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[...](2015) **XXX** draft

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**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### • **Reasons for and objectives of the proposal**

The security of citizens and businesses is a key concern of this Commission. The use of firearms by serious and organised crime and terrorist organisations can inflict huge damage upon society as we have witnessed on several occasions in the past year, notably in the attacks that took place in Paris and Copenhagen. Most recently, more than 120 people died in a series of coordinated terrorist attacks carried out on 13 November 2015 in Paris.

These tragic events<sup>1</sup> are a clear evidence of the multidimensional threat posed by organised crime, and they have shown why we need to further strengthen our fight against trafficking of firearms, through a coordinated and coherent approach. A common European responsibility for combating cross-border crime and terrorism was also underlined in the political guidelines of President Juncker.

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/EEC as amended by Directive 2008/51/EC.

Citizens of the European Union rely on the national governments and EU to ensure their security. To this effect, it is important to take immediate action strengthening the existing rules on the access and trade with firearms.

#### • **Consistency with existing policy provisions in the policy area**

The objective of Firearms Directive 91/477/EEC is to facilitate the functioning of the internal market in firearms within the EU, while guaranteeing a high level of safety for EU citizens. These rules aim to address potential issues and vulnerabilities which can emerge along the life cycle of a firearm (from production to trade, ownership and possession, deactivation and destruction). To this effect, the Directive lays down the minimum requirements that MS should impose as regards the acquisition and possession of the different categories of firearms<sup>2</sup> and regulates the conditions for the transfer of firearms across MS, while granting more flexible rules for hunting and target shooting<sup>3</sup>.

The amendment approved in 2008, i.e. Directive 2008/51/EC<sup>4</sup> intervened to reinforce the security aspects and to align the Directive to the UN Protocol against the Illicit Manufacturing

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<sup>1</sup> The Paris, Copenhagen and Thalys train terror attacks, underlined the link between organised crime and terrorism notably in obtaining firearms

<sup>2</sup> As one of the central aspect, Annex I of Directive 91/477/EEC establishes 4 categories of firearms, by order of level of danger:

- “Category A, consisting of prohibited firearms – military weapons”;
- “Category B including firearms subject to authorisation – used mostly by marksmen and hunters”;
- “Category C covering firearms subject to declaration – essentially firearms used by hunters”;
- “Category D for other firearms – which mainly applies to single-shot long firearms with smooth-bore barrels”.

<sup>3</sup> Granted that Member States are in principle entitled to take more stringent measures than those provided for by the Directive.

<sup>4</sup> The amendment followed two subsequent factors: a) The signing on January 16, 2002, by the European Commission on behalf of the European Community, of the United Nations Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition,

of and Trafficking in Firearms, their Parts and Components and Ammunition, which supplements the United Nations Convention against Organized Crime.

The existing EU legislative framework on firearms largely derives from the UN Firearms Protocol (UNFP) which was negotiated and signed by the Commission in 2002 on behalf of the EU.

The Protocol is an international instrument to which both the EU and its Member States are parties. The Commission completed the process of transposition into EU legislation of all its provisions, essentially through:

- Directive 2008/51/EC, which integrates the appropriate provisions required by the Firearms Protocol as regards *intra-Community* transfers of weapons.
- Regulation 258/2012 (IP/12/225) which addresses trade and transfers with countries *outside* the EU, thereby transposing the provisions of Article 10 of the UNFP.
- **Consistency with other Union policies**

This initiative is fully consistent with the 2014-2019 strategic objectives of the European Commission with respect to the promotion of 'An Area of Justice and Fundamental Rights Based on Mutual Trust'.

After the terrorist attacks in Paris in January 2015, EU Interior and/or Justice Ministers adopted a "Paris declaration" in which they reiterated their countries' commitment to reduce the illicit supply of firearms throughout Europe and, accordingly, to increase their cooperation in the framework of the European Multidisciplinary Platform Against Criminal Threats (EMPACT), to improve intelligence sharing, and to ensure the full use of Europol, Eurojust and Interpol resources<sup>5</sup>.

During the informal European Council meeting of 12 February 2015, the Heads of State and Government requested that all competent authorities increase the level of cooperation in the fight against illicit trafficking of firearms, including through the swift review of relevant legislation, and a renewed dialogue with third countries on security issues, particularly in the Middle East and North Africa, and with the Western Balkans<sup>6</sup>.

At the Justice and Home Affairs Council meeting of 12-13 March 2015, Ministers invited the Commission to propose ways to combat the illicit trafficking of firearms and, together with Europol, to enhance information exchange and operational cooperation<sup>7</sup>.

In response, the Commission adopted the European Agenda on Security to ensure an effective and coordinated response at European level to emerging and increasingly more complex security threats. While highlighting the challenges posed by illicit trafficking in firearms, the

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supplementing the United Nations Convention against Transnational Organized Crime; b) results and proposals for improvement (e.g., deactivated weapons, export and import licenses, record keeping, marking) of the Commission report of December 2000 on the implementation of the Directive 91/477/EEC<sup>4</sup> following its transposition into national law by all the Member States - COM (2000) 837, Report from the Commission to the European Parliament and the Council. The implementation of the Council Directive 91/477/EEC of 18 June 1991 on control of acquisition and possession of weapons.15/12/2000.

<sup>5</sup> 5322/15 Paris Declaration of 11 January 2015

<sup>6</sup> 6112/15 Draft Statement of the Members of the European Council

<sup>7</sup> 7178/15 Press release of the JHA Council

European Agenda on Security<sup>8</sup> highlighted the differences between national legislation as an obstacle to effective controls and police cooperation across the EU and called in particular for reviewing legislation on firearms with proposals in 2016 as a priority action. It also called for an urgent action on the deactivation of firearms to prevent their reactivation and use by criminals. The Declaration of the Home Affairs Ministers Council of 29 August 2015 repeated the call for the revision of the Firearms Directive and for a common approach on the deactivation of firearms.

Finally, on 8 October 2015, the Council adopted conclusions on strengthening the use of means of fighting trafficking of firearms, inviting the Member States, the European Commission, Europol and Interpol to take measures including revising the current legislation, and monitoring the threats posed by firearms through coordinated cross-border investigations and operations. This also covers the trafficking of firearms online<sup>9</sup>.

The European Parliament has also considered the issue of firearms trafficking on a number of occasions. On 11 February 2015, the European Parliament adopted a Resolution on anti-terrorism measures<sup>10</sup> in which it 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."

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

### **• Legal basis**

Article 114 of the Treaty on the Functioning of the European Union is the legal basis of this proposal in line with the initial legal basis of the Firearms Directive.

### **• Subsidiarity (for non-exclusive competence)**

According to Article 5 TEU, all action taken on the EU level has to comply with the subsidiarity principle that implies that the EU shall only regulate in case that it adds value to the actions taken by the single Member States.

The issues to be addressed, i.e. the threats of serious and organised crime and terrorism and the potential huge social and economic costs of violent actions, are inherently characterised through their transnational nature, affecting more than one Member State at the same time. In this sense, they cannot be dealt with in a fully satisfactory manner by the individual Member States.

This was demonstrated by recent terrorist attacks in August and November this year which were carried out by transnational criminal networks operating in several Member States. These networks made use of divergent national rules on the possession and trade in firearms and exploited the deficiencies in cross-border exchange of information.

Only an EU-wide system can bring about the co-operation needed between Member States to control and track the civil use of firearms taking place within the EU.

The security issues tackled by the Firearms Directive are of cross-border nature. Vulnerabilities of a Member State to criminal activity affect the European Union as a whole.

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<sup>8</sup> COM(2015) 185 final of 28.4.2015

<sup>9</sup> 12892/15 Council conclusions

<sup>10</sup> **EP reference no:** 2015/2530(RSP) of 11 February 2015

Differences in national legislation, classification of firearms, and administrative procedures undermine the uniform application of the Directive. As underlined in a recent evaluation study, effective action to ensure a high level of security and regulate the cross-border movement of firearms can only be taken at EU level. The Firearms Directive establishes a common regulatory framework that would not have been achieved through national or bilateral action alone.

- **Proportionality**

The proposal complies with the proportionality principle for the following reason(s):

Proportionality is ensured by limiting the content of the proposed changes to those with the most important impact on security, according to the main conclusions of the studies carried out in the preparatory phase. On the whole, this proposal does not go beyond what is necessary to achieve the objective of ensuring the security of EU citizens without unnecessarily restricting the internal market.

Besides standard provisions of a commercial policy nature, in order to take into account the concerns and comments of private stakeholders the proposal is aimed at improving security standards and reducing inconsistencies with the UN Firearms Protocol, in particular those related to the definitions.

- **Choice of the instrument**

The Commission proposes a new directive amending the existing Firearms Directive. Other means would not be adequate to amend the existing Directive.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Ex-post evaluations/fitness checks of existing legislation**

As announced in its 2013 Communication<sup>11</sup>, prior to considering the relevance of revising the current legal framework, the Commission launched a series of research studies covering:

- the relevance (or not) of an EU legislative proposal approximating criminal sanctions against the illicit trafficking of firearms<sup>12</sup>;
- the relevance (or not) of an EU legislative proposal improving rules on deactivation, destruction and marking procedures of firearms in the EU, as well as on alarm weapons and replicas<sup>13</sup>;
- the implementation of the Firearms Directive in all Member States.

The first study concluded that EU-wide minimum rules on illicit firearms trafficking would reduce legal uncertainty, facilitate prosecutions and ensure that criminals are unable to exploit loopholes. However, the evidence also suggested that practical issues such as lack of resources, conflicting policy priorities and lack of enforcement of existing laws were equally

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<sup>11</sup> See footnote n°1

<sup>12</sup> [http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/organized-crime-and-human-trafficking/general/docs/dg\\_home\\_-\\_illicit\\_firearms\\_trafficking\\_final\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/organized-crime-and-human-trafficking/general/docs/dg_home_-_illicit_firearms_trafficking_final_en.pdf)

<sup>13</sup> [http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/organized-crime-and-human-trafficking/general/docs/dg\\_home\\_ia\\_firearms\\_deactivation\\_final\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/organized-crime-and-human-trafficking/general/docs/dg_home_ia_firearms_deactivation_final_en.pdf)

significant impediments to cross-border efforts to combat illicit firearms trafficking, as the differences between national legislation in this area. The study concluded in favour of a policy mix (non-legislative and legislative measures) without favouring either a minimum or a maximum legislative intervention.

The second study proposed a revision of the Firearms Directive, with the aim of:

- Harmonizing the rules for the marking of firearms and establishing the mutual recognition of marks among Member States;
- Enforcing common standards and procedures and introducing registration requirements for deactivated firearms;
- Establishing common technical guidelines on the convertibility of alarm/signal weapons and replicas, by detailing the criteria which qualify alarm weapons and replicas as convertible and, thus, bringing them within the scope of the Firearms Directive;
- Promoting knowledge sharing among Member States (with particular focus on the threats and opportunities offered by technological developments), and improving data collection regarding production and ownership of, and criminal activities related to firearms and deactivated firearms, alarms weapons and replicas.

Finally, the study assessing the implementation of the Firearms Directive recommended, *inter alia*:

- Defining common criteria on the convertibility of alarm weapons;
- Harmonising the rules on marking and standards for deactivation;
- Strengthening the data collection system and examining the interoperability between information systems created at national level; and finally
- Defining an agreed approach to the classification of hunting and sporting firearms.

Together with this proposal, the Commission is publishing the report on the implementation of the Firearms Directive in accordance with Article 17 of the Directive.

- **Stakeholder consultations**

*Consultation methods, main sectors targeted and general profile of respondents*

The stakeholders were consulted by means of questionnaires and invitations to meetings addressed to Member States and interested private parties (representatives of European associations of manufacturers of firearms and ammunition for civilian use, those engaged in civil commerce of weapons, hunters, collectors, NGOs, research institutions, etc.), the opening of a specific e-mail account (JLS-FIREARMS@ec.europa.eu) for permanent consultation and an external study to support the preparation of the Impact Assessment. Moreover, an ‘Inter-Service group’ was established within the Commission.

### Summary of responses and how they have been taken into account

Member States and NGOs agreed that implementing the Directive 477/91 would be useful for preventing diversion of firearms from the legal market to the illegal market. The private parties argued that Member States already had strict regulations covering this aspect and were concerned about possible negative consequences for small and medium-sized enterprises. Many private stakeholders were particularly concerned by amendments to categories that could jeopardize hunting and sports shooters activities.

According to the stakeholders' opinion, the reactivation of deactivated firearms is a relevant source of weapons for criminal use, and loopholes arising from the differences of the national deactivation standards can be used by criminals<sup>14</sup>. Some consider the Firearms Directive to be rigorous on deactivation, and believe that all that is needed is a control on the implementation by MS and the requested technical guidelines<sup>15</sup>. However, closer harmonization is generally considered a priority.

All the stakeholders (from Member States authorities, to experts and representatives of producers) consider that there is a real need to exchange information on firearms across the Member States, and that it is an important issue. Moreover, cooperation should not be limited to the exchange among Member States, whereas public and private stakeholders should be brought together<sup>16</sup>. Increased communication is considered essential for intelligence, joint operations and management. However, focusing on ways of sharing information via e-channels, rather than organising meetings, would be a good practice. Moreover, it should be considered that platforms where such discussions can take place already exist, both at operational level and at regulatory level.

Common recommendations on rules are considered important as some countries have different understanding of some issues (for example, the definition of replicas). To avoid criminals being able to use the different rules between Member States to their advantage, there is a need for a harmonised approach across Europe.

In order to be effective, definitions should include more specific references to alarm weapons and other types of arms not yet well defined in the EU regulatory framework.

The general consensus was that common minimum standards for the deactivation guidelines would help bring the Member States to the same level across the EU through harmonizing various procedures and thus improving communication and facilitating law enforcement. Crime would be reduced, as the application of common minimum standards would help tackle illegal trade of spare parts and prevent the use of illegally reassembled and converted firearms.

The Commission has considered the opinions expressed by public and private stakeholders. This proposal is designed to ensure a higher degree of security/effectiveness and efficiency.

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<sup>14</sup> Transcrime, Lithuanian MS authority

<sup>15</sup> The European Association of the Civil Commerce of Weapons.

<sup>16</sup> Transcrime.

- **Impact assessment**

Due to the urgency of the proposal in the light of recent events, it is submitted without an impact assessment. The proposal can however rely on a REFIT evaluation of the Firearms Directive. This evaluation has shown remaining shortcomings in areas such as the convertibility of blank firing weapons, marking requirements, deactivation, definitions, internet-selling arrangements, as well as data collection and exchange systems. Additional requirements have been identified in the light of the experience of recent events.

#### **4. BUDGETARY IMPLICATIONS**

The proposal has no implication for the Union budget.

#### **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

After two years of its entry into force, the Commission will 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. Subsequent reports will be submitted every five years to the European Parliament and the Council.

- **Explanatory documents (for directives)**

Member States shall communicate to the Commission the text of the law, regulations and administrative provisions necessary to comply with this Directive.

- **Detailed explanation of the specific provisions of the proposal**

In Article 1 the proposal clarifies definitions of brokers and dealers and ensures consistency with the definition of essential components and parts of firearms as defined by UN Firearms Protocol. Commission studies indicate lack of clarity for the definition of "broker" and highlight the fact that they should also be included in the Directive. Silencers are also included within the scope of the Directive.

In Article 2 the proposal newly includes collectors within the scope of the directive. Collectors have been identified as a possible source of traffic of firearms by the evaluation carried out. Therefore, collectors will have the possibility to acquire firearms but only subject to authorisation/declaration.

Deactivated firearms should be covered by the directive as regards identification of the owner and registers. Evidence gathered by the Commission studies showed this is a serious weakness in the EU legislation in terms of security. Recent attacks have been conducted with badly deactivated firearms (or firearms assembled with badly deactivated components).

The proposal to introduce shortly, through an implementing regulation, stringent minimum common guidelines regarding the deactivation of firearms will render reactivation much more difficult. It cannot be excluded that deactivated arms will be reactivated despite stringent rules. Consequently, for the most dangerous firearms (category A) stricter rules have been introduced – even if they are deactivated. This means that deactivated firearms from Category A will not be allowed to be owned nor traded (except for museums)



A new provision establishes the requirement for record keeping of deactivated firearms in national registries. Any transfer (ie change of owner) of deactivated firearms should be registered.

Semi-automatic weapons represent a high share of today's hunting and sport-shooting weapons. However, the evaluation study concludes that some semi-automatic arms can be easily converted to automatic arms, and the existing Directive does not provide any technical criteria to prevent such conversion. However, even in the absence of conversion to category 'A', certain semi-automatic firearms can be very dangerous when their capacity regarding the number of rounds is high. The proposal bans the semi-automatic weapons which are included in the current category 'B7'.

The proposal introduces EU common rules on marking to avoid that markings are easily erased. It especially clarifies on which components the marking should be affixed (ensure coherence with UNFP marking requirements). It should also apply to imported firearms. A computerised data-filling system is extended to more than 20 years. Data should be kept until destruction of the firearm, but no retroactive application is foreseen.

The evaluation of the Firearms Directive and other preparatory study demonstrated the increasing use of internet as a sales channel for firearms and the difficulties to control it for the future. Considerations about a serious risk of fraud in case of acquisition by means of distance communication may increase with a wider use of such sales method in the future. Given the recent terrorist attacks where in some cases firearms were illegally assembled with components legally bought via Internet, it would be an important risk not to regulate this sales channel. Moreover, it will be more difficult to verify on line the legality of authorisations for arms possession. The risk is still higher in case of acquisition from third countries.

Existing Directive specifies that "Member States shall ensure that, except with respect to dealers, the acquisition of firearms and their parts and munition by means of distance communication ...shall, where authorised, be strictly controlled".

The proposal considers a stricter approach: not accepting selling of arms and components by means of distance communication (notably internet), except for dealers and brokers.

Existing Directive does not include alarm, signalling, live-saving weapons etc. It is proposed to define common criteria concerning "alarm weapons" in order to prevent their convertibility to real firearms. This should, of course, cover both alarm weapons manufactured in the EU and imported weapons.

The risk of convertibility of alarm weapons and other types of blank firing weapons to real firearms is high and constitutes a key recommendation resulting from the Directive's evaluation and other study. According to stakeholder information, convertible alarm weapons imported from third countries can enter the EU territory unhindered due to lack of coherent/common rules. The technical specifications will be adopted through an implementing act.

There is no system to inform other Member States when an authorisation is refused (in particular for Category B firearms). The proposal introduces a system of exchange of information among Member States and requires dealers and brokers to be connected to central firearm registers. In this context, the Commission will explore the use of existing information exchange instruments.

The proposal also introduces a 5 year time limit for the duration of a licence.

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Council Directive 91/477/EEC<sup>17</sup> established an accompanying measure for the internal market. It created a balance between on the one hand the undertaking to ensure a certain freedom of movement for some firearms within the Union, and on the other the need to control this freedom using security guarantees suited to this type of product.
- (2) As a response to recent terrorist acts which demonstrated gaps in the implementation of Directive 91/477/EEC especially with regard to deactivation of weapons, convertibility and marking rules, the "European Agenda on Security" adopted in April 2015 and the Declaration of the Home Affairs Ministers Council of 29 August 2015 called for the revision of that Directive and for a common approach on the deactivation of firearms to prevent reactivation and use by criminals.
- (3) Certain issues in Directive 91/477/EEC need further improvement.
- (4) Bodies concerned with the cultural and historical aspects of weapons and recognised as such by the Member State in whose territory they are established and holding in their possession firearms classified in category A acquired before the date of entry into force of this Directive should be able to keep those firearms in their possession subject to authorisation by the Member State concerned and provided that those firearms have been deactivated.
- (5) Since collectors have been identified as a possible source of traffic of firearms, they should be covered by this Directive.
- (6) Since brokers provide services similar to those of dealers, they should also be covered by this Directive.
- (7) Taking into consideration the high risk of reactivating badly deactivated weapons and in order to enhance security across the Union, deactivated firearms should be covered by this Directive. Additionally, for the most dangerous firearms stricter rules should be

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<sup>17</sup> Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons (OJ L 256, 13.9.1991, p. 51).

introduced in order to ensure that those firearms are not allowed to be owned or traded. Those rules should also apply to firearms of that category even after they have been deactivated. Where those rules are not respected, Member States should take appropriate measures including the destruction of those firearms.

- (8) In order to ensure the traceability of deactivated firearms, they should be registered in national registries.
- (9) Some semi-automatic firearms can be easily converted to automatic firearms, thus posing a threat to security. Even in the absence of conversion to category 'A', certain semi-automatic firearms may be very dangerous when their capacity regarding the number of rounds is high. Such semi-automatic weapons should therefore be banned for civilian use.
- (10) To avoid that markings are easily erased and to clarify on which components the marking should be affixed, common Union rules on marking should be introduced.
- (11) Firearms may be used for far more than 20 years. In order to ensure their traceability, records of them should be kept for an indeterminate period of time until destruction is certified.
- (12) Selling arrangements of firearms and their components by means of distance communication may pose a serious threat to security as they are more difficult to control than the conventional selling methods, especially as regards the on line verification of the legality of authorisations. It is therefore appropriate to limit the selling of arms and components by means of distance communication, notably internet, to dealers and brokers.
- (13) Furthermore, the risk of alarm weapons and other types of blank firing weapons being converted to real firearms is high, and in some of the terrorist acts converted arms were used. It is therefore essential to address the problem of converted firearms being used in criminal offences, notably by including them in the scope of the Directive. Technical specifications for alarm and signal weapons as well as for salute and acoustic weapons should be adopted in order to ensure that they cannot be converted into firearms.
- (14) In order to improve the functioning of the information exchange between Member States, the Commission should assess the necessary elements of a system to support such exchange of information contained in the computerised data-filing systems in place in Member States. The Commission's assessment may be accompanied, if appropriate, by a legislative proposal taking into account existing instruments regarding exchange of information.
- (15) In order to ensure appropriate exchange of information between the Member States on authorisations granted and on refusals, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of adopting an act to enable the Member States to create such a system of exchange of information on authorisations granted and on refusals. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (16) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission. Those powers should

be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>18</sup>.

- (17) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.
- (18) Since the objectives of this Directive cannot be sufficiently achieved by the Member States, but can rather, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (19) Directive 91/477/EEC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

#### *Article 1*

Directive 91/477/EEC is amended as follows:

- (1) Article 1 is amended as follows:
  - (a) Paragraph 1b is replaced by the following:

‘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’;
  - (b) Paragraph 1e is replaced by the following:

‘1e. For the purposes of this Directive, ‘broker’ shall mean any natural or legal person, other than a dealer whose trade or business consists wholly or partly in buying, selling or arranging the transfer within a Member State, from one Member State to another Member State or exporting to a third country fully assembled firearms, their parts and ammunition;
  - (c) In paragraph 1, the following paragraphs are added:
    - ‘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.
    - 1g. For the purposes of this Directive, ‘salute and acoustic weapons’ shall mean firearms specifically converted for the sole use of firing blanks, for use in theatre performances, photographic sessions, movies and television recordings.

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<sup>18</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- 1h. For the purposes of this Directive, ‘replica firearms’ shall mean objects that have the physical appearance of a firearm, but are manufactured in such a way that they cannot be converted to firing a shot or expelling a bullet or projectile by the action of a combustible propellant.
  - 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’.
- (d) Paragraph 2 is replaced by the following:
2. For the purposes of this Directive, ‘dealer’ shall mean any natural or legal person whose trade or business consists wholly or partly in any of the following:
    - (i) the manufacture, trade, exchange, hiring out, repair or conversion of firearms;
    - (ii) the manufacture, trade, exchange, hiring out, repair or conversion of parts of firearms;
    - (iii) the manufacture, trade, exchange or conversion of ammunition.
- (2) In Article 2, paragraph 2 is replaced by the following:
- ‘2. This Directive shall not apply to the acquisition or possession of weapons and ammunition, in accordance with national law, by the armed forces, the police, the public authorities. Nor shall it apply to commercial transfers of weapons and ammunition of war.
- (3) In Article 4, paragraphs 1, 2 and 3 are replaced by the following:
- ‘1. Member States shall ensure that any firearm or part placed on the market has been marked and registered in compliance with this Directive.
  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.

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

Member States shall ensure that each elementary package of complete ammunition is marked so as to provide the name of the manufacturer, the identification batch (lot) number, the calibre and the type of ammunition.

Furthermore, Member States shall ensure, at the time of transfer of a firearm from government stocks to permanent civilian use, the unique marking permitting identification of the transferring government.
  3. Member States shall make the pursuit of the activity of dealer or broker within their territory conditional upon authorisation on the basis of at least a check of the private and professional integrity and of the abilities of the dealer or broker.

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

(4) In Article 4, paragraph 4 is amended as follows:

(a) in the first subparagraph, the second sentence is replaced by the following:

‘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.’

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

‘Throughout their period of activity, dealers and brokers shall be required to maintain a register in which all firearms subject to this Directive and which are received or disposed of by them shall be recorded, together with such particulars as enable the firearm to be identified and traced, in particular the type, make, model, calibre and serial number thereof and the names and addresses of the persons supplying and acquiring it.’

Upon the cessation of his activities, the dealer or broker shall deliver the register to the national authority responsible for the filing system provided for in the first subparagraph.

Each Member State shall ensure that the registries of the dealers and brokers established in their territory are connected to the computerised data-filing system of firearms’;

(5) Article 4b is replaced by the following:

*‘Article 4b*

1. Member States shall establish a system for the regulation of the activities of brokers and dealers. Such a system may include one or more of the following measures:

(a) registration of brokers and dealers operating within their territory;

(b) licensing or authorisation of the activities of brokers and dealers.’

2. The system referred to in paragraph 1 shall include at least a check of the private and professional integrity and of the abilities of the dealer or broker. In the case of a legal person, the check shall be on the legal person and on the person who directs the undertaking.’

(6) Articles 5 and 6 are replaced by the following:

*‘Article 5*

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

(a) are at least 18 years of age, except in relation to the possession of firearms for hunting and target shooting, provided that in that case persons of less than 18 years of age have parental permission, or are under parental guidance or the

guidance of an adult with a valid firearms or hunting licence, or are within a licenced or otherwise approved training centre;

(b) 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.

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.

Member States may not prohibit persons resident within their territory from possessing a weapon acquired in another Member State unless they prohibit the acquisition of the same weapon within their own territory.

#### *‘Article 6*

Member States shall take all appropriate steps to prohibit the acquisition and the possession of the firearms and ammunition classified in category A and to destroy those firearms and ammunition held in violation of this provision and seized.

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).

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.

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(\*) 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 contracts (OJ L 144, 4.6.1997, p.19).’

(7) In Article 7, the following subparagraph is added to paragraph 4:

‘The maximum limits shall not exceed five years. The authorisation may be renewed if the conditions on the basis of which it was granted are still fulfilled.

(8) The following Articles 10a and 10b are inserted:

#### *‘Article 10a*

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

The Commission shall adopt technical specifications for alarm and signal weapons as well as for salute and acoustic weapons to ensure they cannot be converted into firearms.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 13b(2).



### *Article 10b*

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.

The Commission shall adopt deactivation standards and techniques to ensure that deactivated firearms are rendered irreversibly inoperable. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 13b(2).'

- (9) In Article 13, the following paragraph 4 and 5 is added:
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.
  5. The Commission shall be empowered to adopt delegated acts in accordance with Article 13a concerning the modalities of exchange of information on authorisations granted and on refusals.

- (10) Article 13a is replaced by the following:

### *'Article 13a*

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in Article 13 shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Directive.
3. The delegation of power referred to in Article 13 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 13 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.'

- (11) Article 13b is inserted:

*Article 13b*

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council(\*).
  2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
- (\*). Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).';

- (12) Article 17 is replaced by the following:

*'Article 17*

The Commission shall submit every five years a report to the European Parliament and the Council on the application of this Directive, accompanied, if appropriate, by proposals in particular as regards the categories of firearms of Annex I and the issues related to new technologies such as 3D printing. The first report shall be submitted two years after the entry into force of this Directive.'

The Commission shall, by [date], assess the necessary elements of a system for the exchange of information contained in the computerised data-filing systems referred to in Article 4(4) between the Member States. The Commission's assessment shall be accompanied, if appropriate, by a legislative proposal taking into account existing instruments regarding exchange of information.

- (13) in Annex I to Directive 91/477/EC part II is amended as follows:

- (a) point A is amended as follows:

- (i) in Category A, the following points are added:

- '6. Automatic firearms which have been converted into semi-automatic firearms;
7. Semi-automatic firearms for civilian use which resemble weapons with automatic mechanisms
8. Firearms under points 1 to 7 after having been deactivated';

- (ii) in category B, point 7 is deleted.

- (iii) In Category C, the following points are added:

- '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'.

- (b) in point B, the following text is deleted.'

‘The breach-closing mechanism, the chamber and the barrel of a firearm which, being separate objects, are included in the category of the firearms on which they are or are intended to be mounted.’

- (14) in Annex I to Directive 91/477/EC part III is amended as follows:
- (a) point (a) is deleted;
  - (b) point (b) is replaced by the following: "are designed for life-saving, animal slaughter or harpoon fishing or for industrial or technical purposes provided that they can be used for the stated purpose only;
  - (c) the second subparagraph is deleted.

#### *Article 2*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive [3 months after publication to the OJ]. They shall forthwith communicate to the Commission the text of those provisions.  
  
When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

#### *Article 3*

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

#### *Article 4*

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*