



Association Européenne de Commerce d'Armes Civiles
The European Association of the Civil Commerce of Weapons

LEGAL FIREARMS AND EVENTUAL REOPENING OF DIRECTIVE 91/477/EEC

I. THE EUROPEAN ASSOCIATION OF THE CIVIL COMMERCE OF WEAPONS

The European Association of the Civil Commerce of Weapons (hereinafter, "AECAC") was founded in 1992 and it is formed from numerous national associations representing the interests of firearm and hunting small- and medium-sized enterprises (hereinafter, "SMEs") and specialized shops from all over Europe.

Since its foundation, AECAC has actively participated in all the procedures of the European Commission policies in which firearm trading is involved in order to support an adequate control of firearms. AECAC does not oppose justified and proportionate restrictions on their acquisition and possession, but seeks to participate in a constructive and non-ideological manner to the EU debate on civilian firearms.

AECAC is currently the only representative at a European level of the firearm trading retailers, and in this capacity AECAC is being considered as a reputable stakeholder before all European Institutions.

II. INTRODUCTION

AECAC is generally satisfied with the text and functioning of the current text of Directive 91/477/EEC, as amended by Directive 2008/51/EC, on the control of the acquisition and possession of weapons.

Notwithstanding the above, AECAC is concerned about a number of recent developments that seem to indicate that the European Commission has already taken a decision to re-open the text of the Directive by 2015, apparently to render it more restrictive.

AECAC considers that the Directive, which is an instrument of the internal market, currently provides a coherent framework that creates mutual trust amongst Member States whilst respecting different national sensibilities on firearms. Member States can also adopt stricter measures provided that they do not breach internal market rules. It has never been the intention of the Directive to fully harmonize national legislations on firearms and a shift in that direction would impinge unnecessarily on the principles of subsidiarity and proportionality.



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Furthermore, and in its condition as an association which essentially pursues representing the interests of firearm and hunting small- and medium-sized enterprises and specialized shops from all over Europe, it is the opinion of AECAC that an eventual reopening of the Directive would negatively impinge on the SMEs due to the implementation of more restrictions to the business activity of such companies.

In this connection, the distribution of the potential costs and of the benefits of the proposals with respect to the business size, differentiating between micro, small, medium and large enterprises should be analyzed qualitatively and, if possible and proportionate, quantitatively. It would be also important to establish to which extent such proposal would affect SMEs competitiveness or the business environment in which it will affect their operations. Cost and impacts identified for SMEs should be compared with those of large enterprises.

Finally, it should be borne in mind that SMEs constitute 99% of all European businesses, generate about 58% of the EU's turnover, employ two thirds of the total private employment and created 80% of the new jobs in the last five years (http://ec.europa.eu/enterprise/entrepreneurship/docs/sba/report_think_small_first.pdf, p. 4). The SMEs therefore constitute the basis of the EU's economy and thus a key element in the Lisbon agenda. AECAC considers important and essential to respect the objects of the Small Business Act (hereinafter, the "SBA") and the "Think Small First" principle (to which we shall return later), and which haven't been followed in the framework of a hypothetical reopening of the Directive.

III. AECAC'S POSITION FACING AN EVENTUAL REOPENING OF THE DIRECTIVE

(i) Legal firearms are not the problem

AECAC disagrees with the Commission's allegation about the link between legal and illegal firearms, as well as the specific arguments invoked to establish this link:

(a) Lack of common rules on home storage

AECAC is not aware of the existence of a major problem in this domain and its cross-border implications.

If the Commission believes that this is in fact the case, it should in particular provide data to sustain such an allegation, given the fact that this data should be probably available in many Member States.



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It is the opinion of AECAC that accurate research would show that most firearms seized from criminals come from post-conflict areas and illegal sources.

Finally, most Member States already have effective rules on home storage of firearms and the Directive does not prevent them in any way from adopting these rules.

(b) Lack of common standards on deactivation

The Directive already requires that deactivated firearms be rendered permanently unfit for use. If the Commission considers that the standards in some State Members do not fulfill this requirement, it should start legal actions.

Furthermore, the Directive imposes upon the Commission the obligation to issue Common Guidelines on deactivation, which the Commission has failed to do. The Commission should issue such Guidelines (maybe informed by those prepared by the Permanent International Commission for Firearms Testing - CIP) before considering any further options.

AECAC is strongly convinced that instead of seeking the amendment of the Directive the Commission should ensure the correct implementation and enforcement of its current provisions in order to minimize any possible loophole.

(c) Lack of an obligation to incorporate locking devices in firearms

As with the other claims listed, the Commission has failed to provide data about the extent of the unauthorized use of legal firearms.

In addition, the mandatory incorporation of locking devices in the firearm mechanism would be disproportionate: there are far less burdensome alternatives, such as keeping firearms and ammunition separately. This unnecessary measure could have negative economic implications for the industry and ultimately legal users, the interests of whom AECAC is compelled to defend.

(d) Low standard of control on the acquisition and possession of firearms

The Directive already lays down an adequate level of control, even for the lower categories of firearms: C and D. Categories C and D only include firearms that are difficult to conceal, have slow firepower and are mainly used for hunting and sporting activities but very seldom for criminal activities.



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The Directive requires as a minimum that Category C and D firearms are registered and linked to their owner at any moment and that Member States ensure that those owners have been specifically permitted to acquire and possess such firearms in accordance with national law and are not likely to be a danger to themselves, to public order or to public safety. Firearms in categories C and D are thus already subject to strict controls.

The declaration regime just described (as opposed to the compulsory authorization regime for category B firearms) merely constitutes a simplified administrative procedure which in practice requires a valid hunting or sport-shooting license to be able to benefit from it. Any amendment in this regard would disproportionately impinge on the firearms owners.

(ii) The *Think Small First* principle

AECAC considers that the SBA for Europe, adopted in June 2008, should be necessarily borne in mind. According to the European Commission, its object was *to improve the overall approach to entrepreneurship, to irreversibly anchor the Think Small First principle in policy making from regulation to public service, and to promote SMEs growth by helping them tackle the remaining problems which hamper their development* (http://ec.europa.eu/enterprise/entrepreneurship/sba_en.htm#ff2).

Furthermore, the *Think Small First principle requires that legislation takes SMEs interests into account at the very early stages of policy making. Various tools and techniques could lead to an effective implementation of the principle. These include the application of an SME test to forthcoming legislative proposals, the consultation of the SME stakeholders, the work of the SME Envoy, the use of specific SME provisions in legislation in view of avoiding disproportionate burden on SMEs etc.* (http://ec.europa.eu/enterprise/entrepreneurship/think_small_first.htm).

As past experience has proved, new legislation and more restrictions always generates new obstacles and costs to SMEs, which in turn would be disproportionately affected or disadvantaged by such modification in comparison with large companies. This is the main reason causing the loss of competitiveness of European SMEs in front of our American and Asian competitors.

Quite the contrary, alternative mechanisms and flexibilities in order to help SMEs to comply with the current legal framework would become particularly relevant and necessary in this context.



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(iii) The Directive and its reflection as a broad political agreement

Contrary to many other legal texts that have remained unchanged for decades, the Directive was already thoroughly amended in 2008. The Directive reflects a broad political agreement, illustrated by the adoption of the 2008 amendment by an overwhelming majority in the European Parliament (588 votes in favor, 14 against) and in the EU Council (all Member States ó except one ó were in favor).

Furthermore, it should be noted that some Member States have recently amend their legislation on the acquisition and possession of weapons. Particularly relevant is the case of France, where the current Law on such matter was adopted in March 2012 (by means of the *LOI n° 2012-304 du 6 mars 2012 relative à l'établissement d'un contrôle des armes moderne, simplifié et préventif*).

Before tabling new legislation, the Commission should provide evidence that it is needed, proportionate and suitable to attain the pursued objectives. In this regard, and as previously stated before, it is the opinion of AECAC that establishing a link between legal firearms on the one hand and illicit trafficking and criminal use on the other hand (which is, in fact, the argument alleged by the Commission) constitutes an unsubstantiated argument. The Commission's position seems to reflect an ideological bias instead of a fact-based conclusion.

(iv) The principle of subsidiarity

It is well known that the principle of subsidiarity is fundamental to the functioning of the European Union, and more specifically to European decision-making. The principle of subsidiarity aims at determining the level of intervention that is most relevant in the areas of competences shared between the EU and the Member States. This may concern action at European, national or local levels. In all cases, the EU may only intervene if it is able to act more effectively than Member States.

It is the opinion of AECAC that the amendment of the Directive would be contrary to the abovementioned principle, given the fact that the existing framework already provides the Member States with the necessary mechanisms to ensure the enforcement of the current legislation on civilian firearms.



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IV. CONCLUSIONS

It is erroneous to believe that by increasingly restricting legal trade in and use of hunting and sporting firearms (regulated by the Directive), illegal trafficking in firearms will be reduced. Such restrictions would however impose unjustified and disproportionate restrictions on legal users, while diverting public resources from the important issues, such as tackling trafficking in firearms coming from post-conflict areas.

An amendment of the existing Directive would directly impinge on the *Think Small First* principle, given the fact that SMEs will be disproportionately affected or disadvantaged by said modification in comparison with large companies. In order to avoid such a scenario, the Commissions should consider alternative mechanisms and flexibilities for the purposes of helping SMEs to comply with the current provisions of the legislation on civilian firearms.

The Commission should also consider using other legislative instruments for tackling the problems of illicit trafficking in and criminal use of firearms. For instance: addressing smuggling of firearms into the EU, imposing more severe criminal sanctions or improving communication among national authorities.

Additionally, the introduction of unjustified restrictions will only result in the disaffection of many citizens towards the EU institutions. The European decision-making should be based on the adoption of decisions on a reasonable and technical basis, and not on ideological goals. That is the reason why any amendment to be adopted regarding the legislation on civilian firearms could be supported by AECAC if the Commission complies with the above conditions. Any modifications that fall out of the aforesaid framework may generate risks in relation to a potential disaffection of many citizens towards the EU institutions.

Finally, the Commission should follow due process and take decisions after a proper assessment of the situation and on the basis of facts and data.

AECAC reiterates its eagerness to engage constructively in an open debate on legal civilian firearms.

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