



Evaluation of the Firearms Directive

Executive summary

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The Evaluation of the Firearms Directive

The Firearms Directive¹ (i.e. Directive 91/477/EEC as amended by Directive 2008/51/EC) aims at balancing internal market objectives (i.e. cross border movement of firearms) and security policy objectives (i.e. high level of security and protection against criminal acts and illicit trafficking) within the EU.

The Firearms Directive was adopted in 1991. At that time, intra-EU frontiers and borders controls were about to be abolished including the firearms sector, which raised concerns as regards security safeguards. The Directive thus laid down the minimum requirements that Member States should impose as regards the acquisition and possession of the different categories of firearms to facilitate commercial exchange across Member States while guaranteeing the security of EU citizens. Furthermore, it regulates the conditions for the transfer of firearms across Member States, while granting more flexible rules for the transfer of hunting and target shooting weapons.

The Firearms Directive is part of a set of initiatives taken at international level for the regulation of firearms. Its amendment in 2008 reinforces its security dimension to meet the EU international obligations which result from the Firearms Protocol², in particular Art. 10 thereof on the prevention of illicit manufacturing and trade of firearms, their components and ammunition.

The EU legislation includes comprehensive rules on the acquisition, possession and import/export of firearms, but it also leaves scope for national interpretation, standards and procedures on several aspects. Within the EU framework, Member States are indeed allowed to take more stringent measures in order to meet specific national needs.

Based on this overall context, this study aims at evaluating the Firearms Directive in terms of its relevance to current security and market needs, the consistency of its implementation across EU Member States, its effectiveness and efficiency, and the added value of the EU intervention in this field. The aim is to support the Commission in answering the requirement of Art. 17 of the Directive calling on the Commission, by end of July 2015, to "*submit a report to the EP and the Council on the situation resulting from the application of this Directive accompanied, if appropriate, by amending proposals*".

This evaluation is also included in the Commission's Regulatory Fitness and Performance Programme (REFIT), which aims at reviewing the entire stock of EU legislation to identify burdens, inconsistencies, gaps, overlaps and obsolete measures and to make, where necessary, proposals to follow-up on the findings of the review (COM(2013)685 and Annex).

Relevance

14 years after its first evaluation by the European Commission, the Firearms Directive proves to be relevant to current market needs and to most security risks. Concerns raised by economic operators involved in the study do not relate to the Directive itself but rather to the different implementing measures

¹ Directive 91/477/EEC, OJ L 256, 13.9.1991, p. 51

² UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (Firearms Protocol), adopted in 2001 by the GA with resolution 55/255 and entered into force on 3 June 2005.

and procedures that Member States have adopted. Such heterogeneous measures are a source of additional burden and costs that impact negatively on the cross border movement of firearms.

As for security, most of the concerns at EU level fall within the scope of the Directive. Specifically, trade in firearms parts and cases of reactivation of deactivated firearms challenge the approach to “essential components” included in the Directive.³ The Directive requires a mark to be affixed to an essential component of a firearm, the destruction of which would render the firearm unusable. The Directive does not clearly require the marking of all essential components of the firearm. By disassembling a marked firearm and selling the parts separately, a number of unmarked essential components enter the market, and access to these facilitates the reactivation of deactivated weapons.

“Convertibility” is another term that has left room for national interpretation and contributed to cases of conversion of alarm weapons into firearms shooting live ammunition. The EU definition of firearms includes convertible alarm weapons but the Firearms Directive does not include a definition, standard or guideline on what items are convertible.

Other concerns relating, for instance, to altered or erased marks and firearms thefts, have a more local dimension and would require an improved sharing of responsibilities among Member States to adequately address them.

New technologies (e.g. 3D printing) and new sales channels (e.g. internet) may challenge in the future the scope of the Directive which, for the moment, seems to be adequate to face current concerns.

Consistency in the implementation of the Directive across Member States

A good level of harmonisation has been achieved through the introduction of the European Firearms Pass which substituted a number of documents that were previously requested for hunters and marksmen to move across Member States. The European Firearms Pass was adopted by all Member States. Similarly, national computerised data-filing systems whose implementation is foreseen by the Firearms Directive by the end of 2014, have already been implemented in most MS.

Nonetheless, the use of a Directive inevitably left a number of differences resulting both from national choices (as foreseen by Art. 3⁴) about how to implement the various provisions and from pre-existing national approaches. In most cases these differences are the source of market and security concerns that need to be addressed in proportion to their severity and magnitude.

Firstly, differences relate to the interpretation of key terms included in the Directive. Essential components, brokers, alarm weapons and antique weapons are among the most controversial. The inconsistencies between EU legislation and the United Nations Firearms Protocol as to the definition of essential components and

³ For the purposes of this Directive “essential component” shall mean 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 (*art. 1b*). For the purposes of this Directive “firearms” means [...] any essential component (*Annex IB*). Member States shall ensure either that any firearm or part placed on the market has been marked and registered in compliance with this Directive, or it has been deactivated (*art. 4.1*).

⁴ “Member States may adopt in their legislation provisions which are more stringent than those provided for in this Directive, subject to the rights conferred on residents of the Member States by Article 12(2)”. (Art 3 of the Firearms Directive).

the lack of clarity of the Directive in the definition of a broker, the convertibility criteria for alarm weapons and the criteria to define an antique weapon, left room for national interpretations and in some cases led to security problems (e.g. trade in parts and components, conversion of alarm weapons).

Inconsistencies have also been identified in the implementation of the Directive's provisions. The firearms categories, the main tool introduced by the Directive to achieve harmonisation, are illustrative in this regard as they have generated different interpretations. Member States have the flexibility to create sub-divisions and the discretion to draw stricter boundaries in national legislation. Thus they, for instance, refer to categories to identify the different types of firearms independently from the specific regulatory regime to be applied (i.e. prohibited, under authorization, under declaration, not subject to requirements). Furthermore, there are cases of Member States implementing the four categories of the Directive while adopting more stringent rules than the ones included in the Directive. Member States have also adopted different approaches to categorising weapons that are normally outside the scope of the Directive - alarm weapons and deactivated firearms – considered in some cases as subject to the same rules as firearms. These differences have generated information costs for Member State competent authorities and economic operators to collect information on regulation in use in different countries.

As regards marking, despite the fact that most Member States follow the common information requirements established by the Directive, there are differences in marking standards adopted at national level. Member States still mark a different number and different types of firearms parts, and they use different marking techniques and procedures. These differences hinder the tracing capacities of law enforcement authorities.

Another area of differentiation is deactivation. Without common technical guidelines provided by the EC (as foreseen in Directive – Annex I), Member States have all implemented their specific deactivation procedures, which differ in terms of techniques and in terms of the national definition of essential components. Differences in deactivation standards allow the circulation of deactivated firearms with different levels of security and they facilitate the illegal trade in firearms parts.

Effectiveness

Overall the Firearms Directive has positively contributed to the functioning of the internal market supporting the cross border movement of firearms and maintaining high levels of security. Nonetheless its potential contribution could be further improved.

As for internal market objectives, the introduction of categories and related regulatory regimes prevented the potential market distortion linked to the abolition of internal controls. Nonetheless, different interpretations at national level have limited the magnitude of the expected benefits of EU intervention. Economic operators (producers – especially SMEs, dealers and brokers) incur information costs to understand rules and procedures in force in other MS, and this makes trade among Member States time-consuming and more costly. Such information costs may be counterbalanced by the advantages of the information sharing requirements foreseen by the Directive. However, to date, information sharing among Member States is still not fully operational, and information on national implementing regulations are not always accessible, with a resulting negative impact in terms of both effectiveness and efficiency.

National approaches to categories have also impacted the other major tool introduced by the Directive - the European Firearms Pass. Obstacles to the free movement of marksmen have originated from the fact that firearms commonly used for sport shooting may be forbidden in some Member States (e.g. parabolium 9 mm in Italy). Nonetheless, these are limited cases and the European Firearms Pass proved to be an effective measure, strongly contributing to simplification of procedures for the transfer of hunting and sport shooting firearms across Member States.

As regards the security objective, the level of security and protection against criminal acts and illicit trafficking has been improved with the introduction of additional tracing requirements for Member States competent authorities (i.e., establishment of the computerised data-filing system in which all firearms subject to the Directive shall be recorded) and for dealers (i.e., the maintenance of a register of all firearms transactions). The comprehensiveness and accuracy of information on firearms and firearms owners available to law enforcement has improved remarkably and is expected to further increase once all the national computerised data systems are fully operational and, ideally, integrated. The introduction of marking requirements has also positively contributed to the same objective of improving the tracing of firearms as Member States appear to mark the same information on firearms, strengthening law enforcement capacities in solving cross-border criminal offences involving civilian firearms.

Nonetheless, the type and number of parts on which the mark should be affixed differ across EU. The differences arise, on the one hand, from the failure of some EU Member States to treat essential components as firearms, and on the other hand, from the exemption of essential components in the marking obligations of the Directive. Moreover the inconsistencies between the United Nations Firearms Protocol which has a more inclusive definition of essential components and the EU Firearms Directive have created further differences in national marking approaches. This is the source of cases of illicit trade of firearms parts and reactivation of deactivated firearms. Although there is limited evidence of such cases, re-activation of deactivated firearms represents a security concern for police forces throughout the EU. The EU is indeed under the current legal framework unprepared to address the potential risks of reactivation as common technical guidelines are still under preparation (as requested in the Firearms Directive) and deactivated firearms with different levels of security circulate in the EU.

Another area for improvement relates to alarm weapons. In this regard, the existing differences in the classification of this type of weapons together with cases of criminal offences committed with alarm weapons converted into firearms shooting live ammunition point to the need for a revision of the approach of the Directive to alarm weapons. Alarm and signal weapons are currently excluded from the definition of firearms in the Firearms Directive "provided that they can be used for the stated purpose only" and that they cannot be converted to fire live ammunition. However, whether or not a weapon can be converted to fire a live round is currently determined by national authorities, and there are no common technical guidelines related to convertibility. As a consequence, there are Member States where these weapons can be bought with no license or declaration and others where they are considered as firearms and subject to the same rules.

Finally, it is worth mentioning that the analysis of achievements in terms of security was limited by the current lack of a comprehensive information base including specific and detailed data on criminal offences committed with legally owned firearms, converted alarm weapons, or reactivated firearms in EU Member States.

This is one of the major obstacles preventing policy makers from designing evidence-based policies dealing with civilian firearms.

Efficiency

The overall results of the Directive have been achieved at reasonable costs. The Firearms Directive does not prescribe any major infrastructure investment (except for the creation of a computerised data-filing system). Costs related to the implementation of different provisions serve various objectives and are distributed fairly among interested stakeholders.

Costs and burdens linked to the Directive are considered affordable and proportionate to the objectives by the interested parties. The administrative burden and costs perceived by stakeholders (i.e. national competent authorities, economic operators and users) are more linked to the different and sometimes inefficient administrative procedures implementing the Directive at national level rather than to the Directive itself. A reduction of these costs would be seen as an improvement.

Added value of EU intervention

Even though some implementation differences still persist across Member States hindering the achievement of optimal results, the added value of EU intervention in the firearms sector is undeniable.

Through the establishment of common minimum requirements for the acquisition, possession and transfer of firearms, the Directive laid down the basis for the internal market for civilian firearms, limited the “fears” that economic operators might have considering the abolition of internal borders, and minimised the risks of market bottlenecks. Moreover common rules included in the Directive (e.g. minimum age, a demonstrated good reason to own a firearm) also granted minimum security thresholds to all EU citizens, preventing Member States from adopting less stringent regulations.

In a Europe without borders, and in view of future enlargement to countries with significantly different firearms culture and regulations, the identification of common minimum operating rules for this sector has been the starting point for the creation of a level playing field. Furthermore, regulation at EU level has also contributed to the creation of an EU identity for all producers, dealers or brokers operating within the sector that currently share common requirements and standards.

Recommendations

Based on the evaluation results and identified areas for improvement, the following Table shows a synthetic overview of the study recommendations. They are presented in relation to the problems and gaps they are meant to address with responsible stakeholders and the associated level of priority (L= Low, M= Medium, H= High). This latter has been defined according to 3 criteria: i) the impact on the two specific objectives of the Directive - cross-border movement of firearms and maintenance of high level of security for EU citizens; ii) the feasibility taking into account political acceptability, difficulties/risks for implementation and costs of change/implementation; iii) the intensity of the problem according to stakeholders as expressed during interviews and through the survey.

Table 1 - Overview of the recommendations

RECOMMENDATION	IDENTIFIED PROBLEMS, GAPS AND ISSUES	RESPONSIBLE STAKEHOLDERS	PRIORITY	Impact on specific objectives	Feasibility	Relevance for stakeholders ⁵
1. Enhance transparency and accessibility of national rules implementing the Directive (<i>Non legislative</i>)	<ul style="list-style-type: none"> Information costs for economic operators and MS authorities originating in differences in implementation of the Directive's provisions among MS; Burden resulting from the diversity of administrative procedures adopted to implement the Directive's requirements for each category. 	EC and representatives of MS competent authorities implementing the relevant laws.	H	H	H	H (MS, I, U)
2. Examine interoperability between the information systems created at national level (<i>Non legislative</i>)	<ul style="list-style-type: none"> Lack of information on the structure of content included in national data filing systems and the possibility to be interconnected. 	EC and national experts from each MS selected among: <ul style="list-style-type: none"> Police/forensic authorities; Experts on firearms; 	H	H	H	L (MS)
3. Define an agreed approach to the classification of hunting and sporting firearms and clarify the rules of the EFP (<i>Non legislative</i>)	<ul style="list-style-type: none"> Different classification of hunting and sporting firearms across MS creating obstacles to the movement of hunters and sport shooters; Restrictive interpretation of some rules related to the use of the EFP (i.e. number of firearms that can be registered on the Pass, request for only an invitation to a competition as a proof of hunting and sporting activities) 	EC, MS competent authorities, hunting and sporting associations, hunting and sporting producers	M	M	M	L (U)
4. Conduct in-depth analysis on key issues (<i>Non legislative</i>)	<ul style="list-style-type: none"> The progressive alignment of MS towards common and more detailed firearms' ownership requirements than the ones indicated in the Directive suggest a possible revision of criteria included in 	EC	M	H	L	L (MS)

⁵ Please consider that "MS" stands for National competent authorities, "I" stand for Industry representatives – including SMEs, and "U" stands for Users' representatives.

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	<p>the Directive;</p> <ul style="list-style-type: none"> • Current differences in the interpretation of the term “broker” may suggest the risk that the activity of brokers is not properly regulated and may create serious vulnerabilities; • The public availability of information on how to convert semi-automatic weapons in automatic weapons may suggest that these firearms may be more dangerous than other category B firearms. 					
5. Define common criteria on convertibility of alarm weapons (<i>Legislative</i>)	<ul style="list-style-type: none"> • Converted alarm weapons have been used in several crimes and are a matter of concern for a number of EU MS; • Uncertainty for law enforcement activities, since the weapons defined as “alarm weapons” can be regulated in different manners across MS; • High number of Turkish alarm weapons entering the EU, which appear to be more easily convertible than the ones produced in the EU. • Legal uncertainty and lack of clarity for economic operators as to which rules apply to alarm weapons; • Burden/obstacles linked to the different national requirements 	<p>EC and national experts from each MS selected among:</p> <ul style="list-style-type: none"> • Police/forensic authorities; • Experts on firearms; • Representatives of producers. 	M	M	M	M (MS, I)
6. Harmonise rules on marking (<i>Legislative</i>)	<ul style="list-style-type: none"> • Limited traceability of firearms across borders and law enforcement capacity: MS apply different marking and registration requirements; • Risk of alteration and erasing of the marks 	<p>EC, Proof Houses/MS authorities responsible for marking in different</p>	M	M	M	M (MS, I)

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	<ul style="list-style-type: none"> Potential issues in terms of traceability of essential components: given the absence of a common definition of essential components, some parts can circulate with no marking and be used in another MS to build or reactivate a firearm. 	MS, representatives of producers.				
7. Harmonise standards and rules on deactivation (<i>Legislative</i>)	<ul style="list-style-type: none"> Potential reactivation of deactivated firearms for criminal offences; Circulation of deactivated firearms with different levels of security (depending on the security of the deactivation procedures applied or on the appropriateness of controls performed by competent authorities); Trade in firearms parts that have not been permanently deactivated and can be used to build or reactivate a firearm; 	EC, MS representatives and firearms experts	M	L	M	M (MS, U)
8. Strengthen the knowledge on new technologies (<i>Non legislative</i>)	<ul style="list-style-type: none"> Errors occurred in the data entry in the national filing system and reported cases of erased marks; Increased use of the internet as a sale channel and difficulties for law enforcement authorities' control; Lack of clarity on the advantages/threats linked to new technologies (e.g., 3D printing techniques) to manufacture or trace firearms. 	EC, MS authorities, EU Institutions and Agencies (e.g., Europol) and relevant third parties (e.g., UN offices, experts from research institutes)	M	M	H	M (MS, I)
9. Strengthen data collection (<i>Non legislative</i>)	<p>Poor quality of available data in relation to:</p> <ul style="list-style-type: none"> The civil firearms market structure (i.e., production, import and export of civilian firearms, employees and turnover of companies) 	EC, national statistical offices, Police departments responsible for the	M	H	H	L (MS, I)

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	<p>operating in the sector);</p> <ul style="list-style-type: none"> • Criminal offences related to civilian firearms: • Figures on the market and criminal offences related to alarm weapons and deactivated firearms circulating in EU. 	<p>archiving of information on criminal offences, MS departments responsible for managing the computerised data filing system</p>				