



Council of the
European Union

Brussels, 1 March 2016
(OR. en)

5342/3/16
REV 3 ADD 1

LIMITE

GENVAL 7
JAI 34
MI 20
COMPET 14
COMIX 30
CODEC 45

Interinstitutional File:
2015/0269 (COD)

NOTE

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	14422/15; 15060/15
Subject:	Compilation of Member States comments on the Proposal for a Directive of the European Parliament and of the Council amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons

In addition to document ST 5342/3/16 REV 3, delegations will find in annex the comments of the Czech Republic and of Switzerland on the proposal for amendment of the firearms directive received by 26 February 2016.

<u>Czech Republic</u>	p. 3
<u>Switzerland</u>	p. 13

Czech Republic

Follow-up comments and proposals on the revision of the Firearms Directive by the Czech Republic following the GENVAL meeting on February 8th 2016

February 12th 2016

In addition to the earlier comments and proposals by the Czech Republic (especially the proposal mailed on January 30th 2016, enclosed) we make the further comments and proposals concerning the 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 – text revised by the Presidency.

Recitals

We point out that the current recitals do not reflect the shift in the discussion and in some cases they consist of unfounded and misleading statements. The recitals (2), (4), (7) and (12) have already become at least partly irrelevant due to the progress in the discussions. The recital (9) contains claims simplified to the degree that they are confusing and technically incorrect. On the other hand, the recitals should reflect the fact, that certain weapons including automatic and semi-automatic firearms are essential for national defense policy of several member states and that it can also be firearms that are subject to the Firearms Directive (where Art. 2 par. 2 does not apply).

Article 1

- Paragraphs 1a and 1b

After the proposed changes of the provision of the Art. 1 par. 1b the meaning and purpose of the Art. 1 par. 1a¹ is unclear. **We propose to delete the provision Art. 1 par. 1a.** Consequently, the references to “parts” should be deleted in subsequent provisions (e. g. Art. 1 par. 1d, 1e, 2, Art. 2 par. 2, Art. 6 par. 4).

The Czech Republic reiterates that the definition of essential components has to be clear, definite and conclusive. Thus, it is inappropriate to define essential components barely as examples. Still, we are rather flexible on the question of whether silencers should be covered by the definition. **We propose the further rewording of the par. 1b:**

*“For the purposes of this Directive, “essential component” means ~~any~~ a part of a firearm that is essential to its operation ~~such as and that fulfills the function of~~ the barrel, frame, receiver, slide or cylinder, bolt or breach block. **“Essential components”** ~~which~~, being separate objects, are included in the category of the firearms on which they are or are intended to be mounted. In addition, any device designed or adapted to diminish the sound caused by firing a firearm shall be regarded as an “essential component”.*”

¹ „1a. For the purposes of this Directive, ‘part’ shall mean any element or replacement element specifically designed for a firearm and essential to its operation, including a barrel, frame or receiver, slide or cylinder, bolt or breech block, and any device designed or adapted to diminish the sound caused by firing a firearm.“

- Paragraphs 1f, 1g, 1h and 1i

The terms “alarm weapons”, “signal weapons”, “acoustic weapons” and “salute weapons” should be separated and properly defined. E. g. in the Czech Republic, signal weapons (other than alarm weapons that use blank cartridges and an adapter) as flare guns with caliber over 16mm are classified as category B firearms, whereas properly constructed alarm weapons are classified as category D. In our view, this approach is proportionate due to the different level security risks connected with these weapons (flare guns need not be converted to cause significant damage). However, the problem of these definitions should be tackled with higher level of technical expertise; we recommend consulting C.I.P. on the subject matter.

The term “replica” is still defined in a completely vague. The objects that could be subsumed under the term “replica” as defined now pose only minimal or no security threat. These objects could be used for intimidation, but toys or pieces of carved wood can be misused in the exactly the same way. The benefits of including “replicas” into the scope of the Firearms Directive would be negligible, whereas the administrative and enforcement costs would be significant. **We propose to delete the provision Art. 1 par. 1h (definition of replicas)**. Consequently, references to replicas should be deleted in subsequent provisions (e. g. Art. 10a, Annex I).

On the other hand, we fully support the revised text in par. 1i.

Article 4

- Paragraph 1

Further clarification and specification in the text is needed with respect to marking of firearms “in a durable way”. Does this mean that that only marking with a die or deep engraving should be possible? Will the use of laser engraving be sufficient?

- Paragraph 2

With respect to eventual proposals to obligatorily mark any firearm also with the information about the caliber, we point out that affixing this information to the receiver/frame need not be always rational. The receiver/frame of the most firearms can be typically assembled with barrels and actions in various calibers. In many cases, firearms are supplied as conversion sets with one receiver/frame and several barrels (and eventually also action assemblies). On the other hand, there are also firearms, on which the information about the caliber can be affixed to the receiver/frame (typically, when the barrel cannot be disassembled from the receiver).

Article 5

- Paragraph 1

The possession of firearms (sporting or hunting) by persons of less than 18 years of age is important from the practical point of view. E. g. the students of sports schools or forestry schools and members of registered shooting clubs are allowed to obtain a firearms permit (under the same conditions as adults except for the minimum age) in the Czech Republic. These persons need to keep their firearms especially during transportation to school (additionally, most of forestry schools are boarding schools), place of hunting activities or shooting competition. It is completely unrealistic, that an adult guidance should be provided during the entire time period. **We propose not to change the contemporary conditions on the minimum age and the exemptions currently in force.**

- Paragraph 2

We do not agree with the proposal for the general, across-the-board psychological testing of the applicants for the authorizations. The subject-matter was closely examined in the Czech Republic during the last year. Standard psychological testing does not reduce the incidence of misuse of firearms by mentally disordered individuals. A far more efficient mean to prevent such incidents is to empower a relevant authority to command a person (an applicant for an authorization or a holder of firearms) to undergo thorough psychological/psychiatric examination when there are any signals about possible psychic problems. Thus we propose the following rewording of the par. 2:

*“Member States shall make the issuance or renewal of the authorisations referred to in paragraph 1 subject to a standard system of medical, including psychological **where necessary**, review. Member States shall withdraw the authorisations and refuse their renewal if any of the conditions on the basis of which the authorisation was granted are no longer met.”*

Article 6

- Paragraph 2

We highly appreciate the proposal of the provision of the par. 2. However, **we have to declare that the formulation of this competence of the relevant authorities should not be further limited** (e. g. to only few particular subjects or purposes). In reality, the situations when there is the need to grant a special authorization are extremely heterogeneous. We doubt that a definition of these situations can be exhaustive and limitative at the same time. Thus, the current balance of specificity/generality seems to be adequate and should be maintained.

- Paragraph 3

The purpose of deactivation of category A firearms in collections and museums is unclear. The proposal seems to be completely unfounded in any real data on eventual misuse of such firearms.

We propose to delete the paragraph 3.

Article 7

In our view, the revised text according to which the 5-year time limitation of the validity of authorizations should be applied only to “authorizations for possession” does not deal with the concerned problem adequately. In addition, this change does not mean that it would not affect manufacturers. Manufacturers also possess firearms, typically testing firearms, prototypes, collection or showroom firearms etc. On the other hand, the current technology and database systems enable the checks to be in fact continuous.

As we already presented at the GENVAL meeting, we thus propose to reformulate the provision:

“Member state takes any necessary steps to check whether the person to whom an authorization was issued, complies with the requirements under which the authorization was given, at least every 5 years.”

Article 10a

The term “gas weapon” is unclear. Should it mean an alarm weapon? Or an air gun/rifle? If the latter is true, this provision would be apparently disproportionate. We ask the Presidency to clearly define the term “gas weapon”, however we could not agree with de facto broadening of the scope of the Firearms Directive to air guns/rifles.

Article 10aa

We welcome the proposal of the Swedish delegation. However, it is not clear, what is the exact meaning of the phrase “immediate control”. We also believe that the safety measures should reflect the number of the stored firearms too. On the other hand, we doubt that there is much space to define any common technical rules in the form of an implementing act of the Commission.

We propose the further rewording of the proposed Article 10aa:

“Member States shall establish rules on the proper storage of firearms and ammunition that ensure that they are ~~kept under supervision and~~ stored in a way that there is not risk of being accessed by an unauthorised person. ~~Supervision in this case shall mean that the person possessing the firearm or the ammunition has immediate control over them and~~ The secure storage shall include as a minimum the storage in a standardised safe box when the firearm or ammunition is not in use. The level of scrutiny for the storage arrangements shall correspond to the level of dangerousness of the firearm ~~and the number of the stored firearms.~~”

~~The Commission shall adopt minimum rules and specifications for the storage of firearms and ammunition that ensure that there is no risk that an unauthorized person will get access to the firearm or ammunition. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 13b(2).”~~

Annex I

We refer to the proposal sent on January 30th 2016, in which we proposed to readjust the categories of firearms. The principles of our proposal are:

- Converted semi-automatic firearms (proposed category A6)

Conversions of automatic firearms to semi-automatic firearms should be made subject to the scrutiny by a technical authority (e. g. Proof House). **If the converted semi-automatic firearm meets certain strict technical requirements it should be classified as category B firearm.**

In the Czech Republic, technical specifications of a conversion of a particular model of an automatic firearm by a particular manufacturer must be approved by the Czech Proof House in advance (i.e. before any such firearm is placed on the market). The applicant (manufacturer) must also submit a sample converted firearm of the type. The conversion must be irreversible, that means that the reconversion of a converted semi-automatic firearm back to an automatic firearm must be made impossible under any reasonable circumstances. When a particular conversion is approved, there are still several further checks. First, the Proof House tests and checks every individual conversion and in case it meets the requirements (technical specifications of the conversion and pressure test) it is marked in accordance with C.I.P. After acquisition of the converted firearm by any further person, it must be presented and registered with the police. The police check the firearm physically and assesses whether any unlawful modifications of the mechanism of the firearm were attempted. These checks are regularly repeated when a firearms license/permit is renewed (the holder of the firearms license/permit is obliged to present his firearms to the police).

We are convinced that the described system secures high level of security and prevents eventual reconversions of the firearms once converted from automatic to semi-automatic firearms. In fact, it is more difficult and risky to reconvert the firearms converted according to these standards, than to illegally modify most of the semi-automatic firearms to shoot in bursts. **Thus we propose set analogous rules on the EU level (see the CZ proposal from January 30th).**

In recent years, the only loophole in this system was identified. It is the case of the firearms (sub-machine guns) that fire from open-bolt (i.e. from the rear position of the action). These firearms must be converted in a much more dramatic way that actually means a complete reconstruction of the mechanism (conversion to closed-bolt function). An eventual prohibition of this type of automatic firearms could be rational and acceptable.

On the other hand, unconditional ban on all converted semi-automatic firearms is unacceptable for the Czech Republic. There are approx. 40,000 – 50,000 converted semi-automatic firearms among the holders of the firearms licenses/permits (and the purchases of these firearms by individuals radically plummeted after the publication of the Draft Amending Directive). There is no empirical evidence that these firearms (converted according to the standards described above) pose any security risk. However, we fear that 20% - 50% of these weapons would not be given up in case of a ban and would leak into the illegal sphere.

- Semi-automatic **long firearms that resemble weapons with automatic mechanisms (proposed category A7)**

The Czech Republic repeatedly argued that the definition of “firearms resembling weapons with automatic mechanisms” is vague, incoherent and inherently problematic. The revised text which added the word “long” did not improve the applicability, clarity or practicability of this provision. It even added some further paradoxes. Due to the fact, that “short” and “long” weapons are defined according to the overall dimensions (length up to 60 cm) and length of the barrel (up to 30 cm), this would mean that e. g. a firearms with the appearance of a standard AK-47 would fall under the ban, but firearms “resembling” an AK-74 SU would not.

Still, it was not explained by either the Commission or the Presidency, why the appearance of a firearm results (as in the logic of the proposal apparently should) in a higher level of dangerousness of such a firearm. Otherwise, the proposal seems arbitrary and disproportionate and the proposed category A7 should be deleted from the proposal.

- Alarm and signal weapons, acoustic and salute weapons, replicas and deactivated firearms

Also see above. **In our view, the debate about categorization of these weapons should ensue from the precise and agreed definitions of them.**

In general, we consider the French proposal to classify the acoustic and salute weapons in the same category as the original firearms (i. e. firearms before modification to acoustic or salute weapons) to be a very reasonable minimum standard.

The replicas (as currently defined) are not a security issue and should not be included in the Firearms Directive.

Alarm weapons and deactivated firearms should be classified as category D firearms if properly manufactured (deactivated) according to the common minimum standards set by the Commission in implementing acts.

Questions concerning the Proposal for the Draft Amending Directive

We note that a significant number of questions concerning the current proposal have been addressed to the Commission. However, only a modest amount of answers has been provided so far. Thus, we summarize the most important questions here. We kindly ask the Commission to provide the relevant responses.

- Are there any estimates or assessments of the impacts of the proposal? Namely, what is the number of firearms and weapons that would be affected by the proposed bans and obligation to declare?

- What will be the cost of the proposal in terms of direct costs (buy-out cost of the restricted firearms, enforcement costs) as well as indirect costs (impacts on businesses, employment and administrative burden)? Who will bear the costs?

- Did the Commission assess the security risks resulting from the eventual transition of the newly restricted firearms into the illegal sphere (the estimated rate of non-compliance in case of category A6 and A7 is 20% to 50% for the Czech Republic; that means circa 10,000 to 30,000 firearms that can become illegal)? Do the benefits of the proposal outweigh the significant increase of potential supply of illegal firearms in the EU?

- Is there any statistically significant criminality by the holders of firearms who are under 18 years of age? Is there any empirical evidence on misuse of firearms in collections or museums? How many crimes were committed with category A6 and A7 firearms?

Switzerland

General:

Switzerland thanks the Commission for drafting and presenting the proposed amendment to the Weapons Directive so expeditiously.

Combating the illegal trade in weapons is an important element in preventing terrorism and organised crime. Accordingly, Switzerland is, in principle, in favour of amending the current directive.

It is crucial that all the proposals be analysed in detail and examined as to their expediency and practicability. To that end, the deadlines imposed hitherto have been too short. Nor have they allowed us to conduct the necessary internal consultation. At ministerial level, it was also impossible to evaluate the proposals conclusively in the time available. Switzerland is of the opinion that future provisions should be comprehensible and objectively legitimate in order to achieve the desired impact (combating terrorism). However, this requires more time.

Switzerland therefore requests the Presidency to grant Member States longer deadlines to examine the proposals.

Article 1 paragraph 1a

Should be deleted.

The definition of "part" in the Directive is superfluous. The Directive only attaches legal consequences to the term "essential components," so it is sufficient to define this term only. Retaining the definition of "part" leads to confusion because the definition also embraces "essential components."

As a consequence, the term "part" should be replaced with "essential components" throughout the whole Directive, and if necessary supplemented with "accessories" (see hereinafter Article 1 paragraph 1b).

Article 1 paragraph 1b

It is factually inaccurate to define silencers as "essential components" because they are not "essential to the operation of a firearm." Therefore, they should be defined as an individual category (accessories). A consequence of this is that the category would require its own regulations on acquisition, ownership, transfer, etc.

In this paragraph, "parts" should be replaced with "essential components", and possibly "accessories."

Article 1 paragraph 1f

The addition "that are not converted" can be omitted because the word "originally" already implies this.

Article 1 paragraph 1h

Switzerland does not recognise the need to regulate "replica firearms." According to the proposed definition, "replica firearms" mean objects that cannot be converted to firearms. However, objects that can be converted to firing are indeed dangerous and already fall under the wording of Article 1 paragraph 1, "or may be converted to expel a shot, bullet or projectile..."

Article 2 paragraph 1

The wording "or parts" should be deleted. Instead, the provision should read: "...of firearms or essential components thereof."

Article 4 paragraph 4

Amendment a)

Switzerland sees no reason why weapons that have been destroyed should continue to be registered "for an indefinite period." Once a weapon has been irrevocably destroyed by the authorities, there is no further interest in information on the weapon. Accordingly, data pertaining to the weapon should be deleted, also for data protection reasons. Moreover, a timespan should be defined (for example, 50 years) because the term "indefinite" is unspecific.

Article 4 paragraph 4

Amendment b) broker

Switzerland wonders whether brokers are even in possession of the necessary information to fulfil their obligation to register weapons. Accordingly, this provision is questionable.

Amendment b) centralised data-filing system for dealers (and brokers)

Having a centralised system is not necessary and is not required under the previous paragraph.

There seems to be a disparity between the benefits that connecting weapons dealers and brokers to the computerised data-filing system would bring when compared with the related costs. In Switzerland, there are numerous small-scale weapons dealers, some of whom do not keep computerised records of their business. They must first obtain the required technical equipment.

As Austria, taking a view that Switzerland shares, has pointed out, it must instead be guaranteed that the relevant authorities have access at all times to the records maintained by weapons dealers and brokers. In this way the information required in individual cases, e.g. on sales of specific weapons, can be obtained quickly from weapons dealers (and brokers).

Accordingly, Switzerland would propose that the sentence be reformulated as follows: **“Each Member State shall ensure that dealers (and brokers) established in their territory allow the competent authorities access to their records at all times.”**

Article 4b

Switzerland does not see what other measures could be foreseen besides those mentioned in a) and b). Accordingly, Switzerland is of the opinion that the wording "at least" should be deleted.

The word "and" in a) should be replaced with "or."

Art. 5 c)

The condition "have parental permission", which exists in the current text, should be reinstated as an additional alternative.

Article 5 paragraph 2

The first sentence should be deleted. Limiting authorisation to five years would lead to unnecessary administrative work and financial costs. Furthermore, it is not clear what tests psychologists should carry out and how comprehensive these tests should be.

Switzerland takes the view that it is sufficient to confiscate weapons immediately in cases where the requirements for possessing weapons are no longer being met.

The passage of time alone is not sufficient reason to assume that holders of weapons cannot meet their responsibilities.

Article 6

The newly inserted paragraph 2 should be retained. In contrast, paragraph 3 should be deleted because, as opposed to paragraph 2, it is too narrowly defined.

Such weapons are almost exclusively owned by weapons collectors or museums. If these weapons, which were lawfully acquired at the time, now had to be confiscated under a ban on their possession, this would involve a great deal of time and expense for the law enforcement authorities. It would also give rise to questions of compensation. It must also be assumed that some of these weapons would find their way onto the black market, where they are likely to command higher prices.

In paragraph 4, "parts" are once again to be replaced with "essential components." Switzerland wonders whether it is realistic to exclude private persons from selling weapons over the internet. Switzerland doubts the feasibility of implementing this provision.

Article 7

The amended part should be deleted (see comments on Article 5 paragraph 2). The large volume of administrative work seems disproportionate to the potential improvement in security.

Article 10a

Switzerland does not see the point of the rule in the first part of the provision. What specific obligations do the Member States have? Should weapons that are not produced according to the conditions mentioned in the second part of the provision be prohibited? In Switzerland's opinion, the first part of the provision should be deleted. The second part, in our opinion, is directed at the manufacturers of the relevant objects.

Article 10aa

In Switzerland's opinion, the second part of the provision should be left up to the individual Member States and therefore be deleted. The requirements of the first part of the provision are strict enough to do justice to security considerations.

Article 13

In Switzerland's opinion, this measure seems disproportionate. The requirements for acquiring weapons vary from state to state. This has the consequence that the refusal of authorisation in one state does not necessarily mean that authorisation will be refused in another state. This means that the significance of information about refused authorisations is limited. The proposed procedure, which requires information to be given on authorisations that have been refused, would however entail considerable administrative work and expense. This can hardly be justified when compared with the limited benefits and knowledge gained.

The current system in the Directive, whereby no-one may acquire a firearm in another Member State unless their own Member State has also given authorisation (dual authorisation procedure) is cost-efficient and effective. This system could be further strengthened, for example by specifying the exact content of the authorisation of the person's own Member State.

Annex 1

Category A 7

Reclassification as category A weapons of automatic firearms that have been converted into semi-automatic firearms and semi-automatic civilian firearms that resemble fully automatic military weapons

Like Finland, Switzerland has special provisions on the possession of automatic firearms that have been converted into semi-automatic firearms. Under the current law, persons who have completed military service may be granted authorisation (for weapons in category B) to acquire from the Swiss Armed Forces the *Sturmgewehr 90* (SG 550 assault rifle) that was loaned to them by the for the purpose of military service. These weapons may also be sold on if the relevant authorisation is granted.

These automatic firearms, which have been converted into semi-automatic firearms, along with semi-automatic civilian firearms that resemble fully automatic military weapons (e.g. civilian versions of the *Sturmgewehr 90*) are used in large numbers in Switzerland for recreational shooting unconnected with military service.

Weapons collectors also hold large numbers of these weapons. In Switzerland's opinion, these weapons should not therefore be reclassified as category A weapons.

Annex 1 Category C

The following passage should not be incorporated into category C, but remain separate, because it is of a general nature. Appropriate weapons could also fall under category B.

"Salute and acoustic weapons stay in the category in which they would fall according to how they were originally built."

Annex 1 Category D

This category could be transferred to category C. It does not seem logical to incorporate weapons that cannot be fired into category C and leave weapons that can be fired in category D.

Art. 2, Deadline for implementation

Switzerland's association agreement with the EU currently allows Switzerland a maximum period of two years for implementing Schengen Acquis developments. Switzerland would probably have to make use of this allowance.
