57018/611606/priloha005.pdf> (accessed 12 February 2015).

Destination country	Number of licenses granted and year	Equipment	Reports of torture or other cruel, inhuman or degrading treatment or punishment in destination countries
Democratic Republic of the Congo	1 (2013)	Electric Shock	<i>"Electric shocks were administered in two cases and two other women reported the use of asphyxiation techniques, including the submersion of the head into a toilet and/or partial strangulation."</i> Source: Freedom from Torture, submission to the Committee on the Elimination of Discrimination against Women for its examination of the Democratic Republic of the Congo (DRC), July 2013, Torture of women in the DRC 2006-2011 http://www.freedomfromtorture.org/sites/default/files/documents/freedom_from_torture_submission_for_cedaws_examination_of_the_drc_july_2013.pdf "Congolese human rights defenders and a lawyer confirmed that detainees are not given access to lawyers during their imprisonment. Returnees reported the following ill treatment in prison: • Handcuffed, blindfolded and severely beaten: 1/15 • Severely beaten: 6/15 • Electric shock treatment: 2/15 • Sexual abuse: 2/10 men • Rape: 2/5 women • Slaps and blows with hand/fist: 2/5 women" "The Institute for War and Peace Reporting (2 July 2009) states that the Centre de Droits de L'homme reported the arrest of a man in Lubumbashi, <i>"because he had criticised DRC President Joseph Kabila."</i> He was accused of the offence of offending the Head of State. <i>"I was severely tortured, flogged, then plugged to electrical power, and I underwent strangulation of my genitals for the whole night of March 16, by ANR agents."</i> Source: Justice First, Unsafe Return, Refoulement of Congolese Asylum Seekers, A report compiled by Catherine Ramos, 24 November 2011 http://justicefirst.org.uk/wp-content/uploads/UNSAFE-RE-TURN-DECEMBER-5TH-2011.pdf
Turkey	1 (2013)	Electric shock and pepper spray	Wide spread misuse of tear gas and pepper spray by Turkish law enforcement officials against demonstrators taking part in the Gezi Park protests during May-June 2013 was documented by Amnesty International. <i>"Hand held pepper spray devices were frequently used against peaceful protestors in a manner that is inappropriate and abusive. Individuals told Amnesty International that police officers sprayed pepper spray in their eyes as a punishment when they were apprehended at the scene of demonstrations."</i> Source: Turkey: Gezi Park protests: Brutal denial of the right to peaceful assembly in Turkey, Amnesty International, 2 October 2013, EUR 44/022/2013

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Destination country	Number of licenses granted and year	Equipment	Reports of torture or other cruel, inhuman or degrading treatment or punishment in destination countries
United Arab Emirates	1 (2012)	Electric shock and pepper spray	<i>Abdulla al-Hajri, was, "arrested by State Security officers on 16 July 2012, together with his brother-in-law, Rashid Mohammed al-Roken, and was then detained incommunicado and in solitary confinement at an undisclosed location for eight months. He has said that he was tortured and otherwise ill-treated by interrogators who beat him, forced him to sit in an electric chair and threatened to give him electric shocks if he did not "cooperate" and "confess" to what they dictated to him..."</i> Allegations of torture and other ill-treatment in pre-trial detention were made by some of the Egyptians accused in the trial of 10 UAE nationals and 20 Egyptians that began before the State Security Chamber of the Federal Supreme Court on 5 November 2013. <i>"In handwritten letters handed to a defence lawyer in September 2013 after they had been moved out of secret detention and into al-Wathba Prison in Abu Dhabi, seven of the Egyptian detainees described the torture and ill-treatment to which they had been subjected by the State Security in secret detention. They said they had been beaten on their heads and all over their bodies with a wooden stick; forced to sit in an electric chair and subjected to electric shock to different parts of their bodies..."</i> Source: "There is no freedom here" Silencing dissent in the United Arab Emirates (UAE), Amnesty International, MDE 25/018/2014, November 2014

Amnesty International and Omega Recommendations:

The January 2014 Commission Proposal incorporates a mechanism for Member States to, "address a duly substantiated request to the Commission to add goods designed or marketed for law enforcement to Annex II, Annex III or Annex IIIa."²⁴² Whilst Amnesty International and Omega support the introduction of a procedure to amend the Annexes on a case by case basis, as the need arises, we contend that this limited and ad hoc mechanism needs to be supplemented by a formal review process that would enable the appropriate oversight structures to review the operation of the Regulation and its implementation by Member States in a comprehensive manner and at regular periods.

Amnesty International and Omega recommend that the current Article 15 and 16 of the Regulation should be either amended or replaced by Articles establishing a mechanism for a formal bi-annual review of the Regulation by the Commission in consultation with relevant structures of the Council and European Parliament. This review should specifically include analysis of:

- Annex II, Annex III and Annex IIIa to establish whether existing goods should be transferred to another Annex, or whether further goods designed or marketed for law enforcement should be added as appropriate;
- Implementation of the Regulation by Member States including national licensing decisions, reporting to the Commission, notification and consultation mechanisms amongst Member States, promulgation and enforcement.

An essential aspect of Regulation implementation is for all Member States to introduce rules imposing penalties on violators of the Regulation (as explicitly required by Article 17), and for those rules to be adequately enforced.²⁴³ Consequently, we recommend that the bi-annual review procedure

²⁴² European Commission Proposal (14 January 2014) op.cit., Article 12a, paragraph 1.

²⁴³ Article 17 of EC Regulation 1236/2005 provides, among other things, that, "Member States shall lay down the rules on penalties applicable to infringements of the provisions and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive."

should analyse the operation of the penalty regimes introduced by Member States, and assess whether such regimes are, “*effective, proportionate and dissuasive*”, in accordance with Article 17 of the Regulation. Where such penalty regimes, or their implementation, are deemed to be insufficient, the Commission should provide guidance and assistance to strengthen them.

Finally, appropriate mechanisms should also be established so that information and proposals related to the effectiveness of the Regulation can be received from civil society bodies with relevant expertise (e.g. industry, academia, arms control and human rights organisations) and be considered by the review structures. Furthermore, the potential involvement of the Group of Experts established in 2012 to assist the Commission in its previous review of the Regulation, should be considered.

CONCLUSION AND RECOMMENDATIONS

In 2006 the EU introduced the world's first multilateral trade controls to prohibit the international trade in equipment which has no practical use other than for the purposes of capital punishment, torture or other cruel, inhuman or degrading treatment or punishment; and to control the trade in a range of policing and security equipment misused for such violations of human rights. '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' (the Regulation) fills a major gap in human-rights-based export controls.

Given its importance, Amnesty International and the Omega Research Foundation have, since its introduction, closely monitored the Regulation's implementation by Member States, have highlighted limitations in the control regime, and have sought to provide constructive and realistic policy solutions to these problems.

Consequently, Amnesty International and Omega welcomed and fed into the Commission's comprehensive review of the Regulation and its operation; the first part of which resulted in Commission Implementing Regulation 775/2014 of July 2014 significantly expanding the range of goods controlled or prohibited under the Regulation.

In January 2014, following its review, the Commission presented proposals to the Council of Member States and the European Parliament for strengthening the Regulation's operative provisions. Amnesty International and Omega are supportive of many of the Commission's proposals which focus on long-standing limitations which the two organisations have previously highlighted – and recommend that these elements be adopted and implemented by Member States.

Whilst the Commission Proposals are a significant step forward, they fail to effectively address a number of serious weaknesses and loopholes in the Regulation and its attendant control regime. If these are not tackled directly now in this review process, as outlined in the recommendations below, this rare opportunity to comprehensively and effectively strengthen the control regime and close loopholes that can be exploited by unscrupulous traders will be missed. It is now time for the relevant stakeholders in the European Union particularly among Member States and in the European Parliament to ensure that the Regulation fully fulfils its potential and is used effectively to combat and hopefully end Europe's involvement in the trade in *"tools of torture and execution."*

RECOMMENDATIONS

BROKERING AND ASSOCIATED SERVICES

Amnesty International and Omega support the Commission proposals to introduce controls covering brokering activities undertaken from the EU by a legal or natural person or partnership resident or established within the EU. In addition, we recommend that the provisions should also specifically cover instances where:

- the brokering activity is conducted outside the EU by an EU registered company, EU national or resident of an EU Member State;
- the brokering activity is conducted outside the EU by a non-EU-based subsidiary of an EU company.

Amnesty International and Omega recommend that the scope of these provisions should also explicitly include, *"transportation, financial services, insurance or re-insurance, or general advertising or promotion"* services for Annex II goods and for Annex III and Annex IIIa where the agent knows or has grounds for suspecting that a transfer of such goods is or may be intended to be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment in a country that does not belong to the customs territory of the EU.

TRANSIT OF GOODS THROUGH THE EU

Amnesty International and Omega recommend that the Regulation be amended to remove the exemption for the transit of items falling under Annex III of the Regulation, and that this be replaced by a provision inserted to require specific transit authorization for all items listed in Annex III of the Regulation.

PROMOTION AND MARKETING OF REGULATION GOODS

Amnesty International and Omega recommend that the coverage of the Regulation is extended to prohibit the commercial marketing and promotion within the EU of Annex II items by EU and non-EU registered companies and individuals.

In addition to these changes to the Regulation, Amnesty International and Omega recommend that Member States should conduct appropriate promulgation activities so as to ensure that all companies promoting security equipment and also those companies organising trade fairs and other events where such equipment is promoted, are made aware of the Regulation and their obligations under it.

Furthermore, Member States should require organisers of trade fairs and similar promotional events to inform all potential exhibitors of the Regulation's restrictions, and undertake thorough screening and risk assessment of all potential exhibitors to determine the likelihood that they will trade in or promote equipment prohibited by the Regulation. Where a potential exhibitor poses a substantial risk of engaging in such activities the exhibitor should be denied permission to participate, and their details brought to the attention of the relevant national licensing authority.

TECHNICAL ASSISTANCE

The Regulation currently prohibits the provision of technical assistance related to Annex II goods. In order to remove ambiguity and to ensure effective and consistent implementation by all Member States, the definition of technical assistance should be amended to explicitly include training in the **use** of equipment covered by the Regulation.

Amnesty International and Omega support the Commission proposals to extend control of the provision of technical assistance to that relating to Annex III goods and recommend that these be adopted by Member States. In addition we recommend that this control explicitly incorporates training in the use of Annex III goods.

In addition, Amnesty International and Omega recommend the introduction of appropriate measures to control the supply of technical assistance including instruction, advice, training or the transmission of working knowledge or skills that could aid the commission of judicial executions or torture and other ill-treatment independently of the supply of any equipment falling under the scope of the Regulation.

PHARMACEUTICAL CHEMICALS THAT COULD BE USED FOR THE PURPOSE OF CAPITAL PUNISHMENT

Amnesty International and Omega believe that the Commission proposals are a proportionate and measured response to the risk – allowing effective regulation of the transfer of certain pharmaceutical chemicals that could be used in lethal injection protocols but which have a widespread medical utility - provided EU States establish effective reporting, monitoring and revocation provisions. However, the Commission Proposals as they are currently drafted, particularly Annex IIIa and IIIb, have certain limitations which should be addressed.

Following the introduction of the new control mechanism incorporating Union General Export Authorizations – as proposed by the Commission, Amnesty International and Omega recommend that the Commission consider amending the list of goods that could be used for the purpose of capital punishment (as listed in Annex IIIa) to include: hydromorphone, midazolam, pancuronium bromide, rocuronium bromide and vecuronium bromide. Given the rapidly evolving situation in the U.S. with a number of States actively exploring new lethal injection protocols, the range of toxic chemicals covered by this Regulation procedure should be regularly reviewed by the Commission and changes made to Annex IIIa as and when required.

Amnesty International and Omega recommend that individual EU Member States should be granted the authority to immediately suspend a specific transfer of a pharmaceutical chemical to a particular end user in a case where the Member State has evidence that the chemicals will be employed for inflicting the death penalty.

Amnesty International and Omega recommend that those countries presently on Annex IIIb and potentially covered by a Union General Export Authorization, despite retaining the death penalty in their legislation – namely Benin, Liberia, Madagascar and Mongolia – be excluded from this Annex.

HALTING INAPPROPRIATE EXPORTS, IN URGENT SITUATIONS, OF GOODS NOT LISTED IN THE REGULATION ANNEXES

Amnesty International and Omega recommend that the EU introduce the following complementary mechanisms allowing relevant bodies to halt inappropriate exports of goods not currently listed in the Regulation Annexes:

- Urgency procedures allowing the Commission to quickly amend the Regulation Annexes and thereby control or prohibit the transfer of certain goods, as detailed in the Commission Proposal of January 2014.
- A targeted end-use control mechanism which would require Member States to:
 - suspend or halt a specific transfer of relevant items that are covered under the scope of the Regulation but which are not currently listed in the Regulation Annexes, that clearly have no practical use other than for the purposes of capital punishment, torture and other ill-treatment or where there is evidence that the specific transfer of items would be used to carry out the death penalty, torture and other ill-treatment;
 - report such transfer suspensions to the Commission and for the Commission (in consultation with Member States) to determine whether such goods should be added to the relevant Regulation Annex and their trade controlled or prohibited.

REGULAR REVIEW OF THE REGULATION AND ITS IMPLEMENTATION BY MEMBER STATES

Amnesty International and Omega recommend that a mechanism be established for a formal bi-annual review of the Regulation by the Commission in consultation with relevant structures of the Commission, Council and European Parliament. This review should specifically include analysis of:

- Annex II, Annex III and Annex IIIa to establish whether existing goods should be transferred to another Annex, or whether further goods designed or marketed for law enforcement should be added as appropriate;
- Implementation of the Regulation by Member States including national licensing decisions, reporting to the Commission, notification and consultation mechanisms amongst Member States, promulgation and enforcement.



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GRASPING THE NETTLE: ENDING EUROPE'S TRADE IN EXECUTION AND TORTURE TECHNOLOGY

In 2006 the European Union (EU) introduced the world's first multilateral trade controls to prohibit the international trade in equipment which has no practical use other than for the purposes of executions, torture or other cruel, inhuman or degrading treatment or punishment; and to control the trade in a range of policing and security equipment misused for such violations of human rights, *'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'* (the Regulation).

In January 2014 the Commission presented proposals to the Council of Member States and the European Parliament for strengthening the Regulation. Whilst the Commission proposals focused on certain long-standing limitations, they failed to effectively address a number of crucial weaknesses and loopholes in the Regulation and its attendant control regime. If these issues are not tackled directly now by EU Member States and the European Parliament, this rare opportunity to comprehensively strengthen the control regime and close loopholes exploited by unscrupulous traders will be missed. It is now time for the European Union to "grasp the nettle" and end Europe's trade in execution and torture technology for good. This report, co-authored by Amnesty International and the Omega Research Foundation, is intended to inform this process by highlighting existing failings of the control regime through contemporary case studies and by providing realistic and workable policy solutions to these often complex technical issues.



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