

Conference of Committee Chairs  
The Chair

319527 01.12.2014

Mr Martin SCHULZ  
President of the  
European Parliament

Geda ref.: D(2014)44064

Subject: Contestation by the Committee on International Trade (INTA) of the competence of the Committee on Foreign Affairs (AFET) regarding a legislative report entitled “**Proposal for a Regulation 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 - 2014/0005(COD))

Dear President, *Dear Martin,*

By letter dated 22 January 2014, the Committee on International Trade (INTA) claimed the competence over the above-mentioned legislative file that was referred in plenary to the Committee on Foreign Affairs (AFET) on 24 February 2014. The AFET(DROI) Committee opposed the contestation of competence in a letter dated 25 February 2014.

Despite this exchange of letters, which you will find attached, as well as consideration in the Conference of Committee Chairs, it has not been possible to find a solution acceptable to both committees. Therefore, the Conference of Committee Chairs has mandated me to make a recommendation concerning the INTA Committee's contestation.

#### Purpose and legal basis

The current proposal (2014/0005(COD)) seeks to amend 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.<sup>1</sup> Namely, it aims to establish a specific export licencing system with a view to preventing the use of certain goods for capital punishment and within that context provide for a general export authorisation for exports to those countries that have abolished capital punishment for all crimes and confirmed it with an international commitment. Certain conditions and requirements should nevertheless be imposed in this regard in order to counter the risk of re-export to countries that have not abolished capital punishment.

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

As regards export to countries that still foresee capital punishment, the competent authorities would be required to check, when examining a request for an export authorisation, whether there is a risk that end-users in the country of destination would use the exported goods for such punishment. For that purpose, appropriate conditions and requirements are to be imposed to control sales or transfers to third parties by the end-user.

Finally, the proposal also endeavours to supplement the current trade restrictions on goods exported from the EU that could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment with restrictions on brokering services and technical assistance. It also includes revised definitions of “torture” and “other cruel, inhuman or degrading treatment or punishment”.

The legal basis of the current proposal (2014/0005(COD)) is Article 207 TFEU (“Common commercial policy”).

#### Arguments of the parties

By letter dated 22 January 2014, the INTA Committee has claimed the competence over the above-mentioned legislative proposal. It first refers to the scope of the proposal dealing with international trade in goods that could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment. By laying down a system of export controls and criteria for granting export authorisations as well as establishing a Union general export authorisation, the INTA Committee thus finds the proposal analogous to the Dual use Regulation<sup>2</sup>, which governs the EU export control regime for items that are used for civilian purposes, but may have military applications. The Dual use Regulation has been exclusively dealt with by the INTA Committee in Parliament (e.g. COD 2008/0249, COD 2010/0262, COD 2011/0310).

In addition to the legal basis of the proposal being linked to common commercial policy (Article 207 TFEU), INTA further points out that the current proposal as well as the Dual use Regulation use export control tools for reaching the objectives of both instruments, be it eliminating torture and capital punishment or ensuring security and non-proliferation. Those general EU export control frameworks are in INTA’s view not comparable to the targeted restrictive measures (sanctions) falling under the CFSP and covered by Article 215 TFEU.

In terms of relevant precedents, the INTA Committee also refers, in addition to the Dual use Regulation, to Regulation (EU) No 258/2012<sup>3</sup> that was deliberated under

---

<sup>2</sup> 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 (OJ L 134, 29.5.2009, p. 1).

<sup>3</sup> Regulation (EU) No 258/2012 of the European Parliament and of the Council of 14 March 2012 implementing Article 10 of the United Nations’ Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against Transnational Organised Crime (UN Firearms Protocol), and establishing export authorisation, and import and transit measures for firearms, their parts and components and ammunition (OJ L 94, 30.3.2012, p. 1).

INTA's lead. The purpose of that instrument was to introduce an "export procedure" to be applied by Member States to exports of firearms, their parts and components and ammunition to third countries. Furthermore, INTA indicates that the Council Regulation (EC) No 1236/2005, to be amended by the current proposal, had been part of the "Trade Omnibus I" package (COD 2011/0039), concluded under INTA's lead, aligning several acts within the area of common commercial policy to the provisions of the TFEU with regard to delegated acts/implementing measures. Finally, INTA notes that Parliament has expressed itself on the implementation of the Council's Regulation (EC) No 1236/2005 in its resolution of 17 June 2010.<sup>4</sup>

The INTA Committee thus maintains that this instrument is an export control file under the framework of common commercial policy and therefore within its remit, but is willing to engage with AFET(DROI), if INTA is granted lead over the proposal.

By letter dated 25 February 2014, the AFET(DROI) Committee has opposed the contestation of competence. It first refers to the primary objective of the current proposal being the protection of human rights, as one of the goals of the Union's external action pursuant to Article 21 TEU. Regulation (EC) No 1236/2005 is arguably an important element of the overall EU strategy in the fight against the death penalty and torture as part of the EU human rights policy under the CFSP. The current review of Regulation (EC) No 1236/2005 is moreover explicitly mentioned in the EU Action Plan on democracy and human rights, adopted in June 2012, thus confirming in AFET's view its role in the service of the overall policy goal of protecting human rights and preventing European equipment and substances from being used for torture or to carry out the death penalty.

The AFET(DROI) Committee further points out that the legislative file in question was managed by the Foreign Policy Instruments (FPI) unit working along the EEAS and not by DG Trade of the Commission. Furthermore, the current proposal also seeks to revise the definitions of "torture" (Article 2(a)) and "other cruel, inhuman or degrading treatment or punishment" (Article 2(b)) that in AFET's view manifestly belong under its remit, namely within the competences of its DROI Subcommittee.

### Findings

The current proposal seeks to revise the export control regime, set in place by Regulation (EC) No 1236/2005, with the ultimate aim to prevent goods exported from the EU from being used for capital punishment, torture and cruel, inhuman or degrading treatment or punishment. For that purpose it uses a system of export authorizations, to be issued by competent authorities, whereas that system should find an appropriate balance between limiting the administrative burden for exporters (e.g. export of certain medicinal products for legitimate therapeutic purposes) and at the same time keeping effective export controls in place to avoid the exported goods from being used for capital punishment or torture.

---

<sup>4</sup> 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 (P7\_TA(2010)0236).

As you will recall, Annex VI of the Rules of Procedure attributes to the AFET Committee the competence over:

- “8. issues concerning democracy, the rule of law, human rights, including the rights of minorities, in third countries and the principles of international law. In this context the committee is assisted by a subcommittee on human rights, which should ensure coherence between all the Union’s external policies and its human rights policy. Without prejudice to the relevant rules, members from other committees and bodies with responsibilities in this field shall be invited to attend the meetings of the subcommittee.”

whereas the INTA Committee is responsible for:

“for matters relating to the establishment, implementation and monitoring of the Union’s common commercial policy and its external economic relations, in particular:

1. financial, economic and trade relations with third countries and regional organisations;”

Whereas the underlying objective of the current dossier – eliminating torture and eradicating capital punishment in the world - belongs within the remit of the AFET(DROI) Committee, the proposal uses export control instruments (export authorisations) for attaining those aims. This renders it analogous to the Dual use Regulation (No 428/2009) and Regulation (EU) No 258/2012 that seek to support security and non-proliferation efforts or to combat the illicit trafficking of firearms, while using export control regimes for such purposes. It should be noted that both files mentioned above were deliberated under INTA's lead with AFET's formal contribution limited to a simple opinion (COD 2008/0249).

Furthermore, the legal basis of the proposal (Article 207 TFEU) concerns the common commercial policy, an area the INTA Committee is responsible for under Annex VI. It is therefore of high importance that the competence of INTA for trade-related instruments was fully engaged for the purposes of the current proposal.

The revised definitions of “torture” and “other cruel, inhuman or degrading treatment or punishment” in the proposal (Article 2(a) and Article 2(b)) touch indeed upon the competences of the DROI Subcommittee as regards human rights, but those provisions comprise a relatively minor part of the entire proposal. In view that the main content of the file affects the responsibilities of the INTA Committee (export control framework), I believe that the current proposal should be deliberated under its lead.

However, while acknowledging the underlying purpose of the proposal being the elimination of torture and the eradication of capital punishment in the world, I would propose that Rule 53 is applied vis-à-vis the AFET(DROI) Committee with the following additional elements of cooperation (“Rule 53+”):

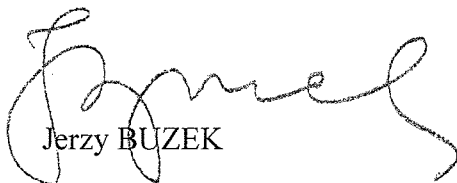
- systematic invitation of the AFET(DROI) draftsperson to all exchanges of views, workshops and hearings scheduled in the INTA Committee;

- invitation of the AFET(DROI) draftsman to meetings with the INTA shadow rapporteurs;
- participation of the AFET(DROI) draftsman, along the INTA shadow rapporteurs, in informal trilogues;
- bilateral meetings between the INTA rapporteur and the AFET(DROI) draftsman for opinion regarding their specific interests and concerns.

My recommendation to the Conference of Presidents would therefore be:

1. that the INTA Committee's claim of competence be granted;
2. that the AFET(DROI) Committee contribute with an opinion under Rule 53 to the INTA report with the additional provisions as outlined above.

Yours sincerely,



Jerzy BUZEK

cc: Mr Elmar BROK, Chair of the Committee on Foreign Affairs  
Mr Bernd LANGE, Chair of the Committee on International Trade  
Ms Elena VALENCIANO MARTÍNEZ-OROZCO, Chair of the  
Subcommittee on Human Rights

*Annexes*



ЕВРОПЕЙСКИ ПАРЛАМЕНТ PARLAMENTO EUROPEO EVROPSKÝ PARLAMENT EUROPA-PARLAMENTET  
EUROPÄISCHES PARLAMENT EUROOPA PARLAMENT ΕΥΡΩΠΑΪΚΟ ΚΟΙΝΟΒΟΥΛΙΟ EUROPEAN PARLIAMENT  
PARLEMENT EUROPÉEN PARLAIMINT NA HEORPA PARLAMENTO EUROPEO EIROPAS PARLAMENTS  
EUROPOS PARLAMENTAS EURÓPAI PARLAMENT IL-PARLAMENT EWROPEW EUROPEES PARLEMENT  
PARLAMENT EUROPEJSKI PARLAMENTO EUROPEU PARLAMENTUL EUROPEAN  
EURÓPSKY PARLAMENT EVROPSKI PARLAMENT EUROOPAN PARLAMENTTI EUROOPAPARLAMENTET

Committee on Foreign Affairs  
The Chair

Subcommittee on Human Rights  
The Chair

Mr Klaus-Heiner Lehne  
Chair  
Conference of Committee Chairs  
ASP 10E10S

200978 25.02.2014

**Subject: Contested competence of file COD 2014/0005: Trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment**

Dear Chairman,

We are writing to you with regard to the contested competence by the Committee on International Trade of file COD 2014/0005 (Trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment). The Commission proposal amends Regulation 1236/2005, following calls to do so, including from Parliament in its resolution on the subject in 2010. This legislative proposal has been attributed to the Committee on Foreign Affairs (AFET) but was contested by the Committee on International Trade (INTA) in a letter by INTA Chair Mr Moreira dated 22 January 2014. Based on the arguments below we are asking you to confirm the original decision and maintain the attribution of the file to the Committee on Foreign Affairs and its Subcommittee on Human Rights.

The objective of this legislative proposal is to revise the modalities relating to the treatment of goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment in third countries. The new proposal amends the original Regulation and widens its scope to include brokering services, technical assistance and transit, with a view to protecting human rights and specifically preventing the use of equipment and substances made in Europe from being used for torture and executions in third countries. In line with this objective and the political context, the file is managed by the Foreign Policy Instruments (FPI) unit working alongside the European External Action Service, and not by DG Trade of the European Commission.

The first and foremost objective of the proposal is to protect human rights, in line with Article 21 of the Lisbon Treaty which, in paragraph 2, defines one of the goals of EU external action as the consolidation and support of democracy, the rule of law, human rights and the principles of international law.

In fact, the so-called "torture tools regulation" is one important element of the overall EU strategy in the fight against the death penalty and torture as part of EU human rights policy under the Common Foreign and Security Policy (CFSP).

The EU Action Plan on democracy and human rights, as adopted in June 2012 by the Foreign Affairs Council, also explicitly lists the review of Regulation 1236/2005 under point 11: *"Make trade work in a way that helps human rights"*, thus confirming the role of the Regulation as being at the service of the overall policy goal of protecting human rights. Treating this file as a purely trade issue will be putting the cart before the horse.

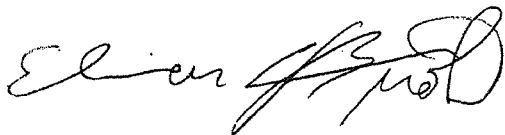
The legal instruments used (export controls and licensing) may well fall under Common Commercial Policy (Article 207 of TFEU) as referred to in the legislative proposal and as pointed out by Mr Moreira in his letter. However, these instruments are clearly used in the context of the overall foreign policy objective of protecting human rights and preventing European equipment and substances from being used for torture or to carry out the death penalty.

Furthermore, the legislative proposal, in Article 2 (a) and (b), also covers the definitions of torture and cruel, inhuman or degrading treatment and their interpretation for the purpose of this Regulation. This particular issue would certainly fall under the competence of the Foreign Affairs Committee and notably its Subcommittee on Human Rights.

Therefore we would request that the original attribution of this legislative file remain with the Committee on Foreign Affairs and its Subcommittee on Human Rights in the lead.

We thank you for your careful consideration of this matter.

Yours sincerely,



Elmar Brok



Barbara Lochbihler



ЕВРОПЕЙСКИ ПАРЛАМЕНТ PARLAMENTO EUROPEO EVROPSKÝ PARLAMENT EUROPA-PARLAMENTET  
EUROPÄISCHES PARLAMENT EUROOPA PARLAMENT ΕΥΡΩΠΑΪΚΟ ΚΟΙΝΟΒΟΥΛΙΟ EUROPEAN PARLIAMENT  
PARLEMENT EUROPÉEN PARLAIMINT NA HEORPA PARLAMENTO EUROPEO EIROPAS PARLAMENTS  
EUROPOS PARLAMENTAS EURÓPAI PARLAMENT IL-PARLAMENT EWROPEW EUROPEES PARLEMENT  
PARLAMENT EUROPEJSKI PARLAMENTO EUROPEU PARLAMENTUL EUROPEAN  
EURÓPSKY PARLAMENT EVROPSKI PARLAMENT EUROOPAN PARLAMENTTI EUROPAPARLAMENTET

Committee on International Trade

The Chairman

INTA D(2014)3629

301341 22.01.2014

Mr. Klaus-Heiner Lehne  
Chairman of the Conference of Committee Chairs  
European Parliament

**Subject: Contestation of competence regarding the legislative report 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 – 2014/0005(COD) – C7-0014/2014)**

Dear Chairman,

On 14 January the Commission adopted a proposal to update 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 (hereinafter "Anti-torture goods Regulation"). This long-awaited proposal comes as a follow-up to the European Parliament resolution of 17 June 2010 on implementation of the aforementioned Regulation and Commission Implementing Regulation (EU) No 1352/2011.

The Committee on International Trade (INTA) believes that this file has been incorrectly attributed to the Committee on Foreign Affairs (AFET). Below you will find a summary of our arguments explaining why this file comes under the competence of INTA.

Firstly, the scope of the file as set out in Article 1 of the proposal deals with international trade in anti-torture goods:

"This Regulation lays down *Union rules governing trade with third countries in goods* that could be used for the purpose of capital punishment or for the purpose of torture or other cruel, degrading or inhuman treatment or punishment, and governing also the provision of brokering services and the supply of technical assistance related to such goods".



The proposal lays down a system of export controls and criteria for granting export authorisations as well as establishing a Union general export authorisation and is therefore analogous to Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items ("the Dual use Regulation"), which governs the EU export control regime for items that are used for civilian purposes, but may have military applications. This Dual Use file has been dealt with exclusively by INTA within the European Parliament. Export control and authorisation systems are based on the EU list of controlled items included in the annexes to the regulation. In a similar vein, the "Anti-torture goods Regulation" establishes an export control regime, which principally aims to prevent goods exported from the EU from being used for torture or capital punishment.

Notwithstanding the aims behind the two regulations, be it ensuring security and non-proliferation or eliminating torture and eradicating capital punishment without hindering legitimate trade, the export control tools used to attain these aims clearly fall under the scope of the Common Commercial Policy. These general EU export control frameworks are by no means comparable to the targeted restrictive measures (sanctions), falling under the Common Foreign and Security Policy and covered by the Article 215 of the TFEU.

Secondly, the legal basis of the proposed Regulation is Article 207 of the TFEU (Common Commercial Policy). According to Annex VII of the Rules of Procedure is the Committee responsible *"for matters relating to the establishment and implementation of the Union's common commercial policy and its external economic relations"*.

Thirdly, in terms of precedents, in addition to the Dual Use Regulation cited above, in May 2010 the Commission adopted a proposal dealing with the implementation of Article 10 of the UN Firearms Protocol against the illicit manufacturing of and trafficking in firearms. The purpose of this proposal was to introduce an 'export procedure' to be applied by Member States to exports of such goods to third countries. In the light of the substance and scope of this proposal, it was referred to INTA as the lead committee and AFET did not contest this referral nor do an opinion on it.


Moreover, the basic "Anti-torture goods Regulation" No 1236/2005 falls under INTA competence, and therefore it was originally included into the so-called "Trade Omnibus I" package (Common commercial policy as regards the procedures for the adoption of certain measures, 2011/0039 COD), aligning the act with the provisions of the Lisbon Treaty on delegated acts. This file was referred to INTA as the lead committee and there was neither challenge to that referral nor opinions from other committees.

The issues covering export controls and external aspects of customs fall within the scope of INTA's responsibility. "The Anti-torture goods Regulation" is an export control file comparable to other similar dossiers that INTA is in charge of, including the implementation of Article 10 of the UN Firearms Protocol (2010/0147(COD), Regulation (EU) No 258/2012).

In light of the aforementioned arguments, I hereby formally request that the Committee on International Trade be granted the status of lead committee, responsible for the review of the "Anti-torture goods Regulation".

Let me assure you of the willingness of INTA to engage with AFET, and in particular its DROI Subcommittee, as regards the legislative work on upgrading Union controls on the export of goods that can be used for torture and capital punishment. I thank you in advance for your consideration of this matter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Vital Moreira', with a stylized, cursive script.

Vital Moreira

Cc: Mr Elmar Brok (Chair of AFET Committee)  
COORDLEG