

January 2016

### Directive 91/477 on control of the acquisition and possession of weapons<sup>1</sup>

*This briefing is one in a series of 'Implementation Appraisals' on the operation of existing EU legislation in practice. Each such briefing focuses on a specific EU law which is likely to be amended or reviewed, as foreseen in the European Commission's Annual Work Programme. Implementation Appraisals aim to provide a succinct overview of material publicly available on the implementation, application and effectiveness of an EU law to date - drawing on available input from the EU institutions and external organisations. They are provided to assist parliamentary committees in their consideration of the new proposals, once tabled. As an additional feature, this Implementation Appraisal pays particular attention to procedural issues stemming from the Commission Better Regulation Guidelines and to the Commission's evaluation of the existing legislation.*

**Main instrument:** [Council Directive 91/477/EEC](#) as amended by [Directive 2008/51/EC](#) on control of the acquisition and possession of weapons

**EP committee responsible:** Internal Market and Consumer Protection (IMCO)

**Date of adoption** of original legislation: 18 June 1991

**Transposition deadline:** 1 January 1993 for Directive 91/477 and 28 July 2010 for Directive 2008/51

**Planned date for review** of legislation: 28 July 2015. Art. 17 states that '[t]he Commission shall, by 28 July 2015, submit a report to the European Parliament and the Council on the situation resulting from the application of this Directive, accompanied, if appropriate, by proposals.'

**Timeline for new amending legislation:** The revision of the Directive was initially included in the [Commission Work Programme 2016](#) (Annex I, item 17). Following the terrorist attacks in Paris on 13 November 2015, the publication of the Commission proposal was brought forward to 18 November 2015.

This paper is structured as follows. Section 1 outlines the background to the Directive in question and concludes with an overview of the procedural aspects in the context of the Commission's Better Regulation Guidelines. Section 2 provides a snapshot of current legislation. Section 3 summarises reports by the European Commission on different aspects of the Directive, including the most recent report on its implementation and the external evaluation that preceded it. Section 4 is dedicated to the Commission's proposal of 18 November 2015 for an amending directive. It provides a chart connecting some of the proposed modifications to the findings and recommendations of the external evaluation. The European Parliament's position and MEP questions are covered in section 5, while Section 6 sets out the conclusions.

## 1. Background

Directive 91/477 on control of the acquisition and possession of weapons as amended by Directive 2008/51, and also known as the 'Firearms Directive', has the dual objective of ensuring the proper functioning of the Internal Market and guaranteeing a high level of security in the EU.

[Directive 91/477/EEC](#) was adopted in 1991 and established minimum requirements to be applied by the Member States on the acquisition, possession, movement and transfer of firearms for civilian use within the European Union.<sup>2</sup>

<sup>1</sup> [Directive 91/477/EEC](#) as amended by [Directive 2008/51/EC](#) on control of the acquisition and possession of weapons.

<sup>2</sup> The Directive does not apply to the 'acquisition and possession of weapons and ammunition [...] by the **armed forces**, the **police**, the **public authorities** or by **collectors** and **bodies concerned with the cultural and historical aspects of weapons** [...]' nor to '**commercial transfers of weapons and ammunition of war**' (Article 2). [Regulation 258/2012](#) addresses trade and transfers with countries outside the European Union.

Its principal aim was to facilitate the free movement of firearms within the EU, following the establishment of the internal market in January 1993, while ensuring a high level of security for EU citizens. In the absence of border controls as a means of detecting the possession of weapons and establishing whether they have been legally acquired and/or transferred within the EU, the Directive sets up a framework enabling Member States to carry out such controls within their respective territories.

The provisions of the Directive establish minimum requirements, leaving to the Member States the possibility to adopt more stringent rules if they so wish (Art. 3 - concept of minimum harmonisation).

### Better Regulation - Procedural Aspects

Art. 17 of the Firearms Directive requires the Commission to '**submit a report ... on the situation resulting from the application of this Directive, accompanied, if appropriate, by proposals**' by **28 July 2015**. The Directive does not provide further instructions on the evaluation criteria to be used for drawing up such a report. This requirement can be considered as a 'review clause'.\* In 2014, the European Commission launched a 12 month external evaluation covering the following **evaluation criteria**: effectiveness, efficiency, consistency, relevance and EU added value. These five criteria correspond to those included in the chapter on Evaluation in the [Better Regulation Guidelines](#) of 19 May 2015. A novelty introduced by the Guidelines concerns the requirement for the Commission to issue an accompanying **Staff Working Document** in order to present and - where necessary - complement the findings of the external evaluation. In the case of the the proposed revision of the Firearms Directive, a [report](#) by the European Commission, summarising and complementing the findings of the [REFIT](#) evaluation, was published together with the [proposal of November 2015](#).

No ex-ante impact assessment was issued for this proposal, the above-mentioned Commission report (and the [external evaluation](#) of the Directive) being presented as the evidence-base to inform decision-makers. This constitutes an exception to the general rule - provided for under the Better Regulation Guidelines - that Commission proposals - particularly those which figure in the annual Work Programme - should be accompanied by an impact assessment. Even if one could expect that, in line with the '**evaluate first**' principle applied by the Commission \*\*, the evaluation would have constituted a sizeable part of the impact assessment (e.g. the section on problem definition and the baseline scenario), it would seem reasonable to expect some forward-looking analysis of the various options considered and their likely impacts. **Stakeholder consultation** was undertaken for the [external evaluation](#) and through meetings with Member States and interested private parties; no additional consultations on the topic have been planned by the Commission.

In its [Better Regulation Package](#) of 19 May 2015, the Commission announced its intention to gather stakeholder feedback on its proposals for a period of (at least) 8 weeks following their publication.\*\*\* It appears that after the adoption of its internal Better Regulation Guidelines in May 2015, the Commission has set up a mechanism for receiving feedback on its published proposals via the dedicated portal [Give Your Feedback](#). It is expected that the feedback from stakeholders gathered in that context will be made available via the internet and summarized by the Commission in a Staff Working Document which will be formally transmitted to the European Parliament and to the Council. Stakeholders can send their comments until 1 February 2016.

The Commission proposal of 18 November 2015 was [officially received](#) by the European Parliament on 14 December 2015.

\*A detailed analysis of reporting and review clauses can be found in the EPRS [Rolling Checklist of Review Clauses in EU Legislation](#).

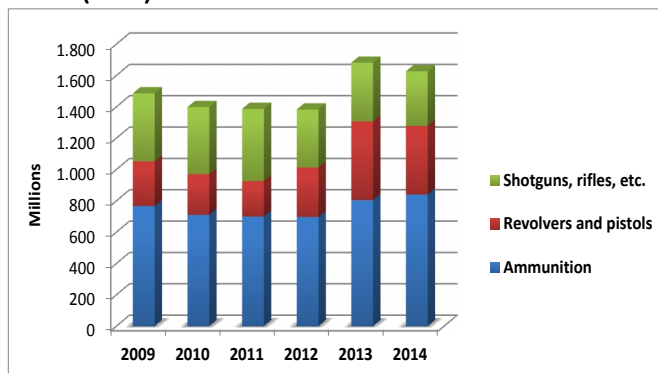
\*\* A more detailed analysis of the findings of the evaluation is provided in Sections 3 and 4.

\*\*\* This procedure was also included in the [Commission's proposal for an Interinstitutional Agreement \(IIA\) on Better Regulation](#), but the relevant passage (point 15) was not supported by the co-legislators and was therefore removed in the [IIA text negotiated with them](#) and endorsed by the Commission on 15 December 2015. The EP still needs to formally endorse the negotiated text of the IIA. See the [Extraordinary joint meeting of JURI and AFCO Committees held on 16 December 2015](#): information on the results of the negotiations on the Interinstitutional Agreement on Better Regulation, presentation by the EP Negotiator, MEP Guy Verhofstadt.

In the first and only revision to date, [Directive 2008/51/EC](#) addressed some of the shortcomings observed in the implementation of the original text<sup>3</sup> and allowed for a partial alignment of the Directive with the [United Nations Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition \(UNFP\)](#),<sup>4</sup> the relevant provisions of which (i.e. Article 10 UNFP)<sup>5</sup> were incorporated in the EU acquis through [Regulation 258/2012](#). A second revision of the Firearms Directive was included in the [Commission Work Programme 2016](#).<sup>6</sup> However, the terrorist attacks in Paris of 13 November 2015 led to the publication of the proposal earlier than envisaged, on 18 November 2015, together with an [Implementing Regulation on deactivation standards](#).<sup>7</sup> The proposal is part of the broader [European Agenda on Security](#) which outlines the set of actions that the Commission has foreseen in order to respond effectively to terrorism and security threats in the European Union for the period 2015-2020.

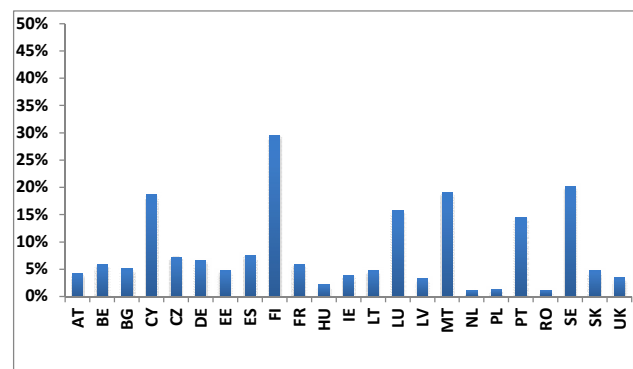
The two figures below give an overview of the production of firearms and ammunition in the EU and of the ownership of registered firearms in a selection of Member States. As will be explained in greater detail below, the availability of precise data in this sector remains limited and uneven.

**Registered firearms by population, selected Member States (2013)**



Source: Authors' elaboration on [Evaluation of the Firearms Directive](#) pp. 30-31

**Selected firearms and ammunition – value of annual EU production (€ million)**



Source: Authors' elaboration on Eurostat<sup>8</sup>

## 2. The Firearms Directive: a brief overview of the current legislation

The acquisition, possession, movement and transfer of firearms for civilian use are regulated by Council [Directive 91/477/EEC](#) and the amending [Directive 2008/51/EC](#).

**Firearm definition:** A firearm is defined by the Directive as 'any portable barrelled weapon that expels, is designed to expel or may be converted to expel a shot, bullet or projectile by the action of a combustible propellant, unless it is excluded for one of the reasons listed in Part III of Annex I.' Excluded are: 'objects which correspond to the definitions of a firearm [...] if they: (a) have been rendered permanently unfit for use by deactivation [...]; are designed for alarm, signalling, life-saving [...]; are regarded as antique weapons and reproductions [...].'

Part II of Annex I establishes four different categories of firearms (see text box). The Directive also applies to essential parts and to ammunitions.

**Ownership provisions:** The Directive lays down minimum conditions for the acquisition and possession of firearms in different categories (Art. 5 - 8). Article 5 states that 'Member States shall permit the acquisition and possession of firearms

<sup>3</sup> See in particular the previous assessment of the implementation of the Directive performed by the European Commission in 2000, [COM \(2000\) 837](#).

<sup>4</sup> The [UNFP](#), supplementing the UN Convention against Transnational Organised Crime.

<sup>5</sup> On remaining inconsistencies (e.g. on marking requirements) between the Firearms Directive and the UNFP, see i.e. [the external evaluation](#) of the Directive, p. 65-67.

<sup>6</sup> See Annex I, point 17.

<sup>7</sup> [Implementing Regulation 2015/2403 establishing common guidelines on deactivation standards and techniques for ensuring that deactivated firearms are rendered irreversibly inoperable](#) (announced on 18 November 2015, see [press release](#), although the date of adoption in the Official Journal is 15 December 2015).

<sup>8</sup> Data from Eurostat Prodcom, Nace Rev. 2, codes 25401230 (Revolvers and pistols (excluding military firearms, machine-pistols, signal flare firearms, blank firers, captive-bolt humane killers, muzzle loaders, spring, air or gas weapons, imitation weapons); 25401250 (Shotguns, rifles, carbines and muzzle-loaders (including punt-guns, combination shotgun-rifles, sporting guns made to resemble walking sticks) (excluding military firearms) and 25401300 (Cartridges and other ammunition and projectiles and parts thereof, including shot and cartridge wads (excluding for military purposes). Data for 2013 and 2014 include Croatia. Data-set last accessed on 14 January 2016.

only by persons who have good cause and who: are at least 18 years of age [exceptions possible under certain conditions]; are not likely to be a danger to themselves, to public order or to public safety. Having been convicted of a violent intentional crime shall be considered as indicative of such danger.'

Article 6 prohibits the acquisition and possession of firearms in Category A while it allows for 'special cases' in which 'the competent authorities may grant authorisations for [Category A] firearms and ammunition [...].' Article 7 covers Category B firearms (those subject to authorisation), while Article 8 covers Category C firearms (those subject to declaration). No specific provisions are given for firearms in Category D.

Transfers of firearms between Member States are covered under Article 11, while transfers of firearms by individuals during a journey fall under Article 12. The latter includes provisions on the European Firearms Pass which allows hunters with firearms of category C and D and marksmen with firearms of category B, C, and D to travel to another Member State (MS) without prior authorisation by the Member State of destination.

On the issue of deactivation, Annex I, part III, obliges the Member States to 'make arrangements for the deactivation measures [...] to be verified by a competent authority in order to ensure that the modifications made to a firearm render it irreversibly inoperable.' It further states that '[t]he Commission shall [...] issue common guidelines on deactivation standards and techniques to ensure that deactivated firearms are rendered irreversibly inoperable.'

Marking and traceability provisions are given in Article 4, requiring Member States to ensure 'either that any firearm or part placed on the market has been marked and registered [...], or that it has been deactivated.' The 2008 revision includes the provision for the introduction of computerised data-filing systems in Member States in which each firearm subject to the Directive is recorded (the deadline given is 31 December 2014).

Activities of dealers and brokers are covered in Articles 1 and 4, penalties in Article 16 and information sharing between Member States in Articles 8, 11, 13 and 15.

**Categories of Firearms**

Annex I of [Directive 91/477](#) classifies firearms into four groups by order of their level of danger, and establishes the different regimes of acquisition and possession for each category.

**Category A - prohibited firearms:** military weapons.

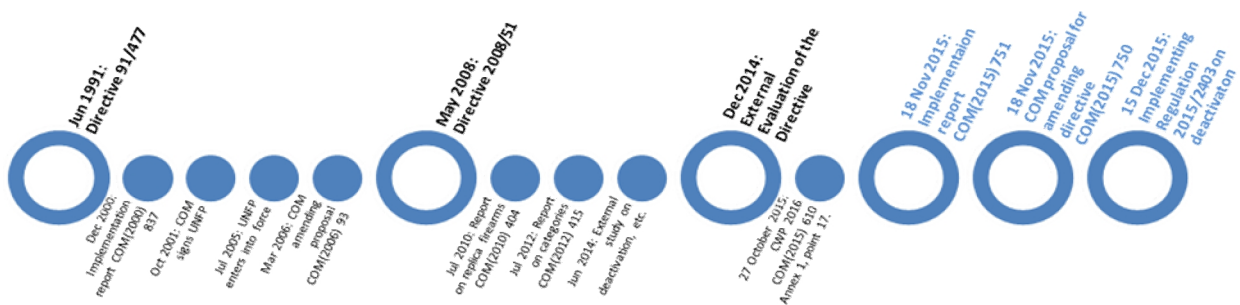
**Category B - firearms subject to authorisation:** semi-automatic or repeating firearms, used mostly by marksmen and hunters.

**Category C - firearms subject to declaration:** essentially firearms used by hunters.

**Category D - other firearms:** mainly single-shot long firearms with smooth-bore barrels.

### 3. EU-level reports, evaluations and studies

This section summarizes the findings of the four reports of the European Commission to the European Parliament and the Council. These reports stem from the reporting requirements in Article 17 of the original text and the amending acts. Of these reports, two have a more general scope and examine the situation resulting from the implementation of the Directive, while the remaining two cover more specific issues of the placing on the market of replica firearms and of the classification of firearms. The section below also includes the evaluation of the Firearms Directive prepared for the European Commission in 2014 and which constitutes the basis for the Commission's November 2015 report. The reports are presented in chronological order. An overview of the **milestones in the 'lifetime' of the Firearms Directive**, including relevant reports, is given below for ease of reference.



- **Report<sup>9</sup> from the Commission to the European Parliament and the Council on the implementation of Council Directive 91/477/EEC on control of the acquisition and possession of weapons, 15 December 2000**

The report was based on the findings of two Commission questionnaires and several meetings with Member States and interested parties.<sup>10</sup> No external evaluation study was carried out in connection with this report.

The report noted that, in general, the Directive had been properly transposed in the Member States and that its provisions were operating in practice. However, there were also several difficulties in the application of the Directive deriving from the different transposition and implementation by the Member States rather than from the provisions of the Directive as then in force. The Commission therefore proposed rather modest changes, 'clarifying the existing wording' of the main provisions with a view to ensuring the uniform application of the Directive in all Member States. Furthermore, in view of the then on-going negotiations on the UN Protocol and the expectation that certain provisions of the Directive would have to be amended to be brought in line with it, the Commission noted that it was advisable to wait for the Protocol to be adopted so that the future amended Directive could be aligned to the future Protocol provisions and improved in view of the Commission's findings.

Most Member States considered that the overall objectives of the Directive had been achieved. The main problems identified were mostly related to the difficulties in the exchange of information, differences in national legislations, issues related to the European firearms pass and differences in the classification of firearms. The interested parties felt that the overall objectives had only been partially or not at all achieved. The problems identified included the disparities in the Member States' legislation, some Member States' tendency to apply more stringent measures, and insufficient cooperation between Member States.

- **Report<sup>11</sup> from the Commission to the European Parliament and the Council: The placing on the market of replica firearms, 27 July 2010**

This report, also required by Article 17 of the Firearms Directive, attempted to determine whether the inclusion of replica firearms within the scope of the Directive is possible and desirable. The report was based on a Commission questionnaire and meetings with MS authorities (interior and justice ministries) and representatives of industry, retailers and other stakeholders affected by the Firearms Directive. The report concluded that replicas should not be included in the field of the application of the Firearms Directive, especially since the amending Directive 2008/51/EC already applies to replicas which can be converted into firearms (Article 1 - the appearance of a firearm and a possibility of conversion due to its construction or the material from which it is made).

- **Report<sup>12</sup> from the Commission to the European Parliament and the Council: Possible advantages and disadvantages of reducing the classification to two categories of firearms (prohibited and authorised) with a view to improving the functioning of the internal market for the products in question through simplification, 26 July 2012**

The report foreseen by Article 17 of the Directive, was based on a Commission questionnaire sent to the MS authorities (interior and justice ministries) and on input of the main groups of users of civilian firearms whose opinion the Commission sought (manufacturers, retailers, hunters, hobby marksmen and collectors). The Firearms Directive classified firearms into four groups but at the same time allowed those Member States 'which divide firearms into a further set of categories [to] maintain their existing classification systems.'<sup>13</sup>

Most Member States did not think that reducing the classification to two categories of firearms would be of clear benefit to the better functioning of the internal market. Similarly, the report found that major groups of users concerned by the Directive expressed no major criticism on the current classification of firearms.

The report thus concluded that there would be no clear benefits in a compulsory restriction of the classification at EU level to only two firearms categories. It postponed until 2015 any recommendation on the possible and desirable ways in which the Firearms Directive could be developed, this being the date when the report on the situation resulting from the application of the Firearms Directive is expected according to Article 17.

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<sup>9</sup> [COM\(2000\) 837](#)

<sup>10</sup> Annex III of [COM\(2000\) 837](#) final provides a list of the European and national federations that have given contributions.

<sup>11</sup> [COM\(2010\) 404](#)

<sup>12</sup> [COM\(2012\) 415](#)

<sup>13</sup> Recital 18 of Directive 2008/51/EC. See also Article 3 of Directive 91/477/EEC.



The aim of the evaluation was to support the Commission in complying with the reporting requirement of Article 17 of the Directive. The five evaluation criteria used were: relevance, consistency, effectiveness, efficiency and the added value of the EU intervention in the field. These criteria were assessed with respect to the two overall objectives of the Directive (functioning of the internal market and a high level of security for EU citizens).

The evaluation concluded that the Directive has positively contributed to the functioning of the internal market. It has laid down the basis of the internal market for civilian firearms with no barriers or blocks raised by the Member States. The evaluation also noted that the implementation of the Directive led to a number of differences between Member States, which were the result of the minimum harmonisation approach taken in Art. 3 and of the pre-existing national approaches. The evaluation further noted that these differences were in many cases the source of security or market concerns.

On the methodological side, the evaluation identified as one of the key challenges the lack of comprehensive data in relation to both market and security aspects.<sup>15</sup> It stated that '[t]his is one of the major obstacles preventing policy makers from designing evidence-based policies dealing with civilian firearms.'<sup>16</sup>

Concerns about the **lack of reliable data/statistics** were also echoed by Members of the European Parliament (MEPs) and stakeholders<sup>17</sup>, among others (e.g. with regard to legal firearms used for criminal and/or terrorist purposes in general, and the use of reactivated firearms / converted alarm weapons and other converted blank firing weapons / converted semi-automatic weapons into automatic weapons / weapons purchased online for criminal and/or terrorist activities).

While recognising these data limitations, the evaluation nonetheless pointed to cases of misuse of legally held weapons across Member States.<sup>18</sup> It also reported many cases of conversion of alarm weapons recorded in fourteen MS.<sup>19</sup> As to the reactivation of previously deactivated firearms, the evaluation mentioned cases of re-activation and trafficking of deactivated firearms encountered by the police forces in eight MS, as well as instances of trade in parts of firearms that have not been permanently deactivated, and can be used to build or reactivate a firearm, reported by six MSs<sup>20</sup> The evaluation highlighted security concerns regarding the potential convertibility of semi-automatic firearms into automatic ones and the availability of public information on the process of conversion. The evaluation, which was finalised in December 2014, noted that 'no specific evidence was collected during the study to further support this concern.'<sup>21</sup> As regards the issue of online purchase, the evaluation noted that no comprehensive statistics were available 'as controls are normally not systematic and there is no system for detection of internet offences.'<sup>22</sup> However, the evaluation reported several cases of illegal use of the internet as a sales channel for firearms.<sup>23</sup>

The evaluation identified a set of problems, gaps and issues (p. 91-92) and put forward nine recommendations in connection with the identified areas for improvement (p. 103-106). These **nine recommendations** (legislative and non-legislative) are given below, together with a summary overview of the **identified problems, gaps and issues**.

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<sup>14</sup> Evaluation of the Firearms Directive: Final Report, Annexes, Executive Summary, prepared by [Technopolis group, EY](#) and [VVA Consulting](#), December 2014.

<sup>15</sup> See p. 22 on data availability (on market data: statistics that do not allow isolating civilian from military firearms, data not available for all MS, limited access to information on the main companies operating in the sector; on security data: the absence of disaggregated data on types/categories of firearms circulating in the EU, and/or illegally used and trafficked firearms, lack of comparable and detailed data on trends in criminal offences and activities involving civilian firearms).

<sup>16</sup> Evaluation of the Firearms Directive: Executive Summary, December 2014, p. 7.

<sup>17</sup> See below, Section 5 on MEPs. As regards stakeholders see e.g. FACE 19 November 2015 Communication.

<sup>18</sup> See, for example, excerpt on variations in the misuse of legally held weapons across Member States in the Evaluation of the Firearms Directive: Final Report, p. 39-40.

<sup>19</sup> Evaluation of the Firearms Directive: Final Report, p. 44-46.

<sup>20</sup> Evaluation of the Firearms Directive: Final Report, p. 47-49. The evaluation was finalized in December 2014. Note that several sources point to possible use of deactivated firearms in the 2015 terrorist attacks (see e.g. the [European Commission Press release of 18 November 2015](#), Q&A, p. 1. which states that '*[r]ecent terrorist attacks or attempted attacks included the use of firearms that had been incorrectly deactivated or firearms assembled with badly deactivated components.*' An article in The Times 'Smuggled guns came from source used to attack Paris' of 1 December 2015 states that an '*inquiry [...] has identified a "grey market" [...] originating in western Slovakia, where deactivated weapons were bought legally, trafficked to other countries and then easily converted to fire live ammunition.*' An article in The Independent 'Why getting hold of Kalashnikov is so easy' of 24 November 2015 states that '*at least one officially deactivated weapon was put back into service in Belgium and used in the Charlie Hebdo attacks.*'

<sup>21</sup> Evaluation of the Firearms Directive: Final Report, p. 49; see also p.79.

<sup>22</sup> Evaluation of the Firearms Directive: Final Report, p. 50-51.

<sup>23</sup> See also the [European Commission Press release of 18 November 2015](#), Q&A, p. 3 which states that recent terrorist attacks included cases in which '*firearms were illegally assembled with components legally bought via Internet.*'

- 1. Enhance transparency and accessibility of national rules implementing the Directive (Non legislative)**
  - Information costs for economic operators and MS authorities originating in differences in implementation of the Directive's provisions among MS;
  - Burden resulting from the diversity of administrative procedures adopted to implement the Directive's requirements for each category.
- 2. Examine interoperability between the information systems created at national level (Non legislative)**
  - Lack of information on the structure of content included in national data filing systems and the possibility to be interconnected.
- 3. Define an agreed approach to the classification of hunting and sporting firearms and clarify the rules of the European Firearms Pass (EFP) (Non legislative)**
  - Different classification of hunting and sporting firearms across MS creating obstacles to the movement of hunters and sport shooters;
  - Restrictive interpretation of some rules related to the use of the EFP ( i.e. number of firearms that can be registered on the Pass, request for only an invitation to a competition as a proof of hunting and sporting activities).
- 4. Conduct in-depth analysis on key issues (Non legislative)**
  - The progressive alignment of MS towards common and more detailed firearms' ownership requirements than the ones indicated in the Directive suggest a possible revision of criteria included in the Directive;
  - Current differences in the interpretation of the term "broker" may suggest the risk that the activity of brokers is not properly regulated and may create serious vulnerabilities;
  - The public availability of information on how to convert semi- automatic weapons in automatic weapons may suggest that these firearms may be more dangerous than other category B firearms.
- 5. Define common criteria on convertibility of alarm weapons (Legislative)**
  - Converted alarm weapons have been used in several crimes and are a matter of concern for a number of EU MS;
  - Uncertainty for law enforcement activities, since the weapons defined as "alarm weapons" can be regulated in different manners across MS;
  - High number of Turkish alarm weapons entering the EU, which appear to be more easily convertible than the ones produced in the EU;
  - Legal uncertainty and lack of clarity for economic operators as to which rules apply to alarm weapons;
  - Burden/obstacles linked to the different national requirements.
- 6. Harmonise rules on marking (Legislative)**
  - Limited traceability of firearms across borders and law enforcement capacity: MS apply different marking and registration requirements;
  - Risk of alteration and erasing of the marks;
  - Potential issues in terms of traceability of essential components: given the absence of a common definition of essential components, some parts can circulate with no marking and be used in another MS to build or reactivate a firearm.
- 7. Harmonise standards and rules on deactivation (Legislative)**
  - Potential reactivation of deactivated firearms for criminal offences;
  - Circulation of deactivated firearms with different levels of security (depending on the security of the deactivation procedures applied or on the appropriateness of controls performed by competent authorities);
  - Trade in firearms parts that have not been permanently deactivated and can be used to build or reactivate a firearm.
- 8. Strengthen the knowledge on new technologies (Non legislative)**
  - Errors occurred in the data entry in the national filing system and reported cases of erased marks;
  - Increased use of the internet as a sale channel and difficulties for law enforcement authorities' control;
  - Lack of clarity on the advantages/threats linked to new technologies (e.g., 3D printing techniques) to manufacture or trace firearms.
- 9. Strengthen data collection (Non legislative)**
  - Poor quality of available data in relation to:
    - The civil firearms market structure (i.e., production, import and export of civilian firearms, employees and turnover of companies operating in the sector);
    - Criminal offences related to civilian firearms;
    - Figures on the market and criminal offences related to alarm weapons and deactivated firearms circulating in EU.

- [Report](#)<sup>24</sup> from the Commission to the European Parliament and the Council: Evaluation of Council Directive 91/477/EC of 18 June 1991, as amended by Directive 2008/51/EC of 21 May 2008, on control of the acquisition and possession of weapons, 18 November 2015

Article 17 of the Firearms Directive requires the Commission to submit a report to the European Parliament and the Council on the situation resulting from the application of the Firearms Directive, accompanied, if appropriate, by proposals. This report draws on the external evaluation of December 2014 described above. This report, due on 28 July 2015, was submitted on 18 November 2015, five days after the Paris attacks.<sup>25</sup> The [report](#) was published together with the [proposal for an amendment to the Firearms Directive](#). In addition, the text for the [Commission Implementing Regulation](#), establishing common guidelines on deactivation standards and techniques, was adopted by the College of Commissioners on the same day.<sup>26</sup>

The aim of the report is threefold: a) describe the [findings of the evaluation study](#), b) complement those findings with the [feedback received from the Firearms Committee](#),<sup>27</sup> and c) present the [critical assessment](#) of the Commission. Addressing the first two objectives, while the Commission considers that the recommendations are 'justified and valuable,' it feels that some call for more urgent actions than others. It also notes that some recommendations might have a significant impact in terms of costs (e.g. marking of all parts of firearms and interconnecting information registry) and might need to be further examined.

On the basis of both the external evaluation and the feedback of the Firearms Committee, the report highlights the following critical issues for further action:

- the **convertibility** of blank firing weapons (such as **alarm** guns) into real firearms
- clarification of the requirements for the **marking** of firearms (allowing their traceability)
- common and stringent **guidelines for the deactivation** of firearms
- clarifying **definitions**
- considering **internet selling** arrangements
- streamlining and improvement of the **national data exchange** systems and exploring the possibilities for interoperability
- strengthening **data collection** activities related to civilian firearms and related criminal offences.

Finally, the report states that the Commission has decided to bring forward the review of the Directive in view of the recent Paris terrorist attacks and previous attacks in Paris, Copenhagen and on board a Thalys train.

## 4. The European Commission proposal to amend the Firearms Directive

### 4.1. The Commission's Proposal amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons<sup>28</sup>

On 18 November 2015, the Commission announced the [proposal for an amending directive](#), together with the [report on the implementation of the Directive](#) and the [Implementing Regulation establishing common guidelines on deactivation standards and techniques](#). In its [press release](#), the Commission states that the main objectives of the changes are to make it more difficult to acquire firearms (including deactivated firearms), to ensure better traceability of firearms and to ensure stronger cooperation between Member States. The following is a non-exhaustive list of the proposed modifications. Those that are explored in more depth in the chart below are marked with \*<sup>29</sup>:

- include within the scope of the directive **alarm** and **signal** weapons, **salute** and **acoustic** weapons, **replica** firearms (proposed placement in Category C) and **deactivated** firearms (proposed placement in Category A and C, depending on their pre-deactivation category);\*

<sup>24</sup> COM(2015) 751 final

<sup>25</sup> See also the [European Commission Press release of 18 November 2015](#).

<sup>26</sup> As announced in the 18 November 2015 [press release](#), although the date of adoption indicated in the Official Journal is 15 December 2015: [Commission Implementing Regulation 2015/2403](#) of 15 December 2015 establishing common guidelines on deactivation standards and techniques for ensuring that deactivated firearms are rendered irreversibly inoperable (entry into force 8 April 2016).

<sup>27</sup> The Firearms Committee (Article 13(a) 'The Commission shall be assisted by a committee') consists of 28 MSs, and the four EEA and EFTA countries. The summary records of the seven meetings held between 13 December 2013 and 18 November 2015 are available on the [Comitology Register](#) (with the exception of the last two meetings, for which only the agenda is available). Feedback was also provided in writing by four MS (BE, FR, SE, UK), not included here.

<sup>28</sup> COM(2015) 750.

<sup>29</sup> For a full list of proposed modifications, see the Commission [proposal](#), pp. 10-18.



- expand **category A (prohibited firearms)** to include '**automatic firearms which have been converted into semi-automatic firearms**' and '**semi-automatic firearms for civilian use which resemble weapons with automatic mechanisms**';\*
- include within the scope of the directive **collectors**;<sup>30</sup>
- introduce common rules on **marking** to avoid that markings are easily erased;
- clarify the definition of terms '**essential component**', '**broker**' and '**dealer**';
- require that **national computerised data filing systems** maintain specific records on firearms, including deactivated firearms, **until destruction of the firearm** certified by the competent authorities (current provision is 'not less than 20 years');
- extend to **brokers** the requirements for registration/licencing or authorisation as well as the requirement to **maintain a register** and to deliver the register to the national authority upon the cessation of their activities;
- require that **brokers' and dealers' registries** are **connected to** the **national** computerised data-filing systems;
- Introduce **standard medical tests** for issuing or renewing authorisation for the acquisition and possession of firearms;
- Limit the **duration of the licence** authorising the acquisition and possession of **Category B** firearms to **5 years** (renewable if conditions are still fulfilled);
- **prohibit** the acquisition and possession of weapons in **Category A by private individuals**;<sup>31</sup>
- require that **museums** ('bodies concerned with the cultural and historical aspects of weapons') ensure that **Category A firearms** in their possession are **deactivated**;
- prohibit **online acquisition** of Category A, B and C firearms / parts / ammunition except in the case of authorised dealers and brokers;\*
- require the Commission to adopt **technical specifications preventing convertibility** of alarm/signal/salute/acoustic weapons;\*
- strengthen the system for **exchange of information** between MS with regard to the **authorisations granted** for the transfer of firearms to another MS and on the **refusals** to grant such authorisation.

#### 4.2. Analytical overview of some of the proposed modifications

The chart below connects some of the main proposed modifications put forward by the Commission with the relevant provisions in the Firearms Directive as it stands and with the related findings and recommendations of the external evaluation published in December 2014.

As stated in its [report](#) of 18 November 2015, the Commission also sought feedback from the members of the Firearms Committee (Art. 13(a), MS, EEA and EFTA states). Feedback from the meetings of the Firearms Committee is included, where relevant, in the footnotes.

<u>The Commission's proposal</u> of 18 November 2015	Relevant provision/s in the Firearms Directive <a href="#">91/477/EEC</a> <a href="#">2008/51/EC</a>	<u>Conclusions of the Evaluation</u> of December 2014
<p><b>EXTENSION OF CATEGORY A TO INCLUDE SOME SEMI-AUTOMATIC FIREARMS</b></p> <p>(13) (a) (i) 6.<sup>32</sup></p> <p>Addition in Category A (prohibited firearms) of '<b>automatic firearms which have been converted into semi-automatic firearms</b>'</p> <p>(13) (a) (i) 7.</p>	<p>There is no reference in the original act to 'automatic firearms which have been converted into semi-automatic firearms.'</p> <p>The original act included 'semi-automatic firearms for civilian use which resemble weapons with automatic mechanisms' in Category B; this provision</p>	<p>The evaluation recognises security concerns posed by semi-automatic weapons when converted into automatic weapons. 'The public availability of information on how to convert semi-automatic weapons in automatic weapons may suggest that these firearms may be more dangerous than other category B firearms' (identified problem in recommendation 4). <b>The evaluation recommends that the Commission conduct an in-depth analysis on this issue.</b> Specifically, the evaluation states that '[t]aking into account the available knowledge to convert semi-automatic firearms into automatic firearms, <b>the EC may evaluate the opportunity to revise the rules applied to [semi-</b></p>

<sup>30</sup> The current Article 2 states that the Directive does not apply to, inter alia, 'collectors and bodies concerned with the cultural and historical aspects of weapons.'

<sup>31</sup> Current provision allows for 'special cases' in which the competent authorities may grant authorisations.

<sup>32</sup> This numbering corresponds to the one indicated in the Commission proposal and is used throughout this table for ease of reading. Note that the categorisation of weapons is included in Annex I of the Directive.

The Commission's proposal of 18 November 2015	Relevant provision/s in the Firearms Directive <u>91/477/EEC</u> <u>2008/51/EC</u>	Conclusions of the Evaluation of December 2014
Addition in Category A (prohibited firearms) of ' <b>semi-automatic firearms</b> for civilian use <b>which resemble weapons with automatic mechanisms</b> ' and a corresponding deletion of this type of firearm from current Category B (B7)	remained unchanged in the amending Directive 2008/51.	<b>automatic] weapons and to design more stringent rules to their ownership, acquisition and transfer.</b> <sup>133</sup>
<p><b>EXTENSION OF CATEGORIES A AND C TO INCLUDE DEACTIVATED FIREARMS</b></p> <p>(13) (a) (i) 8.</p> <p>Addition in Category A (prohibited firearms) of 'firearms under points 1 to 7 [current Category A plus two above additions] after having been deactivated'</p> <p>(13) (a) (iii) 6.</p> <p>Addition in Category C of 'firearms under category B and points 1 to 5 of Category C [current Category C plus proposed Category C point 5 which consists of 'alarm and signal weapons, salute and acoustic weapons as well as replicas'], after having been deactivated'</p>	The original act does not include deactivated firearms under the definition of firearms. <sup>34</sup> Article 3, however, allows Member States to adopt more stringent measures.	The evaluation states that some MSs treat deactivated firearms as firearms while some MSs do not and take deactivated firearms out of the national registers. The evaluation recognises related security concerns stemming from the potential risks of reactivation and the circulation of deactivated firearms with different levels of security in the EU. <b>The evaluation recommends 'a legislative intervention to define common standards and rules for deactivation' as foreseen by Annex I. III of Directive 2008/51</b> ('The Commission shall [...] issue common guidelines on deactivation [...]'). The evaluation however includes a caveat in relation to the ownership, selling or transfer of deactivated firearms and states that '[o]ur analysis supports the need for a legislative intervention in this regard as guidelines would probably not provide a lasting solution to the current [deactivation] differences'. <sup>35</sup> An earlier study specifically includes in its preferred policy option <b>'the introduction of rules on registration of deactivated firearms</b> and the obligation for owners to communicate the transfer or selling of deactivated weapons'. <sup>36</sup>
<p><b>EXTENSION OF CATEGORY C</b></p> <p>(13) (a) (iii) 5.</p> <p>Addition in Category C of '<b>alarm and signal weapons, salute and acoustic weapons as well as replicas</b>'</p>	Alarm and signal weapons are excluded from the definition of firearms 'provided that they can be used for the stated purpose only [i.e. cannot fire live	The evaluation finds that the conversion of originally blank firing weapons to fire live ammunition is seen as a serious issue in a high number of MSs and that many documented cases of conversion exist.

<sup>33</sup> See more on pages 49, 96-97 and 104 of the Evaluation of the Firearms Directive. See also summary record of the 4<sup>th</sup> and the 5<sup>th</sup> meetings of the Firearms Committee held on 25 March 2015 and 4 May 2015. The March meeting summary record states that '[a] large number [of Member States] seemed to agree on the need [...] to look into the issue of convertibility of semi-automatic weapons into automatic ones (and vice-versa)'. The May meeting however does not include this matter among the five topics to potentially include in the proposal for amending the Directive. The records of the subsequent meetings held on 14 September 2015 and 18 November 2015 were not yet available in the Comitology Register at the time of writing this paper.

<sup>34</sup> Directive 91/477 Annex I, III states that '*objects which correspond to the definition of a 'firearm' shall not be included in that definition if they: (a) have been rendered permanently unfit for use by the application of technical procedures which are guaranteed by an official body or recognised by such a body.*' Directive 2008/51 amends this article: '*(a) have been rendered permanently unfit for use by deactivation, ensuring that all essential parts of the firearm have been rendered permanently inoperable and incapable of removal, replacement or a modification that would permit the firearm to be reactivated in any way. Member States shall make arrangements for the deactivation measures [...] to be verified by a competent authority in order to ensure that the modifications made to a firearm render it irreversibly inoperable. Member States shall [...] provide for the issuance of a certificate or record attesting to the deactivation of a firearm or the apposition of a clearly visible mark to that effect on the firearm. The Commission shall [...] issue common guidelines on deactivation standards and techniques to ensure that deactivated firearms are rendered irreversibly inoperable.*'

<sup>35</sup> Evaluation of the Firearms Directive, p. 99. See also pages 47-49, 70-72, 98-99 and 105. In particular, see identified problems, gaps and issues relevant to the recommendation 7 on page 105 of the evaluation (standards and rules of deactivation). See also the summary record of the 2<sup>nd</sup> meeting of the Firearms Committee held on 9 July 2014 on the proposal to include/maintain deactivated firearms in national registers (with a new status of deactivated firearms). The record shows that a number of MS were against this measure since they considered it to be '*disproportionate, administratively burdensome and costly [...] registration of deactivated firearms is not needed if common rules and standards for deactivation are stringent enough so that reactivation is no longer possible*' (p.2). On the other hand, the record of the 5<sup>th</sup> meeting of the Firearms Committee held on 4 May 2015 shows that some MS proposed to keep records of deactivated firearms. The records of the subsequent meetings held on 14 September 2015 and 18 November 2015 were not yet available in the Comitology Register at the time of writing this paper.

<sup>36</sup> [Study to support an Impact Assessment on a possible initiative related to improving rules on deactivation, destruction and marking procedures of firearms in the EU, as well as on alarm weapons and replicas](#), prepared by EY and SIPRI, June 2014, p. 93-97.

The Commission's proposal of 18 November 2015	Relevant provision/s in the Firearms Directive <a href="#">91/477/EEC</a> <a href="#">2008/51/EC</a>	Conclusions of the Evaluation of December 2014
<p>(8) Article 10a, first and second paragraphs</p> <p><b>Member States</b> shall take measures to <b>ensure</b> that alarm and signal weapons as well as salute and acoustic weapons <b>cannot be converted into firearms. The Commission shall adopt technical specifications</b> for alarm and signal weapons as well as for salute and acoustic weapons <b>to ensure they cannot be converted into firearms.</b></p>	<p>ammunition]' (Annex I. III.b).</p> <p>Those alarm and signal weapons that can be converted to fire live ammunition are considered as firearms in the current Directive (Art. 1).</p> <p>No common technical guidelines/specifications exist as regards the convertibility.</p>	<p>The above security concerns are coupled with market concerns (uncertainty of economic operators as regards applicable rules for alarm weapons).</p> <p>The evaluation recommends <b>that common criteria on convertibility of alarm weapons be defined and that '[a]larm/signal weapons that prove not to be in line with the anti-conversion criteria will be subject to the provisions of the Firearms Directive and related requirements.</b><sup>37</sup></p>
<p><b>ONLINE SALE</b></p> <p>(6) 2. Article 6, third paragraph</p> <p>'The acquisition of firearms and their parts and ammunition concerning Categories A, B and C by means of distance communication [...] shall be authorised only with respect to dealers and brokers and shall be subject to the strict control of the Member States'.</p>	<p>'Member states shall ensure that, except with respect to dealers, the acquisition of firearms and their parts and ammunition by means of distance communication [...] shall, where authorised, be strictly controlled.' (Art. 6)</p>	<p>The evaluation provides non-legislative recommendations on this point; see e.g. <b>'strengthen knowledge on new technologies.'</b> Some of the case studies point to concrete cases of illegal online transactions.<sup>38</sup></p>
<p><b>DEACTIVATION STANDARDS</b></p> <p>(8) Article 10b, second paragraph</p> <p>The Commission shall <b>adopt deactivation standards and techniques</b> to ensure that deactivated firearms are rendered irreversibly inoperable.<sup>39</sup></p>	<p>The original act does not include references to <b>deactivation standards and techniques.</b> The amending Directive 2008/51 states that '[t]he Commission shall [...] <b>issue common guidelines</b> on deactivation standards and techniques to ensure that deactivated firearms are rendered irreversibly inoperable.'<sup>40</sup></p> <p>The Commission adopted an <a href="#">implementing regulation establishing common</a></p>	<p>The evaluation notes that the common guidelines on deactivation standards are still under preparation and that this has left room for national differences in deactivation procedures. These differences among MSs in deactivation standards 'allow the circulation of deactivated firearms with different levels of security and they facilitate the illegal trade in firearms parts'.<sup>41</sup> The evaluation states that 'under the current legal framework,' the EU is 'unprepared to address the potential risks of reactivation [...] and deactivated firearms with different levels of security circulate in the EU.'<sup>42</sup> The evaluation further states that 'common deactivation guidelines foreseen by the Commission would have a positive impact in terms of progressive harmonisation of procedures and reduction of threats to EU citizens' security by reducing the criminal activity linked to the reactivation of deactivated firearms.'<sup>43</sup></p>

<sup>37</sup> See pages 44-46, 53-54, 97-98 and 104 of the Evaluation of the Firearms Directive. In particular, see identified problems, gaps and issues relevant to the recommendation 5 on page 104 of the evaluation (common criteria on convertibility of alarm weapons). See also the summary record of the 3rd meeting of the Firearms Committee held on 16 March 2015 regarding the common criteria on convertibility of alarm weapons and/or blank firers (MS suggested legally binding measures to this effect). Similarly, the record of the 4th meeting of the Firearms Committee held on 24 April 2015 shows that a large number of MS agreed that the definition of common criteria on convertibility of alarm weapons is among the three high priority recommendations. The summary record of the 5th meeting of the Firearms Committee held on 17 June 2015 reveals that the Commission intends to consider among the modifications of the Directive not only 'defin[ing] convertibility' but also 'extend[ing] the scope of the Directive to blank firing arms/alarm weapons etc.'

<sup>38</sup> The Evaluation of the Firearms Directive, Final Report, December 2014, see e.g. p. 42 on France, and pages 50-51.

<sup>39</sup> The proposed amendment further reads that '*[t]hose implementing acts shall be adopted in accordance with the examination procedure referred to in Article 13b(2)* [i.e. Article 5 of Regulation 182/2011].'

<sup>40</sup> See 2008/51 Article 1.13. (b) (ii) The amendment states that the Commission should issue such guidelines '*acting in accordance with the procedure referred to in Article 13a(2) of the Directive* [i.e. Articles 5 and 7 of Council Decision 1999/468/EC, see full text in Article 13a(2)].'

<sup>41</sup> The Evaluation of the Firearms Directive, Executive Summary, December 2014, p. 5.

<sup>42</sup> The Evaluation of the Firearms Directive, Executive Summary, December 2014, p. 6.

<sup>43</sup> The Evaluation of the Firearms Directive, Final Report, December 2014, p. 72.

<u>The Commission's proposal</u> of 18 November 2015	Relevant provision/s in the Firearms Directive <a href="#">91/477/EEC</a> <a href="#">2008/51/EC</a>	Conclusions of <u>the Evaluation</u> of December 2014
	<a href="#">guidelines on deactivation standards and techniques</a> jointly with this proposal for amending the Firearms Directive (announced on 18 November; adoption date in OJ: 15 December 2015).	The evaluation recommends legislative action to harmonise standards and rules on deactivation. <sup>44</sup>

## 5. European Parliament position / MEP questions

### 5.1. Recent EP resolutions

The Parliament has expressed its views on the issue of firearms (generally in relation to illegal firearms), in its resolution of 11 February 2015 on the anti-terrorism measures and later in its resolution of 9 July 2015 on the European Agenda on Security.

#### - [European Parliament resolution of 11 February 2015 on anti-terrorism measures](#)

The Parliament considers that combating trafficking in firearms should be a priority for the EU and 'calls on the Commission to evaluate as a matter of urgency the existing EU rules on the movement of illegal firearms, explosive devices and arms trafficking linked to organised crime.'<sup>45</sup>

#### - [European Parliament resolution of 9 July 2015 on the European Agenda on Security](#)

The Parliament takes note of the European Agenda of Security and considers that 'terrorism, violent extremism, cross-border organised crime and cybercrime are the most serious threats which require coordinated actions at national, EU and global level.' The Parliament further calls on the Commission 'to ensure effective and operational implementation of [the European Agenda on Security].'<sup>46</sup>

### 5.2. The prominent role of the Parliament in the 2008 revision of the Firearms Directive

The Parliament was instrumental in ensuring that the first and so far only revision of the Firearms Directive took into account the findings of the Commission's 2000 [report](#).<sup>47</sup>

Indeed, when the Commission submitted its [proposal in 2006](#), it stated that the proposal 'merely adapt[ed] the provisions of the Directive to the new legal context brought about by community accession to the [United Nations Firearms] Protocol.'<sup>48</sup> This appears contrary to the Commission's earlier intention to submit a proposal that would include both amendments pertaining to the alignment of the Directive to the UNFP *and* those stemming from the findings of its 2000 report.<sup>49</sup> In that report, the Commission stated that it was advisable to wait for the adoption of the UN Protocol 'so that the adaptation of the Directive [would] not need to be redone twice within a short period of time.'<sup>50</sup> Such wording would imply that an amending Directive would be forthcoming even in the absence of the UN Protocol.

The European Parliament noted this point and, in its [report on the proposal](#) stated that the Commission's report from 2000 'identified a series of problems encountered in the implementation of the Directive, and [...] envisaged a series of improvements.'<sup>51</sup> The rapporteur<sup>52</sup> proposed that '[...] the current revision process of the 1991 directive should not be

<sup>44</sup> The Evaluation of the Firearms Directive, Final Report, December 2014, p. 105.

<sup>45</sup> 2015/2530(RSP), 16.

<sup>46</sup> 2015/2697(RSP), 1, 12. Note that one of the three priorities of the [European Agenda on Security](#) is disrupting organised crime. The Agenda foresees the revision of the Firearms Directive in the context of this priority.

<sup>47</sup> COM(2000) 837 final.

<sup>48</sup> COM(2006) 93 final, p. 3.

<sup>49</sup> As noted earlier, the COM(2000) 837 report did not conclude that substantial changes to the Directive were needed, but did identify a number of problems and possible solutions, mostly to clarify the existing wording of the main provisions with a view to ensuring the uniform application of the Directive in all Member States.

<sup>50</sup> COM(2000) 837 final, p. 22.

<sup>51</sup> Report on the proposal for a directive of the European Parliament and of the Council amending Council Directive 91/477/EEC on the control of the acquisition and possession of weapons, Committee on the Internal Market and Consumer Protection, [A6-0276/2007](#), 12 July 2007, p. 6.

limited to the points mentioned in the UN Protocol. It should also examine, amongst other things in light of the Commission 2000 report and developments in national legislation, whether it would now be useful to make additional modifications to the directive, to reduce the need for additional changes in the near term.<sup>53</sup>

Indeed, after a lengthy legislative process,<sup>54</sup> the final [amending directive](#)<sup>55</sup> represented a considerable departure from the [Commission's proposal](#).

### 5.3. Members' questions

Several Members of the European Parliament have tabled a number of questions following the announcement of the Commission's proposal of 18 November 2015 for amending the Firearms Directive.<sup>56</sup> An overview of the questions is provided below, with similar questions placed in thematic groups for ease of reading.

#### **Requests for information linking legally owned firearms to terrorist acts and criminal activities**<sup>57</sup>

Including terrorist and/or criminal use of converted alarm and signalling weapons, previously deactivated weapons, weapons bought from collectors and through online purchase, and semi-automatic weapons.

- With reference to all the terrorist attacks carried out in the EU since 11 September 2001: When and where have semi-automatic weapons, weapons bought online, converted alarm pistols, previously deactivated weapons or weapons bought from collectors been used in terrorist attacks? When and where have legally purchased weapons been used in terrorist attacks?
- What percentage of the crimes which the Commission's proposed amendments to Directive 91/477/EEC seek to reduce are carried out with lawfully obtained weapons?
- What is the number of crimes committed each year in the Member States using legally held weapons? Please provide statistics broken down by: organised crimes; terrorist offences or similar; crimes of murder; crimes of killing; crimes of bodily harm.
- Does the Commission have detailed information about the number of terrorist attacks carried out in the EU by people holding a licence to possess a self-loading weapon issued on the basis of the rules currently in force and using weapons obtained through official distribution channels, and if so can the Commission make that information available?
- How many cases have been recorded of converted signalling weapons being used for criminal purposes? Signalling weapons can save the lives of people at sea and hikers. Will it be more difficult, or even impossible, for private individuals to purchase such weapons in the future? According to the report referred to above, weapons previously made unusable which had been reactivated by the terrorists were employed in the appalling recent attacks in Paris. What is the Commission's source for this information, and how did the terrorists get hold of the weapons in question?

#### **Links between legally owned firearms and terrorist / criminal acts questioned**<sup>58</sup>

- How will added restrictions on legal gun ownership help to tackle terrorism? ['There is widespread concern that the problem of illegal weapons will not be tackled by restricting legal gun ownership']
- What is the rationale behind the Commission's proposal to tighten up, i.e. restrict, the legal possession of firearms when the terrorist attacks referred to in the explanatory memorandum were carried out using illegally held weapons?
- How does the Commission propose to ensure that the revision of the Weapons Directive concentrates on preventing the illegal trade in firearms, crime and terrorism?
- To what extent will the proposals for regular reviews and medical tests in connection with weapons licences impact upon the presence of illegal weapons, and how great will be the extra administrative burdens involved for the authorities responsible?
- Is the Commission seriously arguing that terrorists are going to equip themselves with antique deactivated firearms from the Royal Armouries or regimental museums in order to carry out atrocities?

<sup>52</sup> Gisela Kallenbach, Group of the Greens/European Free Alliance.

<sup>53</sup> *Ibid*, p. 29-30.

<sup>54</sup> The Commission proposal was published in March 2006, the amending directive was adopted in May 2008.

<sup>55</sup> [Directive 2008/51/EC](#)

<sup>56</sup> At the time of writing (10 January 2016), none of the reported questions mentioned had been replied to.

<sup>57</sup> [P-015424-15](#) Beatrix von Storch (ECR) 3 December 2015; [P-015167/2015](#) Milan Zver (PPE) 30 November 2015; E-015119/2015 Richard Sulík (ECR) 26 November 2015; E-015051/2015 Kosma Złotowski (ECR) and Edward Czesak (ECR) 25 November 2015; [P-014866/2015](#) Harald Vilimsky (ENF) 19 November 2015.

<sup>58</sup> E-015014/2015 Anna Maria Corazza Bildt (PPE) 25 November 2015; E-015119/2015 Richard Sulík (ECR) 26 November 2015; [P-014918/2015](#) Anneli Jäätteenmäki (ALDE) FI 20 November 2015; E-015165/2015 Fredrick Federley (ALDE) 30 November 2015; E-015114/2015 Mike Hookem (EFDD) 26 November 2015.



### **Absence of an impact assessment<sup>59</sup> and related issues<sup>60</sup>**

- Will the Commission follow good law-making practice and carry out an impact assessment? ['Because the Commission has omitted to carry out an impact assessment, it is impossible to say how weapons security would be improved ...']
- Has the Commission carried out a study on the impact, in terms of the growth of the illegal trade in weapons, of tightening up the conditions for legally obtaining and holding firearms?
- Does the Commission not think that making it harder to obtain weapons lawfully might boost the black market in weapons? When it drew up the draft amendments to this directive, did the Commission have access to a comprehensive analysis of the financial and administrative impact of the proposed rules on people in possession of self-loading weapons, business owners conducting lawful trade in such weapons, collectors and people using self-loading weapons for recreation and sport? Were these groups consulted by the Commission on the proposed amendments [...]

### **Impact on legal owners of firearms<sup>61</sup>**

- What effects will the proposals have on semi-automatic weapons for the many hobby marksmen and shooting clubs active in nearly all EU Member States?
- Does [the Commission] not fear that peace-loving people, who are not in the least bit dangerous, will be harmed by this amended directive which, in any case, will not effectively combat the criminal use of these weapons that proliferate in the suburbs of our cities, because of arms trafficking?

### **Impact on national defence capabilities<sup>62</sup> (cases of Finland and Lithuania)**

- Does the Commission realise that banning assault rifles and semi-automatic sub-machine guns would make it impossible for reservists to preserve their defensive abilities and would cause serious problems for Finland's defence capability?
- How does the Commission propose to ensure that the revision of the Firearms Directive does not make it harder for reservists' associations in Finland to carry out their activities?
- What is the Commission's evaluation of, and opinion on, the impact of the [...] ban on Member States' ability to defend themselves? How does the Commission intend to ensure that the proposed amendments do not have a negative impact on the security of those countries whose national defence systems depend not only on a professional army, but also on civil defence forces?

### **Clarity of terminology<sup>63</sup>**

- How will the Commission address the lack of terminological clarity in the proposed amendments? [e.g. 'What are 'real' firearms? What is a large 'capacity regarding the number of rounds'? How can we easily define the concept of weapons that are 'easily converted to automatic arms'?]
- Who would determine if a weapon 'resembles' a fully automatic rifle, and on what grounds?

### **Other issues<sup>64</sup>**

#### **Lack of guidelines on common deactivation standards**

- How is it possible that the Commission [...] has not managed over the last five years to publish common guidelines on deactivation standards and techniques?

<sup>59</sup> It is worth recalling that the current proposal does not include an impact assessment (IA) 'due to the urgency of the proposal in the light of recent events' (COM(2015) 750 final, p.7.). Likewise, the Commission's proposal in 2006 did not include an IA with the explanation that '[a]n impact assessment is not necessary for simple technical amendments ensuing from the Community's international commitments [i.e. alignment with the UNFP]' (COM(2006) 93 final, p.4.). An IA was not required in 1991 when the Directive was originally adopted.

<sup>60</sup> [P-015444-15](#) Henna Virkkunen (PPE) 7 December 2015; [E-015119/2015](#) Richard Sulík (ECR) 26 November 2015; [P-015167/2015](#) Milan Zver (PPE) 30 November 2015; [E-015051/2015](#) Kosma Złotowski (ECR) and Edward Czesak (ECR) 25 November 2015.

<sup>61</sup> [E-015165/2015](#) Fredrick Federley (ALDE) 30 November 2015; [E-015093/2015](#) Joëlle Bergeron (EFDD) 26 November 2015.

<sup>62</sup> [P-015444-15](#) Henna Virkkunen (PPE) 7 December 2015; [P-014918/2015](#) Anneli Jäätteenmäki (ALDE) FI 20 November 2015; [E-015364/2015](#) Gabrielius Landsbergis (PPE) 2 December 2015.

<sup>63</sup> [P-015408/2015](#) Stanislav Polčák (PPE) 3 December 2015; [E-015014/2015](#) Anna Maria Corazza Bildt (PPE) 25 November 2015.

<sup>64</sup> [P-015408/2015](#) Stanislav Polčák (PPE) 3 December 2015; [P-015167/2015](#) Milan Zver (PPE) 30 November 2015; [P-015588-15](#) Janusz Zemke (S&D) 9 December 2015; [E-015093/2015](#) Joëlle Bergeron (EFDD) 26 November 2015; [P-015444-15](#) Henna Virkkunen (PPE) 7 December 2015; [E-015400/2015](#) Jasenko Selimovic (ALDE) 3 December 2015; [E-015014/2015](#) Anna Maria Corazza Bildt (PPE) 25 November 2015; [E-015165/2015](#) Fredrick Federley (ALDE) 30 November 2015; [P-014866/2015](#) Harald Vilimsky (ENF) 19 November 2015; [E-015400/2015](#) Jasenko Selimovic (ALDE) 3 December 2015; [E-015114/2015](#) Mike Hookem (EFDD) 26 November 2015; [P-015424-15](#) Beatrix von Storch (ECR) 3 December 2015.

#### Procedural and legal issues

- Why did the Commission publish the proposal, which relates to lawfully acquired weapons, much earlier than it intends to publish the action programme to tackle the illicit trade in firearms?
- Given the many objections that have been raised by people in legal possession of firearms, is the Commission considering changing the proposal [...]
- Is the Commission not infringing here the principle of subsidiarity as defined in the Maastricht Treaty?

#### Clarifications sought on proposal provisions

- Do the proposed changes also apply to single-shot semi-automatic firearms used for sport and hunting?
- [C]ould the Commission state: exactly which semi-automatic weapons the proposal concerns; where the added value lies in five-year weapons licenses.
- Will the proposal to restrict gun licences to five years apply only to licences for semi-automatic weapons or to all kinds of weapon licences?
- What exceptions will be possible to the basic rule that firearms licences may not be granted to under-18s?
- How exactly is the Commission planning to tighten up the EU rules and will the stricter provisions also cover handguns?

#### Online sale of firearms

- [C]ould the Commission state: why online sales should also be banned in countries which have well regulated and well-functioning systems in which both the buyer and the seller must have a license?

#### Authorised bodies concerned with the cultural and historical aspects of weapons

- Who will decide what is an authorised museum? Will this include small regimental collections held by military units? Does the Commission anticipate this directive being extended to Her Majesty's royal palaces, including Windsor Castle and the Tower of London?

#### Impact of checks at national borders on the illegal arms trafficking

- With reference to the illegal arms trade and illegal arms shipments: In the Commission's view, what impact would stringent checks at national borders have on the illegal arms trade and illegal arms shipments?

Prior to the adoption of the Commission's proposal, Members of the European Parliament had already raised relevant questions on firearms in the course of 2015, including *inter alia* questions on illegal weapons (EU's efforts to curb trafficking in small arms and light weapons/SALW; cooperation with the Western Balkans state to combat trafficking in SALW),<sup>65</sup> the transposition of the Firearms Directive (more stringent rules adopted by the MS in line with Article 3),<sup>66</sup> crimes committed with legal weapons,<sup>67</sup> and on the conversion of deactivated weapons.<sup>68</sup>

### **5.4. European Parliament: Petitions and Citizens' Enquiries (AskEP) on firearms**

In the period from July 2005 (London underground terrorist attack) to 8 December 2015, sixteen petitions were received by the European Parliament, of which eleven have been closed. The five on-going petitions essentially amount to three petitions, due to their identical or near-identical texts.<sup>69</sup> Petition 1237/2015 'EU: You cannot stop terrorism by restricting legal gun ownership' calls for the rejection of the Commission's proposal of 18 November 2015. A second [petition with the same title and text](#) is available online on the change.org website and has reportedly attracted some 290 000 online supporters, according to the information available on the site.<sup>70</sup>

Following the Commission proposal, AskEP has received a number of enquires (33 on an individual basis and 861 in the context of a mass-campaign), an overwhelming majority of which express their opposition to the Commission proposal.<sup>71</sup>

<sup>65</sup> [E-009523-15](#); [E-009417-15](#); [E-009417-15](#); [E-008523-15](#) Pablo Iglesias (GUE/NGL) 11 June 2015; 10 June 2015; 10 June 2015 and 28 May 2015 respectively; [E-001008-15](#) Rachida Dati (PPE) 26 January 2015; [E-000446-15](#) Ivan Jakovčić (ALDE) 14 January 2015.

<sup>66</sup> [P-008328-15](#) Lorenzo Fontana (NI) 22 May 2015

<sup>67</sup> [E-007561/2015](#) Stanislav Polčák (PPE) 11 May 2015

<sup>68</sup> [P-003566-15](#) Charles Tannock (ECR) 4 March 2015

<sup>69</sup> Figures as of 9 December 2015. The petitions number 1237/2015 and 1286/2015 have nearly identical texts. In addition, petitions number 0911/2014 and 2616/2013 have identical titles 'Ban on personal weaponry regulation by the EU,' and, from what can be gauged from the respective summaries, very similar petition texts. Finally, the petition number 1787/2015 deals with the arms trade and is not of immediate relevance for this paper.

<sup>70</sup> Note that it is not clear who exactly is being petitioned in the change.org petition: the website states 'Petitioning Council of the European Union,' while the European Parliament's role in line with Article 227 TFEU is not mentioned. Again, the text of this petition is nearly identical to the one of Petitions 1237/2015 and 1286/2015 submitted to the EP.

<sup>71</sup> Figures as of 4 January 2016. More specifically, 35 enquiries were received between 19 November and 17 December 2015 (33 messages received on an individual basis expressed strong opposition to the proposal '*which seeks inter alia to unconditionally prohibit the holding of certain semi-automatic fire-arms by private persons*'; another message expressed negative sentiments on discussions about the control of firearms, and another enquired if the Commission would conduct an impact assessment and the reasons why such

## 5.5. Internal Market and Consumer Protection (IMCO) Committee meeting

On 7 December 2015, the IMCO Committee heard a presentation by the European Commission on its proposal to amend the Firearms Directive. The Commission presented the main modifications. In addition, and following questions raised by MEPs, the Commission noted that the recent terrorist acts were partly committed with legal weapons and that the proposal, accelerated in the wake of the terrorist attacks, was nevertheless the result of a long process that included several studies. The Commission further underlined that nothing would change for hunters (who mostly use Category C weapons) and sport shooters (who mostly use Category B weapons) as the proposal bans only two types of semi-automatic firearms. As to the proposal to move semi-automatic firearms which 'resemble' automatic ones (B7) into the group of prohibited firearms (category A), the Commission clarified that it had in mind semi-automatic Kalashnikovs.

## 6. Conclusions

Since its entry into force, the Firearms Directive has been broadly successful in facilitating the free movement of firearms within the internal market and, at the same time, in ensuring a high level of security for EU citizens. Yet, some difficulties became apparent, notably as concerns the security aspects of the Directive. The 2008 revision intervened mainly on this front, also requiring the Commission to issue guidelines on deactivation standards 'to ensure that deactivated firearms are rendered irreversibly inoperable.' The current proposal for an amending directive again aims at reinforcing security aspects of the Directive, in view mainly of the findings of the evaluation study and feedback from Member States. The Commission announced the adoption of the implementing regulation establishing common guidelines on deactivation standards and techniques only seven years later, on 18 November 2015, together with its proposal for amending the Firearms Directive.

As regards procedural aspects, it is to be noted that no impact assessment accompanied the Commission proposal, which would appear to constitute a departure from the Commission's Better Regulation Guidelines. It is worth noting that, at the time of writing, there is an on-going public consultation (invitation to provide feedback) launched by the Commission on its proposal, which remains open until 1 February 2016.

The proposal draws on the findings and recommendations of the external evaluation of the Firearms Directive. Some of the proposed modifications go beyond the recommendations of the evaluation (e.g. inclusion of alarm and signal weapons in the definition of firearms) while others are deferred to a later stage (e.g. examination of the interoperability between national information systems). It should be noted in this context that the Commission also relied on input from the Firearms Committee (Art. 13(a), MS, EEA and EFTA states).

One of the recurring points in recent debates is the link made by the Commission between the timing of the proposal and the recent terrorist attacks. Indeed, several Members of the European Parliament and stakeholders raised doubts about the role of legal weapons in terrorist attacks and criminal acts in general, perceiving this link as unsubstantiated. While this link might contribute to creating the political momentum for speedy adoption of the amending directive, it could also undermine the perceived legitimacy of the otherwise needed revision of the directive.

Another frequently mentioned issue relates to the lack of comprehensive data. Both the 2014 external evaluation and the Commission proposal acknowledge this problem. Nevertheless, they point to several worrying trends, such as the convertibility of alarm and signal weapons, as warranting a revision of the Directive.

Last but not least, it appears that some of the current concerns surrounding the Commission proposal could have been prevented in part through clearer terminology, especially as regards the proposed ban on some semi-automatic weapons.

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an assessment was not done in the first place). 861 additional messages were received by AskEP in the context of a mass-campaign, with an overwhelming majority against the proposal.