

L.N. 167 of 2006

**NATIONAL INTEREST (ENABLING POWERS) ACT
(CAP. 365)**

Importation and Exportation Control of Goods which could be used for Capital Punishment, Torture or other Cruel, Inhuman or Degrading Treatment or Punishment Regulations, 2006

IN virtue of the powers vested in him by article 3(3) of the National Interest (Enabling Powers) Act, the Prime Minister has made the following regulations:

1. (1) The title of these regulations is the Importation and Exportation Control of Goods which could be used for Capital Punishment, Torture or other Cruel, Inhuman or Degrading Treatment or Punishment Regulations, 2006. Citation and scope.

(2) These regulations implement the provisions of Council Regulation (EC) No 1236/2005 of the 27th June, 2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, hereinafter referred to as “the Council Regulation”.

2. (1) In these regulations, unless the context otherwise requires:- Interpretation.

“the Community” means the European Community;

“the Director” means the Director responsible for trade and includes any officer designated or authorized by the Director to act for a purpose or class of purposes of these regulations;

“export” means any departure of goods from the customs territory of the Community, including the departure of goods that requires a customs declaration and the departure of goods after their storage in a free zone of control type I or free warehouse within the meaning of Council Regulation (EEC) No 2913/92 of the 12th October, 1992 establishing the Community Customs Code;

“import” means any entry of goods into the customs territory of the Community, including temporary storage, the placing in a free zone or free warehouse, the placing under a suspensive procedure and the release for free circulation within the meaning

of Council Regulation (EEC) No 2913/92 of the 12th October 1992 establishing the Community Customs Code;

“Member State” means Member State of the European Union;

“museum” means a non-profit making, permanent institution in the service of society and of its development, and open to the public, which acquires, conserves, researches, communicates and exhibits, for purposes of study, education and enjoyment, material evidence of people and their environment;

“other cruel, inhuman or degrading treatment or punishment” means any act by which significant pain or suffering, whether physical or mental, is inflicted on a person, when such pain or suffering is inflicted either by or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity. It does not, however, include pain or suffering arising only from, inherent in or incidental to, lawful penalties;

“person” means any natural or legal person;

“technical assistance” means any technical support related to repairs, development, manufacture, testing, maintenance, assembly or any other technical service, and may take forms such as instruction, advice, training, transmission of working knowledge or skills or consulting services. Technical assistance includes verbal forms of assistance and assistance provided by electronic means;

“torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from that person or from a third person information or a confession, punishing that person for an act that either that person or a third person has committed or is suspected of having committed, or intimidating or coercing that person or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted either by or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity. It does not, however, include pain or suffering arising only from, inherent in or incidental to, lawful penalties.

Export prohibition.

3. (1) No person shall make any export 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, listed in the First Schedule to these regulations, irrespective of the origin of such goods.

(2) No person shall supply technical assistance related to goods listed in the First Schedule to these regulations, whether for consideration or not, from the customs territory of the Community, to any person, entity or body in a third country.

(3) By way of derogation from sub-regulations (1) and (2) hereof, an authorization may be issued by the Director for the export of goods listed in the First Schedule to these regulations, and the supply of related technical assistance, if it is demonstrated that, in the country to which the goods will be exported, such goods will be used for the exclusive purpose of public display in a museum in view of their historic significance.

4. (1) No person shall make any import of goods listed in the First Schedule to these regulations, irrespective of the origin of such goods. Import prohibition.

(2) No person shall receive technical assistance related to goods listed in the First Schedule to these regulations, supplied from a third country, whether for consideration or not, by any person, entity or body.

(3) By way of derogation from sub-regulations (1) and (2) hereof, an authorization may be issued by the Director for the import of goods listed in the First Schedule to these regulations, and the supply of related technical assistance, if it is demonstrated that, such goods will be used for the exclusive purpose of public display in a museum in view of their historic significance.

5. (1) An authorization shall be required for the export of goods that could be used for the purpose of torture and other cruel, inhuman or degrading treatment or punishment, listed in the Second Schedule to these regulations, irrespective of the origin of such goods. However, no authorization shall be required for goods which only pass through the customs territory of the Community, namely those which are not assigned a customs-approved treatment or use other than the external transit procedure. Export authorization.

(2) Sub-regulation (1) hereof shall not apply to exports to those territories of Member States which are both listed in the Third Schedule to these regulations and are not part of the customs territory of the Community, provided that the goods are used by an authority in charge of law enforcement in both the country or territory of destination

and the metropolitan part of the Member State to which that territory belongs. Customs or other relevant authorities shall have the right to verify whether this condition is met and may decide that, pending such verification, the export shall not take place.

(3) Sub-regulation (1) hereof shall not apply to exports to third countries, provided that the goods are used by military or civil personnel of a Member State, if such personnel is taking part in an European Union or United Nations peace keeping or crisis management operation in the third country concerned or in an operation based on agreements between Member States and third countries in the field of defence. Customs and other relevant authorities shall have the right to verify whether this condition is met and may decide that, pending such verification, the export shall not take place.

Penalties for failure to comply with these regulations.

6. Any person in Malta, or any citizen or permanent resident of Malta, whether in Malta or elsewhere, who:

(a) contravenes any of these regulations, or

(b) contravenes any of the provisions of the Council Regulation

shall be guilty of an offence and shall, on conviction, be liable to a term of imprisonment not exceeding five years or to a fine (multa) not exceeding fifty thousand liri.

FIRST SCHEDULE**List of goods referred to in Regulations 2 and 4**

CN code	Description
	1. Goods designed for the execution of human beings, as follows:
ex 4421 90 98 ex 8208 90 00	1.1. Gallows and guillotines
ex 8543 89 95 ex 9401 79 00 ex 9401 80 00 ex 9402 10 00 ex 9402 90 00	1.2. Electric chairs for the purpose of execution of human beings
ex 9406 00 38 ex 9406 00 80	1.3. Air-tight 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
ex 8413 81 90 ex 9018 90 50 ex 9018 90 60 ex 9018 90 85	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 designed for restraining human beings, as follows:
ex 8543 89 95	2.1. Electric-shock belts designed for restraining human beings by the administration of electric shocks having a no-load voltage exceeding 10 000 V

Note: This list does not cover medical-technical goods

SECOND SCHEDULE

List of goods referred to in Regulation 5

CN code	Description
	1. Goods designed for restraining human beings, as follows:
ex 9401 61 00 ex 9401 69 00 ex 9401 71 00 ex 9401 79 00 ex 9402 90 00 ex 9403 20 91 ex 9403 20 99 ex 9403 50 00 ex 9403 70 90 ex 9403 80 00	1.1. Restraint chairs and shackle boards <i>Note:</i> This item does not control restraint chairs designed for disabled persons.
Ex 7326 90 98 ex 8301 50 00 ex 3926 90 99	1.2. Leg-irons, gang-chains, shackles and individual cuffs or shackle bracelets <i>Note:</i> This item does not control 'ordinary handcuffs'. Ordinary handcuffs are handcuffs which have an overall dimension including chain, measured from the outer edge of one cuff to the outer edge of the other cuff, between 150 and 280 mm when locked and have not been modified to cause physical pain or suffering.
Ex 7326 90 98 ex 8301 50 00 ex 3926 90 99	1.3. Thumb-cuffs and thumb-screws, including serrated thumb-cuffs
	2. Portable devices designed for the purpose of riot control or self-protection, as follows:
ex 8543 89 95 ex 9304 00 00	2.1. Portable electric shock devices, including but not limited to, electric shock batons, electric shock shields, stun guns and electric shock dart guns having a no-load voltage exceeding 10 000 V <i>Notes:</i> 1. This item does not control electric shock belts as described in 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.

	3. Substances for the purpose of riot control or self-protection and related portable dissemination equipment, as follows:
ex 8424 20 00 ex 9304 00 00	3.1. Portable devices for the purpose of riot control or self-protection by the administration or dissemination of an incapacitating chemical substance <i>Note:</i> This item does not control individual portable devices, even if containing a chemical substance, when accompanying their user for the user's own personal protection.
Ex 2924 29 95	3.2. Pelargonic acid vanillylamide (PAVA) (CAS 2444-46-4)
ex 2939 99 00	3.3. Oleoresin capsicum (OC) (CAS 8023-77-6)

THIRD SCHEDULE

List of territories of Member States referred to in Regulation 5(2)

DENMARK:

- Greenland

FRANCE:

- New Caledonia and Dependencies
- French Polynesia
- French Southern and Antarctic Territories
- Wallis u Futuna Islands
- Mayotte
- St Pierre u Miquelon

GERMANY:

- Büsingen