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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

Possible advantages and disadvantages of reducing the classification to two categories of firearms (prohibited or authorised) with a view to improving the functioning of the internal market for the products in question through simplification.

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Possible advantages and disadvantages of reducing the classification to two categories of firearms (prohibited or authorised) with a view to improving the functioning of the internal market for the products in question through simplification.

This report is drafted to meet one of the requirements of Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons, as amended by Directive 2008/51/EC of the European Parliament and of the Council of 21 May 2008.

1. DIRECTIVE 91/477/EEC AND THE MATTER OF THE CLASSIFICATION OF FIREARMS

1.1. Directive 91/477/EEC originally constituted an accompanying measure for the completion of the internal market. In exchange for a certain freedom of movement for firearms from one Member State to another, it integrated into European law specific safety guarantees suited to this type of product.

1.2. The Directive has two annexes, the first of which (Annex I) classifies firearms primarily in terms of their degree of danger. There are therefore four categories (which are still in force): Category A consisting of prohibited firearms – military weapons; Category B including firearms subject to authorisation – used mostly by marksmen and hunters; Category C covering firearms subject to declaration – essentially firearms used by hunters; and finally Category D for other firearms – which mainly applies to one type of firearm[1].

1.3. This classification, like indeed the entire scope of the Directive, sets out the minimum requirements. Under Article 3 of Directive 91/477/EEC[2], the Member States may draw stricter distinctions by, for example, removing Category C or D, or by placing one or other specific firearm in a higher category for political or safety reasons or in line with their hunting traditions.

1.4. This discretion allowed to the Member States reflects the character of the Directive, which does not attempt full harmonisation, but rather provides a minimum level of safety, without prejudice to the measures that the Member States might undertake to prevent illegal trade in weapons[3].

1.5. It should be pointed out that the Directive does not apply to the acquisition or possession of weapons by the armed forces, the police, the public authorities or by collectors and bodies concerned with the cultural and historical aspects of weapons and recognised as such by the Member State in whose territory they are established. This is a fundamental distinction,

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[1] Single-shot long firearms with smooth-bore barrels

[2] *"Member States may adopt in their legislation provisions which are more stringent than those provided for in this Directive, subject to the rights conferred on residents of the Member States by Article 12 (2)"*.

[3] As stated in Recital 8 of Directive 91/477/EEC: *"Whereas the Directive does not affect the right of Member States to take measures to prevent illegal trade in weapons"*.

differentiating between arms for civilian use and other types of equipment used by the armed forces or even sometimes by organised crime.

1.6. The Commission submitted a report on the implementation of the Directive to the European Parliament and the Council on 15 December 2000[4]. Its conclusions, which were generally favourable and did not call into question the categorisation of firearms set out in Annex I, have not been challenged.

2. THE CLASSIFICATION OF FIREARMS IN THE CONTEXT OF THE ADOPTION OF DIRECTIVE 2008/51/EC OF 21 MAY 2008 AMENDING DIRECTIVE 91/477/EEC AND THE METHODOLOGY USED FOR THIS REPORT

2.1. The co-legislator's approach to this matter first centred on two main considerations: reducing the classification of firearms to two categories (prohibited or subject to authorisation) would be both safer for the European citizen and simpler for economic operators.

2.2. However, this view was not shared by those who felt that the Member States should retain a certain degree of discretion in the internal classification of firearms, provided, of course, that the minimum thresholds established by Annex I are respected. Nor did the economic operators, like the ordinary users of civilian firearms, appear any more convinced of the advantages of such a simplification.

2.3. These views were summarised in recital 18 of Directive 2008/51/EC, which stated that *"Several Member States have simplified the way they classify firearms by switching from four categories to [...] two. Member States should fall into line with this simplified classification, although Member States which divide firearms into a further set of categories may, in accordance with the principle of subsidiarity, maintain their existing classification systems."*

2.4. The aim of this report is therefore to re-examine the question of the classification of firearms with explicit reference to the better functioning of the internal market and in advance of the *"report on the situation resulting from the application of this Directive, accompanied, if appropriate, by proposals"* which the Commission must submit to the European Parliament and the Council by 28 July 2015, as set out in the Directive.

2.5. With this in mind, the Commission has adopted an approach that involves the services in the Member States that are competent for firearms (mainly Ministries of the Interior and of Justice, depending on the Member State), to whom a questionnaire was sent in November 2011, and the main groups of users of civilian firearms – in particular manufacturers, retailers, hunters, hobby marksmen and collectors – who have been asked on several occasions for their opinion.

2.6. A broad range of questions was put to the authorities of the Member States, covering the following aspects:

(1) economic importance of the firearms manufacturing and retail sector

(2) number of registered hunters and hobby marksmen

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[4] COM(2000) 0837 final.

(3) number of European firearms pass holders

(4) information on trends in crimes and offences over recent years

(5) any problems in the tracing of firearms

(6) systematic requirement of a licence to purchase a firearm

(7) validity of a licence for one or more firearms

(8) implicit authorisation via another authorisation or licence

(9) possible existence of a simple declaration system

(10) interest in further mandatory restrictions on the categories in European law

(11) possible impact of those further restrictions on the economic sectors concerned

(12) possible improvements to be envisaged

It was also made very clear that the questionnaire referred only to weapons covered by the Directive, i.e. hunting and sporting weapons, and not military weapons.

3. ASSESSMENT OF THE ECONOMIC IMPORTANCE OF THE SECTOR AND THE MAIN USERS OF FIREARMS AS INDICATED BY THE QUESTIONNAIRE; GENERAL INFORMATION

3.1. One group of Member States has no, or almost no, manufacturing industry producing civilian firearms. The importance of this group lies in the fact that it consists of more than a dozen Member States. However, even if it manufactures very little, it does, in part, represent a significant share of the retail market: in Finland, for example, there are no less than 600 dealers involved in retail and repairs, and in Hungary they number around 500.

3.2. Another group of countries has a relatively solid, often traditional, manufacturing industry, although its production levels are not very high. This group includes Slovakia, the Czech Republic, Austria and Poland. These Member States have, however, a fairly significant number of dealers, repairers or retailers; Poland, for example, accounts for around 500 dealers, and Austria 700[5].

3.3. The most heavily-populated Member States are the ones with the main production areas, although this is becoming less systematic as the manufacturing industries decline. Although Germany and Italy still retain an important level of manufacturing, often geared towards exports[6], France, the United Kingdom and, to a lesser extent, Spain have seen a major decline in the manufacture of arms for civilian use. However, some of these countries, such as France[7], still maintain an important network of dealers.

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[5] Source for Austria: European Association of the Civil Commerce of Weapons

[6] 85 to 90% of the German production of firearms for civilian use is exported to third countries or EU Member States (source: Association of European Manufacturers of Sporting Firearms).

[7] According to figures published by the European Institute for Hunting and Sporting Weapons, arms are the main business of between 800 and 1000 sales outlets in France.

3.4. The largest numbers of hunters and hobby marksmen are found in the most heavily-populated Member States. The figure given for hunters in France is more than 1 400 000, with around 850 000 in Italy and more than 1 500 000 in Spain. The number of hobby marksmen has always been lower than that of hunters, but is still significant: around 300 000 for Italy, 213 000 for France and around 14 600 for Poland.

3.5. It should be pointed out that some Member States with smaller populations (below the EU average) have a high proportion of hunters or hobby marksmen. Sweden, for example, has at least 490 000 hunters and 96 000 hobby marksmen, whilst Finland accounts for more than 300 000 hunters and 35 000 hobby marksmen. Denmark, in turn, has 169 000 hunters and 120 000 hobby marksmen.

3.6. It is also worth mentioning the number of European firearms pass holders[8], which gives a fair indication (although not the only one) of the mobility of hunters and hobby marksmen within the European Union. Certain Member States, such as Austria, have a relatively high number of passholders (38 000), whereas in others the pass is less widely used (around 20 000 holders in Italy, and 39 378 in France).

4. INFORMATION ON TRENDS IN CRIMES AND OFFENCES LINKED WITH THE USE OF FIREARMS AND TRACEABILITY OF CIVILIAN FIREARMS

4.1. The answer to the question of whether recent years have seen a significant increase in crimes involving hunting or sporting firearms is mostly negative. Some Member States, such as Greece, Poland, Sweden and Portugal, have experienced a slight or insignificant rise.

4.2. Most Member States, such as Austria, Hungary, Bulgaria, the United Kingdom, Finland and Spain, consider the trend to be one of stability. Other Member States, like Belgium and Ireland, have even seen a decrease in this type of crime.

4.3. These aspects can also be seen in the trends for crimes involving firearms that are connected, for example, with the availability of weapons – mainly military weapons – at the conclusion of armed conflict. However, this type of weapon does not fall within the scope of the Directive, which classifies them as prohibited (Category A of Annex 1), by contrast with weapons that can be acquired for use in a leisure or sport activity.

4.4. The weapons authorised by the Directive present much fewer tracing difficulties, as attested by the answers to the questionnaire, which are mostly reassuring, at least with regard to legal movement within the EU; indeed, most Member States consider that there are relatively few problems, at least at national level, in tracing firearms for civilian use.

4.5. However, certain difficulties do occur in the collection and processing of information relating to the tracing of a weapon which may have had a whole string of owners. In particular, one essential requirement would appear to be the keeping of good records by the Member States – and by the dealers – and their accessibility to the competent task forces.

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[8] The European firearms pass was established by Directive 91/477/EEC. It is *"a document which is issued on request by the authorities of a Member State to a person lawfully entering into possession of and using a firearm"* (Article 1(4)). It enables holders to travel with their weapons from one Member State to another under a simplified licence system to take part in an activity – usually hunting or target shooting. It is highly valued by its users and there have been no reports of safety problems linked with its issue or use.

5. THE SYSTEM FOR ACQUIRING AND POSSESSING FIREARMS FOR CIVILIAN USE

5.1. The overall conclusion to be drawn from the answers to the questionnaire is that the acquisition and possession of firearms for civilian use are subject to an authorisation system and, in certain more restricted cases, to a declaration or registration system, the latter case corresponding in practice to indirect authorisation. However, the requirements for certain types of weapon or weapons with certain characteristics, such as historical or deactivated weapons, may in one Member State or another be less stringent.

5.2. The authorisation system does not necessarily mean that a permit must be applied for systematically before the purchase of each weapon. A permit may be issued for the purchase of a specific number of identified weapons with characteristics listed in the permit itself (this is the case in Austria, Poland and Luxembourg).

5.3. The purchase authorisation itself may be an additional authorisation or may be conditional on, for example, the purchaser's activity as a hunter or marksman, or in certain cases on an administrative decision confirming that the purchaser is entitled to acquire a weapon for reasons of self-defence (as is the case, for example, in Finland or Poland).

5.4. The declaration system – Category C in Annex I to Directive 91/477/EEC – is applied to a large number of hunting weapons, principally in France. Under this system, the purchaser must give the dealer a copy of his identity card and of some form of authorisation entitling him to make the purchase (a valid hunter's licence, for example); he then fills out a declaration together with the dealer[9], which is registered and sent by the dealer to the competent authorities. If the authorities are opposed to the purchase, they ask the purchaser to return the weapon or force him to do so via the law enforcement authorities.

5.5. In France, a certain number of hunting weapons are grouped together in a new intermediary category between Categories C and D of the Directive: these are single-shot long firearms with smooth-bore barrels, which fall under a registration system that is very close to the declaration system (copy of identity card, copy of hunting/target shooting licence, form to be filled in, checks by the police authorities).

5.6. It does not therefore seem possible from the answers given to the questionnaire for firearms to fall under the least restrictive classification of Category D of the Directive, (in other words that they could be acquired without any particular formalities, as the Directive allows for single-shot long firearms with smooth-bore barrels). The Member States that retained this possibility have all introduced more stringent requirements (as illustrated by the above paragraph).

5.7. It should also be pointed out that the classification applying in a Member State for an imported weapon (prohibition, authorisation, declaration, registration) is binding and takes precedence over the weapon's classification in its country of acquisition. In other words, if, for example, a weapon acquired in a Member State has been purchased under an authorisation system, but its owner (even if he holds a European firearms pass) intends to take it with him to another Member State which applies a prohibition system to that weapon, it will be the prohibition system that takes precedence and the weapon will not be able to leave its country of origin.

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[9] The dealer carries out an initial cross-check against the list of prohibited firearms.

6. THE MEMBER STATES HOLD DIFFERENT VIEWS ON THE APPROPRIATENESS OF REDUCING THE CATEGORIES PERMITTED BY THE DIRECTIVE

6.1. Certain Member States, such as Poland, the United Kingdom, Ireland, Denmark and Latvia, are interested in reducing the classification at European level to two categories, as they feel this would simplify matters.

6.2. Other Member States, on the other hand, think that the discretion allowed by the current classification of the Directive should be retained. For example, Sweden, Italy, Hungary and Belgium do not see any real benefits in modifying the current classification; they consider that any revision would bring an additional burden and engender unnecessary costs.

6.3. Some Member States, such as Slovakia, the Netherlands and Romania, which have introduced national systems based on two or three categories, would also prefer for Member States to be able to apply the categories they consider appropriate within the current classification.

6.4. As to whether such a reduction in categories would have a substantial impact on the economic sectors concerned, most Member States answer either that the impact would be difficult to judge or that there would probably be no impact, since the classification with two categories is already fairly widespread. However, it should be pointed out that it is principally Member States that do not manufacture firearms that think that the economic impact of a reduced number of categories would be of little significance in their country.

6.5. By contrast, certain Member States that do have a firearms manufacturing industry, such as Italy or Belgium, feel that the economic sector would suffer. Other Member States, such as Poland, think that there may be an economic impact, but still see no reason for not reducing the number of categories.

6.6. However, most Member States do not think that reducing the classification of Annex I to the Directive to two categories of firearms would be of clear benefit to the better functioning of the internal market. The concern was even expressed that a reduced number of categories could divert legal trade in weapons to illegal channels.

7. CERTAIN SUGGESTIONS OTHER THAN REDUCING THE NUMBER OF CATEGORIES HAVE BEEN MADE WITH A VIEW TO SIMPLIFYING THE MOVEMENT OF FIREARMS IN GREATER SAFETY

7.1. Certain Member States, such as Germany, Estonia and Poland, see a clear benefit in defining common standards for the deactivation of firearms on the basis of techniques proposed by the ad hoc working parties of the *Commission internationale pour les armes à feu portatives* (CIP[10]); this could lead to increased safety and facilitate exchanges at EU level.

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[10] The *Commission internationale permanente pour l'épreuve des armes à feu portatives* (CIP, Permanent International Commission for Firearms Testing) is the result of an intergovernmental convention between the main countries for European firearms production (11 European countries plus Chile, Russia and the United Arab Emirates) under which they agree to recognise the tests on firearms and ammunition carried out in "proof houses" prior to their being placed on the market in accordance with technical criteria defined and updated within the CIP. This recognition takes the physical form of a proof mark which is stamped on the firearm and identifies the proof house where it has been tested. In

7.2. Other Member States, such as Sweden, the Netherlands, France, Luxembourg and Portugal, are of the opinion that increased computerisation of the information held by the Member States would help to link the movements of firearms with their owners. They therefore think an effort should be made to make the information held in the registers accessible to all Member States and thus facilitate the exchange of information within the European Union where necessary.

7.3. Some suggestions are more specific, such as the proposal to equip commercial carriers of firearms with GPS devices so that their location can be tracked (Czech Republic) or that of creating a more stringent framework for the activities of private security companies (Bulgaria); others are more ambitious, such as the proposal that firearm definitions be harmonised in order to facilitate a common approach at EU level (the Netherlands).

7.4. Certain Member States see an advantage in creating a standardised transfer form for trade in firearms (Romania). This document would record all the information contained in the authorisation applications or in the reports on commercial transactions from one Member State to another.

7.5. However, a significant number of Member States consider the current situation to be, for the most part, satisfactory and/or do not propose any particular measures. Some, such as Italy, think that any change considered should take into account the principle of proportionality and whether there is a real need for an initiative at EU level.

7.6. Overall, the Member States' comments mainly relate to the issues of the traceability and deactivation of firearms. These are two areas where the Commission plans to intervene, whether by issuing common guidelines on deactivation standards and techniques or by ensuring that Member States fulfil their obligation of keeping a computerised data-filing system[11], two tasks that were prescribed in Directive 2008/51/EC itself.

8. THE MAJOR GROUPS OF USERS CONCERNED BY THE DIRECTIVE APPEAR TO BE INTERESTED IN ANY SIMPLIFICATION THAT DOES NOT NECESSARILY INVOLVE A REDUCTION OF CATEGORIES

8.1. Hunters (numbering approximately seven million across the European Union[12]) appear to be satisfied with the current classification, which is based on hunting traditions and the safety concerns of their Member State. They set great store by the recognition and promotion of the European firearms pass, which enables them to move easily from one Member State to another within a very satisfactory security framework.

8.2. Marksmen can also use the European firearms pass to travel to another Member State in order to take part, in most cases, in competitions. Indeed, this travel appears to be well organised, and is subject to a strict authorisation system supervised by local or national

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certain proof houses the firearms are also deactivated using techniques and in line with requirements that can vary without necessarily being recognised from one Member State to another.

11 This computerised data-filing system for firearms – linking weapons to their owners – must be established by 31 December 2014 under the terms of Directive 2008/51/EC.

12 Figures provided by the Federation of Associations for Hunting and Conservation of the EU (FACE), which brings together the national hunting associations of the Member States of the European Union and other countries of the Council of Europe.

shooting federations. Making a reduction in categories mandatory throughout the EU would not appear to create any clear simplification in this area either.

8.3. Although their activities do not fall under the scope of the Directive, collectors of antique and historical firearms or reproductions of historical firearms would welcome the possibility of including their collection items in a European firearms pass, as this would facilitate the movement between the Member States of this type of product. Other measures making it easier for Member States to recognise this type of weapon, during for example their transport from one Member State to another, would be welcomed by a sector including suppliers, cultural establishments, auction houses and authorised experts, etc.

8.4. Manufacturers of civilian firearms would be interested in simplification measures. In this respect, mention should be made of the industry's longstanding desire for comprehensive licences covering all firearms transfers within the EU. Instead of authorisations being issued by the Member States for each individual transfer, a licence would cover a given period and a predefined type of product[13] and be issued to operators presenting a certain number of approved guarantees.

8.5. Both manufacturers and retailers advocate simplification in the definitions used for the essential parts of firearms. These definitions do not fully coincide from one legislation to another, and greater precision would improve the flow and security of commercial transactions.

8.6. To summarise, the current classification of firearms in EU legislation is not met with specific criticism by the major groups of users concerned by the Directive. However, their wish for certain simplification measures to improve the functioning of the internal market is clearly identifiable.

9. THE ISSUE OF THE CLASSIFICATION AT EU LEVEL OF CIVILIAN FIREARMS COULD, HOWEVER, BE RE-EXAMINED IN THE LIGHT OF THE DEADLINES AND GUIDANCE GIVEN BY THE DIRECTIVE ITSELF

9.1. The requirement for Member States to establish and maintain a computerised data-filing system by 31 December 2014 will certainly satisfy the desire expressed in the answers to the questionnaire for improvements in the accessibility of information. In this context, it will be interesting to look again at the problems of traceability at EU level which may stem from the current classification applied by the Directive.

9.2. Furthermore, the wish, voiced in the Member States' answers, for common methods of deactivating firearms will soon be realised by the Commission, which is in any case required by the Directive to take action in this respect[14]. This should result in a greater level of safety for movements of this type of product.

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[13] This possibility is allowed in theory by Directive 91/477/EEC, Article 11 of which provides for dealers to obtain approval in certain cases for transferring firearms to another Member State without prior authorisation. However, it is rarely used in practice, since it requires recognition by both the Member State of origin and the destination Member State within a comparable regulatory framework.

[14] Annex I to the Directive stipulates that *"The Commission shall, acting in accordance with the procedure referred to in Article 13a(2) of the Directive, issue common guidelines on deactivation standards and techniques to ensure that deactivated firearms are rendered irreversibly inoperable"*.

9.3. The Member States' desire for greater traceability could also be addressed by an explicit reference in Directive 2008/51/EC: this is the reference in the seventh Recital to the Convention of 1 July 1969 on Reciprocal Recognition of Proofmarks on Small Arms, which *"should, to the greatest extent possible, be used as a reference for the marking system in the Community as a whole"*.

9.4. In this respect, discussions could be held at short notice between the European Union and the *Commission Internationale Permanente pour l'Epreuve des Armes à Feu Portatives* (CIP, Permanent International Commission for Firearms Testing) with the aim of establishing recognised standards for the testing of firearms within the European Union. Indeed, additional – and attested – supervision of the manufacture and movement of firearms within the European Union could have advantages for all aspects of safety.

9.5. It can therefore be concluded that there would be no clear benefit in a compulsory restriction of the classification at EU level to only two firearms categories. In any case, this issue should not be treated in isolation, as there would be a risk that the discussion would focus solely on the question of which type of document would constitute authorisation, and this would probably result in a situation hardly different from the current one of diversity within the EU.

9.6. The analysis of the possible and desirable ways in which Directive 2008/51/EC could be developed should therefore be set primarily against the background of the report on the situation resulting from the application of the Directive to be submitted by the Commission to the European Parliament and the Council by 28 July 2015 – accompanied, if appropriate, by proposals – and should target a form of simplification that takes account of all the specific needs and constraints of this type of product.

9.7. The conclusions of this report will be presented in October 2012 at the meeting of the Contact Group set up pursuant to the Directive. They will probably also be discussed at a conference on illicit trafficking in firearms that the Commission plans to hold at the end of November 2012 with the parties involved in combating this form of crime in order to make an inventory of the needs in this area and formulate a way forward.