



Association Européenne de Commerce d'Armes Civiles  
The European Association of the Civil Commerce of Weapons

## **AECAC<sup>1</sup> POSITION PAPER ON THE REVISION OF THE FIREARMS DIRECTIVE**

### **CONTEXT**

By tabling a legislative proposal to amend the Firearms Directive, the Commission is putting forward a number of restrictions concerning the legal ownership of civil firearms, including the ban of some of them. The Commission presents its proposal as an essential element of the fight against trafficking of firearms and terrorism, despite having failed to prove any link between legal and illegal activities.

The Firearms Directive, which was thoroughly amended in 2008 with a broad political support, already lays down strict rules on the acquisition and possession of civil firearms. Legislation, however, is useless without enforcement.

### **UNSUBSTANTIATED LINK BETWEEN LEGAL AND ILLEGAL FIREARMS**

Since 2013, the Commission has been trying, without success, to establish a link between legal and illegal firearms, for which it has even resorted to the unacceptable misrepresentation and alteration of data<sup>2</sup>.

Recent tragic terrorist attacks have finally provided the Commission with the political opportunity to present a legislative proposal to review the Firearms Directive. In the Questions and Answers that accompany the legislative proposal, the Commission states the following: "*There is little official data on the types of firearms circulating in the EU,*

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<sup>1</sup> AECAC was founded in 1992 and it is formed from numerous national associations representing the interests of firearm and hunting small- and medium-sized enterprises from all over Europe. Being the only representative at a European level of the **firearm retailers**, AECAC has already stated its satisfaction with the current text and functioning of the Directive 91/477/EEC, as amended by Directive 2008/51/EC.

<sup>2</sup>[http://face.eu/sites/default/files/attachments/face\\_response\\_to\\_ec\\_communication\\_on\\_firearms\\_10\\_02\\_2014\\_formatted.pdf](http://face.eu/sites/default/files/attachments/face_response_to_ec_communication_on_firearms_10_02_2014_formatted.pdf)



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*weapons illegally used and trafficked, and criminal offences and activities involving civilian firearms. However, it has become clear that gaps in the current legislation on firearms and shortcomings in its implementation at national level make us vulnerable to criminal activity and have an impact on the overall level of security of EU citizens".*

In fact, there should be sufficient official data at least with regard to legal firearms, given that the Directive requires the registration of legal firearms, the establishment and maintenance of a computerized data-filing system and the exchange of information amongst Member States.

The Commission claims that there are gaps in the current legislation on firearms. However, it does not provide data to support that claim and it mostly puts forward measures (like the ban of certain semiautomatic firearms) that bear no connection with illegal firearms. The proposed changes on deactivation of firearms, which potentially bear such connection with illegal firearms, do not substantially change the current rules, which are already extremely strict (see below the section on deactivation).

During the debate held on 7 December 2015 at the Committee on the Internal Market and Consumer Protection of the European Parliament, the Commission stated that 10,000 people have been killed with legal firearms in Europe in the last ten years. AECAC is convinced that this statement is false and also that it shows, once again, the repeated tendency of the Commission to mix up legal and illegal activities.

#### **NEGATIVE IMPACT ON SMEs. ABSENCE OF IMPACT ASSESSMENT.**

AECAC is mainly made up of Small and Medium Enterprises (SMEs), subject to the strictest controls, including those laid down in the Firearms Directive. In this respect, it is difficult to reconcile the tabling of the proposal (which has not even been accompanied by an impact assessment) with the 'Think Small First' principle and the mission statement of the Commission's Directorate General for Internal Market, Industry, Entrepreneurship and SMEs.



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Most of the companies dealing with sport and hunting firearms are SMEs. For them, the implementation of new restrictions would have a negative impact. The burden of administration and regulation – i.e. dealing with red tape – is the biggest complaint of SMEs when it comes to hindrances to their business.

The proposal is in contradiction with the Small Business Act (SBA) for Europe, which is supposed to reflect the central role of SMEs in the EU economy and for the first time puts into place a comprehensive policy framework for the EU and its Member States concerning Small Companies. The EU needs a SME-friendly policy, not proposals driven by ideological prejudices or a political agenda - like the one to amend the Firearms Directive.

The Commission seeks to justify the lack of impact assessment "due to the urgency of the proposal in the light of recent events". However, the only element in the proposal which could bear some connection with those recent events, namely the deactivation of firearms, is already strictly regulated in the Directive. Furthermore, the Commission has needed seven years to adopt guidelines on deactivation, which could have been adopted without amending the Directive.

## **BREACH OF THE SUBSIDIARITY PRINCIPLE**

In accordance with the principle of subsidiarity, in areas which do not fall within its exclusive competence, the EU shall take action only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the EU. Any action by the EU shall be proportionate, that is to say, it shall not go beyond what is necessary to achieve the objectives of the EU Treaties.

The Directive, which is an instrument of the internal market, currently provides a coherent framework that creates mutual trust amongst Member States whilst respecting different national sensibilities on firearms. Member States can also adopt stricter measures provided that they do not breach internal market rules. However, it never been the objective of the Directive to fully harmonize national legislation on firearms. The Commission's proposed

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measures unnecessarily regulate in detail aspects of that legislation and in doing so they impinge on the principles of subsidiarity and proportionality.

The Commission seems to forget that harmonization is not an end in itself but the means to achieve mutual trust and thus facilitate the acceptance of common rules for intra-EU movements.

### **BAN OF CERTAIN SEMIAUTOMATIC FIREARMS**

The Commission seeks to ban semiautomatic firearms for civilian use that resemble automatic weapons with automatic mechanisms (currently listed in category B-7) as well as firearms which have been converted into semiautomatic firearms.

Semiautomatic firearms that could more or less resemble (on the basis of a subjective assessment) automatic ones are often used by sport-shooters and in some instances are also by hunters.

Those firearms are already subject to authorization under the Directive and in practice Member States require the highest level of control on their acquisition and authorization. Furthermore, their transformation into automatic firearms (if at all possible) would already amount to illicit manufacturing under the Directive.

The Commission has not produced any data to support the proposed ban. Furthermore, the terrorist attacks undertaken during the last year (which the Commission seeks to use as anecdotal evidence to support its proposed restrictions) did not involve legally-held semiautomatic firearms.

Until now, there has been a clear distinction between prohibited firearms (automatic ones) and non-prohibited firearms (the rest). If legal firearms owners and dealers are supposed to accept the end of this distinction just because it suits the political agenda or the ideological prejudices of the Commission, are they also expected to accept subsequent bans for the same reason?



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The ban of certain firearms on the basis of their "looks" is arbitrary, subjective and far too vague to provide legal certainty. The exterior aspect of a firearm says very little about its danger. Furthermore, some firearms can be fitted with an array of accessories (some of them purely cosmetic) that could make a firearm look "tactical" and thus subject to the ban.

Thousands of law-abiding EU citizens have legally acquired those firearms. The proposed confiscation of their property would only result in litigation and payment of millions of Euros in compensation, without bringing any additional security.

If there is evidence that certain semiautomatic firearms are potentially dangerous, any restriction under the Directive should be based on an objective criterion, like the possibility to readily convert a semiautomatic firearm into an automatic one on account of its mechanism and operation. The Commission could then issue technical guidelines, as it has been done with regard to deactivation standards.

## **DEACTIVATION OF FIREARMS**

The Directive already mandates that deactivated firearms be rendered **permanently unfit for use, ensuring that all its essential parts have been rendered permanently inoperable and incapable of removal, replacement or a modification** that would permit the firearm to be reactivated in any way. The Directive already provides for one of the strictest deactivation standards in the world, which turn a firearm into a piece of welded metal. Furthermore, contrary to what the Commission has insinuated, the acquisition of any essential component for a firearm is subject to the same conditions as those that apply to the firearm for which the essential component is intended.

Given that the Commission argues that problems in this specific area is part of the justification to reopen the Directive, it is legitimate to ask the Commission what it has done in the last years to ensure that national legislations have complied with the obligations on deactivation pursuant to the Directive. The Commission, as Guardian of EU law, must ensure that Member States transpose correctly the Directive.

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It is also worth noting that it has taken the Commission no less than seven years to issue guidelines on deactivation. Those guidelines have been finally adopted under the form of an Implementing Regulation, which did not require the amendment of the Directive.

Instead of enforcing the existing rules, the Commission proposes to register and license properly deactivated firearms. Such measure is totally uncalled for. A firearm that is deactivated pursuant to the Directive (and the above-mentioned Implementing Regulation) cannot be reactivated. The Commission's proposed measure would only waste resources and diverts them from the fight against illegal activities.

#### **TIME LIMITATION FOR FIREARMS PERMITS**

Some Member States require the periodical renewal of authorizations while others do not require such renewal but withdraw the authorization if any of the conditions on the basis of which it was granted are no longer satisfied.

The Commission seeks to limit the validity of all authorizations to **five years**.

Such new restriction does not bring any additional security to the system, burdens legal responsible owners and public officers with additional bureaucracy and costs and impinges on the subsidiarity principle.

#### **MANDATORY MEDICAL TEST**

The Directive already requires that persons that wish to acquire or possess firearms are not likely to be a danger to themselves, public order or public security. In this respect, the Directive requires that those persons have a clean criminal record. Additionally, some Member States require a medical certificate while some others conduct a different type of control, for instance through interviews with the police or the relevant authorities. The Member States that favor the latter approach (like Germany and the UK) do not seem to encounter specific problems.

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The Commission's proposed imposition of standard medical tests unnecessarily impinges of the subsidiarity principle.

### **RESTRICTIONS ON SOUND MODERATORS**

Sound moderators have been used in several countries (e.g. Denmark, Ireland, UK, and Germany) for many years for health and safety reasons. They are very useful to avoid permanent hearing damages not only for hunters but also for game keepers, forestry personnel and even working dogs, game and all the fauna.

Large caliber rifles have a sound level of around 150 dB without a sound moderator. These can be reduced in more than 70 % by using sound moderators.

The experience in the countries where sound moderators are being legally used is that there isn't any danger or problem with these items. Adding new restrictions on them is not technically justified.

### **BANS FOR MUSEUMS AND COLLECTORS**

The Commission's proposal extends the personal scope of the Directive to cover cultural bodies (such as museums) and collectors.

The Directive already requires the registration and marking of any firearm placed in the market (except antique firearms), so these requirements should apply already to cultural bodies and collectors. In practice, Member States already control the acquisition of firearms by cultural bodies and collectors, in some cases even requiring higher standards than those for hunters and sport-shooters (for instance, regarding the storage of firearms).

The proposed blanket ban on category A firearms would imply the destruction of safely-kept historical firearms in private collections and museums. Private collectors would not even be



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allowed to keep deactivated category A firearms. Such measure would have a very negative impact on Europe's historical heritage and would also have severe financial consequences.

It is also unacceptable that the Commission points at collectors as a source for illicit trafficking without providing any evidence.

### **NEW RESTRICTIONS FOR YOUNG HUNTERS AND SPORT SHOOTERS**

The current legal framework already prohibits young persons (under the age of 18) from purchasing firearms. They can only acquire a firearm if it is given to them by their parents or if they inherit it - and of course if they meet the other conditions laid down in the Directive. The subsequent possession and use of the firearm require parental permission and guided supervision.

The Commission seeks to eliminate completely the possibility for young people to acquire firearms under the above-mentioned conditions.

Many high schools, particularly in rural areas, educate students in hunting and wildlife management. Sport-shooting is also widely extended between young people.

The Commission's proposed measure seems to be based on an ideological prejudice and it affects the future of hunting and sport shooting.

### **CONCLUSIONS**

The Commission's proposed measures would only penalize law-abiding citizens and business. None of the proposed measures would have prevented the recent terrorist attacks.

It is utterly wrong to believe that by increasingly restricting legal trade in and use of hunting and sporting firearms illegal trafficking in firearms will be reduced. Such restrictions will not only impose unjustified and disproportionate restrictions on legal users but they will also



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divert public resources from the real threats, such as tackling the current black market and the trafficking in firearms coming from post-conflict areas.

AECAC calls on the Commission to reconsider its current strategy, which will only exacerbate the disaffection of millions of citizens towards the EU and will **not solve the real problems**. The Commission should instead enforce the current rules on legal firearms and coordinate the actions and efforts of the Member States in the fight against illegal activities.

Brussels, December 2015