Regulation (EU) No 258/2012 of the European Parliament and of the Council of 14 March 2012 implementing Article 10 of the United Nations' Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against Transnational Organised Crime (UN Firearms Protocol), and establishing export authorisation, and import and transit measures for firearms, their parts and components and ammunition

REGULATION (EU) No 258/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 14 March 2012

implementing Article 10 of the United Nations' Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against Transnational Organised Crime (UN Firearms Protocol), and establishing export authorisation, and import and transit measures for firearms, their parts and components and ammunition

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Acting in accordance with the ordinary legislative procedure[(1)],

Whereas:

(1) In accordance with Council Decision 2001/748/EC of 16 October 2001 concerning the signing on behalf of the European Community of the United Nations Protocol on the illicit manufacturing of and trafficking in firearms, their parts, components and ammunition, annexed to the Convention against transnational organised crime[(2)], the Commission signed that Protocol (hereinafter referred to as the 'UN Firearms Protocol') on behalf of the Community on 16 January 2002.

(2) The UN Firearms Protocol, the purpose of which is to promote, facilitate and strengthen cooperation among Parties in order to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, entered into force on 3 July 2005.

(3) In order to facilitate the tracing of firearms and efficiently combat illicit trafficking in firearms, their parts and essential components and ammunition, it is necessary to improve the exchange of information between Member States, in particular through the better use of existing communication channels.

(4) Personal data must be processed in accordance with the rules laid down in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the

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protection of individuals with regard to the processing of personal data and on the free movement of such data[(3)] and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data[(4)].

(5) In its Communication of 18 July 2005 on measures to ensure greater security in explosives, detonators, bomb-making equipment and firearms[(5)], the Commission announced its intention to implement Article 10 of the UN Firearms Protocol as part of the measures which need to be taken in order for the Union to be in a position to conclude that Protocol.

(6) The UN Firearms Protocol requires Parties to put in place or improve administrative procedures or systems to exercise effective control over the manufacturing, marking, import and export of firearms.

(7) Compliance with the UN Firearms Protocol also requires that illicit manufacture of or trafficking in firearms, their parts and essential components and ammunition be established as criminal offences, and that measures be taken to enable the confiscation of items so manufactured or trafficked.

(8) This Regulation should not apply to firearms, their parts and essential components or ammunition that are intended specifically for military purposes. The measures to meet the requirements of Article 10 of the UN Firearms Protocol should be adapted to provide for simplified procedures for firearms for civilian use. Consequently, some facilitation with regard to authorisation for multiple shipments, transit measures and temporary exports for lawful purposes should be ensured.

(9) This Regulation does not affect the application of Article 346 of the Treaty on the Functioning of the European Union, which refers to essential interests of the security of the Member States, nor has this Regulation any impact on Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community[(6)], or on Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons[(7)]. Moreover, the UN Firearms Protocol, and consequently this Regulation, do not apply to State-to-State transactions or to State transfers in cases where the application of the Protocol would prejudice the right of a State Party to take action in the interest of national security consistent with the Charter of the United Nations.

(10) Directive 91/477/EEC addresses transfers of firearms for civilian use within the territory of the Union, while this Regulation focuses on measures in respect of export from the customs territory of the Union to or through third countries.

(11) Firearms, their parts and essential components and ammunition when imported from third countries are subject to Union law and, in particular, to the requirements of Directive 91/477/EEC.

(12) Consistency should be ensured with regard to record-keeping provisions in force under Union law.

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(13) In order to ensure that this Regulation is properly applied, Member States should take measures giving the competent authorities appropriate powers.

(14) In order to maintain the list of firearms, their parts and essential components and ammunition for which an authorisation is required under this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of aligning Annex I to this Regulation to Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff[(8)], and to Annex I to Directive 91/477/EEC. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(15) The Union has adopted a body of customs rules, contained in Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code[(9)] and its implementing provisions as laid down in Commission Regulation (EEC) No 2454/93[(10)]. Consideration should also be given to Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code)[(11)] whose provisions are applicable in different phases according to Article 188 thereof. Nothing in this Regulation constrains any powers under and pursuant to the Community Customs Code and its implementing provisions.

(16) Member States should lay down rules on penalties applicable to infringements of this Regulation and ensure that they are implemented. Those penalties should be effective, proportionate and dissuasive.

(17) This Regulation is without prejudice to the Union regime for the control of exports, transfer, brokering and transit of dual-use items established by Council Regulation (EC) No 428/2009[(12)].

(18) This Regulation is consistent with the other relevant provisions on firearms, their parts, essential components and ammunition for military use, security strategies, illicit trafficking in small arms and light weapons and exports of military technology, including Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment[(13)].

(19) The Commission and the Member States should inform each other of the measures taken under this Regulation and of other relevant information at their disposal in connection with this Regulation.

(20) This Regulation does not prevent the Member States from applying their constitutional rules relating to public access to official documents, taking into account Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents[(14)],

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HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT, DEFINITIONS AND SCOPE

Article 1

This Regulation lays down rules governing export authorisation, and import and transit measures for firearms, their parts and essential components and ammunition, for the purpose of implementing Article 10 of the United Nations Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organised Crime (the 'UN Firearms Protocol').

Article 2

For the purposes of this Regulation:

(1) 'firearm' means any portable barrelled weapon that expels, is designed to expel or may be converted to expel, a shot, bullet or projectile by the action of a combustible propellant as referred to in Annex I.

An object is considered as capable of being converted to expel a shot, bullet or projectile by the action of a combustible propellant if:

— it has the appearance of a firearm, and

— as a result of its construction or the material from which it is made, it can be so converted;

(2) 'parts' means any element or replacement element as referred to in Annex I 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;

(3) 'essential components' means the breech-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;

(4) 'ammunition' means the complete round or the components thereof, including cartridge cases, primers, propellant powder, bullets or projectiles that are used in a firearm, as referred to in Annex I, provided that those components are themselves subject to authorisation in the relevant Member State;

(5) 'deactivated firearms' means objects otherwise corresponding to the definition of a firearm which have been rendered permanently unfit for use by deactivation, ensuring that all essential parts of the firearm have been rendered permanently inoperable and incapable of removal, replacement or modification that would permit the firearm to be reactivated in any way.

Member States shall make arrangements for these deactivation measures to be verified by a competent authority. Member States shall, in the context of that verification, provide for the issue of a certificate or record attesting to the deactivation of the firearm or the apposition of a clearly visible mark to that effect on the firearm;

(6) 'export' means:

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(a) an export procedure within the meaning of Article 161 of Regulation (EEC) No 2913/92;

(b) a re-export within the meaning of Article 182 of Regulation (EEC) No 2913/92 but not including goods moving under the external transit procedure, as referred to in Article 91 of that Regulation where no re-export formalities as referred to in Article 182(2) thereof have been fulfilled;

(7) 'person' means a natural person, a legal person and, where the possibility is provided for under the rules in force, an association of persons recognised as having the capacity to perform legal acts but lacking the legal status of a legal person;

(8) 'exporter' means any person, established in the Union, who makes or on whose behalf an export declaration is made, that is to say the person who, at the time when the declaration is accepted, holds the contract with the consignee in the third country and has the power for determining the sending of the item out of the customs territory of the Union. If no export contract has been concluded or if the holder of the contract does not act on its own behalf, the exporter shall mean the person who has the power for determining the sending of the item out of the customs territory of the Union.

Where the benefit of a right to dispose of firearms, their parts and essential components or ammunition accrues to a person established outside the Union pursuant to the contract on which the export is based, the exporter shall be considered to be the contracting party established in the Union;

(9) 'customs territory of the Union' means the territory within the meaning of Article 3 of Regulation (EEC) No 2913/92;

(10) 'export declaration' means the act whereby a person indicates in the prescribed form and manner his intention to place firearms, their parts and essential components, and ammunition under an export procedure;

(11) 'temporary export' means the movement of firearms leaving the customs territory of the Union and intended for re-importation within a period not exceeding 24 months;

(12) 'transit' means the operation of transport of goods leaving the customs territory of the Union and passing through the territory of one or more third countries with final destination in another third country;

(13) 'transhipment' means transit involving the physical operation of unloading goods from the importing means of transport followed by reloading, for the purpose of re-exportation, generally onto another means of transport;

(14) 'export authorisation' means:

(a) a single authorisation or licence granted to one specific exporter for one shipment of one or more firearms, their parts and essential components and ammunition to one identified final recipient or consignee in a third country; or

(b) a multiple authorisation or licence granted to one specific exporter for multiple shipments of one or more firearms, their parts and essential components and ammunition to one identified final recipient or consignee in a third country; or