



# WHY THE EU SHOULD BAN THE COMMERCIAL MARKETING AND PROMOTION OF INHUMANE POLICING AND PRISON EQUIPMENT

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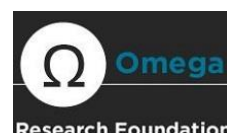
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**Cover photos:** (Top) Photograph of Le Protecteur-Scorpion-ATAM “American electric shock knuckler” displayed on Le Protecteur stand, Milipol 2015 © Robin Ballantyne/Omega Research Foundation. Amnesty International and Omega believe there is an inherent risk that the use of this device could result in cruel, inhuman or degrading treatment or punishment and that it should not be used in law enforcement. (Bottom) Weighted leg irons displayed at China Garments Co. Ltd stall, Milipol 2015 © Robin Ballantyne/Omega. Council Regulation (EC) No 1236/2005 prohibits the import and export of “Bar fetters, weighted leg restraints and gang chains comprising bar fetters or weighted leg restraints.”



# CONTENTS

<b>EXECUTIVE SUMMARY</b>	<b>4</b>
<b>INTRODUCTION</b>	<b>5</b>
<b>THE MARKETING AND PROMOTION OF PROHIBITED GOODS AT ARMS AND SECURITY EXHIBITIONS</b>	<b>7</b>
Thumbcuffs	8
Spiked batons	8
Spiked shields	9
Weighted restraints	10
<b>USE OF ARMS AND SECURITY EXHIBITIONS TO PROMOTE EQUIPMENT AND TECHNOLOGY THAT SHOULD BE BANNED</b>	<b>11</b>
Assaultive arm armour	11
Electroshock weapons	12
<b>PROMOTION OF PROHIBITED GOODS ON THE INTERNET</b>	<b>14</b>
Body worn electric shock devices	14
Fixed or weighted restraints	15
Thumbcuffs	16
<b>HOW TO ADDRESS THIS PROBLEM</b>	<b>17</b>
<b>APPENDIX</b>	<b>20</b>

# EXECUTIVE SUMMARY

This Briefing Paper is one of a number of publications by Amnesty International and the Omega Research Foundation (Omega) urging European Union (EU) member states and the European Commission to address weaknesses that remain in 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). Amnesty International and Omega have closely monitored the Regulation's implementation by member states since its introduction and made recommendations for policy solutions to address the remaining weaknesses in the law.

The law covering all of the 28 member states of the EU has two main objectives. First it is intended to prohibit exports and imports of equipment that has no practical use other than for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment. Second it imposes controls on exports of certain equipment that the EU considers could be used not only for the purpose of torture and other cruel, inhuman or degrading treatment or punishment, but also for legitimate law enforcement purposes. As a result of proposals based on research by Amnesty International and Omega, on 16 July 2014, the European Commission introduced Commission Implementing Regulation (EU) No. 775/2014, significantly expanding the lists of prohibited goods (Annex II) and controlled goods (Annex III) covered by the Regulation. These lists are reproduced in an annex to this Briefing Paper.

However, there are still no provisions in the Regulation requiring EU member states to prohibit the commercial promotion and marketing of prohibited goods (listed in Annex II of the Regulation). As illustrated by the cases outlined in this Briefing Paper, any company or individual within an EU member state's jurisdiction can market and promote equipment the practical use of which results in capital punishment, torture or other cruel, inhuman or degrading treatment or punishment. This is a major loophole that should be urgently closed in the Regulation. If the import or export of a product is prohibited, so should the publicizing or marketing of that product for such purposes.

Amnesty International and Omega are calling on the Council of the EU and the European Commission to agree to a specific proposal made by the European Parliament in October 2015 which makes the following amendment to the Regulation: "Online and offline commercial marketing and promotion activities within the Union, by any natural or legal person or partnership, for the purpose of the transfer of goods listed in Annex II shall be prohibited." Furthermore, Amnesty International and Omega recommend that member states should require organizers of trade fairs and similar promotional events to inform all potential exhibitors of the Regulation's prohibitions, and undertake thorough screening and risk assessment of all potential exhibitors.

# INTRODUCTION

The absolute ban on torture and other cruel, inhuman or degrading treatment (ill-treatment) enshrined in core United Nations human rights treaties is reflected at the EU level in the Charter of Fundamental Rights, which states that “no one shall be subjected to torture or to inhuman or degrading treatment or punishment”.<sup>1</sup> The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment requires each State Party to take effective measures to prevent torture and other ill-treatment and expressly stipulates that they must make complicity in torture a criminal offence.<sup>2</sup>

A key objective of the European Union (EU) 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) is to “ensure that Community economic operators do not derive any benefits from trade which either promotes or otherwise facilitates the implementation of policies on capital punishment, or on torture or other ill-treatment.”<sup>3</sup> Amongst its provisions, the Regulation aims to prohibit exports and imports of equipment to and from the EU, irrespective of the origin of such equipment, when the equipment has no practical use other than for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment. The Regulation also aims to prohibit the supply to ‘third countries’ outside the EU of technical assistance related to such prohibited goods. Moreover, it imposes controls on exports of certain goods that the EU considers could be used not only for the purpose of torture and other cruel, inhuman or degrading treatment or punishment, but also for legitimate law enforcement purposes. On 16 July 2014, the European Commission introduced Commission Implementing Regulation (EU) No. 775/2014, significantly expanding the lists of prohibited goods (Annex II) and controlled goods (Annex III) covered by the Regulation.<sup>4</sup>

However, there are still no provisions in the Regulation requiring EU member states to prohibit the commercial promotion and marketing by any company or individual within an EU member state’s jurisdiction of prohibited goods (listed in Annex II of the Regulation). This is a major loophole that should be urgently closed in the Regulation. If the sale or trade of a product is prohibited, so should the publicizing or marketing of that product.

Amnesty International and the Omega Research Foundation (Omega) have closely monitored the Regulation’s implementation by member states since its introduction and have highlighted limitations in the control regime and made recommendations for policy solutions to address the problems. In January 2014, following its review, the Commission presented proposals to the Council and the European Parliament to strengthen the Regulation’s operative provisions. Whilst the Commission Proposals are a significant step forward, they fail to effectively address a number of serious weaknesses and loopholes.<sup>5</sup> The European

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<sup>1</sup> Article 4, European Union, *Charter of Fundamental Rights of the European Union*, 26 October 2012, 2012/C 326/02. In addition, Article 5 of the Universal Declaration of Human Rights, Article 7 of the International Covenant on Civil and Political Rights and Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms all lay down an unconditional, comprehensive prohibition on torture and other cruel, inhuman or degrading treatment or punishment. Other provisions, in particular the United Nations Declaration Against Torture (1) and the 1984 United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, place an obligation on States to prevent torture.

<sup>2</sup> Articles 2, 4 and 16, United Nations, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*; Adopted and opened for signature, ratification and accession by United Nations General Assembly resolution 39/46 of 10 December 1984 (entry into force 26 June 1987).

<sup>3</sup> Paragraph 7 of the Regulation, states that: “It is therefore appropriate to lay down Community rules on trade with third countries in goods which could be used for the purpose of capital punishment and in goods which could be used for the purpose of torture and other cruel, inhuman or degrading treatment or punishment. These rules are instrumental in promoting respect for human life and for fundamental human rights and thus serve the purpose of protecting public morals. Such rules should ensure that Community economic operators do not derive any benefits from trade which either promotes or otherwise facilitates the implementation of policies on capital punishment or on torture and other cruel, inhuman or degrading treatment or punishment, which are not compatible with the relevant EU Guidelines, the Charter of Fundamental Rights of the European Union and international conventions and treaties” [emphasis added]. European Union, *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.

<sup>4</sup> 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*.

<sup>5</sup> See for example: Amnesty International & Omega Research Foundation, *Grasping the Nettle: Ending Europe’s Trade in Torture Technology*, Index: EUR 01/1632/2015, May 2015; Amnesty International & Omega Research Foundation, *No more delays: putting an end to the EU trade in “tools of torture”*, Index: ACT 30/062/2012, June 2012; Amnesty International & Omega Research Foundation, *From Words to Deeds: making the EU ban on the trade in “tools of torture” a reality*, Index: EUR 01/004/2010, February 2010; Amnesty International, *European Union: Stopping the Trade in Tools of Torture*, Index: POL 34/001/2007, February 2007.

Parliament, the Commission and the Council are considering amendments to the Regulation, including whether to prohibit commercial marketing and promotion of prohibited items.

Currently the commercial marketing and promotion by companies of equipment banned for export and import under the Regulation or under the national law of a EU member state is allowed to take place at trade fairs and exhibitions in member states, as well as on the internet.

Amnesty International and Omega have documented companies marketing and promoting prohibited equipment, as well as equipment that, while not explicitly prohibited under the Regulation, is totally inappropriate for law enforcement, such as prisoner hoods, prisoner control pliers and a range of direct contact electric shock devices, the use of which would facilitate torture or other ill-treatment. This commercial activity undermines the object and purpose of the Regulation since it would potentially facilitate the import, export or brokering of such equipment.

In this briefing paper Amnesty International and Omega provide further examples of unregulated commercial marketing and promotion in the EU of equipment already listed in the Regulation as being prohibited, as well as equipment not yet banned but which has no place in legitimate law enforcement. Arguments put forward by some member state officials to avoid prohibiting such marketing and promotion within the jurisdiction of the EU are considered and rejected. Rather, Amnesty International and Omega recommend that the scope of trade activities prohibited by the Regulation should include the commercial marketing and promotion of items listed in Annex II, whether those activities are being carried out by EU nationals and EU-registered companies, or by non-EU registered companies and individuals within the jurisdiction of the EU.

#### **OBLIGATIONS TO PREVENT PARTICIPATION AND COMPLICITY IN TORTURE AND OTHER ILL-TREATMENT**

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. Despite such obligations, torture and other such ill-treatment are still perpetrated in countries in all regions of the world.

The prohibition on torture and other ill-treatment is set out in numerous international treaties, including the International Covenant on Civil and Political Rights (Article 7), the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the European Convention on Human Rights (Article 3), which EU states are party to. Under these treaties states must not only ensure that their own officials do not breach the prohibition on torture or other ill-treatment, but they also have a positive obligation to take effective steps to ensure that private actors, companies, and other third parties do not do so.

Specifically, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment requires that “each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction” (Article 2) and imposes an obligation on states similarly to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment (Article 16). Furthermore, “1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. 2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature” (Article 4).

An International Commission of Jurists (ICJ) Panel of Experts has examined the question of corporate complicity in human rights violations, including torture, in some depth and clarified how legal liability, both civil and criminal, could arise for such complicity. The ICJ panel considered that there could be a sufficiently close link in law if the company’s conduct enabled, exacerbated or facilitated the abuse, and the company knew, or ought reasonably to have known, that the abuse would occur. A company could enable, exacerbate or facilitate abuse through, among other things, the provision of goods or services.

The International Law Commission’s second version of the draft Code of Crimes against the Peace and Security of Mankind (ILC Code), adopted in 1996, encapsulated the principle of accomplice liability, including for torture when committed as a crime against humanity or a war crime. This Code provided that an individual will be held responsible if he or she “knowingly aids, abets or otherwise assists, directly and substantially, in the commission of such a crime, including providing the means for its commission.” The

person who is giving the assistance, encouragement or moral support must know that his or her actions would contribute to the crime. This knowledge can be inferred from all relevant circumstances, including both direct and circumstantial evidence. It is not necessary to show that the practical assistance caused the crime or even made it worse; rather it has to be shown that it had a ‘substantial effect’ on it. The ILC Code is consistent with the subsequent findings of the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY) established by the UN Security Council, the first international war crimes tribunal since the Nuremberg and Tokyo tribunals, which ruled that:

*“it is not necessary that the aider and abettor should know the precise crime that was intended and which in the event was committed. If he is aware that one of a number of crimes will probably be committed, and one of those crimes is in fact committed, he has intended to facilitate the commission of that crime, and is guilty as an aider and abettor”.*<sup>6</sup>

Over the past decade there has been increasing recognition of the responsibility of companies to act with due diligence to respect human rights. This responsibility has been confirmed in the UN “Protect, Respect and Remedy” Framework for Business and Human Rights and the UN Guiding Principles on Business and Human Rights. The corporate responsibility to respect human rights requires that companies take adequate measures to prevent, mitigate and – where necessary – to redress human rights abuses connected to their business operations. According to the Guiding Principles, “The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfill their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights.” Any company supplying law enforcement equipment to end users who are known by the company to be committing acts of torture or ill-treatment or where the company has been informed by the authorities that the practical use of that equipment in law enforcement will result in torture or ill-treatment, would be in breach of these standards.

## THE MARKETING AND PROMOTION OF PROHIBITED GOODS AT ARMS AND SECURITY EXHIBITIONS

The following examples relate to commercial marketing and promotion that took place at the Milipol 2015 “worldwide exhibition of internal state security”<sup>7</sup>, held in Paris, France on 17-20 November 2015. According to the Milipol 2015 brochure, the exhibition is “organized under the patronage of the French Ministry of Interior, Milipol Paris is an official event, carried out in partnership with the French National Police and Gendarmerie, Civil Defence, French Customs, Europol, Interpol, the European Commission”<sup>8</sup> The following pieces of equipment whose practical use in law enforcement would result in torture and other cruel, inhuman or degrading treatment or punishment, were promoted at Milipol 2015 even though they were listed in Annex II of Council Regulation (EC) No 1236/2005 and were therefore prohibited for import or export. Prior to publication, Amnesty International wrote to the French Government and to all the companies highlighted in this briefing paper, providing them with an opportunity to comment on the text and provide further clarification. All subsequent responses are cited and reflected in the final text, as appropriate.

<sup>6</sup> *Furundzija* ICTY T. Ch.II 10.12.1998, para. 246, available at: [www.icty.org/x/cases/furundzija/tjug/en/fur-tj981210e.pdf](http://www.icty.org/x/cases/furundzija/tjug/en/fur-tj981210e.pdf) (accessed 12 April 2016)

<sup>7</sup> <http://en.milipol.com/milipol-paris-exhibition/Accueil-Milipol/Milipol-Paris-exhibition> (accessed 13 March 2016)

<sup>8</sup> Milipol 2015 brochure, available at: <http://en.milipol.com/content/download/197659/2103478/file/MILIPOL-GB%20BD.pdf> (accessed 25 April 2015)

## THUMBCUFFS

Council Regulation (EC) No 1236/2005 prohibits the import and export of “Thumb-cuffs, finger-cuffs, thumbscrews and finger-screws.”<sup>9</sup>

However, two French companies and two Chinese companies promoted thumbcuffs in product catalogues distributed at Milipol 2015.



Images of thumbcuffs in product catalogues of Le Protecteur-Scorpion-ATAM (top left), Welkit (top right), Jinniu Police Equipment Manufacturing Co. Ltd (bottom left), and Jiangsu Anhua Police Equipment Manufacturing Company Ltd (bottom right).

## SPIKED BATONS

Council Regulation (EC) No 1236/2005 also prohibits the import and export of “Batons or truncheons made of metal or other material having a shaft with metal spikes.”<sup>10</sup>



 Xi'An Yuanfar International Trade Co. 2013 catalogue

However, the Chinese company, Xi'An Yuanfar International Trade Co., promoted a spiked baton in their 2013 “Personal Protection” product catalogue, distributed at Milipol 2015 (shown left).

On 5 April 2016, in response to an information request from Amnesty International and Omega, Xi'An Yuanfar International Trade Co. confirmed that the product catalogue promoting the spiked baton in question was distributed at Milipol 2015, but that no physical samples of these spiked batons were displayed at the exhibition.<sup>11</sup> The company stated that, to date, they “had not sold this product to any customers” and that the product was “being deleted [from] our new catalog, and will not appear in any other platform such as our website.” Xi'An Yuanfar International Trade

Co. declared that they “obey the rules of [EC] Council Regulation [[1236/2005]... and other international rules” and “promise[d]” Amnesty International “that [they would] not sell any products which may result in cruel and inhuman treatment.”<sup>12</sup>

Xi'An Yuanfar International Trade Co. and a second Chinese company, Xinxing Jihua International Trading Co., Ltd promoted another type of spiked baton in their product catalogues at Milipol 2015.

<sup>9</sup> Annex II, Article 2.2. 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*. Published in Official Journal of the European Union, L210/1, 17 July 2014.

<sup>10</sup> Annex II, Article 3.1. 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*. Published in Official Journal of the European Union, L210/1, 17 July 2014.

<sup>11</sup> Email correspondence to Amnesty International and Omega from a representative of Xi'An Yuanfar International Trade Co., 5 April 2016.

<sup>12</sup> Email correspondence to Amnesty International and Omega from a representative of Xi'An Yuanfar International Trade Co., 5 April 2016.



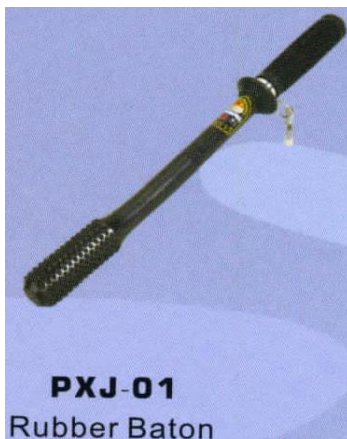


It is unclear whether the spikes of these batons are composed of metal or other material such as hardened rubber or plastic. If

the spikes have been made of metal then they would fall under the scope of Annex II of the Regulation prohibiting the import and export of spiked batons or truncheons.

However, given the restriction of the definition of prohibited equipment to batons or truncheons “made of

metal or other material having a shaft with metal spikes”, if the spikes on the batons are not themselves composed of metal then they would not strictly be covered by the Regulation, even though such batons are essentially the same type of equipment with very similar properties, fulfilling the same function.



**PXJ-01**  
Rubber Baton

↑ From the top down: image taken from Xinxing Jihua International Trading Co. Ltd catalogue; Xi’An Yuanfar International Trade Co. catalogue; Zhejiang Huaan Security Equipment Co. Ltd catalogue

In addition, a third Chinese company, Zhejiang Huaan Security Equipment Co. Ltd, distributed marketing material at Milipol 2015 that promoted a similar (if not identical) spiked baton. This was termed a “Rubber Baton”. As this instrument does not appear to be composed of metal, its trade would not appear to be prohibited by the Regulation. Nevertheless, the deployment and use in law enforcement of all such spiked batons – whether the shaft and the spikes are composed of metal or other hardened material – could easily result in cruel, inhuman or degrading treatment or punishment, and should therefore be completely prohibited from trade, and from commercial marketing and promotion.

### SPIKED SHIELDS

Council Regulation (EC) No 1236/2005 prohibits the import and export of “Shields with metal spikes.”<sup>13</sup>

However, in their product catalogue distributed at Milipol 2015 a Chinese company, Wenzhou Hongda Police Equipment Share Co. Ltd, promoted a “riot police shield” with metal spikes. In addition, a spiked shield was physically displayed at the China Aole Safety Equipment Co. Ltd, stand during Milipol 2015. Correspondence from China Aole Safety Equipment Co. Ltd appears to indicate that this latter shield was electrified.



↑ A spiked shield displayed, at the China Aole Safety Equipment Co., Ltd, stand No. U073, Milipol 2015 © Robin Ballantyne/Omega Research Foundation

On 6 April 2016, in response to a request for more information from Amnesty International and Omega, China Aole Safety Equipment Co. Ltd stated that they “only produce defensive products for governments but not for aggressive usage”.<sup>14</sup> They stated that both the spiked shield and the electric shock capture device (detailed later in this briefing) were “conductive products [intended] only for demo[nstrations] and for people who are looking... [to]... improv[e] the quality and safety usage in the anti-roit [sic] fields for police and public security guards.” According to the company for “safety reasons, both of the products’ electric shocks are not strong [enough] to kill people, each output of electric shock is less than 0.1 J/sec

<sup>13</sup> Annex II, Article 3.2. 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*. Published in Official Journal of the European Union, L210/1, 17 July 2014.

<sup>14</sup> Email correspondence to Amnesty International and Omega from a representative of China Aole Safety Equipment Co. Ltd, 6 April 2016.

maximumly [when]... fully recharged.” The Company also stated that the spiked shield was “not distributed in Europe and America at the moment from China Aole.”<sup>15</sup>

It is unclear how the China Aole Safety Equipment company managed to physically display this item at Milipol 2015 when its import is prohibited under Council Regulation (EC) No 1236/2005 (which is directly applicable in all member states, including France).

## WEIGHTED RESTRAINTS

Council Regulation (EC) No 1236/2005 prohibits the import and export of “*Bar fetters, weighted leg restraints and gang chains comprising bar fetters or weighted leg restraints.*”<sup>16</sup>

However a number of Chinese companies promoted weighted leg restraints in their product catalogues distributed at Milipol 2015. For example Senken Group Co. Ltd promoted weighted “shackles” in their Tactical & Armor Products” catalogue (see right).

The Chinese company Xinxing Jihua International Trading Co., Ltd promoted what appear to be weighted leg fetters connected to handcuffs in their product catalogue (see right).

Jiangsu Anhua Police Equipment Manufacturing Company Ltd, promoted similar items under their handcuff and legcuff product range in their product catalogue (see right).

Of particular concern, the Chinese company China Garments Co. Ltd physically displayed weighted leg irons on their marketing stall in the exhibition. In addition to concerns about the commercial marketing and promotion of “prohibited goods”, it is unclear how China Garments Co. Ltd managed to display such items at Milipol 2015 when their import into the EU is expressly prohibited under the Regulation. On 8 April 2016, in response to an information request from Amnesty International and Omega on these matters, China Garments Co. Ltd stated that: “all our products ha[ve] been reported to the authorities in detail...4 months before the exhibition. And we have all the legal documents for the customer clearance to France.” Furthermore, the company stated that: “in all the procedures, [none of] the authorities ...mentioned anything that is illegal in our products.”<sup>17</sup>

The company further explained that the “the weighted leg irons are ... new... products which are designed [for] use [by] policemen to restrict some highly dangerous criminals in critical conditions [such as in a] terrorism attack.” In addition the company stated that: “This product has never been sold ...[and this was the] first time it was show[n] [at] MILIPOL. We will stop ... research on this product immediately.”<sup>18</sup> This commitment by China Garments Co. Ltd is welcomed by Amnesty International and Omega.



Image of “riot police shield” taken from the product brochure of Wenzhou Hongda Police Equipment Share Co. Ltd.



(Top down) Image taken from Senken Tactical & Armor Products catalogue; image taken from Jiangsu Anhua Police Equipment Manufacturing Company Ltd Catalogue; image taken from Xinxing Jihua International Trading Co., Ltd catalogue; photograph of weighted leg irons displayed at China Garments Co. Ltd stall, Milipol 2015 © Robin Ballantyne/Omega

<sup>15</sup> Email correspondence to Amnesty International and Omega from a representative of China Aole Safety Equipment Co. Ltd, 6 April 2016.

<sup>16</sup> Annex II, Article 2.3. 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.* Published in Official Journal of the European Union, L210/1, 17 July 2014.

<sup>17</sup> Email correspondence to Amnesty International and Omega from a representative of China Garments Co. Ltd, 8 April 2016.

<sup>18</sup> Email correspondence to Amnesty International and Omega from a representative of China Garments Co. Ltd, 8 April 2016.

# USE OF ARMS AND SECURITY EXHIBITIONS TO PROMOTE EQUIPMENT AND TECHNOLOGY THAT SHOULD BE BANNED

The examples below relate to the commercial marketing and promotion in the EU of equipment not listed in the Regulation as being prohibited but which has no legitimate practical purpose in law enforcement and would result, or be easily used, in torture or other ill-treatment. These marketing activities took place at the Milipol 2015 exhibition. The following pieces of equipment were promoted at the exhibition and are not currently listed in either Annex II or Annex III of Council Regulation (EC) No 1236/2005. Nevertheless, Amnesty International and Omega consider this equipment inappropriate for use by law enforcement officials when acting in conformity with UN standards on the use of force.

## ASSAULTIVE ARM ARMOUR

The Chinese company Senken Group Co. Ltd promoted its “Assaultive Arm Armor” at Milipol 2015. This item was included in its “Tactical & Armor Products” catalogue, distributed at the exhibition. In addition, “Assaultive Arm Armor” was physically displayed at the Senken Group marketing stall in the China pavilion.



→ From the left: image taken from Senken product catalogue; photographs of Assaultive Arm Armor on display at Senken Group stand, Milipol 2015 © Robin Ballantyne/Omega Research Foundation.

According to the company’s product catalogue the “Assaultive Arm Armor” is composed of aluminium alloy and high strength steel. The photographs in the catalogue and the product displayed show an armour device with multiple rows of sharp spikes. The catalogue says the device is intended to enable an officer to “snatch knife from enemy fast... shatter glass in anti-riot... attack target with light weight.”<sup>19</sup>

Whilst Council Regulation (EC) No 1236/2005 has a chapeau category of prohibited goods described as “Portable devices which are not suitable for use by law enforcement authorities for the purpose of riot control or self-protection”, it does not specifically include spiked armour or similar items under this category. It therefore appears that the trade, and the commercial marketing and promotion of this item is not currently prohibited or even controlled under the Regulation. Amnesty International and Omega believe this item has no legitimate law enforcement purpose which could not be accomplished by other means, and there is a high risk that its use could result in cruel, inhuman or degrading treatment or punishment, for example by

<sup>19</sup> Tactical & Armor Products catalogue, undated, Senken Group Co. Ltd p.4 (catalogue distributed by the company at Milipol 2015, November 2015, copy on file with the Omega Research Foundation).

being scraped across the exposed skin of targeted individuals. The trade, commercial marketing and promotion of such items should be prohibited and included in Annex II of the Regulation.

## ELECTROSHOCK WEAPONS

Amnesty International and Omega have concluded that any use of direct contact electric shock devices such as 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. Amnesty 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.

Consequently, 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.

However, Council Regulation (EC) No 1236/2005 currently controls, but does not prohibit, the export of “*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.*”<sup>20</sup>

Amnesty International and Omega recognize 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 organizations has uncovered EU companies promoting direct contact electric shock devices to the law enforcement community.<sup>21</sup>

The following two examples illustrate new forms of such devices marketed at Milipol 2015, whose design gives additional concern that there is a substantial inherent risk that their use could result in cruel, inhuman or degrading treatment or punishment and that the items do not have a legitimate use in law enforcement.<sup>22</sup>

### ELECTRIC KNUCKLEDUSTERS

The French company Le Protecteur-Scorpion-ATAM marketed an electric shock weapon at Milipol 2015, called the “American electric shock knuckler”. It was promoted in their product catalogue distributed at the exhibition and was physically displayed on the company stand. According to the company, the “knuckler” can transmit a 2,000,000 volt shock. It is designed in the shape of a “knuckle-duster”. Amnesty International and Omega believe there is an inherent risk that the use of this device could result in cruel, inhuman or degrading treatment or punishment and that it should not be used in law enforcement.



 ↑ Photograph of Le Protecteur-Scorpion-ATAM “American electric shock knuckler” displayed on Le Protecteur stand, Milipol 2015 © Robin Ballantyne/ Omega Research Foundation.

<sup>20</sup> Annex III, Article 2.1. 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*. Published in Official Journal of the European Union, L210/1, 17 July 2014.

<sup>21</sup> See for example, Amnesty International & Omega Research Foundation, *Grasping the Nettle: Ending Europe’s Trade in Torture Technology*, Index: EUR 01/1632/2015, May 2015.

<sup>22</sup> See for example, Amnesty International & Omega Research Foundation, *Grasping the Nettle: Ending Europe’s Trade in Torture Technology*, Index: EUR 01/1632/2015, May 2015.

## ELECTRIC SHOCK CAPTURE DEVICE

An electrified capture device was physically displayed at the China Aole Safety Equipment Co. Ltd, stand no: U073, at Milipol 2015. Although no details are available about this device, it is clearly electrified having two electrodes at the end of the pole between the two curved arms.

Its use would appear to be incompatible with international standards on law enforcement methods and the device could easily be employed for torture and ill-treatment.

On 6 April 2016, in response to an information request from Amnesty International and Omega, China Aole Safety Equipment Co. Ltd stated that they “only produce defensive products for governments but not for aggressive usage”.<sup>23</sup> They stated that both the electric shock capture device and spiked baton (detailed previously) were “conductive products [intended] only for demo[nstrations] and for people who are looking... [to]... improv[e] the quality and safety usage in the anti-riot [sic] fields for police and public security guards.” According to the company, for “safety reasons, both of the products’ electric shocks are not strong [enough] to kill people, each output of electric shock is less than 0.1 J/sec maximumly [when]... fully recharged.” The Company also stated that the electric shock capture device was “not distributed in Europe and America at the moment from China Aole.”<sup>24</sup>



↓ Electric shock capture device photographed at China Aole Safety Equipment Co. Ltd stand, Milipol 2015 © Robin Ballantyne/Omega Research Foundation.



Amnesty International and Omega consider that the trade, commercial marketing and promotion of both this electrified capture device and the electric shock knuckler should be prohibited.

Prior to publication, Amnesty International and Omega provided the French Government with a draft of this briefing paper, highlighting in particular their concerns regarding promotion of inhumane policing and prison equipment at Milipol 2015. In its response, received on 4 May 2016, the French Government stated that:

“We thank Amnesty International for [its] vigilance and ... work on the different exhibitors and the material presented. We are concerned about the report you sent us. Following our information, the French government had not been informed of the exposure of the presence and exposure of goods listed in the Amnesty International study (spiked shield, weighted handcuffs, etc.) during MILIPOL fair. The fact that some of these materials have been presented in the exhibitors catalogues, or even physically at the show, [does] not in any way mean that their transfer would be allowed if it was duly notified .”

In addition, the French Government enunciated its desired to address commercial promotion of such goods as part of the current review of the Regulation. “ [W]e support an ambitious revision of the regulation 1236/2005- especially regarding the adoption of the new provisions aimed at prohibiting the promotion of products prohibited by the Regulation”.<sup>25</sup>

<sup>23</sup> Email correspondence to Amnesty International and Omega from a representative of China Aole Safety Equipment Co. Ltd, 6 April 2016.

<sup>24</sup> Email correspondence to Amnesty International and Omega from a representative of China Aole Safety Equipment Co. Ltd, 6 April 2016.

<sup>25</sup> Email correspondence to Amnesty International and Omega from the French Ministry of Foreign Affairs, 4 May 2016.

# PROMOTION OF PROHIBITED GOODS ON THE INTERNET

The commercial marketing and promotion of items prohibited under the Regulation also occurs through the distribution of information via the internet. The illustrative cases below describe how EU-based companies use this method even though the goods are listed in Annex II of the Regulation and are therefore prohibited from import to and export from the EU. Currently, this form of marketing and promotion of such goods is not prohibited, yet it could facilitate torture and other cruel inhuman or degrading treatment or punishment.

Amnesty International and Omega do not know whether the companies in the examples below also manufacture, assemble or acquire the goods listed in Annex II that they have promoted on the internet. The regulation of manufacturing and assembly is not covered under the scope of Council Regulation (EC) No. 1236/2005. However, Amnesty International and Omega believe such activities should also be regulated.

## BODY WORN ELECTRIC SHOCK DEVICES

### GERMANY

In July 2014 Council Regulation (EC) No 1236/2005 Annex II was extended to include “*electric shock devices which are intended to be worn on the body by a restrained individual, such as belts, sleeves and cuffs, designed for restraining human beings by the administration of electric shocks*”.<sup>26</sup> Consequently, the import and export of such devices is prohibited.

However, despite this introduction of an EU trade prohibition on such devices the German company PKI Electronic Intelligence GmbH continued to promote the PKI 9360 stun cuff for sale on its website. According to the company material:

“*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!*”<sup>27</sup> The company claimed that the PKI 9360 stuncuffs have a maximum range of 300 metres and can transmit an electric shock of up to 60,000 Volts.<sup>28</sup>

On 27 April 2015 in 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.*”<sup>29</sup>

Although the company declared that it did not make the product, it provided no information about the manufacturer and whether they were or were not located within the EU.

In response to further questions by Amnesty International and Omega, on 4 April 2016 the company stated that they “*never produced or distributed this product PKI 9360. If we get an enquiry for this item we refrain from offering. However, as the new catalogue...is still under construction we will delete this product within the next days from our old catalogue on our website in order to avoid further misunderstandings.*”<sup>30</sup>



 ↑ Image of “PKI 9360 stun-cuffs for hands” taken from the PKI Electronic Intelligence GmbH website.

<sup>26</sup> Annex II, Article 2.1. 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*. Published in Official Journal of the European Union, L210/1, 17 July 2014.

<sup>27</sup> PKI Electronic Intelligence, *Stun-Cuffs for foot, Stun-Cuffs for hand*, available at: [www.pki-electronic.com/products/police-customs-and-military-equipment/stun-cuffs-for-foot-stun-cuffs-for-hand/](http://www.pki-electronic.com/products/police-customs-and-military-equipment/stun-cuffs-for-foot-stun-cuffs-for-hand/) (last accessed 25 April 2016)

<sup>28</sup> PKI Electronic Intelligence, *Stun-Cuffs for foot, Stun-Cuffs for hand*, available at: [www.pki-electronic.com/products/police-customs-and-military-equipment/stun-cuffs-for-foot-stun-cuffs-for-hand/](http://www.pki-electronic.com/products/police-customs-and-military-equipment/stun-cuffs-for-foot-stun-cuffs-for-hand/) (last accessed 25 April 2016)

<sup>29</sup> Email correspondence from a representative of PKI Electronic Intelligence GmbH, 27 April 2015.

<sup>30</sup> Email correspondence from a representative of PKI Electronic Intelligence GmbH, 4 April 2015.

However, as of 25 April 2016, the product was still being promoted on the company website.


## FIXED OR WEIGHTED RESTRAINTS

In July 2014, Council Regulation (EC) No 1236/2005 Annex II was extended 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.”<sup>31</sup> Consequently the import and export of such devices is prohibited.

### CZECH REPUBLIC

The Czech company ALFA - PROJ spol. s r.o, has manufactured and promoted a range of restraint equipment. Among the products advertised on the company website, is a range of “handcuffs and leg-irons” including the “Ralkem 9923.”<sup>32</sup> 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, ALFA - PROJ on its website previously described the product as “Handcuffs - Business - police handcuffs –9923” and stated a potential use was “to confine persons in detention.”<sup>33</sup> This reference was subsequently removed following an information request from Amnesty International and Omega on 20 May 2015, in response to which ALFA-PROJ stated that the information on its website was “faulty”.<sup>34</sup>



 Image of “Ralkem 9923” downloaded from ALFA - PROJ spol. s r.o, website, 3 March 2016.

As of 25 April 2016, this product was still promoted on the company website.

### GERMANY

The German company Clemen & Jung, “Deliver their products to police, military, justice institutions, and correctional facilities worldwide.”<sup>35</sup> As of 25 April 2016, among the product range advertised by the company is a handcuff described as the “No.17 heavy [cuff] with anchor” which weighs 1,055 grams and appears to be designed for attachment to a fixed object.<sup>36</sup> As the “No.17 heavy cuff” has no linking chain between the restraint and the attachment device, the restrained individual would be severely restricted in their movements potentially adding to their discomfort. The company also promotes the “No.13 heavy [cuff]” weighing 1kg<sup>37</sup> and the “No.15 heavy [cuff]” weighing 1.38kg.<sup>38</sup>

Previously, on 17 April 2015, Amnesty International and Omega wrote to Clemen & Jung requesting information on these and other products – including leg irons.<sup>39</sup> On 22 April 2015 the Clemen & Jung website was updated. Changes to the website included the removal of all reference to leg iron products. The website did retain details of the “No.17 [hand]cuff with anchor”, “No.13 heavy [cuff]”, and the “No.15 heavy [cuff]”, although these goods were now placed in a “Phantasise cuffs” section. As of 25 April 2016 these items were still being promoted on the company website.

<sup>31</sup> Articles 2.3 and 2.4. 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*. Published in Official Journal of the European Union, L210/1, 17 July 2014.

<sup>32</sup> [www.alfa-proj.cz/pouta-sluzebni-policejni-pouta/9923-s289415](http://www.alfa-proj.cz/pouta-sluzebni-policejni-pouta/9923-s289415) (last accessed 25 April 2016)

<sup>33</sup> 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, [www.alfa-proj.cz/pouta-sluzebni-policejni-pouta/9923-s289415](http://www.alfa-proj.cz/pouta-sluzebni-policejni-pouta/9923-s289415) (accessed 14 May 2015)

<sup>34</sup> Email correspondence to Amnesty International and Omega from Vie Manager, ALFA-PROJ spol.s.r.o, 20 May 2015.

<sup>35</sup> Clemen & Jung website, [www.clejus.de/en/index.html](http://www.clejus.de/en/index.html) (last accessed 25 April 2016)


<sup>36</sup> Clemen & Jung products, <http://clejus.com/product/no-17-heavy-with-anchor/> (last accessed 25 April 2016)

<sup>37</sup> Clemen & Jung products, available at: <http://clejus.com/product/no-13-heavy/> (accessed 25 April 2016)

<sup>38</sup> Clemen & Jung products, available at: <http://clejus.com/product/no-15-heavy/> (accessed 25 April 2016)

<sup>39</sup> As documented by Amnesty International and Omega in Amnesty International & Omega Research Foundation, *Grasping the Nettle: Ending Europe's Trade in Torture Technology*, Index: EUR 01/1632/2015, May 2015.



↑  Images of the “No.17 [hand]cuff with anchor”, “No.13 heavy [cuff]”, and the “No.15 heavy [cuff]”, downloaded from the Clemen & Jung company website, 3 March 2016.

## THUMBCUFFS

Council Regulation (EC) No 1236/2005 prohibits the import and export of “*Thumb-cuffs, finger-cuffs, thumbscrews and finger-screws.*”<sup>40</sup>

In addition to those companies that have promoted thumbcuffs at EU arms and security exhibitions, a number of companies have marketed such devices on their websites. For example two German companies – Haller Stahlwaren<sup>41</sup> and Buchner Grosshandel<sup>42</sup> – included thumbcuffs amongst the range of security equipment marketed on their websites on 12 April 2016.



←  Images of thumbcuffs downloaded from marketing material on Haller Stahlwaren (left) and Buchner Grosshandel (right) websites on 12 April 2016.

<sup>40</sup> Annex II, Article 2.2. 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*. Published in Official Journal of the European Union, L210/1, 17 July 2014.

<sup>41</sup> [http://cms.haller-stahlwaren.de/fileadmin/user\\_upload/inhalte/catalogue/Security02/#/12/](http://cms.haller-stahlwaren.de/fileadmin/user_upload/inhalte/catalogue/Security02/#/12/) (last accessed 25 April 2016)

<sup>42</sup> [www.buchner-grosshandel.de/daumenschellen-mit-arretierung.html](http://www.buchner-grosshandel.de/daumenschellen-mit-arretierung.html) (last accessed 25 April 2016)



# HOW TO ADDRESS THIS PROBLEM

To achieve the objective of Council Regulation (EC) No 1236/2005 to prohibit exports and imports of equipment which has no practical use other than for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment, and to “ensure that Community economic operators do not derive any benefits from trade which either promotes or otherwise facilitates the implementation of policies on capital punishment, or on torture or other ill-treatment,”<sup>43</sup> Amnesty International and the Omega Research Foundation recommend that the scope of trade activities prohibited by the Regulation should include the commercial marketing and promotion of items listed in Annex II. To be effective, the prohibition should apply to such activities conducted by EU nationals and EU-registered companies, and also those carried out by non-EU registered companies and individuals within the jurisdiction of the EU.

Currently the European Parliament, the Commission and the Council are considering amendments to the Regulation, including whether to prohibit commercial marketing and promotion of prohibited items. Initial proposals from the Commission have sought to retain the previous loophole in the Regulation. This states that: ‘For the purposes of this Regulation the sole provision of ancillary services is excluded from this definition. Ancillary services are transportation, financial services, insurance or re-insurance, or general advertising or promotion.’<sup>44</sup> This wording is the same as that in the Council Regulation setting up a regime for the control of exports of dual-use items and technology, but unlike the goods in Annex II of the Council Regulation (EC) No 1236/2005 that are totally prohibited, dual-use goods are defined as having both civil and military purposes.<sup>45</sup> Dual use goods are not prohibited outright, but their trade or transit can be prohibited on a case-by- case basis depending on the circumstances. The equivalence is with Annex III items in Regulation No 1236/2005, which are items that could have a legitimate use in law enforcement, not with the prohibited items listed in Annex II.

To close this and other loopholes, the European Parliament proposed the following amendment:

*“For the purposes of this Regulation the sole provision of ancillary services is included in this definition. Ancillary services are transportation, financial services, insurance or re-insurance, or general advertising or promotion, including via internet.”*<sup>46</sup>

This amendment was strengthened by an additional much more specific proposal from the Parliament to address the commercial marketing and promotion of prohibited items by inserting:

*“Prohibition of commercial marketing and promotion: Online and offline commercial marketing and promotion activities within the Union, by any natural or legal person or partnership, for the purpose of the transfer of goods listed in Annex II shall be prohibited.”*<sup>47</sup>

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<sup>43</sup> Paragraph 7 of the Regulation, states that: “It is therefore appropriate to lay down Community rules on trade with third countries in goods which could be used for the purpose of capital punishment and in goods which could be used for the purpose of torture and other cruel, inhuman or degrading treatment or punishment. These rules are instrumental in promoting respect for human life and for fundamental human rights and thus serve the purpose of protecting public morals. Such rules should ensure that Community economic operators do not derive any benefits from trade which either promotes or otherwise facilitates the implementation of policies on capital punishment or on torture and other cruel, inhuman or degrading treatment or punishment, which are not compatible with the relevant EU Guidelines, the Charter of Fundamental Rights of the European Union and international conventions and treaties” [emphasis added].

<sup>44</sup> Article 1.2.(k). 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.

<sup>45</sup> See Council Regulation (EC) No 428/2009, chapter 1, Articles 2, 3 and 4. Originally this EU law was established as Council Regulation (EC) No 1334/2000.

<sup>46</sup> Amendment 5. Amendments adopted by the European Parliament on 27 October 2015 on the proposal for a regulation of the European Parliament and of the Council 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 (COM(2014)0001 – C7-0014/2014 – 2014/0005(COD)).

<sup>47</sup> Amendment 11. Amendments adopted by the European Parliament on 27 October 2015 on the proposal for a regulation of the European Parliament and of the Council 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 (COM(2014)0001 – C7-0014/2014 – 2014/0005(COD)).

For the reasons explained above, Amnesty International and Omega strongly support these two proposals made by the Parliament. In its initial response, the Council did not show support for the Parliament's proposals or present any alternatives to address commercial marketing and promotion.<sup>48</sup>

In addition to these changes to the Regulation, we recommend that member states should adopt measures to ensure that all companies commercially marketing and promoting security equipment that has legitimate uses in law enforcement, and also those companies organizing trade fairs and other events where such equipment is commercially marketed and promoted, are made aware of the prohibition on commercially marketing and promoting items listed in Annex II of the amended Regulation and their obligations under it.

The importance of such promulgation and awareness-raising activities has been recognised by the European Parliament which has proposed the following amendment to the Regulation:

*“The competent authority, taking into account all relevant evidence, shall, along with Member States, ensure that all companies marketing security equipment and those organising trade fairs and other events where such equipment is marketed, are made aware of the fact that such equipment could be used for torture and other cruel, degrading or inhuman treatment or punishment and that marketing such equipment may become prohibited and authorisations relating to it may be withdrawn.”<sup>49</sup>*

Furthermore, Amnesty International and Omega recommend that member states should require organizers of trade fairs and similar promotional events to inform all potential exhibitors of the Regulation's prohibitions, 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 has marketed or promoted equipment explicitly prohibited by the Regulation, the exhibitor should be denied permission to participate in the trade or promotional event, and their details brought to the attention of the relevant national trade licensing authority with a view to preventing the recurrence of that marketing and promotion, including through possible prosecution of the company.

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<sup>48</sup> Proposal for a Regulation of the European Parliament and of the Council 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 [First reading] - Mandate for negotiations with the European Parliament (Presidency Compromise Proposal of 26 November 2015), Document no. ST 14669 2015 INIT.

<sup>49</sup> Amendment 13. Amendments adopted by the European Parliament on 27 October 2015 on the proposal for a regulation of the European Parliament and of the Council 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 (COM(2014)0001 – C7-0014/2014 – 2014/0005(COD)).

# APPENDIX

The following text is taken from “Annex II” and “Annex III” of *Commission Implementing Regulation (EU) No 775/2014 of 16 July 2014 amending Council Regulation (EC) No 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment*. The full document is available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0775&from=EN> (accessed 6 April 2016)

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## ANNEX II

*List of goods referred to in Articles 3 and 4*

*Notes:*

1. Items 1.3 and 1.4 in Section 1 concerning goods designed for the execution of human beings do not cover medical-technical goods.
  2. The object of the controls contained in this Annex should not be defeated by the export of any non-controlled goods (including plant) containing one or more controlled components when the controlled component or components are the principal element of the goods and can feasibly be removed or used for other purposes.
- NB:* In judging whether the controlled component or components are to be considered the principal element, it is necessary to weigh the factors of quantity, value and technological know-how involved and other special circumstances which might establish the controlled component or components as the principal element of the goods being procured.

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### Description

#### **1. Goods designed for the execution of human beings, as follows:**

- 1.1. Gallows and guillotines
- 1.2. Electric chairs for the purpose of execution of human beings
- 1.3. Airtight vaults, made of e.g. steel and glass, designed for the purpose of execution of human beings by the administration of a lethal gas or substance
- 1.4. Automatic drug injection systems designed for the purpose of execution of human beings by the administration of a lethal chemical substance

#### **2. Goods which are not suitable for use by law enforcement authorities to restrain human beings, as follows:**

- 2.1. Electric shock devices which are intended to be worn on the body by a restrained individual, such as belts, sleeves and cuffs, designed for restraining human beings by the administration of electric shocks
- 2.2. Thumb-cuffs, finger-cuffs, thumbscrews and finger-screws Note: This item includes both serrated and non-serrated cuffs and screws
- 2.3. Bar fetters, weighted leg restraints and gang chains comprising bar fetters or weighted leg restraints  
*Notes:*
  1. Bar fetters are shackles or ankle rings fitted with a locking mechanism, linked by a rigid bar which is typically made of metal
  2. This item includes bar fetters and weighted leg restraints which are linked to ordinary handcuffs by means of a chain
- 2.4. Cuffs for restraining human beings, designed to be anchored to a wall, floor or ceiling

- 2.5. Restraint chairs: chairs fitted with shackles or other devices to restrain a human being Note: This item does not prohibit chairs only fitted with straps or belts
- 2.6. Shackle boards and shackle beds: boards and beds fitted with shackles or other devices to restrain a human being Note: This item does not prohibit boards and beds only fitted with straps or belts
- 2.7. Cage beds: beds comprising a cage (four sides and a ceiling) or similar structure enclosing a human being within the confines of the bed, the ceiling or one or more of the sides of which are fitted with metal or other bars, and which can only be opened from outside
- 2.8. Net beds: beds comprising a cage (four sides and a ceiling) or similar structure enclosing a human being within the confines of the bed, the ceiling or one or more sides of which are fitted with nets, and which can only be opened from outside
- 3. Portable devices which are not suitable for use by law enforcement authorities for the purpose of riot control or self-protection, as follows:**
- 3.1. Batons or truncheons made of metal or other material having a shaft with metal spikes
- 3.2. Shields with metal spikes
- 4. Whips as follows:**
- 4.1. Whips comprising multiple lashes or thongs, such as knouts or cats o' nine tails
- 4.2. Whips having one or more lashes or thongs fitted with barbs, hooks, spikes, metal wire or similar objects enhancing the impact of the lash or thong'

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## ANNEX III

### *List of goods referred to in Article 5*

*Notes:*

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

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

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

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### Description

**1. Goods designed for restraining human beings, as follows:**

1.1. Shackles and gang chains

*Notes:*

1. Shackles are restraints consisting of two cuffs or rings fitted with a locking mechanism, with a connecting chain or bar
2. This item does not control the leg restraints and gang chains prohibited by item 2.3 of Annex II

3. This item does not control “ordinary handcuffs”. Ordinary handcuffs are handcuffs which meet all the following conditions:

- their overall dimension including chain, measured from the outer edge of one cuff to the outer edge of the other cuff, is between 150 and 280 mm when both cuffs are locked;
- the inside circumference of each cuff is a maximum of 165 mm when the ratchet is engaged at the last notch entering the locking mechanism;
- the inside circumference of each cuff is a minimum of 200 mm when the ratchet is engaged at the first notch entering the locking mechanism; and
- the cuffs have not been modified to cause physical pain or suffering.

1.2. Individual cuffs or rings fitted with a locking mechanism, having an inside circumference exceeding 165 mm when the ratchet is engaged at the last notch entering the locking mechanism

*Note:*

This item includes neck restraints and other individual cuffs or rings fitted with a locking mechanism, which are linked to ordinary handcuffs by means of a chain

1.3. Spit hoods: hoods, including hoods made of netting, comprising a cover of the mouth which prevents spitting  
*Note:* This item includes spit hoods which are linked to ordinary handcuffs by means of a chain

## **2. Weapons and devices designed for the purpose of riot control or self-protection, as follows:**

2.1. Portable electric discharge weapons that can target only one individual each time an electric shock is administered, including but not limited to electric shock batons, electric shock shields, stun guns and electric shock dart guns

*Notes:*

1. This item does not control electric shock belts and other devices falling within item 2.1 of Annex II
2. This item does not control individual electronic shock devices when accompanying their user for the user's own personal protection

2.2. Kits containing all essential components for assembly of portable electric discharge weapons controlled by item 2.1

*Note:*

The following goods are considered to be essential components:

- the unit producing an electric shock,
- the switch, whether or not on a remote control, and
- the electrodes or, where applicable, the wires through which the electrical shock is to be administered

2.3. Fixed or mountable electric discharge weapons that cover a wide area and can target multiple individuals with electrical shocks

## **3. Weapons and equipment disseminating incapacitating or irritating chemical substances for the purpose of riot control or self-protection and certain related substances, as follows:**

3.1. Portable weapons and equipment which either administer a dose of an incapacitating or irritating chemical substance that targets one individual or disseminate a dose of such substance affecting a small area, e.g. in the form of a spray fog or cloud, when the chemical substance is administered or disseminated

*Notes:*

1. This item does not control equipment controlled by item ML7(e) of the Common Military List of the European Union ( 1 )
2. This item does not control individual portable equipment, even if containing a chemical substance, when accompanying their user for the user's own personal protection

3. In addition to relevant chemical substances, such as riot control agents or PAVA, the goods controlled by items 3.3 and 3.4 shall be deemed to be incapacitating or irritating chemical substances

3.2. Pelargononic acid vanillylamide (PAVA) (CAS RN 2444-46-4)

3.3. Oleoresin capsicum (OC) (CAS RN 8023-77-6)

3.4. Mixtures containing at least 0,3 % by weight of PAVA or OC and a solvent (such as ethanol, 1-propanol or hexane), which could be administered as such as incapacitating or irritating agents, in particular in aerosols and in liquid form, or used for manufacturing of incapacitating or irritating agents

*Notes:*

1. This item does not control sauces and preparations therefor, soups or preparations therefor and mixed condiments or seasonings, provided that PAVA or OC is not the only constituent flavour in them

2. This item does not control medicinal products for which a marketing authorisation has been granted in accordance with Union law ( 2 )

3.5. Fixed equipment for the dissemination of incapacitating or irritating chemical substances, which can be attached to a wall or to a ceiling inside a building, comprises a canister of irritating or incapacitating chemical agents and is activated using a remote control system

*Note:*

In addition to relevant chemical substances, such as riot control agents or PAVA, the goods controlled by items 3.3 and 3.4 shall be deemed to be incapacitating or irritating chemical substances

3.6. Fixed or mountable equipment for the dissemination of incapacitating or irritating chemical agents that covers a wide area and is not designed to be attached to a wall or to a ceiling inside a building

*Notes:*

1. This item does not control equipment controlled by item ML7(e) of the Common Military List of the European Union

2. This item also controls water cannons

3. In addition to relevant chemical substances, such as riot control agents or PAVA, the goods controlled by items 3.3 and 3.4 shall be deemed to be incapacitating or irritating chemical substances

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

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

(a) amobarbital (CAS RN 57-43-2)

(b) amobarbital sodium salt (CAS RN 64-43-7)

(c) pentobarbital (CAS RN 76-74-4)

(d) pentobarbital sodium salt (CAS 57-33-0)

(e) secobarbital (CAS RN 76-73-3)

(f) secobarbital sodium salt (CAS RN 309-43-3)

(g) thiopental (CAS RN 76-75-5)

(h) thiopental sodium salt (CAS RN 71-73-8), also known as thiopentone sodium

*Note:*

This item also controls products containing one of the anaesthetic agents listed under short or intermediate acting barbiturate anaesthetic agents

#### **5. Components designed for goods designed for the execution of human beings, as follows:**

5.1. Guillotine blades

# WHY THE EU SHOULD BAN THE COMMERCIAL MARKETING AND PROMOTION OF INHUMANE POLICING AND PRISON EQUIPMENT

In 2006 the European Union 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 death penalty, torture and other ill-treatment; and to control the trade in a range of policing and security equipment misused for such violations: the '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'.

Since then, Amnesty International and the Omega Research Foundation have worked to strengthen the scope and implementation of the Regulation in order to curb the torture trade. In 2012 the Commission announced the beginning of a comprehensive review of the Regulation, further expanding the lists of prohibited and controlled goods covered, but there are some remaining weaknesses in the Regulation that still need to be addressed by the EU Member States.

One of the key weaknesses in the current Regulation is illustrated in this Briefing Paper. Research has uncovered examples of companies marketing and promoting for sale a range of products within the EU, or for export to abroad, which could be used for torture and other ill-treatment. The Regulation should be based on the fundamental principle that if the sale or trade of a product is prohibited, so should the commercial marketing and promotion of that product.

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