Ratifying the UN Firearms Protocol

According to the United Nations, the black market in arms trafficking generates on average US$240 million per year. This amounts to 10-20% of the legal arms market. Aimed at countering this phenomenon, the Firearms Protocol (UNFP) to the UN Convention on Organised Crime, in force since 2005, has now to be concluded by the European Union (EU).

**Firearms trafficking**

Organised criminal groups make huge profits from illicit trafficking of firearms, increasing their economic power as well as their ability to commit other crimes. Trafficking in firearms has become, along with trafficking of drugs and persons, one of the most lucrative criminal activities. Organised crime groups make liberal use of lawful trading and new technologies. For instance, they manufacture and distribute weapons from spare parts bought legally on the internet; convert legal air guns into more dangerous weapons; or reactivate "neutralised" weapons. Without proper controls and registration procedures in place, practices such as multiple transfers and onward re-selling of new and second-hand arms and their parts increases the risk of their diversion from controlled trade to illegal trafficking.

**The UN Firearms Protocol**

The Firearms Protocol (UNFP) to the UN Convention on Organised Crime ("Palermo Convention") was adopted to counter arms trafficking. The Protocol was adopted by the UN General Assembly in resolution 55/255 of 31 May 2001. It was open for signature from July 2001 to December 2002, and entered into force on 3 July 2005, with 40 ratifications.

It strengthens cooperation against the illicit manufacturing and trafficking of small arms, such as handguns and pistols. It does not apply to weapons traded for military purposes.

In order to implement the UNFP, contracting parties need to adopt three sets of provisions in their domestic legal systems. First, illicit manufacturing of and trafficking in firearms, their parts, components and ammunition must be categorised as criminal offences (see in particular Articles 5 and 6 of the Protocol).

Second, a system of government authorisation or licences to ensure legitimate manufacturing and international movements of firearms should be established (see Articles 7-9).

Finally, adequate marking and recording regimes for the purpose of effective international cooperation and tracing of firearms should be implemented (Article 10).

**Ratification by the EU and Member States**

The UNFP is categorised as a "mixed" agreement, covering both EU and Member State (MS) competence. The European Community had exclusive competence only on the basis of Articles 95 (internal market) and 133 EC Treaty (common commercial policy). Therefore, provisions in those fields were the only ones on which the Commission negotiated. Even if provisions dealing with criminalisation and confiscation may now fall, with the Lisbon Treaty, under EU competence, the provisions of the Protocol as they affect the EU will not change (unless negotiations were to be opened with all parties to the UNFP).

The European Community signed the UNFP on 16 January 2002, following Council authorisation adopted in October 2001. Whereas the Community concluded the Palermo Convention and two parallel Protocols in 2004 and 2006 respectively, conclusion of the Firearms Protocol was delayed. This was to allow time for the adoption of new legislation and amendments to existing Community law relating to the internal market in firearms.

In March 2013, the Commission proposed that the Council decide to approve the UNFP's conclusion on behalf of the Community. This Decision needs the consent of the European Parliament under Article 218 TFEU. The Committee on Civil Liberties, Justice and Home Affairs has appointed Véronique Mathieu Houillon (EPP, France) rapporteur on the proposal.
To date, the Protocol is in force in 18 MS (Belgium, Bulgaria, Cyprus, Estonia, Finland, Greece, Hungary, Italy, Latvia, Lithuania, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden) as well as Croatia. A further five MS (Austria, Denmark, Germany, Luxembourg and the United Kingdom) signed it but have not yet ratified.

**EU firearms legislation**

Even before the negotiation of the UNFP, trafficking in illicit firearms had been high on the EU's political agenda for a number of years. In 1991, the Council adopted Directive 91/477/EEC setting out conditions on the possession, sale and transfer of weapons between Member States within the internal market. The Directive does not apply to weapons for the police or military, or for commercial sales to such forces.

The 2005 Hague Programme set out a range of measures to be taken by the EU to strengthen freedom, security and justice in the EU. The same year, the Commission adopted a Communication on measures to ensure greater security in explosives, detonators, bomb-making equipment and firearms, which included initiatives (section 4.10) necessary to meet the commitments made under the UNFP.

The 1991 Directive was updated in 2008 by Directive 2008/51/EC. To implement the UNFP provisions, it strengthens measures against the illicit manufacturing of and trafficking in firearms, and defines standards and procedures for trade. In particular, these concern record-keeping, marking of firearms, deactivation of firearms, requirements for export, import and transit licensing authorisation systems, strengthening of controls at export points and brokering activities. Moreover, the 2008 Directive requires all MS to create a database covering ownership and transfers of legal firearms within the EU by 2014. The Commission is to report by July 2015 on how the Directive has been transposed by MS.

On the external trade side, Article 10 of the UNFP has been implemented by Regulation 258/2012 on licensing and controls for transfers of weapons in and out of the EU. The Regulation aims to improve the tracing and control of civilian firearms imported into, exported from and transiting through the EU.

**EU security measures**

According to recent studies from MS and Europol’s 2011 Organised Crime Threat Assessment, there is a serious risk that, in particular, military grade arms trafficked from the Western Balkans could threaten the EU’s internal security.

After the entry into force of the Lisbon Treaty, the European Council adopted the Stockholm Programme (2009), building on the Hague Programme. In 2010, the EU Internal Security Strategy and the European Action Plan to combat illegal trafficking followed. The latter also covers ‘heavy’ firearms and establishes a link between EU internal and external policies. In this connection, increased cooperation between the Council’s main bodies dealing with external and internal security (the Political and Security Committee and the Standing Committee on Internal Security (COSI) respectively), as well as between EU agencies, such as Europol and Eurojust, is essential.

The Commission has recently set up an expert group on measures against illicit trafficking in firearms and is due to present a Communication on how to limit the threat of firearms to the EU’s internal security before the end of 2013.

A range of measures dealing with illicit arms trafficking have also been adopted under the EU’s external security competences, such as: 1998 EU Code of Conduct on Arms Exports; 2003 Council Common Decision on the Control of Arms Brokering; 2002 Joint Action; and 2006 EU strategy to combat the illicit accumulation and trafficking in small arms and light weapons. The Council has also adopted two Joint Actions: 2008/113/CFSP supporting the International “Tracing Instrument” for Small Arms and Light Weapons (SALW) and 2008/230/CFSP to promote the control of arms exports among third countries.

Most recently, on 27 May 2013 the Council authorised MS to sign the new UN Arms Trade Treaty, which regulates international trade in all types of conventional weapons, to prevent them falling into the wrong hands.