**Questionnaire pursuant to General Assembly resolution 73/304 entitled “Towards torture-free trade: examining the feasibility, scope and parameters for possible common international standards”**

**Submission of Ireland**

**April 2020**

**Question 1:**

**What are the regional and/or national instruments or policies guiding your country for the regulation of trade in goods used for a) capital punishment b) torture or other cruel, inhuman or degrading treatment of punishment? Please provide examples. Which government department/agency is responsible for monitoring the implementation of such regulations/policy, if any?**

The relevant European Union legislation regulating trade of goods used for capital punishment and torture or other cruel, inhuman or degrading treatment or punishment is Regulation (EU) 2019/125 of the European Parliament and of the Council of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment. This is the most widely implemented control regime of this type of goods in the world. The legislation codified the various amendments and changes to Council Regulation (EC) No 1236/2005.

Within Ireland, as specified by the Regulation, the Department of Business Enterprise and Innovation (DBEI) is the National Competent Authority for the administration of Regulation (EU) 2019/125.

S.I. No. 455 of 2019 European Communities (Control of Trade in Goods That May Be Used for Torture) Regulations 2019 is the relevant national legislation, and sets out the licensing requirements, enforcement powers of DBEI Authorised Officers and the penalties applicable for breaches of export controls.

**Question 2:**

**Have there been any investigations, prosecutions and/or convictions for breaches of national regulations on the trade in goods indicated in paragraph 8 of the introduction to this questionnaire? If so, please give details.**

There have been no investigations, nor have there been any licences issued, or applied for, since the introduction of Council Regulation (EC) No 1236/2005.

**Question 3:**

**Do you agree with the proposed categorization of goods used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment indicated in paragraph 8 of the introduction to this questionnaire (see above)? If not, which categories would you propose?**

The following three categories of goods used for capital punishment, torture or other cruel, inhuman or degrading treatment of punishment are proposed:

1. goods which have no practical use other than for the purpose of capital punishment, torture and other cruel, inhuman or degrading treatment or punishment;
2. goods that could be used not only for the purpose of torture or other cruel, inhuman or degrading treatment or punishment, but also for legitimate purposes; and
3. goods that could be used for the purpose of capital punishment (products which could be used for the execution of human beings by means of lethal injection).

**Question 4:**

**Please indicate whether you believe there should be an exhaustive list of goods under each category. If yes, should there be a mechanism of regular updating of the lists under each category?**

An exhaustive list of goods under each of the proposed categories would be desirable for legal certainty and administrative efficiency.

It would be appropriate to develop a mechanism to add goods where there is a clear and immediate risk that those goods will be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, in order to respond quickly where new goods are developed which could be used for these purposes.

Where an exhaustive list is infeasible, a viable approach is set out in the control of military and dual-use exports: i.e. an extensive list that is subject to review and updating where, if necessary, controls can be imposed on non-listed items. As in the case of military and dual-use goods, the control of non-listed items should be based on clear criteria concerning the torture related risks of items being used for capital punishment.

**Question 5:**

**Should the proposed common international standards prohibit trade in goods which have no practical use other than for the purpose of capital punishment or torture or other cruel, inhuman or degrading treatment or punishment? If not, please provide further explanations.**

It is necessary that the proposed common international standards prohibit exports and imports of goods which have 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.

Ireland is fully committed to the prevention and eradication of torture and other forms of cruel, inhuman or degrading treatment or punishment. Ireland opposes the use of the death penalty in all cases and circumstances, and seeks universal abolition of the death penalty.

Article 5 of the Universal Declaration of Human Rights, Article 7 of the International Covenant on Civil and Political Rights (ICCPR) and Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms all provide for the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

The prohibition is one of the cornerstones of the international human rights framework with which all countries are obliged to comply, and there are no circumstances which can be invoked as a justification for torture or any other form of ill-treatment.

Further, Article 2(2) of the Charter of Fundamental Rights of the European Union states that no one shall be condemned to the death penalty or executed.

Ireland is a member of the Global Alliance for Torture-Free Trade, a major initiative to end the trade in goods used to carry out the death penalty and torture, which delivers on the EU’s shared commitment to the eradication these practices.

**Question 6:**

**Should the proposed common international standards provide for strict control of trade in goods that could be used for the purpose of torture or other cruel, inhuman or degrading treatment or punishment and goods that could be used for the purpose of capital punishment? If not, please provide justification.**

The proposed common international standards should provide for strict control of trade in goods that could be used for capital punishment and torture or other cruel, inhuman or degrading treatment or punishment, but also for legitimate purposes. Such controls are necessary for the protection and promotion of respect for human dignity and human rights. This is reflected in Regulation (EU) 2019/125.

**Question 7:**

**What types of activities linked to “import, export and transfer” should the proposed common international standards regulate? Please consider activities such as transit, promotion, technical assistance and training, brokering, sharing technology, manufacturing, production and commercial marketing among others. Please also provide an explanation for why these activities should be regulated or not.**

The activities enumerated in the question should be regulated by the proposed common international standards, as well as further activities including training in the use of regulated goods, promotion in trade fairs or exhibitions, and advertising.

**Question 8:**

**Please indicate which risk assessment mechanisms and criteria should be considered for the import, export and transfer of a) goods that could be used for the purpose of torture or other cruel, inhuman or degrading treatment of punishment and b) goods that could be used for the purpose of capital punishment. Please consider, inter alia, the criteria for preventing diversion to third countries.**

Trade should be prohibited in relation to goods which have no practical use other than for the purposes of capital punishment, torture and other cruel, inhuman or degrading treatment or punishment.

In relation to goods that could be used not only for the purpose of torture or other cruel, inhuman or degrading treatment or punishment, but also for legitimate purposes, exports should be regulated, i.e. subject to an export authorisation requirement. Authorisation should not be granted where there are reasonable grounds to believe that goods might be used for torture or other cruel, inhuman or degrading treatment or punishment in the country to which they are exported.

In relation to goods that could be used for the purpose of capital punishment, exports should be regulated, i.e. subject to an export authorisation requirement. Authorisation should not be granted when there are reasonable grounds to believe that such goods might be used for capital punishment in the country to which they are exported.

Article 12 of Regulation (EU) 2019/125 provides a sound model in this regard. Article 12 provides that decisions on applications for authorisations in respect of the export of goods (as listed in Annex III of the Regulation) will be taken by competent authorities taking into account all relevant considerations, including in particular whether an application in respect of an essentially identical export has been dismissed by another EU Member State in the previous three years, and considerations about intended end-use and the risk of diversion.

**Question 9:**

**Please indicate what you consider to be the most suitable type of international instrument to establish common international standards for regulating goods used for capital punishment or torture or other cruel, inhuman or degrading treatment or punishment. Please provide further explanation.**

An international legally binding instrument is appropriate in order to put a stop to the trade of goods used for capital punishment and torture or other cruel, inhuman or degrading treatment, and to establish measures to control and restrict trade in goods to this end.

Regulation (EU) 2019/125 established rules, principles and mechanisms which could serve as inspiration for such an international legally binding instrument.

Treaties and other international agreements underpinned by international engagement at technical and policy level provide a basis for wider international action. The Wassenaar Arrangement provides an example in the context of certain dual-use items.