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NOTE

From:	Presidency
To:	Permanent Representatives Committee
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Subject:	Draft Directive of the European Parliament and of the Council amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons - Policy debate

I. Background

1. On 18 November 2015, the European Commission proposed a revision of the Firearms Directive (Directive 91/477/EEC as amended by Directive 2008/51/EC). The proposal aims at addressing certain weaknesses in the current legislation that have been identified especially in the context of recent terrorist attacks in major European cities and of massacres committed in several Member States. The proposal includes areas such as online acquisition of firearms, their marking, exchange of relevant information between Member States and the regime of salute and acoustic weapons, where substantial progress has been achieved in the GENVAL Working Party.

2. Following the terrorist attacks in Brussels on 22 March 2016, the Ministers for Justice and Home Affairs at their meeting on 24 March 2016, expressed the need to pursue in a resolute manner the swift completion of legislation on control of the acquisition and possession of firearms.
3. However, delegations' views remain divergent with respect to two key issues of the proposal, namely the proposal to ban certain dangerous semi-automatic firearms and the question of possible exemptions from this prohibition.

II. Defining the semi-automatic firearms to be prohibited

4. The Commission proposed to move "semi-automatic firearms for civilian use which resemble weapons with automatic mechanisms", which require an authorization under the current regime, into Category A of the Directive's Annex I. This would result in a strict prohibition to hold such firearms by private persons.
5. Many delegations criticized this aspect of the Commission proposal, arguing that a definition based on criteria related to mere resemblance is overly vague and complicated to enforce. In order to seek political guidance, the Presidency had initiated a policy debate at Council level (6755/16) on 10 March 2016, coming to the conclusion that restrictive conditions to acquire and possess particularly dangerous semi-automatic firearms for civilian use needed to be set up.
6. At the GENVAL meeting on 11 April 2016, the Presidency submitted a revised text (5662/1/16 REV 1) reflecting technical criteria of danger that a firearm may represent. However, a number of delegations did not agreed to the Presidency suggestion.

7. Consequently, at the GENVAL meeting on 25 April 2016, the Presidency proposed a new wording (5662/2/16 REV 2), based on a joint contribution made by France and Germany. According to this text¹, the prohibition would concern firearms fulfilling certain technical characteristics relating to their firing power (number of rounds without reloading), as well as to their length and construction (ease of a concealed carry of an otherwise long firearm). Similarly, the prohibition would concern large magazines permitting to fire the corresponding number of rounds.

8. Although most delegations welcomed this proposal of the Presidency as a step forward, the new text was criticized by some delegations on the following grounds:
 - a) The new wording required clarification: delegations mainly questioned the exact meaning of the formulation "*if a magazine with a capacity exceeding 20 cartridges is connected to the firearm*", wondering whether every firearm would be out of the scope of this provision, as long as no magazine is attached to it. The new wording set out in Annex I.b to this note clarifies this issue. The classification now mentions the term configuration. Configuration refers to a firearm together with either a fixed or detachable magazine or a feeding belt.
 - b) According to a number of delegations, the proposed wording as to the number of rounds allowed was not ambitious enough since the number of rounds allowed (21) remained too high for any use that civil population may legitimately require (some delegations proposed limiting this number to 10 or even 5-6 rounds).
 - c) Focusing on magazines was not reliable, since magazines tend to be disposable and their technical nature does not allow for their classification as essential components. Therefore, appropriate marking and traceability can not be expected.
 - d) The criteria should make a distinction between firearms using centrefire and rim fire ammunition, the latter corresponding to smaller calibers and being generally considered as less dangerous.

¹ cf. Annex

- e) The criteria should make a better distinction between short and long firearms. Short firearms with a large number of rounds (but always fewer than 21) are in wide use and should be spared from such a strict prohibition to a larger extent than long firearms that pose a greater threat. It should be considered to apply a stricter rule to the number of rounds of long firearms.
9. The Presidency therefore proposes the new wording, set out in Annex I.b of this note. That proposal aims at defining the firearms that should be subject to a strict prohibition under Category A7 of the Directive's Annex I. The wording has been adapted so as to include a distinction between short and long firearms and to incorporate the aspect of danger represented by firearms using centrefire ammunition.

III. Exemptions from the prohibition (Article 6)

10. The text of Art. 6(2), as discussed at the GENVAL meeting on 25 April 2016, featured an exhaustive list of grounds allowing competent authorities of Member States to grant exemptions from the prohibition to acquire firearms listed in Category A of the Directive's Annex I. These grounds include national defence, educational, cultural, research and historical purposes.
11. The most critical issue amongst the delegations relates to the exhaustive character of the list under Art. 6(2). Many Member States voiced their wish to make this list a demonstrative one, by means of adding the words "such as" into the phrase.
12. On the other hand, the Commission and a number of Member States consider that such an open list would seriously undermine the effectiveness of the Directive, leaving too much discretion to the Member States in terms of possible exemptions.

13. Another important issue in this regard relates to museums and collectors. The text of Art. 6(3), as currently proposed, allows Member States to authorize museums to acquire firearms, essential components and ammunition from category A, B, C and D subject to strict conditions. Some delegations question whether the specific exemption for museums under Art. 6(3) is needed or whether museums might be covered under cultural and historical purposes under Art. 6(2). Possible legal implications are twofold:
14. First, Art. 6(2) only provides for exemptions relating to category A, whereas museums may need to be able to acquire firearms belonging to other categories, or at least to category B, which is subject to authorization. Second, the proposed new wording of Art. 2(2) stipulates that the Directive does not apply to public authorities, which may concern museums in some Member States.
15. As far as collectors are concerned, a number of Member States wish that these be granted a similar regime as museums, whereas the Commission and some Member States are convinced, on the basis of studies conducted inter alia by Europol, that collectors represent a possible source of dangerous firearms for unauthorized persons. Moreover, the Commission argues that granting such an exemption to collectors would be inconsistent with a strict prohibition of the corresponding firearms with respect to sport shooters.
16. Finally, particular situations in some Member States led some delegations to request further exemptions with respect to firearms that are to be prohibited. This concerned especially the status of reservists in a few Member States, a concern which has been reflected in a new Recital (7b), and the protection of maritime routes or critical infrastructure by private companies. Similarly, it was discussed whether private manufacturers, producing otherwise prohibited firearms for the army or police, are covered by the "research" exemption under 6(2).

17. This last point raises the question whether such particular situations have to be addressed by means of a specific provision, a specific additional ground under Art. 6(2) or a modification of the list under that article into a demonstrative one.
18. Based upon these considerations, the Presidency proposes the new wording, set out in Annex II.b of this note.

IV. Conclusion

19. *In the light of the above, COREPER is invited:*

- (1) *to discuss the text set out in Annex I.b to this document, with a view to agreeing on the final wording or giving guidance on the criteria pertaining to semi-automatic firearms prohibited for civilian use. This discussion should mainly focus on firing power, number of rounds allowed and length of those firearms;*
- (2) *to discuss the text set out in Annex II.b to this document, with a view to agreeing on the final wording or giving guidance on the list of grounds allowing competent authorities of Member States to grant exemptions from the prohibition to acquire firearms listed in Category A of the Directive's Annex I, whereby the situation of museums and collectors is provided for separately under article 6:*
 - *Should the list of grounds allowing for an exemption under Art. 6(2) be an exhaustive or a demonstrative one?*
 - *In case the delegations agree on an exhaustive list, should manufacturers, dealers and brokers, as well as museums and collectors be exempted from the prohibition by means of separate provisions under article 6?*

Annex I: Defining the semi-automatic firearms to be prohibited

a. Text as in 5662/2/16 REV 2

7. Semi-automatic firearms with one or more of the following characteristics:
- a) firearms allowing the user to fire more than 21 rounds without reloading, if a magazine with a capacity exceeding 20 cartridges is connected to the firearm;
 - b) magazines capable of holding more than 20 rounds;
 - c) long firearms (i.e. firearms that are originally intended to be fired from the shoulder) that can be reduced to a length of less than 60cm without losing functionality by means of a folding or telescoping stock or by a stock that can be removed without using tools.

b. Text as proposed for discussion in COREPER

Bold text is new as compared to the text in document 5662/2/16 REV 2.

7. **Any of the following [centrefire] semi-automatic firearms(...):**
- a) **[short]² firearms the configuration of which allows the firing of more than [21] rounds without reloading;**
 - [b) long firearms the configuration of which allows the firing of more than [11] rounds without reloading;]**
 - c/b) long firearms that can be reduced, by means of a folding or telescoping stock or by a stock that can be removed without using tools, to a length of less than 60 cm without losing **their** functionality.

² The word “short” should only be included when the point under b) is included.

Annex II: Exemptions from the prohibition (Article 6)

a. Text as in 5662/2/16 REV 2

Article 6

1. Without prejudice to Article 2(2), Member States shall take all appropriate steps to prohibit the acquisition and the possession of the firearms and ammunition listed in category A in Annex I. They shall ensure that those firearms and ammunition unlawfully held in contravention of that prohibition are seized.

2. In special cases, for national defence, educational, cultural, research and historical purposes and without prejudice to Article 6(1), the competent authorities may grant authorisations for such firearms and ammunition where this is not contrary to public security or public order.

3. Member States may authorise museums to acquire firearms, essential components and ammunition from category A, B, C and D subject to strict conditions.

4. Member States shall ensure that in case of the acquisition and selling of firearms and their essential components and ammunition covered by categories A, B, C and D set out in Annex I by means of distance communication as defined in Article 2 of Directive 2011/83/EC of the European Parliament and of the Council, the identity, and where required, the authorisation of the person acquiring the firearm or the essential components thereof or ammunition is controlled prior to or at least upon delivery thereof to that person, by:

- an authorised dealer or broker; or
- a public authority or a representative thereof.

(7) In Article 7, the following paragraph is added after paragraph 2:

2a. An authorisation to acquire or possess a firearm listed in category 7 under B set out in Annex I of the Directive shall be granted only for the purposes of hunting or target shooting.

b. Text as proposed for discussion in COREPER

Article 6 is replaced by the following:

Article 6

1. Without prejudice to Article 2(2), Member States shall take all appropriate steps to prohibit the acquisition and the possession of the firearms and ammunition listed in category A in Annex I. They shall ensure that those firearms and ammunition unlawfully held in contravention of that prohibition are seized.

2. In special cases, **[such as] for the protection of critical infrastructure and commercial shipping**, national defence, educational, cultural, research and historical purposes and without prejudice to Article 6(1), the competent authorities may grant authorisations for such firearms, **essential components** and ammunition where this is not contrary to public security or public order.

3. **[Entities or private persons authorised to manufacture or assemble firearms, essential components and ammunition listed in category A in Annex I, as well as dealers and brokers are exempted from the prohibition mentioned under 1.]**

[4. Member States may permit museums to acquire and possess firearms, essential components and ammunition from category A, B, C and D subject to strict conditions.]

[5. Member States may permit collectors to acquire and possess firearms under the categories B, C and D.]

(7) In Article 7, the following paragraph is added after paragraph 2:

Deleted.

[...]
