



Council of the
European Union

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NOTE

From:	Presidency
To:	Permanent Representatives Committee/Council
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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

Background

1. Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons¹ established an accompanying measure for the internal market. It aimed at creating a balance between, on the one hand, a certain freedom of movement for some firearms within the Union, and on the other hand, the need to control this freedom by security guarantees suited to this type of product. However, in view of the recent terrorist acts, certain issues in Directive 91/477/EEC need further improvement.
2. The Council had called for the revision of that Directive, in both its conclusions of 15 June 2015 on the Renewed European Union Internal Security Strategy 2015-2020 and its conclusions of 8 October 2015 with a view to stepping up measures against trafficking in firearms.

¹ Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons (OJ L 256, 13.9.1991, p. 51).

3. On 18 November 2015, the Commission submitted a proposal for a Directive of the European Parliament and of the Council amending Council Directive 91/477/EEC.² The amendments tackling risks for public safety and security focus on:
 - improved control of the traffic of firearms,
 - enhanced traceability of firearms,
 - the measures on deactivation and reactivation or conversion of firearms,
 - stricter rules for the acquisition and possession of firearms,
 - ban for civilian use of the most dangerous firearms
 - improving the relevant information exchange between Member States.
4. In the light of the Council Conclusions of 20 November 2015 and subsequent to the first round of discussion on the proposed amendments at the GENVAL Working Party on 26 November and 18 December 2015 as well as on 25 January 2016, the Presidency revised the text of the proposal, taking into account as much as possible the various concerns raised by delegations.

The GENVAL Working Party discussed the revised text at its meeting of 8 February 2016. It became clear that both the scope of the amended Directive and its key concepts require further fine-tuning. The discussion should also be continued on the proposed re-categorisation of firearms and on how to avoid overregulation as to market restrictions.

5. **The Presidency noted, in particular, broad consensus concerning the suggestion that salute and acoustic weapons, which were used at the Paris attacks, stay in the category in which they would fall according to how they were originally built.**
6. With a view to reaching a general approach on the proposed amendments of the Firearms Directive by June 2016, the Presidency intends to seek political guidance from the Council to the Working Party on the five issues set out below.
 - A. **Minimum age for the possession of firearms**
7. According to the current Directive (Art. 5(1)(a)), Member States shall authorise the acquisition, other than through purchase, and possession of firearms only to persons who are at least 18 years of age. However, by way of exception, an authorisation may

² 14422/15 GENVAL 60 JAI 903 MI 742 COMPET 533 COMIX 612 CODEC 1557

be granted for hunting and/or target shooting to persons of less than 18 years of age in three alternative cases:

- they have parental permission, or
- they are under parental guidance or the guidance of another adult with a valid firearms or hunting license; or
- they are within a licenced or otherwise approved training centre.

8. The Commission amendment to the Directive seeks to limit this exception to the sole possession of firearms and thereby excludes the acquisition of firearms, even by gift or inheritance, by minors. The exception was opposed by some Member States as too limited. Other Member States opined that the exception should be restricted to minors of a certain age (e.g. as from 15 years), whereas others thought this should be left to national legislation.

9. In view of the above, Member States are invited to state (...) whether **they prefer** :
- a) *that the rule in the current Directive which permits the acquisition, other than through purchase, and possession of firearms by persons of less than 18 years, should be maintained; or*
 - b) *that the exception for minors set out in the current Directive should be confined to the sole possession of weapons (...); or*
 - c) *that the exception for minors set out in the current Directive should be further circumscribed by setting a minimum age for the possession of firearms.*

B. Medical tests for the authorisation to acquire and to possess firearms

10. Article 5(2) of the current Directive allows for Member States having the possibility to withdraw an authorisation for possession of a firearm if any of the conditions on the basis of which it was granted are no longer satisfied. The current Directive does not provide any criteria on which Member States should grant or withdraw such an authorisation (which is necessarily restricted to category B firearms, the only category for which an authorisation is required under the Directive).
11. Article 5(2) of the Directive as amended by the Commission would oblige Member States:
- to provide for standard medical tests for issuing or renewing the authorisation for the acquisition as well as for the possession of firearms; and
 - to withdraw such authorisation if any of the conditions on the basis of which it was granted is no longer met.
12. The Commission proposal does not lay down any criteria for such test, but merely refers to a 'standard medical test'. The Presidency revised the proposal by complementing medical checks by a psychological review of the applicant for such an authorisation.
13. Many Member States are, opposed to obligatory medical checks since they questioned their proportionality, costs and usefulness. If at all in favour of such measures, they asked for flexibility at national level as to the design of such personal assessments.

14. In view of the above, Member States are invited to indicate whether they prefer:
- a) *a rule like in the current Directive which leaves it entirely up to national legislation how to grant or withdraw authorisation to acquire and possess firearms;*
 - b) *a requirement of a medical test for such authorisations **in the Directive**;*
 - c) *a (...) medical test for such authorisations with criteria for such tests to be laid down at EU level.*

C. Prohibition of semi-automatic firearms for civilian use

15. Annex I, II A of the current Directive sets out four categories of firearms (A, B, C, D) according to the scale the degree of dangerousness of firearms and define the term for the purposes of the Directive. Category A contains prohibited weapons and category B lists weapons subject to authorisation, whereas the two other categories are about weapons the acquisition/possession of which is either entirely free (D) or subject to a mere declaration (C).
16. The Commission proposal seeks to amend the current Directive, in particular, by:
- adding automatic firearms which have been converted into semi-automatic firearms to category A (“Prohibited firearms”), and
 - upgrading semi-automatic firearms for civilian use which resemble weapons with automatic mechanisms currently listed under point 7 of category B (“Firearms subject to authorisation”) to category A7.
17. Semi-automatic weapons currently represent a high share of hunting and sport-shooting weapons. The Commission’s reasoning for a ban of the current category B.7 firearms is that semi-automatic weapons can easily be converted into automatic arms. The current Directive does not provide any technical criteria to prevent such conversion and even in the absence of conversion to category A, certain semi-automatic weapons could be very dangerous when their capacity regarding the number of rounds is high.

18. Many Member States which opposed the re-categorisation to category A of the firearms currently listed under point B.7 would prefer to keep that type of weapon in category B. Alternatively, it was suggested to complement the proposal by provisions that prohibit the conversion of semi-automated weapons and to focus on defining the eligibility for using such arms.
19. With a view to dealing with the risk the current B.7 firearms present to public security, Member States are invited to state their preferences as to whether these weapons:
- a) *should be prohibited (...), limited to the most dangerous ones, to be further defined by way of technical specifications in the Directive, or*
 - b) *their possession for civilian use should continue to be authorised by Member States but under stricter conditions to be defined in the Directive.*

D. Exceptional possession of prohibited firearms for cultural and historical reasons

20. According to Article 6 of the current Directive, Member States are obliged to take all appropriate steps to prohibit the acquisition and the possession of firearms and ammunition classified in category A. Under Article 6 (2) however, the competent authorities may grant authorisations for such firearms and ammunition where this is not contrary to the public security or public order. Moreover public bodies, such as museums, and private collectors are currently outside the scope of the Directive. (...)
21. **The Presidency acknowledges that this discussion is without prejudice to the issue of the acquisition and/or possession of firearms by army reservists, which will be dealt with separately at a later stage.**

22. The Commission has proposed to bring private collectors within the scope of the Directive and to delete the generic derogation in Article 6(2). It moreover proposed to strengthening the prohibition to acquire and possess category A firearms by introducing an obligation to destroy such firearms and ammunition if seized. However, the amendment allows for an exemptions thereto for officially recognised bodies, such as museums, concerned with the cultural and historic aspects of weapons, which may be authorised by Member States to keep their category A firearms:
- if they were acquired before the entry into force of the amended Directive; and
 - provided that those firearms have been deactivated.
23. Most Member States have difficulties with the proposal, because the envisaged deactivation of category A firearms would affect the preservation of the cultural and historic heritage, and some Member States prefer to delete such a provision at all. Another question was to what extent private collectors in view of the risk they present as a possible source of traffic of firearms are covered by the amended Directive and would be affected by this provision. By way of a compromise, the Presidency had suggested to reinstate the provision that Member States might authorise the possession of prohibited firearms in special cases where that would not be contrary to public security or public order.
24. Member States are invited to exchange views on whether they would prefer
- a) *a general rule such as in the current Directive which gives leeway to Member States authorising the acquisition as well as the possession of category A firearms as long as it is not contrary to public security or public order;*
 - b) *only museums [and private collectors] to be exempted from the above-mentioned general prohibition and be allowed to acquire and possess category A weapons;*
 - c) *an exception only for museums [and private collectors] allowing for only the possession of category A firearms which, furthermore, are deactivated, as provided by the **Commission** proposal.*

E. On line sales

25. Article 6 of the proposal provides the acquisition of firearms and their parts and ammunition concerning categories A, B and C by means of distance communication. This kind of on line sale shall be authorised only with respect to dealers and brokers and shall be subject to strict control of the Member States.
26. Member States are invited to exchange views on whether they would prefer to allow the acquisition and selling of firearms and ammunition by means of distance communication for individuals, where authorised:
- a) *but requiring that the actual handover is done under conditions that allow for verification of the identity and the authorisation of the buyer, for instance in the presence of a dealer or of public authorities representatives;*
 - b) *but only through authorised dealers and brokers with the transfer of weapons being an officially authorised face-to-face transaction;*
 - c) *but under the condition that the acquisition and selling of firearms and their parts and ammunition by means of distance communication is strictly controlled.*