



REVISION OF THE FIREARMS DIRECTIVE (91/477/EEC)

Comments by FACE to the Commission's Proposal of 18 November 2015

30 November 2015

In its proposal, the European Commission recommends restrictions to the lawful possession of firearms which not only impose unnecessary and burdensome limitations on hunters and sports shooters, but also directly infringe on their fundamental rights of property and to equal treatment. FACE objects to the adoption of such measures in view of the lack of evidence needed to justify the objective envisioned by the Commission: to tackle illicit trafficking and to prevent future terrorist attacks.

On the contrary, the background material for the Commission proposal concludes: “**Most illicit firearms originate from cross-border trafficking, often from outside the EU.** Since the early 1990s, the firearms illicitly trafficked have originated from three main sources that have replaced each other: first of all the former Soviet Union and Warsaw Pact bloc were a source of illicit firearms due to the fall of the iron curtain; then, during the wars of Yugoslav succession, the Western Balkans became an important source of illicit firearms; and more recently, North Africa has superseded the former, with a pool of weapons available and following some of the main drug trafficking routes into the EU. According to Europol, the amount of heavy firearms and Small Arms and Light Weapons (SALW) in circulation in the EU seems to satisfy much of the demand at present and suppliers in south-eastern Europe have the capacity to meet any rise in demand in the foreseeable future.”¹

FACE is of the overall opinion that the Firearms Directive is **not** the appropriate legal instrument to combat terrorism and illicit firearms trafficking, as it covers **legal** acquisition and ownership. More restrictions on law-abiding citizens will have no impact whatsoever on the thriving black market of firearms and the prevention of terrorism. A more stringent framework would, however, deeply impact legal users – one of the most law-abiding and controlled group in the EU. FACE deeply regrets that by

¹ Center for Strategy and Evaluation Services, Study to Support an Impact Assessment on Options for Combatting Illicit Firearms Trafficking in the European Union, Final Report of 14 July 2014, referred to in the Commission Proposal on p. 5, footnote 12.



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proposing these restrictions, the European Commission implies that legal ownership of civilian firearms is somehow linked to terrorism and radicalisation.

FACE fully supports adequate control of firearms, including justified and proportionate restrictions to their acquisition and possession that ensure their safe use, transportation and traceability throughout the European Union. Directive [91/477/EEC](#) on control of the acquisition and possession of firearms provides for an appropriate legal framework in this respect.

The Firearms Directive lays down clear and accumulative requirements to the traceability (by means of irrevocable marking and registration) of firearms, to persons that wish to carry a firearm and to firearms dealers and brokers. In addition, it establishes the framework for the exercise of control by the EU Member States. The Firearms Directive was recently (2008)² reviewed, with broad political support, in order to streamline its provisions with the United Nations Protocol on the illicit manufacturing of and trafficking in firearms, their parts, components and ammunition. The Directive is now fully in line with the UN Protocol.

The current threat of terrorist attacks on EU citizens has highlighted the existence of an EU market for illegal military assault weapons. FACE Members, who are as concerned about these developments as other European citizens, understand and subscribe to the need to strengthen EU action to fight terrorism and to counter illicit firearms trafficking from outside the EU borders and within the territory of the Union, with effective control instruments.

FACE therefore supports the Commission's initiatives aimed at reinforcing the current framework by means of standardised methods for deactivation, common rules on marking (of firearms manufactured in the EU and on imported firearms) and improved traceability of firearms through computerised filing systems. These measures are beneficial to the well-functioning of the internal market and to the safety of EU citizens, while they respect the rights of legal users of firearms.

FACE also welcomes the introduction of a system of sharing information between Member States on the refusal of firearms authorisations and on authorisations granted for transfers of firearms to another

² By Directive [2008/51/EC](#)



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Member State. Such initiatives can strengthen the capacity of Member States to enforce the Firearms Directive while preventing criminal activities.

FACE however strongly opposes to the proposed unjustified and disproportionate restrictions to the acquisition, possession and use of legally owned firearms by hunters and sport shooters.

Hunters make up a large group of citizens that use civilian firearms for purposes that enjoy recognition at EU level as legitimate and sustainable forms of use with significant social, cultural, economic and environmental benefits throughout Europe.³ Therefore, the Firearms Directive explicitly recognises the need for flexibility and less burdensome administrative procedures in regard of hunters, which should be maintained⁴. FACE holds that the Commission's proposal threatens the rights and freedoms of hunters in several respects, which is all the more serious in view of the Commission's decision not to conduct an impact assessment of the proposed changes.

Hunters predominantly use the lighter categories of firearms (C and D in Annex I) which, by their very nature, are of little interest to persons with criminal intention because of their low rate of fire and considerable length, which makes them difficult to conceal. Category C or D firearms must always be declared to the authorities in accordance with national law. Category B firearms are subject to a more stringent national authorisation procedure.

Prohibition for citizens to use means of distance communication

The Commission furthermore proposes to restrict the selling and buying of firearms by means of distance communication⁵ to dealers and brokers based on its assumption that it may be difficult to control the use of internet as a sales channel "for the future".⁶ Accordingly, transactions between private parties of any type of used hunting and sports firearm will be prohibited and consumers will be forced to engage a dealer or a broker at all times. Such ban is unnecessary and disproportionate

³ See the European Commission's website on sustainable hunting initiative:

http://ec.europa.eu/environment/nature/conservation/wildbirds/hunting/index_en.htm

⁴ Recital 7 to the Preamble to Directive 91/477/EEC; Recital 14 to the Preamble of Directive 2008/51/EC.

⁵ As defined in Article 2 of Directive [97/7/EC](#) on the protection of consumers in respect of distance contracts

⁶ Explanatory Memorandum to the Commission proposal, p. 9.



Nowadays, private legal users of firearms commonly trade used firearms by means of placing small advertisements in hunting magazines or on the internet. The Directive fully covers these practices in that the purchaser at all times must comply with the law and is obliged to register any purchased firearm in accordance with national legislation. There is no evidence that the current system is not working and that the private sale of used hunting and sports firearms in any way should result in illicit trafficking, as it has been suggested.⁷ A total ban would obstruct the internal market disproportionately. Moreover, such measure would discriminate against law-abiding users of firearms, with a particularly negative effect on people living in remote areas, who are highly dependent on the use of media such as the Internet.

Additionally it is obvious that this provision would not have prevented terrorist attacks.

Prohibition of category B7 firearms

The Commission proposes to move the vaguely defined “semi-automatic firearms for civilian use which *resemble* weapons with automatic mechanisms”, currently falling under category B7, to category A. This change would result in a sudden and immediate ban of a whole sub-category of firearms, which have been obtained and registered in full compliance with the legal requirements for possession, including a thorough authorisation procedure.

FACE objects to such a ban, as well as the introduction of the new category of prohibited firearms A6, as these categories are based on unclear criteria, while their prohibition is disproportionate and not technically justified.

Distance communication – what is it?

Article 2 of [Directive 97/7/EEC](#) on the protection of consumers in respect of distance contracts defines “means of distance communication” as **all means of communication between people that do not require a simultaneous physical presence**, including but not limited to (ex Annex I to Directive 97/7/EEC):

- Unaddressed printed matter
- Addressed printed matter
- Standard letter
- Telephone with human intervention
- Videophone (telephone with screen)
- Videotex (microcomputer and television screen) with keyboard or touch screen
- Electronic mail
- Facsimile machine (fax)

A prohibition of the use of means of distance communication between private persons effectively implies that owners discussing about the sale of their firearm by e-mail, on the phone or advertising in specialised magazines or on websites would not comply with the proposal, in other words they would be committing a crime, which is likely to fall under anti-terrorism measures.

⁷ Commission Communication to the European Parliament and to the Council of 21 October 2013 on Firearms and the Internal Security of the EU: protecting citizens and disrupting illegal trafficking, COM (2013) 716 final, p. 4-5.



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Category B7 firearms possess the same technical specifications as any other category B firearm. They are therefore not “more dangerous”, which is the logic and technical rationale for firearms categorisation. To justify a total ban of a certain category of firearms solely based on the unclear and subjective criterion of their “resemblance” with automatic weapons is not only disproportionate but also leads to legal uncertainty and the unequal treatment of citizens.

Finally, the consequential confiscations and destruction of the firearms in question (at least 100.000 in Sweden and Finland⁸ alone, depending on the interpretation of the criterion of resemblance) constitutes an unjustified infringement of the fundamental right of property of legal owners, which will cause considerable damages.

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Obligatory periodicity (proposed Article 7(4))

The Commission proposal limits the multi-annual license for the possession of a category B firearm to a maximum of 5 years, after which the owner must renew his or her license⁹. This measure means a radical breach with the current framework where Member States decide upon the periodicity of authorisations based on subsidiarity. The Commission does not provide a justification for this restriction, which is unnecessarily bureaucratic, burdensome and costly for hunters, as well as for licence issuing authorities. The current legal framework provides for an adequate system of control and for the possibility for Member States to “withdraw authorisations for possession of a firearm if any of the conditions on the basis of which it was granted are no longer satisfied”¹⁰.

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Standard medical checks (proposed Article 5(2))

FACE disapproves of the proposed introduction of medical checks for issuing or renewing category B firearms authorisations. It is highly doubtful that medical checks will prevent criminals from obtaining firearms from illegal sources. In countries such as Germany and the United Kingdom, which do not

⁸ In Finland, members of the reserve military forces typically own firearms that are at risk of being placed under the definition of firearms that “resemble” automatic firearms

⁹ Article 7 of the proposal.

¹⁰ Article 5(b), last sub-paragraph of the Directive



foresee medical checks, there is no evidence of increased risk of individuals with criminal intentions acquiring a firearm. In addition, by imposing such standards the EU would obstruct the competence of the Member States and lead to bureaucratic and costly procedures, without any benefit.

Additionally it is obvious that this provision would not have prevented terrorist attacks.

European Firearms Pass

FACE welcomes proposals that provide authorities with appropriate tools to restrict the circulation of illegal firearms and improve border controls. However, the European Commission must ensure the full implementation of the European Firearms Pass across the EU, guaranteeing the right of free movement of citizens. The European Firearms Pass, issued by the authorities of an EU Member State to persons lawfully acquiring and using a firearm, is the instrument that validly and efficiently allows the tracing of a legal firearm to its owner while travelling in the European Union.

Additionally it is obvious that this provision would not have prevented terrorist attacks.

Silencers (proposed Article 1(b))

The Commission proposes to change the classification of silencers (sound moderators) from “parts” to “essential components” of a firearm¹¹. This is technically erroneous, since silencers (sound moderators) do not affect the functionality of firearms but serve to protect the hearing of hunters and sport shooters (and their dogs).

FACE objects to the Commission proposal, as a result of which sound moderators would require an authorisation or declaration on the same basis as the firearm to which they are mounted. Moreover, silencers would need to be deactivated together with the firearm to which they are mounted, so that they can no longer be separately used for different firearms.

What do sound moderators do?

Sound moderators do not eliminate the sound of a gun-shot but merely reduce its peak (harmful) noise by 15-30dB. Large calibre rifles for hunting, such as .308, have a sound level of 135-160dB which is reduced by 15-30dB with a moderator, in level with a noise which will not pose a severe danger to hearing. Some field tests on sound attenuation in moderated rifles suggest a reduction of around 75% in terms of decibel output received by the shooter. NB: dB is a logarithmic scale with 1 dB meaning a 100% difference in sound effect. A difference of 30 dB means that the sound effect is multiplied by a factor 1000.

¹¹ Number 1(a) of the Commission proposal.



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Silencers are legalised in a growing number of EU Member States (Denmark, Finland, Germany, Ireland, Latvia, Sweden, United Kingdom) due to their proven benefits on users' hearing and reduced environmental noise disturbance in the countryside and on shooting grounds.

Additionally it is obvious that this provision would not have prevented terrorist attacks.

Exception for young hunters (proposed Article 5(1) (a))

The Commission further proposes to amend the current exception for firearms acquisition of younger hunters and sport shooters by deleting the word “acquisition”, so that persons younger than 18 years of age would no longer be able to obtain firearms in person.¹² The Commission does not provide any reasons for this proposed amendment, which remains unmotivated, unjustified and disproportionate.

FACE objects to the exclusion of young hunters from firearms acquisition, which appears to be an attempt from the Commission to quietly phase out ownership among this age group. Ownership is a prerequisite for the use of firearms by many young hunters, because ownership is linked to other legal requirements, such as storage.

The current legal framework already prohibits young persons from purchasing firearms. They can therefore only possess firearms if they are given to them by their parents or if they inherit them. Possession requires parental permission and guided supervision. There is no reason to change the current stringent framework. The proposed change of the rules will have a serious impact not only on young hunters, but also on schools that teach young persons about hunting and wildlife.

Additionally it is obvious that this provision would not have prevented terrorist attacks.

¹² Number 6 of the Commission proposal.



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FACE is the European Federation of Associations for Hunting and Conservation. Established in 1977, FACE represents the interests of Europe's 7 million hunters as an international non-profitmaking non-governmental organisation. FACE represents national hunters' associations from 35 European countries including the EU-28. FACE is supported by 7 associate members and is based in Brussels. FACE is the largest democratically representative body for hunters in the world.

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Identification number in the EU Transparency register: 75899541198-85.