



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

**EUROPEAN COMMISSION**  
**Directorate-General Justice, Freedom and Security**  
**To the Director-General Mr. Jonathan Faull**  
**B-1049 Brussels**  
**BELGIUM**

Barcelona, 8th of September 2009

Dear Sir,

I am writing to you in my capacity as the Secretary-General of the *European Association of the Civil Commerce of Weapons (AECAC)* with regard to the initiative of the *Directorate General (DG) for Justice, Freedom and Security of the European Commission* to implement in European Legislation the **article 10 of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition**, supplementing the United Nations Convention against Transnational Organized Crime. The objective of the Protocol, which is the first legally binding instrument on small arms that has been adopted at a global level, is to promote, facilitate and strengthen cooperation among States Parties in order to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

Our general opinion is that such an initiative is completely unnecessary and able to provoke a contrary effect to the required. It affects negatively the competitiveness of Small Companies, it does not respect the legal European process as it is contrary to the Principle of Subsidiarity and it is neither practical nor effective, as it provides no improvement in the control over dangerous weapons, but targets sporting guns, which are considered low risk and are already submitted to the highest national controls. Furthermore, legislation on a national legislation level is already sufficient and any new further regulation always provokes more problems than solutions. Member states already have strict regulations concerning this issue.

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In January 2009 the European Commission issued the necessary ***“Study on an Impact Assessment of a proposal for a Council Regulation that implements Article 10 of the UN Firearms Protocol into Community legislation”*** which we do not consider **neither sufficiently nor correctly elaborated** for the following reasons.

Assessing potential impacts of different policy options, the European Commission should follow the Impact Assessment Guidelines (in the following named IAG) and its Annexes issued by the European Commission (revised 15th of January 2009). In the IAG (Part I, p. 4 f.) it is stated that an Impact Assessment (in the following named IA) is *“a key tool to ensure that commission initiatives and EU legislation are prepared on the basis of transparent, comprehensive and balanced evidence”*. In particular, the following 6 key analytical steps are named:

1. Identifying the problem
2. Define the objectives
3. Develop main policy options
4. Analyse the impacts of the options
5. Compare the options
6. Outline policy monitoring and evaluation

*AECAC* asserts that the European Commission only disclosed a small part of the referred IA. In the introduction of the IA its necessary parts are named (IA, p. 17), but the disclosed version only shows part 1 (Defining the problem) and a very small abstract of part 2 (Setting the objectives). The European Commission argues in its letter to *FACE* (dated the 4th of May 2009) that only sending a part of the document would be justified by an exception according to article 4 paragraph 3 of Regulation No. 1049/2001 regarding public access to European Parliament, Council and Commission documents.

*AECAC* considers (as does *FACE* in its complaint to the European Commission dated the 26th of March 2009) that exceptions to the general principle, that the public should have the widest possible access to the named documents, must be interpreted narrowly, and that in this case the disclosure of the rest of the study or parts of it would not seriously undermine the Commission's decision-making process. In the IAG it is furthermore stated that the Commission's Impact Assessment system should be *“in line with the Commission's policy of transparency and openness towards other institutions and the civil society”* (IAG, p. 6). For all these reasons we consider that the entire study should be disclosed.

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**Regarding the disclosed parts of the IA and its Annexes, we criticise the following points:**

**I. Gathering information and consulting stakeholders:**

1. Basic principles:

According to the IAG, “*good quality data – facts as well as figures - are an essential part of any IA*” (IAG, p. 17). It is also explained that “*consulting interested parties is an obligation for every IA and it must follow the Commission's minimum standards*”. It is important to plan the consultations early, to engage all affected stakeholders, to use the most appropriate timing, format and tools to reach them, to ensure that stakeholders can comment on a clear problem definition, subsidiarity analysis, description of the possible options and their impacts, to maintain contact with stakeholders throughout the process and to provide feedback and analyse stakeholders' contributions for the decision-making process and to report fully in the IA report on how the input was used. According to the IAG it is a Treaty obligation to consult those who will be affected by a new policy or initiative and those who will implement. “*It is an essential tool for producing high quality and credible policy proposals. Consultation helps to ensure that policies are effective and efficient, and it increases the legitimacy of EU action from the point of view of stakeholders and citizens*”. An IA should take into account “*a wide range of external stakeholders*” (IAG, p. 6).

2. Consultations:

In the provided documentation we find a questionnaire on “*Procedural, Legal and Administrative questions for Public Authorities*” (sent to the Member States in December 2006), a report of a respective meeting in March 2007 and the evaluation of replies and opinions in the Annexes to the IA (p. 8 f.). Another questionnaire was established about “*economic and administrative aspects, addressed to businesses*” (sent to the stakeholders in December 2006), a report on a respective meeting in June 2007 and the concerning evaluation in the Annexes to the IA regarding 15 interest groups (p. 26 and 37 f.). Apparently, as mentioned in the Annexes to the IA (p. 26), additional interviews with a selection of stakeholders and business representatives were carried out by Regioplan Policy Research in September 2008. In the Annexes to the IA there are the respective interview reports (p. 37 f.).

It is to be criticized that the gathered information does not include enough Member States respectively stakeholders. Regarding “*Procedural, Legal and Administrative questions for Public Authorities*”, information about the topic has been received and evaluated from only

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13 Member States and the respective answers were rather short and often not very significant.

About “*economic and administrative aspects, addressed to businesses*”, a few departments of only 5 Member States have been consulted, and only 5 private parties and two NGOs. Notably, there aren't any consultation results from France, and Italy is not mentioned regarding “*economic and administrative aspects*” nor in the consultation done by Regioplan Policy Research, although both Member States are identified as key players (IA, p. 47). It also attracts attention that the department in Germany consulted by Regioplan Policy Research is “*the responsible for the implementation of the UNFP*”, whereby there is no further reference made to the concrete entity. We consider this a partial and narrow research and not an appropriate way to find out the opinion or situation of a country, especially since no other department has been consulted in the same Member State.

As above mentioned, the IA should take into account a wide range of stakeholders, which obviously was not the case in the consultations made. On the contrary, the number of Member States and stakeholders taken into account was not sufficient at all. It is important to “*be careful in drawing conclusions if there are only a small number of responses and they come from a narrow range of interests*”. It has to be considered that “*an open consultation is unlikely to provide a fully representative picture of opinions. You may need, therefore, to make specific efforts to ensure that all relevant stakeholders are both aware of and able to contribute to the consultation*” (IAG, p. 19).

In addition, in the IA itself it is declared that, regarding the replies of the two questionnaires and of the interviews with the consulted stakeholders, “*it remains unclear in some cases whether the licences are issued for export or/and import and whether these licences or authorisations are referring to military and/or firearms for civilian use*”. Further it is stated that “*the difference between licences and authorisations is not always clearly defined*” (IA, p. 46). We insist that on such imprecise data basis no reliable conclusion can be made.

Furthermore, it is necessary to highlight that sufficient time was not provided for the various consultations to give the respective replies.

Therefore, the given opinions and information for the concerning IA can not be taken as evidence and do not provide a sufficient data basis. But even if they did, the respective conclusions to the consultations drawn in the IA (p. 26 f.) are not sufficient neither in breadth nor in detail.

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In summary, the information gathered and the consultation of the stakeholders do not comply with the minimum consultation standards required according to the IAG.

## **II. Key analytical steps:**

### **1. Defining the problem/Evidence:**

As we know, the principal objective of the UN Firearms Protocol is to combat the transnational organized crime by controlling the related illicit manufacturing of and trafficking in firearms (IA, p. 21). Therefore, the respective IA should focus on this objective and analyze why control on a Member States' level would not be sufficient and why the Member States are not able to establish their own necessary regulation for civil firearms without the respective EU legislation. However, in the IA there are several problems mentioned, but most of them are not relative to the actual objective or problem behind the initiative, so as for example the statement that "*the variety of rules between countries and the lack of transparency of obligations ... impose costs on trade*" (IA, p. 49). The IA should talk about the main problems which gave reason to the respective initiative and which are actually not addressed in the present IA.

Furthermore, since the Commission and the DG for Justice, Freedom and Security are only competent to legislate about civil firearms (IA, p. 64), we suppose that the concerning regulation will only have effect on procedures regarding **civil firearms**. Accordingly, it is stated in the present IA (p. 24) that firearms of category A that are specifically designed for military purposes were excluded from the scope of the IA. Therefore, the IA should actually investigate whether there does indeed exist a real problem in the sector of civil firearms, which should demonstrate clear underlining causes for the necessity of regulation in this specific area.

**Further, we would like to draw attention to the fact that the Member States have the competence to regulate their matters regarding military arms, and therefore we wonder why they should not be able then to control their regulations concerning civil firearms.**

However, regarding the questionnaires and the interviews with the stakeholders it has been seen that in some cases it remained unclear "*whether these licences or authorisations are referring to military and/or firearms for civilian use*" (IA, p. 46). Also regarding the problem of criminal acts committed by firearms, there is no differentiation made between civil firearms and military weapons. In the IA it is stated that "*different measurement methods*

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*were used, and none of the available studies distinguish whether the criminal acts were committed by means of firearms for civilian use, converted firearms or military weapons”* (IA, p. 54). That means that these studies do not entirely focus on civil weapons and therefore do not give any evidence or useful data for this case by not differentiating between civil firearms and military weapons.

At the end of chapter 2.3 of the IA it is said that there is no regulation on how to deal with the import and export of firearms for civilian use from/to third countries which could be identified as a problem, since it could result in a non-harmonised legislation (IA, p. 55). But as stated in the IAG, *“problems should not be defined as a ‘lack of something’”* (IAG, p. 21), and anyway, it is ironic to mention the lack of the proposed solution as the problem itself.

Furthermore, as required by the IAG, a good problem definition should ***“describe the nature of the problem in clear terms and support the description with clear evidence”*** (IAG, p. 20). In chapter 2 of the IA there are several related problems mentioned, but generally there is an insufficient provision of evidence of the nature and scale of the respective problem. For instance regarding the mentioned claim about *“the variety of rules between countries and the lack of transparency of obligations that impose costs on trade”* (IA, p. 49) it is referred to Annex 1.2. where we find a list about the different legislation on the issue in some of the Member States (Annexes to the IA, p. 8). In this list it appears that there are some differences in regulations, but it can't be deduced that there is an actual lack of transparency. Also there is no evidence for the statement that this would be imposing costs on trade. In the chapters 2.1. and 2.2. (IA, p. 49 f.) costs of crime are also mentioned as an economic problem and firearms related crime is noted as a social problem. It is said that *“an important source for the use of firearms for illegal purposes is the unauthorised transfer of firearms and the unregistered transfer of firearms from the legal market, which feeds the illegal market”*, but also here there is no proof or reference given for this claim.

Further, there are four Member States identified as key players causing the problem, but it is not clearly explained which are the actors, sectors and social groups that are primarily affected by the problem in these countries.

Nevertheless, most of the Member States already dispose of the necessary regulation in these matters, therefore there is definitely no need for implementing Article 10 into community legislation.

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## 2. Baseline scenario:

The explanations made to describe the baseline scenario and to lead to its conclusions (IA, p. 58 f.) are very shallow and without further explained basis data. It is just stated that the disparity between Member States in authorisation procedures of the transfer of firearms etc. would have a negative impact on social security and on the competitiveness of the EU. The respective illustrations (IA, p. 63 f.) can not be considered sufficient. It is even mentioned that *“continuing the current situation could be an option”* (IA, p. 64), from which it can be deduced that there is no necessity for EU regulation.

It is also mentioned in the IA that *“current difficulties in tracing international transfers of firearms and ammunition that are diverted for illegal purposes would persist”* (IA, p. 64), but there isn't any further explanation supporting this conclusion either.

## 3. Verifying the EU's right to act and the justification for EU action on the basis of principles set in the Treaty

The Impact Assessment Guidelines state that it is to *“verify if the EU has the right to take action and if it is better placed than the Member States to tackle the problem”* (IAG, p. 21). Proposals must be examined for compatibility with the EU Charter of Fundamental Rights, since the Charter places legal limits on the Union's right to act (IAG, p. 21). It is furthermore established that problem should be linked *“to at least one article of the Treaties and the objectives they contain, as this is the basis for Union's right to act (principle of conferral)”* (IAG, p. 21).

In addition it must be checked if the Community has exclusive competence on the regarding issue. If this is not the case, the **principles of subsidiarity** (Necessity test and Test of EU value added) and **proportionality** apply (IAG, p. 21). This is repeated on page 15 of the IAG, where it is stated that in case of legislative actions the report should contain a subsidiarity and proportionality analysis to explain the necessity and added value of EU action.

In the IA it is stated that the subsidiarity principle wouldn't apply in this case *“due to the exclusive competence of the Community to act in the field of the Common commercial policy and the need to act on behalf of the Community following the signature of the Protocol”* (IA, p. 64). However, there is no sufficient explanation in the IA why this is an exclusive competence of the Community, whereby the principles of subsidiarity (necessity test and test of EU Value Added) and proportionality should be applied in the present Impact Assessment, which has not been done.

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Regarding the Union's right to act there is neither an actual examination for compatibility with the EU Charter of Fundamental Rights nor an article of the Treaties (**principle of conferral**) is mentioned.

For these reasons, we consider that the respective requirements of the IAG are not fulfilled.

#### 4. Setting the objectives and remaining key analytical steps:

Since we are not in possession of the whole chapter about "*Setting the objectives*" (only chapter 3.1. and a part of chapter 3.2), we are not able to evaluate if it fulfils the requirements of the IAG. We reserve a respective evaluation after having had the possibility to verify the rest of the chapter, as we do for the whole undisclosed rest of the IA (Develop main policy options, Analyse the impacts of the options, Compare the options, Outline policy monitoring and evaluation).

### III. The „SME-Test“

#### 1. Small Business Act for Europe (SBA)

The **Small Business Act for Europe (SBA)** was adopted in June 2008 and "*reflects the Commission's political will to recognise the central role of SMEs (Small and Medium Enterprises) in the EU economy*" and "*puts into place a comprehensive SME policy framework for the EU and its Member States*". According to the European Commission, its object is "*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](http://ec.europa.eu/enterprise/entrepreneurship/sba_en.htm#ff2)).

*"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](http://ec.europa.eu/enterprise/entrepreneurship/think_small_first.htm)).

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The SME Test, that means evaluating the effects of legislative proposals on SMEs, is a **“compulsory and integral element of Commission's impact assessments”** ([http://ec.europa.eu/enterprise/entrepreneurship/think\\_small\\_first.htm](http://ec.europa.eu/enterprise/entrepreneurship/think_small_first.htm)). Regarding the methodology to use, it is referred to the IAG.

In the IAG it is asserted that, via the Small Business Act, the Commission has made *“a commitment to implementing the ‘Think Small First’ principle in its policy-making, to assess the impact of forthcoming legislation and administrative initiatives on SMEs (the ‘SME-test’), and to take the results of this analysis into account when designing proposals”* (IAG, p. 39).

**This should be reflected in each of the analytical steps of an Impact Assessment.** Thereby it should be analyzed whether SMEs are disproportionately affected or disadvantaged compared to large companies, and – in case of affirmation – corresponding options of alternative mechanisms and flexibilities in order to help SMEs to comply should be considered (IAG, p. 39). In the Annexes to the IAG (p. 31 f.) there is more detailed information about the requirements for an SME-test, so as the below mentioned particular steps. We state that all these proceedings either have not been carried out at all, or if they have, then not in the corresponding correct way:

#### 1.1. Consultation with SMEs representatives

- round table discussions with stakeholders (further specific suggestions for consulting SME stakeholders are mentioned in the IAG),
- test Panels of entrepreneurs to check new initiatives in flexible and quick manner,
- specific committees,
- use of IT tools (on-line consultations, forum)

#### 1.2. Preliminary assessment of businesses likely to be affected

During this stage, it shall be established whether SMEs are among the affected population. The characteristics of the businesses / sector(s) likely to be affected shall be identified. Relevant sources of information should be explored including SME representatives. A non-exhaustive list of elements to consider includes, when applicable

- number of businesses and their size (micro, small, medium or large enterprises)
- proportion of the employment concerned in the different categories of enterprises affected
- weight of the different kind of SMEs in the sector(s) (micro, small and medium ones)
- links with other sectors and possible effect on subcontracting

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If the preliminary assessment leads to the conclusion that SMEs are amongst the affected parties, further analysis should be carried out and – where appropriate – taken into account when defining the objectives and developing the policy options in the impact assessment.

### 1.3. Measurement of the impact on SMEs

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 analysed qualitatively and, if possible and proportionate, quantitatively. It is important to establish to which extent the proposal affects SME's 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. There are more additional elements to be considered which are specified in the Annexes to the IAG (p. 32).

### 1.4. Assess alternative options and mitigating measures

If the abovementioned cost/benefit analysis shows that SMEs are facing a relatively higher burden, one might consider the use of SME specific measures in order to ensure a level playing field and the respect of the proportionality principle. When the analysis made under the previous section shows that SMEs are disproportionately affected or disadvantaged compared to large companies, one should consider using possible mitigating measures.

The choice of specific measures to use will be made on a case by case basis. A non-exhaustive list of measures to be considered is specified in the Annexes to the IA (p. 33). When assessing possible mitigating measures for SMEs, it is important that the costs this could produce are also fully considered and included in the final assessment.

## 2. Realization in the present IA

### 2.1. Consultation with SMEs representatives

As declared in point I. of the present writing (*“Gathering information and consulting stakeholders”*), the present IA does not fulfil the required minimum standards of consultation. Also, there were no round table discussions with stakeholders carried out, no test panels of entrepreneurs or any IT tools used and no specific committees built, as it would be required according to the Annexes to the IAG.

### 2.2. Preliminary assessment of businesses likely to be affected

In the available documentation we can find neither an actual preliminary assessment of businesses likely to be affected nor any other preliminary research on this issue or elements that should be considered in this context.

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Further, in the Annexes to the IA it is stated that, according to the answers of the business representatives, “*the implementation of Article 10 will especially have an impact on the small and medium sized companies in the EU*” and that they “*will suffer more heavily from the implementation of Article 10*” (Annexes to the IA, p. 27 f.). This conclusion is correct since it is a fact that many companies which deal worldwide with civil firearms are SMEs, and especially the expense and the additional issues to get authorisations and licences for the trade with civil weapons in foreign countries will cost them more time and money than large companies if the referred article 10 is implemented. Therefore, further analysis should be completed regarding the effect on SMEs.

### 2.3. Measurement of the impact on SMEs

On page 26 of the present IA there is just one (!) small paragraph regarding the impact on small and medium sized companies in the EU, and the corresponding comments are very general and do not comply with the required standards of the IAG, since they can't be considered an analysis: An analysis would require a detailed examination and evaluation of the relevant information and determination of the best possibility of action from among various alternatives, which couldn't even possibly be made in such a short paragraph. In the mentioned paragraph there are just some short conclusions to the consultations without any detailed naming of referred data basis or any explanations to the related conclusions drawn.

In the whole rest of the present IA there is no further related information, apart from some comments about costs for concerned EU businesses in general, but without any distinction of the business sizes (IA, p. 50).

### 2.4. Conclusion

For all these reasons, the realization of a correct SME-Test hasn't been carried out in the present study. As above mentioned, the Impact Assessment should reflect the consideration of SMEs in each of the analytical steps, which here is not the case, hence there is only one single paragraph about this issue and barely further mentions in other parts of the present IA or its Annexes.

Summarized, the “*Study on an Impact Assessment of a proposal for a Council Regulation that implements Article 10 of the UN Firearms Protocol into Community legislation*” doesn't fulfil its obligation to carry out an SME-Test since the above mentioned requirements are not fulfilled at all. Furthermore, we reference a correspondence from the 17<sup>th</sup> November 2008 between AECAC and Mrs. Oranje (Regioplan Policy Research) which supports that a specific SME Impact Assessment had not been prepared.

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As mentioned previously, the Commission has made a commitment to anchor the 'Think Small first' principle in its policy making and the SME Test is a compulsory element of its impact assessments. 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](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. We consider it important and essential to **respect the objects of the Small Business Act and the 'Think Small First' principle**, which haven't been followed in the present IA.

#### **IV. Summary**

For all these reasons, we consider that the *“Study on an Impact Assessment of a proposal for a Council Regulation that implements Article 10 of the UN Firearms Protocol into Community legislation”* doesn't comply with the required minimum standards, and we therefore insist on its revision and amplification, taking into account the hereby criticized points. Furthermore, we reserve an evaluation of the entire Impact Assessment, after having had the possibility to verify the undisclosed rest of it, and hereby ask you again to disclose and send us the complete version of the Impact Assessment.

Yours sincerely,

Víctor Fabregat  
Secretary-General

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