



2015/0269(COD)

2.3.2016

DRAFT OPINION

of the Committee on Civil Liberties, Justice and Home Affairs

for the Committee on the Internal Market and Consumer Protection

on the proposal for a directive of the European Parliament and of the Council amending Council Directive 91/477/EC on control of the acquisition and possession of weapons
(COM(2015)0750 – C8-0358/2015 – 2015/0269(COD))

Rapporteur (*): Bodil Valero

(*) Associated committees - Rule 54 of the Rules of Procedure

SHORT JUSTIFICATION

Background

The acquisition, possession and import/export of firearms for civilian use is subject to a comprehensive EU regulatory framework set out in Directive 91/477/EC as amended by Directive 2008/51/EC. The Directive aimed to establish minimum standards for the marking, storing, manufacture, trade, registering and deactivation of firearms, as well as establishing definitions and introduction of punishable offences.

In spite of stricter legislation, gun related violence remains a significant threat within the EU. The Declaration of the Home Affairs Ministers Council of 29 August 2015 called for an urgent action on the deactivation of firearms to prevent their reactivation and use by criminals. It repeated its call for the revision of the Firearms Directive and for a common approach on the deactivation, enhancing the traceability in the existing legislation in order to close gaps and shortcomings in its implementation at national level.

The report on the implementation of the Firearms Directive also identified obstacles to tracing firearms due to differences across Member States. In its proposal the Commission suggested amending the existing legislation on a number of areas, for example:

- EU common standards on deactivation;
- EU common rules on marking of firearms to improve the traceability of weapons;
- Better exchange of information between Member States, for example on any refusal of authorisation to own a firearm decided by another national authority, and obligation to interconnect national registers of weapons;
- Common criteria concerning alarm weapons (e.g. distress flares and starter pistols) in order to prevent their transformation into fully functioning firearms;
- Stricter rules on the online acquisition of firearms, to avoid the acquisition of firearms, key parts or ammunition through the Internet;
- Stricter rules to ban certain semi-automatic firearms, which will not be allowed to be held by private persons, even if they have been permanently deactivated;
- Stricter conditions for the circulation of deactivated firearms;
- Stricter conditions for collectors to limit the risk of sale to criminals.

The Committee on Civil Liberties, Justice and Home Affairs organised a mini-hearing on February 15th 2016 in order to examine points that could be improved within the current directive and to clarify the appropriate level of harmonisation on EU level.

The invited expert on firearms especially highlighted the threat caused by converted and reactivated firearms and the need for high common standards for deactivation within the EU

and furthermore pointed out that each essential part of a firearm needs to be marked so that it can be traced if stolen or lost. The expert demonstrated that a general ban on semi-automatic firearms based on the criteria of "resemblance" is problematic and not feasible for Member States to implement.

Another invited expert on licensing and medical tests testified that some basic level of medical check (of both physical ability and mental health) is needed to give a license on firearms, as well as follow-up tests on a regular basis.

The rapporteur's position

The rapporteur welcomes the revision of the directive so that loopholes in existing legislation can be closed and the security of European citizens can be enhanced. The rapporteur consequently supports the majority of suggestions in the Commission's proposal. However there are parts that need to be amended in order to make the new legislation understandable, effective, balanced and proportional.

Furthermore the rapporteur would strongly like to emphasize that this Directive, although the aim is better security for the citizens, is not addressing illegal arms and with them related organized crime and terrorist activity, which are only two types of gun related problems. It's more about preventing legal firearms from ending up on the black market, preventing shooting rampages, suicides, homicides and accidents with firearms.

The rapporteur regrets that the commission did not present an impact assessment in advance. In an impact assessment the commission for example could have specified the types and amounts of firearms affected by the proposal, making it easier for the parliament to take an informed position on the matter.

In view of these considerations, the rapporteur proposes amendments particularly concerning:

1. The scope of the directive (to include not only firearms, but also their essential components and ammunition);
2. The marking of essential components;
3. The deactivation of firearms;
4. The exchange of information between Member States;
5. Distance sales;
6. Suitability tests for license applicants;
7. Additional security measures.

In its proposal the commission wishes to amend Annex I of the Directive so as to add in category A "automatic firearms which have been converted to semi-automatic firearms" and "firearms under points 1 to 7 after having been deactivated", consequently prohibiting such firearms. The rapporteur supports this provision.

The commission also wishes to move the so called B7 category of "semi-automatic firearms for civilian use resembling automatic firearms" to category A. The Rapporteur recognizes that this provision is neither comprehensible nor practically implementable in its current shape, since it does not distinguish between physical appearance and technical characteristics. Instead of the mere looks of a weapon, technical criteria should be decisive, such as excitation energy of the firearm, the calibre, possibility of attaching a large magazine; or other properties that are not justified for good cause such as pistol grip, foldable stock, cooling systems et cetera. The Rapporteur urges the Commission to reconsider its proposal on this point.

AMENDMENTS

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a directive Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) The maintenance and exchange of information are subject to compliance with Regulation (EU) 2016/... of the European Parliament and of the Council^{1a}.

^{1a} Regulation (EU) 2016/... of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation), and repealing Directive 95/46/EC(OJ L ...).

Or. en

Amendment 2

Proposal for a directive Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) This Directive concerns legal firearms and security relating to firearms. Therefore, further security measures should be introduced, especially as regards safe storage of firearms, since such measures are vital in order to prevent the misuse of firearms, shooting rampages, suicides and accidents with firearms.

Or. en

Amendment 3

Proposal for a directive Article 1 – point 1 – point a Directive 91/477/EEC Article 1 – paragraph 1b

Text proposed by the Commission

Amendment

1b. For the purposes of this Directive, "essential component" shall mean the barrel, frame, receiver, slide or cylinder, bolt or breach block and any device designed or adapted to diminish the sound caused by firing a firearm which, being separate objects, are included in the category of the firearms on which they are or are intended to be mounted.

1b. For the purposes of this Directive, "essential component" shall mean the barrel, frame, receiver, slide or cylinder, bolt or breach block, ***magazine and*** any device designed or adapted to diminish the sound caused by firing a firearm which, being separate objects, are included in the category of the firearms on which they are or are intended to be mounted.

Or. en

Amendment 4

Proposal for a directive Article 1 – point 1 – point c Directive 91/477/EEC

Article 1 – paragraph 1f

Text proposed by the Commission

1f. For the purposes of this Directive, "alarm and signal weapons" shall mean portable devices with a cartridge holder having a gas exit to the front, aside or on the top, which are specifically designed and constructed for the purpose of raising alarm or sending a signal **and** which are only designed to fire blanks, irritants, other active substances or pyrotechnic ammunition.

Amendment

1f. For the purposes of this Directive, "alarm and signal weapons" shall mean portable devices with a cartridge holder having a gas exit to the front, aside or on the top, which are specifically designed and constructed for the purpose of raising alarm or sending a signal, which are only designed to fire blanks, irritants, other active substances or pyrotechnic ammunition, **and which cannot be converted into a firearm by using conventional tools.**

Or. en

Amendment 5

Proposal for a directive

Article 1 – point 1 – point c

Directive 91/477/EEC

Article 1 – paragraph 1g a (new)

Text proposed by the Commission

Amendment

1ga. Sizes of ammunition for salute and acoustic weapons must not be identical to live ammunition sizes.

Or. en

Justification

The use of different ammunition sizes makes it more difficult to convert these weapons into "real" firearms because the use of live ammunition requires additional conversion steps.

Amendment 6

Proposal for a directive

Article 1 – point 1 – point c

Directive 91/477/EEC

Article 1 – paragraph 1i

Text proposed by the Commission

1i. For the purposes of this Directive, "deactivated firearms" **shall** mean firearms that have been modified with the purpose of rendering them 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.**

Amendment

1i. For the purposes of this Directive, "deactivated firearms" means firearms that have been modified with the purpose of rendering them permanently unfit for use **as firearms and which are irreversibly rendered inoperable** by deactivation **in accordance with Commission Implementing Regulation (EU) 2015/2403^{1a}.**

^{1a} **Commission Implementing Regulation (EU) 2015/2403 of 15 December 2015 establishing common guidelines on deactivation standards and techniques for ensuring that deactivated firearms are rendered irreversibly inoperable (OJ L 333, 19.12.2015, p. 62).**

Or. en

Justification

Reference should be made to the implementing regulation on deactivation. In the future, only weapons that have been processed in line with the requirements of the implementing regulation incoming updates and or revisions will be considered deactivated.

Amendment 7

Proposal for a directive

Article 1 – point 3

Directive 91/477/EEC

Article 4 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that any firearm or **part** placed on the market has been marked and registered in compliance with this Directive.

Amendment

1. Member States shall ensure that any firearm or **essential component thereof** placed on the market has been marked **in a durable way** and registered in compliance with this Directive.

Or. en

Justification

Bearing in mind that every life stock and every egg has to be marked for being for tracing within the EU that should be an interest that each essential part of a firearm is marked for tracing/tracking too.

Amendment 8

Proposal for a directive

Article 1 – point 3

Directive 91/477/EEC

Article 4 – paragraph 2 – subparagraph 1

Text proposed by the Commission

2. For the purposes of identifying and tracing each assembled firearm, Member States shall, at the time of manufacture *of each firearm* or at the time of import to the Union, require a unique marking including the name of the manufacturer, the country or place of manufacture, the serial number and the year of manufacture, if not already part of the serial number. This shall be without prejudice to the affixing of the manufacturer's trademark.

Amendment

2. For the purposes of identifying and tracing each assembled firearm *and its essential components*, Member States shall, at the time of manufacture *thereof* or at the time of import to the Union, require a unique marking including the name of the manufacturer, the country or place of manufacture, the serial number and the year of manufacture, if not already part of the serial number. This shall be without prejudice to the affixing of the manufacturer's trademark.

Or. en

Justification

Since different parts can be bought and assembled to a functional firearm, all essential components need to be traceable through marking and subject to license.

Amendment 9

Proposal for a directive

Article 1 – point 3

Directive 91/477/EEC

Article 4 – paragraph 2 – subparagraph 2

Text proposed by the Commission

The marking shall be affixed to the receiver of the firearm.

Amendment

deleted

Amendment 10

Proposal for a directive

Article 1 – point 4 – point a

Directive 91/477/EEC

Article 4 – paragraph 4 – subparagraph 1 – sentence 2

Text proposed by the Commission

This filing system shall record each firearm's type, make, model, calibre and serial number, as well as the names and addresses of the supplier and the person acquiring or possessing the firearm. The record of firearms, including deactivated firearms, shall be maintained until ***destruction of the firearm has been certified by the competent authorities.***

Amendment

This filing system shall record each firearm's type, make, model, calibre and serial number, as well as the names and addresses of the supplier and the person acquiring or possessing the firearm. ***The filing system shall also include export data.*** The record of firearms, including deactivated ***and destroyed*** firearms, shall be maintained ***for an indefinite period of time.***

Or. en

Justification

Firearms generally have very long lifespans and are dangerous for a long time. It is important that destroyed firearms are traceable in the register, should any mistake in destruction have been made.

Amendment 11

Proposal for a directive

Article 1 – point 6

Directive 91/477/EEC

Article 5 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) enclose a proof of liability insurance covering personal injury and property damage when applying for a firearms licence.

The competent authorities shall require the production of proof of such liability insurance at regular intervals.

Justification

Just as vehicles require insurance so should firearms. It seems imperative to make an obligation to the liability insurance as a pre-condition of any compulsory private gun ownership. It is important that the weapon and not just the holder will be insured for liability as it is a general interest that at least the victim protection is guaranteed whether the shooter is the legal owner of the weapon or not.

Amendment 12**Proposal for a directive****Article 1 – point 6**

Directive 91/477/EEC

Article 5 – paragraph 2 – subparagraph 1

Text proposed by the Commission

2. Member States shall provide for standard medical tests for issuing or renewing authorisations as referred to in paragraph 1 and shall withdraw authorisations if any of the conditions on the basis of which it was granted is no longer met.

Amendment

2. Member States shall provide for ***standardised*** tests for issuing or renewing authorisations as referred to in paragraph 1, ***investigating the physical, mental and cognitive aptitude of the applicant***, and shall withdraw authorisations if any of the conditions on the basis of which it was granted is no longer met.

Upon renewal of a licence, a less stringent follow-up test shall be carried out.

Justification

A standardized suitability test is required to prevent persons obviously unfit to carry firearms. It could be carried out in different ways in different member states depending on the national system. As licenses are issued for a maximum of 5 years, I suggest a lighter follow-up instead of a completely new test, in order to lessen the bureaucratic burden.

Amendment 13**Proposal for a directive****Article 1 – point 6**

Directive 91/477/EEC

Article 5 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. So long as the correct procedure for the standardised test is followed, no liability shall attach to the authority issuing the test certificate.

Or. en

Justification

If authorities are to make adequate standard suitability tests as a prerequisite for issuing or renewing a license, they are not to be held liable if the person granted the license commits a criminal offence using a firearm afterwards. Otherwise, for example doctors may oppose to carry out such medical tests in order not to hold the responsibility if a person's character or his or her psychological and physical conditions experiment a sudden change.

Amendment 14

Proposal for a directive

Article 1 – point 6

Directive 91/477/EEC

Article 6 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

In special cases, and without prejudice to paragraph 1, the competent authorities may grant authorisations for possession of such firearms and ammunition where this is not contrary to public security or public order.

Or. en

Justification

Several member states have organized their shooting practice for defence forces or reservists through sport shooting organisations. Exceptions must to be possible for special cases like this.

Amendment 15

Proposal for a directive

Article 1 – point 6

Directive 91/477/EEC

Article 6 – subparagraph 2

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Text proposed by the Commission

Member States may authorise bodies concerned with the cultural and historical aspects of weapons and recognised as such by the Member State in whose territory they are established to keep in their possession firearms classified in category A acquired before [the date of entry into force of this Directive] provided they have been deactivated in accordance with ***the provisions that implement Article 10(b)***.

Amendment

Without prejudice to paragraph 1, Member States may authorise bodies concerned with the cultural and historical aspects of weapons and recognised as such by the Member State in whose territory they are established to keep in their possession firearms classified in category A acquired before [the date of entry into force of this Directive] provided they have been deactivated in accordance with ***Commission Implementing Regulation (EU)2015/2403 or have been exempted from deactivation on grounds of the conservation of cultural and historical heritage and if it can be demonstrated that their storage does not put public safety and security or public order at risk.***

Or. en

Justification

There is no reason to prohibit for example army museums from having firearms, so long as they are of interest to the conservation of cultural and historical heritage and has in place adequate security measures for safe storage etc.

Amendment 16

Proposal for a directive

Article 1 – point 6

Directive 91/477/EEC

Article 6 – subparagraph 3

Text proposed by the Commission

The acquisition of firearms and their parts and ammunition concerning categories A, B and C by means of distance communication, as defined in Article 2 of Directive 97/7/EC of the European Parliament and of the Council(*), shall be authorised only with respect to dealers and brokers and shall be subject to the strict control of the Member States.

Amendment

The acquisition of firearms and their parts and ammunition concerning categories A, B and C by means of distance communication, as defined in Article 2 of Directive 97/7/EC of the European Parliament and of the Council (*), shall be authorised only with respect to dealers and brokers and shall be subject to the strict control of the Member States. ***In special circumstances, exceptions may be made if***

the handing-over of firearms, their parts and ammunition takes place at the dealer's or relevant authorities' premises.

Or. en

Justification

Online sales are harder to control than sales face-to-face. In some member states, long distances could present a problem for private persons that cannot order online. Therefore there could be a need for an exception. However it is important that a face-to-face check is done at the hand-over.

Amendment 17

Proposal for a directive

Article 1 – point 8

Directive 91/477/EEC

Article 10 a – paragraph 1

Text proposed by the Commission

Member States shall take measures to ensure that alarm and signal weapons as well as salute and acoustic weapons cannot be converted into firearms.

Amendment

Member States shall take measures to ensure that alarm and signal weapons as well as salute and acoustic weapons, ***including replica and gas weapons***, cannot be converted into firearms.

Or. en

Justification

Replica and gas weapons could also present a problem.

Amendment 18

Proposal for a directive

Article 1 – point 8

Directive 91/477/EEC

Article 10b – paragraph 1

Text proposed by the Commission

Member States shall make arrangements for the deactivation of firearms to be verified by a competent authority in order to ensure that the modifications made to a firearm render it irreversibly inoperable.

Amendment

Member States shall make arrangements for the deactivation of firearms 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, in the context of this verification, provide for the issuance of a certificate *or* record attesting to the deactivation of the firearm or the apposition of a clearly visible mark to that effect on the firearm.

Member States shall, in the context of this verification, provide for the issuance of a certificate *and* record attesting to the deactivation of the firearm or the apposition of a clearly visible mark to that effect on the firearm.

Or. en

Justification

It's important not only to issue a certificate but also to keep the record of the deactivation.

Amendment 19

Proposal for a directive

Article 1 – point 8

Directive 91/477/EEC

Article 10 b a (new)

Text proposed by the Commission

Amendment

Member States shall arrange for their duty surplus stock weapons hitherto used by their police, customs and military to be destroyed.

Or. en

Justification

No firearm used by the police, customs or military shall end up on the private market.

Amendment 20

Proposal for a directive

Article 1 – point 8

Directive 91/477/EEC

Article 10 b b (new)

Text proposed by the Commission

Amendment

Member States shall establish rules on the safe storage of firearms and ammunition that meet standards equivalent to those laid down in the Agreement on the European Economic Area, ensuring that firearms and ammunition are kept in such

a way as to preclude any risk of their being accessed by unauthorised persons.

Or. en

Justification

Safe storage is essential to reducing the risk of thefts, accidents, homicides and suicides.

Amendment 21

Proposal for a directive

Article 1 – point 9

Directive 91/477/EEC

Article 13 – paragraph 4

Text proposed by the Commission

4. The competent authorities of the Member States shall exchange information on the authorisations granted for the transfers of firearms to another Member State as well as information with regard to refusals to grant authorisations as defined in Article 7.

Amendment

4. The competent authorities of the Member States shall *by electronic means* exchange information on the authorisations granted for the transfers of firearms to another Member State as well as information with regard to refusals to grant authorisations as defined in Article 7 *and in accordance with Regulation (EU) 2016/... of the European Parliament and of the Council^{1a}*.

^{1a} *Regulation (EU) 2016/... of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation), and repealing Directive 95/46/EC(OJ L ...).*

Or. en

Justification

Information exchange must be effective and in accordance with existing legislation on data protection.

Amendment 22

Proposal for a directive

Article 1 – point 11 a (new)

Directive 91/477/EEC

Article 16 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Organising, directing, aiding, abetting, facilitating or counselling the commission of an offence under this Directive shall constitute a criminal offence where such an act is committed intentionally.

Or. en

Justification

This wording is taken from the UN Protocol, which forms the basis of the Directive, and is intended to clarify the provision.

Amendment 23

Proposal for a directive

Article 1 – point 13 – point a – point ii

Directive 91/477/EEC

Annex I – part II – point A – category B – point 7 a (new)

Text proposed by the Commission

Amendment

In Category B, the following point is added:

"7a. Magazines with a capacity of more than 10 rounds".

Or. en

Justification

Large magazines make firearms more dangerous and should be subject to license.

Amendment 24

Proposal for a directive

Article 1 – point 13 – point a – point iii

Directive 91/477/EEC

Text proposed by the Commission

"5. Alarm and signal weapons, ***salute and acoustic weapons*** as well as replicas;

6. Firearms under ***category B and points 1 to 5 of category C, after having been*** deactivated."

Amendment

"5. Alarm and signal weapons as well as replicas; ***salute and acoustic weapons shall remain in the category in which they would fall according to how they were originally built.***

6. Firearms under ***categories A, B, C and D that have been*** deactivated ***in accordance with Commission Regulation on the deactivation.***"

Or. en

Justification

These provisions are deemed to reduce the risks connected to the reconversion of firearms.

Amendment 25

Proposal for a directive

Article 2 – paragraph 1 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

Where a person has lawfully acquired magazines or other essential components of firearms prior to the entry into force of this Directive, and such magazines or other essential components become subject to a licence requirement by virtue of this Directive, the person concerned shall register those magazines or essential components in writing with the competent authorities by []*at the latest.

****one year after the date of entry into force of this Directive.***

Or. en

Justification

Transitional rules are needed to help implementation

