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LEGAL FIREARMS AND POSSIBLE REOPENING OF DIRECTIVE 91/477/EEC

INTRODUCTION

FACE represents 7 million hunters: the vast majority of the law-abiding and responsible citizens that use legal firearms in the EU and who are affected by Directive 91/477/EEC, as amended by Directive 2008/51/EC, on the control of the acquisition and possession of weapons.

FACE supports an adequate control of firearms and does not oppose justified and proportionate restrictions on their acquisition and possession. It also seeks to participate in a constructive and non-ideological manner to the EU debate on civilian firearms.

FACE is generally satisfied with the text and functioning of the Directive, leaving aside minor internal market problems that relate only to its implementation. In any case; these do not warrant an amendment of its current text.

However, FACE is concerned about a number of recent developments that seem to indicate that the European Commission has already taken a decision to re-open the text of the Directive by 2015, apparently to render it more restrictive, with the general unsubstantiated argument that there is strong link between legal firearms and illicit trafficking in firearms¹.

LEGAL FIREARMS ARE NOT THE PROBLEM

FACE disagrees with the Commission's allegation about the link between legal and illegal firearms; as well as the specific arguments invoked to establish this link:

- **“Firearms are stolen from their legal owners due to the lack of common rules on home storage”**

FACE is not aware of the existence of a major problem in this domain and its cross-border implications.

¹ “*Legally owned weapons in the EU continue to feed the illegal market*” (speech by Commissioner Malmström at the Conference “Fight against illicit trafficking in firearms. Where do we stand”, 19 November 2012, and speech by DG HOME at the EP CRIM Hearing of 23 April 2013); “*Most illicit trafficking originates in lawful activity, as firearms which are legally registered, held and traded get diverted into criminal markets or to unauthorised individuals*” (Questions and Answers: the UN Firearms Protocol and the EU, Commission’s MEMO/13/271, 22 March 2013); “*Guns and similar weapons are usually produced legally, but can remain effective for decades and may be used for criminal ends with horrific consequences (...)*” (Commission’s consultation on a common approach to reducing the harm caused by criminal use of firearms in the EU, March 2013). The Commission has also announced the publication of Communication on the criminal use of firearms by Autumn 2013.



If the Commission believes that this is in fact the case, it should in particular provide data, probably available in many Member States, to sustain such an allegation².

FACE believes that accurate research would show that most firearms seized from criminals come from post-conflict areas and illegal sources.

Finally, many Member States already have effective rules on home storage of firearms and the Directive does not prevent them in any way from adopting these rules.

- **“Reactivation of firearms deactivated in other Member States due to the lack of common standards on deactivation”**

The Directive already requires that deactivated firearms be “*rendered permanently unfit for use*”³. If the Commission considers that the standards in some Member States do not fulfil this requirement, it should start legal actions.

Furthermore, the Directive imposes upon the Commission the obligation to issue Common Guidelines on deactivation, which the Commission has failed to do. The Commission should issue such Guidelines (maybe informed by those prepared by the Permanent International Commission for Firearms Testing - CIP) before considering any further options.

- **“Unauthorised use of firearms due to the lack of an obligation to incorporate locking devices in them”**

As with the other claims listed, the Commission has failed to provide data about the extent of the unauthorised use of legal firearms.

In addition, the mandatory incorporation of locking devices in the firearm mechanism would be disproportionate: there are far less burdensome alternatives, such as keeping firearms and ammunition separately. This unnecessary measure would have very negative economic implications for the industry and ultimately legal users.

² The Commission has recently indicated in reply to parliamentary question E-006539-13 that as of 1 January 2013 there are 421 194 entries of firearms in the Second Generation Schengen Information System (SIS II). SIS II covers firearms that have been reported stolen or lost, or are searched for as evidence in criminal proceedings. The Commission, however, should clarify the period of time which this figure covers (for instance, does it cover all firearms lost or stolen across the EU as from 1995 or earlier?) and the origin of these firearms (law enforcement, military, dealers, legal users, etc.). The Commission should provide the context too: the total number of legal firearms in the EU (virtually all firearms require registration so Member States should already have this data, even before their obligation pursuant to Article 4(4) of the Directive to establish a computerised data-filing system) and an estimation of the number of illegal firearms in the EU. Relying on the broadest available figure to justify a very specific measure (such as the introduction of EU standards on home storage of firearms) is completely unwarranted. It runs against good law-making and does not demonstrate the suitability of that measure to attain the pursued objective. The Commission should not rely on isolated figures that can be easily misinterpreted or misused but instead on comprehensive data, subject to a peer review, about the situation in the different Member States.

³ See Article 4(1) and Annex I.III. Similarly, possible problems with blank-firing/alarm “pistols” being illegally converted to shoot live ammunition can already be addressed with the current text of the Directive, which clearly requires that an object that “*has the appearance of a firearm and as a result of its construction or the material from which it is made can be (...) converted to expel a shot, bullet or projectile by the action of a combustible propellant*” falls within the definition of a firearm and shall be treated accordingly (see Article 1 and Annex I.III).



- **“Criminal use of certain firearms due to the low standard of control on their acquisition and possession”**

The Directive already lays down an adequate and robust level of control, even for the ‘lower’ categories of firearms: C and D. Categories C and D only include firearms that are difficult to conceal, have slow firepower and are mainly used for hunting and sporting activities but very seldom for criminal activities.

The Directive requires as a minimum that Category C and D firearms are registered and “*linked to their owner at any moment*” and that Member States ensure that those owners have been “*specifically permitted to acquire and possess such firearms in accordance with national law*” and “*are not likely to be a danger to themselves, to public order or to public safety*”⁴. Firearms in categories C and D are thus already subject to strict controls.

The declaration regime just described (as opposed to the compulsory authorisation regime for category B firearms) merely constitutes a simplified administrative procedure which in practice requires a valid hunting or sport-shooting licence to be able to benefit from it.

THE DIRECTIVE WORKS SATISFACTORILY AND REFLECTS A BROAD POLITICAL AGREEMENT

- 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. It has never been the intention of the Directive to fully harmonise national legislations on firearms and a shift in that direction would impinge unnecessarily on the principles of subsidiarity and proportionality.
- Contrary to many other legal texts that have remained unchanged for decades, the Directive was already thoroughly amended in 2008. The Directive reflects a broad political agreement, illustrated by the adoption of the 2008 amendment by an overwhelming majority in the European Parliament (588 votes in favour, 14 against) and in the EU Council (all Member States – except one – were in favour). Furthermore, the introduction of unjustified restrictions will only result in the disaffection of many citizens towards the EU institutions⁵.

⁴ See Articles 4(5), 4a and 5. The issue of the classification of firearms under the Directive was the object of a specific Report of the Commission in 2012, which concluded that “*there would be no clear benefit in a compulsory restriction of the classification at EU level to only two firearms categories*” (paragraph 9.5). <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0415:FIN:EN:PDF>

⁵ It is worth noting that FACE’s reasoned application to join the Firearms Expert Group recently set up by the Commission Decision of 11 April 2013 to tackle illicit trafficking in firearms was turned down without any explanation. This, despite the strong link that according to DG HOME and Commissioner Malmström exists between legal firearms (of which FACE has considerable and demonstrable expertise) and this trafficking. Furthermore, DG HOME seems to be unsatisfied with the 80 000 replies to its recent public consultation on firearms, since most of them stated that there is no need for further EU action on legal firearms. In view of these replies, DG HOME has argued that the consultation was not “representative of a cross-section of the general public” and was not “scientifically based” so a Euro-barometer survey will be launched. FACE questions whether DG HOME, which could have thought



- Before tabling new legislation, the Commission should provide evidence that it is needed, proportionate and suitable to attain the pursued objectives. FACE considers that the Commission has failed to substantiate this evidence. The Commission has also failed to substantiate its alleged link between legal firearms on the one hand and illicit trafficking and criminal use on the other hand. The Commission's initiatives seem to reflect an ideological bias instead of fact-based conclusion.

CONCLUSIONS

It is erroneous to believe that by increasingly restricting legal trade in and use of hunting and sporting firearms (regulated by the Directive), illegal trafficking in firearms will be reduced. Such restrictions would however impose unjustified and disproportionate restrictions on legal users, while diverting public resources from the important issues, such as tackling trafficking in firearms coming from post-conflict areas.

Instead of seeking the amendment of the Directive, the Commission should ensure the correct implementation and enforcement of its *current* provisions (for instance on deactivation) in order to minimise any possible loophole.

The Commission should also consider using other legislative instruments for tackling the problems of illicit trafficking in and criminal use of firearms. For instance: addressing smuggling of firearms into the EU, imposing more severe criminal sanctions, improving communication among national authorities, etc.

Finally, the Commission should follow due process and take decisions after a proper assessment of the situation and on the basis of facts and data.

FACE reiterates its eagerness to engage constructively in an open debate on legal civilian firearms.

****END****

of such shortcomings when the consultation was designed, would have reached the same conclusion if the replies had called for further EU action on legal firearms.



WHAT IS FACE?

- FACE is the European Federation for Hunting and Conservation.
- Established in 1977, it represents the interests of Europe's 7 million hunters as an international non-profit-making non-governmental organisation (INGO).
- This makes FACE the largest democratically representative body for hunters in the world and is probably one of the largest European civil society organisations.
- FACE is made up of its Members: national hunters' associations from 36 European countries including the EU-28. FACE also has 4 Associate Members and has its Secretariat in Brussels.
- FACE represents the largest group of legal firearms users in the EU. FACE and its Members seek to ensure that hunters can acquire, possess, use and travel with firearms and ammunition safely and without unjustified bureaucracy, costs or restrictions.
- FACE has provided objective information to EU policy-makers since the establishment of the EU Firearms Directive in 1991 and continues to provide expert advice to both its Members and EU policy-makers on EU firearms issues.
- FACE is fully signed up to the EU Transparency Register:
<http://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=75899541198-85&locale=en#en>

FOR FURTHER INFORMATION

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