

EUROPEAN PARLIAMENT

2004



2009

Committee on Civil Liberties, Justice and Home Affairs

2006/0031(COD)

12.6.2007

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/EEC on control of the acquisition and possession of weapons
(COM(2006)0093 – C6-0081/2006 – 2006/0031(COD))

Draftsman: Alexander Alvaro

Enhanced cooperation between committees – Rule 47 of the Rules of Procedure

PA_Legam

SHORT JUSTIFICATION

Background to the directive

The purpose of the directive amending Directive 91/477/EEC is to transpose at Community level the 'United Nations Protocol on the illicit manufacturing of and trafficking in firearms, their parts, components and ammunition, annexed to the Convention against transnational organised crime', signed by the Commission.

Directive 91/477/EEC aimed to establish minimum standards for the marking of weapons, the storing of records of the manufacture of and trade in weapons (registers), the deactivation of fire arms and the definition and introduction of punishable offences.

The Commission's specific objectives

The proposed directive amends the existing legislation in the following ways:

- Definition, within the scope of application of the Directive, of the notions of 'illicit manufacturing and trafficking of firearms';
- Provisions stipulating the marking of weapons;
- Extension of the period for keeping registers prescribed by Directive 91/477/EEC;
- Clarification of the applicable penalties;
- Inclusion of the general principles on the deactivation of weapons defined by the United Nations Protocol.

Commission report to the European Parliament and the Council (COM(2000)837)

In its report COM(2000)837, the Commission assesses the application of Directive 91/477/EEC, the conclusions on which are essentially positive, although improvements are needed in some areas.

It is agreed that the directive should lay down the following principle:

Travel from one Member States is not permitted if the passenger is in possession of a fire arm. Any deviation from this principle is only possible in compliance with a clearly defined procedure whereby the Member State in question is informed that a fire arm is to be brought onto its sovereign territory.

According to the Commission, there are serious shortcomings with regard to the exchange of information, resulting in a lack of detailed information and inadequate cooperation between Member States. Difficulties have also emerged with the use of the European Firearms Pass, even though, in the Commission's view, it is a suitable means for hunters and marksmen to travel from one Member State to another for the purposes of hunting or target shooting.

With regard to the classification, acquisition and possession of firearms, it has become apparent that the separation of firearms into categories A, B, C and D, defined by the Commission, is unnecessary in the large majority of Member States. In most Member States there a distinction is made only between prohibited firearms and those that are subject to authorisation.

Those affected by the Directive have not signalled any shortcomings or need to amend it and so the view prevails that the Directive has been sensibly transposed and fulfils its objectives.

Draftsman's position

The draftsman shares the basic opinion of those concerned and the Commission and consequently supports the amendment of Directive 91/477/EEC in line with the Commission's wishes. In order to clarify the remaining imperfections, however, the Commission's amendments have been fleshed out with provisions of the Schengen Agreement and the UN Protocol.

The draftsman also supports the inclusion in the scope of the directive of internet trade and the provision of internet platforms for trade in arms. Since the transposition of the Directive in 1993, the Internet has developed considerably and become an electronic market place. The Directive's aim of stopping trade in fire arms can only be achieved, therefore, if all trading opportunities are covered.

The draftsman further specifies that the failure to carry a European Firearms Pass when transporting fire arms from one Member State to another should not be subject to penalties, so as to prevent disproportionate restrictions on the free movement of persons

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 incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1
RECITAL 3 A (new)

(3a) Given that intelligence evidence shows an increase in the use of converted weapons within the EU, it is essential to ensure that such convertible weapons are brought within the definition of 'firearm' in this Directive.

¹ Not yet published in OJ.

Amendment 2
RECITAL 5

(5) Furthermore, the Protocol establishes an obligation to mark weapons at the time of manufacture, and at the time of transfer from government stocks to permanent civilian use, whereas Directive 91/477 refers only indirectly to the marking obligation.

(5) Furthermore, the Protocol establishes an obligation to mark weapons at the time of manufacture, and at the time of transfer from government stocks to permanent civilian use, whereas Directive 91/477 refers only indirectly to the marking obligation. ***Given that the Convention of 1 July 1969 on Reciprocal Recognition of Proofmarks on Small Arms includes all the requirements of the Protocol, the application of the Convention to the European Union as a whole should be envisaged.***

Justification

The Convention on Reciprocal Recognition of Proofmarks on Small Arms is in force in a large number of EU Member States, thus providing a marking and control system, which includes all the guarantees and requirements set out in the UN Protocol.

Amendment 3
RECITAL 6

(6) Moreover, the period during which the registers containing information on the weapons are kept must be increased to at least ten years, ***as specified by the Protocol.***

(6) Moreover, ***while the Protocol provides that*** the period during which the registers containing information on the weapons are kept must be increased to at least ten years, ***it is necessary to prolong this period up to at least 20 years in order to allow a proper tracing of firearms. It is also necessary that Member States keep a computerised and centralised data filing system in which each firearm is attributed a unique identification number and in which the name and address of every successive owner is mentioned. Access by police and judicial authorities to the information contained in the central register must be subject to compliance with Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms.***

Justification

The Protocol provides for the maintenance of information "for not less than ten years", but a

10-year period is inadequate given the very long lifespan of firearms. Therefore the information should be kept for at least 20 years. Furthermore, the Protocol provides that the maintenance of information is the responsibility of public authorities. Appropriate tracing of firearms requires centralised registration systems monitoring the weapon rather than the person. Automation of registers is imperative in the 21st Century. It is important to ensure that access to the information contained in this central register is subject to rules guaranteeing respect for private and family life.

Amendment 4
RECITAL 6 A (new)

(6a) To facilitate the tracing of firearms and effectively combat the illicit manufacturing and trafficking of firearms, their parts, components and ammunition, steps should also be taken to improve the exchange of information between Member States.

Amendment 5
RECITAL 6 B (new)

(6b) The maintenance and exchange of information are subject to compliance with Directive 95/46/EC of the European Parliament and of the Council, of 24 October 1995, on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

¹ OJ L 281, 23.11.1995, p. 31.

Justification

It is important to emphasise the need to comply with the framework directive on the protection of personal data.

Amendment 6
RECITAL 9 A (new)

(9a) Due to the special nature of the activity of dealers and brokers, a strict control over this activity is necessary, in particular to verify the professional abilities and integrity of the dealers and brokers.

Justification

Until now, pursuit of the activity of dealer has not been properly regulated, unlike many other professions, although it is a very specific activity that requires strict controls. Therefore, it is desirable that dealers and brokers provide evidence of their professional

Amendment 7
RECITAL 9 B (new)

(9b) The European Firearms Pass functions in a satisfactory way in principle and should be regarded as the only document needed by hunters and marksmen to transfer a firearm to another Member State.

Justification

As mentioned in the Commission's 2000 report and in view of a proper functioning of the internal market, Member States should not be allowed to require documents or fees other than the European Firearms Pass regarding the circulation of hunters and marksmen.

Amendment 8
RECITAL 9 C (new)

(9c) The Commission should as soon as possible draw up a cost-benefit study of the impact which a reduction in the number of categories of arms would have on the functioning of the internal market.

Amendment 9
ARTICLE 1, POINT -1 A (new)
Article 1, paragraph 1 (Directive 91/477/EEC)

(-1a) Article 1(1) is replaced by the following:

'For the purposes of this Directive, 'firearm' shall mean 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 an explosive, unless it meets the definition but is excluded for one of the reasons listed in section III of Annex I. Firearms are classified in section II of Annex I'.

Justification

The definition of a firearm is consistent with the Protocol. However, the definition should acknowledge the increase in the use of converted weapons in criminal activity across Europe, and the increase in cross-border smuggling of convertible weapons, including since the signing of the Protocol in 2001. The definition of 'readily convertible' used in the Protocol is weak, and risks differing interpretation across Member States, and therefore opens potential loopholes in the control of weapons used in criminal activities for criminal exploitation. Police also cite increasingly advanced techniques used by criminals in order to convert weapons, and therefore weapons may be used for conversion that are not considered 'readily convertible'. Furthermore the definition should be consistent with the exclusion of deactivated firearms, antique weapons and some other firearms mentioned in Annex 1, section III of the Directive.

Amendment 10

ARTICLE 1 POINT -1 B (new)

Article 1, paragraph 2 (Directive 91/477/EEC)

(-1b) Article 1(2) is replaced by the following:

'2. For the purposes of this Directive 'dealer' shall mean any natural person whose trade or business consists wholly or partly in the manufacture, trade, or providing a platform for that purpose, exchange, hiring out, repair or conversion of firearms.'

Amendment 11

ARTICLE 1, POINT -1 C (new)

Article 1, paragraph 1 a (new) (Directive 91/477/EEC)

(-1c) In Article 1, the following paragraph 1a shall be inserted:

"1a. For the purposes of this Directive, 'antique weapon' shall mean either a weapon manufactured before 1900, or any weapon manufactured after that defined as an antique weapon by a Member State according to technical criteria."

Justification

A definition of "antique weapon" is needed for legal certainty reasons because these weapons are not covered by this Directive. On the other hand, other definitions by Member States should be allowed provided they are based on technical criteria.

Amendment 12
ARTICLE 1, POINT 1
Article 1, paragraph 2b (Directive 91/477/EEC)

4. For the purposes of this Directive, “illicit trafficking” shall mean the acquisition, sale, delivery, movement or transfer of firearms, their parts and components and ammunition **from or across** the territory of **one** Member State **to that of another** Member State if any one of the Member States concerned does not authorise it in accordance with the terms of this Directive or if the firearms **are** not marked in accordance with Article 4(1).

2b. For the purposes of this Directive, “illicit trafficking” shall mean the acquisition, sale, delivery, movement, transfer of firearms, their parts and components and ammunition **in violation of this Directive to** the territory of **a** Member State if any one of the Member States concerned does not authorise it in accordance with the terms of this Directive or if the firearms, **their parts and components and ammunition are not registered in accordance with Article 4(3) or** not marked in accordance with Article 4(1). **The acquisition, sale, delivery, movement or transfer of firearms shall however not be considered illicit trafficking for the sole reason that they are not marked in accordance with Article 4(1) if they were manufactured or transferred from government stocks to permanent civilian use before ...*, provided that the marking meets the relevant requirements applicable before that date.**

* [Date of transposition of this Directive by the Member States]

Justification

The absence of registration should be included as a requisite of illicit trafficking. The insertion of the words "in violation of this Directive" will allow legal certainty by defining as an illicit trafficking any trafficking that is not in compliance with all the provisions of the Directive, and ensure that all firearms present on the EU territory are equally treated. However, transactions with firearms meeting current marking standards should not be considered illicit if they concern firearms manufactured or transferred before the date for transposition of this Directive.

Amendment 13
ARTICLE 1, POINT 1 A (new)
Article 1, paragraph 4 (Directive 91/477/EEC)

(1a) Article 1(4) is replaced by the following:

'4. The 'European firearms pass' is a document which is issued on request by the authorities of a Member State to a person lawfully entering into possession of and using a firearm. It shall be valid for a maximum period of five years. The period of validity may be extended. It shall contain the information set out in Annex II. The 'European firearms pass' is a non-transferable document, on which shall be entered the firearm or firearms possessed and used by the holder of the pass. The pass must always be in the possession of the person using the firearm. Changes in the possession or characteristics of the firearms shall be indicated on the pass, as well as the loss or theft of the firearm.'

Amendment 14

ARTICLE 1, POINT 2

Article 4, paragraph 1, subparagraph 1 (Directive 91/477/EEC)

1. For the purpose of identifying and tracing each firearm, the Member States, at the time of manufacture of each firearm, either require unique marking ***providing*** the name of the ***manufacturer***, the country or place of manufacture and the serial number, or maintain any alternative unique user-friendly marking with simple geometric symbols in combination with a number or alphanumeric code, permitting ready identification by all States of the country of manufacture.

1. For the purpose of identifying and tracing each firearm, the Member States, at the time of manufacture of each firearm, either require unique marking, ***including*** the name ***or mark*** of the ***producer***, the country or place of manufacture and the serial number, ***for example as laid down in the Convention of 1 July 1969 on Reciprocal Recognition of Proof Marks on Small Arms***, or maintain any alternative unique user-friendly marking with simple geometric symbols in combination with a number or alphanumeric code, permitting ready identification by all States of the country of manufacture.

Amendment 15

ARTICLE 1, POINT 2

Article 4, paragraph 2 (Directive 91/477/EEC)

2. ***At least in respect of categories A and B***, each Member State shall make the pursuit of the activity of dealer within its territory conditional upon authorisation on the basis of at least a check on the private and

2. Each Member State shall make the pursuit of the activity of dealer within its territory conditional upon authorisation on the basis of at least a check on the private and professional integrity of the dealer. In the

professional integrity of the dealer. In the case of a legal person, the check shall be on the person who directs the undertaking. ***In respect of categories C and D, each Member State which does not make the pursuit of the activity of dealer conditional upon authorisation shall make such activity subject to a declaration.***

case of a legal person, the check shall be on the person who directs the undertaking.

Amendment 16
ARTICLE 1, POINT 2
Article 4, paragraph 3 (Directive 91/477/CEE)

3. Dealers shall be required to keep a register in which information concerning all firearms ***classified in category A, B or C*** received or disposed of by them shall be recorded, ***including*** such particulars as enable the weapon to be identified, in particular the type, make, model, calibre and serial number thereof and the names and addresses of the person acquiring the weapon. The dealer shall conserve the register for a period of five years, even after he has ceased his activity. Each Member State shall ensure the maintenance of ***this*** information for not less than ***ten*** years.

3. Dealers shall be required to keep a register in which information concerning all firearms received or disposed of by them shall be recorded, ***as well as*** such particulars as enable the weapon to be identified, in particular the type, make, model, calibre and serial number thereof and the names and addresses of the person acquiring the weapon. The dealer shall conserve the register for a period of five years, even after he has ceased his activity. Each Member State shall ensure the maintenance of ***the aforementioned information in a centralised and computerised registration system*** for not less than ***twenty*** years.

Justification

The existence in each Member State of a centralised and computerised registration system would facilitate information tracing and exchanges. Moreover, in view of a firearm's lifetime, the period for maintenance of information, which is ten years in the proposal for a directive, should be extended to twenty years.

Amendment 17
ARTICLE 1, POINT 2 A (new)
Article 4, paragraph 3 a (new) (Directive 91/477/EEC)

(3a) Member States shall ensure that all firearms classified in categories A, B, C and D may be linked to their current owners.

Amendment 18
ARTICLE 1, POINT 2 B (new)
Article 4a (new) (Directive 91/477/EEC)

(2b) The following Article shall be added after Article 4:

"Article 4a

Without prejudice to Article 3, Member States shall allow the acquisition and possession of firearms classified in categories A, B, C or D only by persons who were granted a licence or a permit to do so in accordance with national legislation."

Amendment 19
ARTICLE 1, POINT 2 C (new)
Article 5 (Directive 91/477/EEC)

(2c) Article 5 is replaced by the following:

'Without prejudice to Article 3, Member States shall allow the acquisition and possession of firearms only by persons who have good cause and who:

(a) are 18 years old or more, except for hunting or target shooting;

(b) are not likely to be a danger to themselves, to public order or to public safety.

Without prejudice to Article 3, Member States shall allow the possession of firearms only by persons who have not been convicted of a serious offence (e.g. murder, robbery or arson) or of involvement therein.

Member States may withdraw authorisation for possession of the firearm if any of the conditions in point (b) of the first paragraph is no longer satisfied.

Member States may not prohibit persons resident within their territories from possessing a weapon acquired in another

Member State unless they prohibit the acquisition of the same weapon within their own territories.'

Justification

The inserted text is intended to clarify the provision, so as to reflect Article 83(c) of the Schengen Agreement.

Amendment 20

ARTICLE 1, POINT 2 D (new)
Article 6 (Directive 91/477/EEC)

(2d) In Article 6, the following paragraph is added:

"The acquisition of firearms, their parts and components and of ammunition through means of distance communication, as defined in Article 2 of Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts¹, shall be fully subject to the provisions of this Directive.

¹ OJ L 144, 4.6.1997, p. 19."

Amendment 21

ARTICLE 1, POINT 2 E (new)
Article 12, paragraph 2 (Directive 91/477/EEC)

(2e) Article 12, paragraph 2 is amended as follows:

(a) The first subparagraph is replaced by the following:

"2. Notwithstanding paragraph 1, hunters and marksmen may without prior authorization be in possession of one or more firearms during a journey through two or more Member States with a view to engaging in their activities, provided that they are in possession of a European firearms pass listing such firearm or firearms. No other document than the European firearms pass shall be required by Member States to that end. Member

States may not make acceptance of a European firearms pass conditional upon any additional registration requirement or the payment of any fee or charge."

(b) The second subparagraph is replaced by the following:

"However, this derogation shall not apply to journeys to a Member State which prohibits the acquisition and possession of the firearm in question; in that case, an express statement to that effect shall be entered on the European firearms pass."

Justification

As mentioned in the Commission's 2000 report and in view of a proper functioning of the internal market, Member States should not be allowed to require documents or fees other than the European firearms pass regarding the circulation of hunters and marksmen.

Amendment 22

ARTICLE 1, POINT 2 F (new)

Article 13, paragraph 3 (Directive 91/477/EEC)

(2f) Article 13(3) is replaced by the following:

"3. Member States shall establish networks for the exchange, on a regular basis, of all information at their disposal.

The Commission shall establish, no later than one year after the entry into force of this Directive, a contact group for the exchange of information for the purpose of applying this article.

Each Member State shall inform the other Member States and the Commission of the authorities responsible for forwarding and receiving the information and applying the formality under Article 11(4)."

Amendment 23

ARTICLE 1, POINT 3

Article 16, paragraph 1, subparagraph 3 (Directive 91/477/EEC)

Such attempts, or participation as an

Organising, directing, aiding, abetting,

accomplice in the latter shall *also* be considered as criminal *offences*, when committed intentionally.

facilitating or counselling the commission of an offence defined by this Article shall be considered as *a* criminal *offence*, when committed intentionally.

Justification

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

Amendment 24

ARTICLE 1, POINT 3

Article 16, paragraph 1, subparagraph 3 a (new) (Directive 91/477/EEC)

The failure to carry a European firearms pass shall not be subject to a custodial sentence.

Justification

This addition is to prevent lawful owners of weapons risking prison if they travel to another Member State and are unable to present a European firearms pass but are in possession of all other necessary documents.

Amendment 25

ARTICLE 1, POINT 4 A (new)

Annex I, point (f) (Directive 91/477/EEC)

***4a) In Annex II, point (f), the second paragraph is amended as follows:
"The prior authorisation referred to above is not in principle necessary in order to travel with a firearm with a view to engaging in hunting or for the purpose of taking part in target shooting, on condition that the traveller is in possession of the European firearm pass".***

Amendment 26

ARTICLE 2, POINT 2 A (new)

(2a) Within five years from the date of transposition of this Directive into national law, and every fifth year thereafter, the

Commission shall submit a report to the European Parliament and to the Council on the situation resulting from the application of this Directive, accompanied, if appropriate, by proposals.

The Commission shall undertake a study on the marketing of replica weapons within the European Community and report on this to the European Parliament and to the Council by [...]* at the latest.

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

Justification

In line with better regulation the requirement for reporting included in Directive 91/477/EEC should be updated and made regular. In addition the Commission should conduct a study on the complex issue of replica weapons and their marketing, including their sale on the internet, within the European Community.

PROCEDURE

Title	Control of the acquisition and possession of weapons			
References	COM(2006)0093 - C6-0081/2006 - 2006/0031(COD)			
Committee responsible	IMCO			
Opinion by Date announced in plenary	LIBE 3.4.2006			
Enhanced cooperation - date announced in plenary	3.4.2006			
Drafts(wo)man Date appointed	Alexander Alvaro 13.9.2006			
Discussed in committee	23.11.2006	25.1.2007	1.2.2007	8.5.2007
	5.6.2007	11.6.2007		
Date adopted	11.6.2007			
Result of final vote	+: -: 0:	26 2 0		
Members present for the final vote	Alexander Alvaro, Philip Bradbourn, Mihael Brejc, Maria Carlshamre, Carlos Coelho, Esther De Lange, Panayiotis Demetriou, Claudio Fava, Kinga Gál, Jeanine Hennis-Plasschaert, Livia Járóka, Wolfgang Kreissl-Dörfler, Stavros Lambrinidis, Kartika Tamara Liotard, Sarah Ludford, Claude Moraes, Javier Moreno Sánchez, Athanasios Pafilis, Martine Roure, Ioannis Varvitsiotis			
Substitute(s) present for the final vote	Inés Ayala Sender, Gérard Deprez, Ignasi Guardans Cambó, Ona Juknevičienė			
Substitute(s) under Rule 178(2) present for the final vote	Luis de Grandes Pascual, Véronique Mathieu, Arlene McCarthy, Gisela Kallenbach			