Directive (EU) 2017/853 of the European Parliament and of the Council of 17 May 2017 amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons (Text with EEA relevance)

DIRECTIVE (EU) 2017/853 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons

(Text with EEA relevance)

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 114 thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee[(1)],

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) Council Directive 91/477/EEC[(3)] established an accompanying measure for the internal market. It created a balance between, on the one hand, the commitment to ensure a certain freedom of movement for some firearms and their essential components within the Union, and, on the other hand, the need to control that freedom using security guarantees suited to those products.

(2) Certain aspects of Directive 91/477/EEC need to be further improved in a proportionate way, in order to address the misuse of firearms for criminal purposes, and considering recent terrorist acts. In this context, the Commission called in its communication of 28 April 2015 on the European Agenda on Security, for the revision of that Directive and for a common approach on the deactivation of firearms to prevent their reactivation and use by criminals.

(3) Once firearms are lawfully acquired and possessed in accordance with Directive 91/477/EEC, national provisions concerning the carrying of weapons, hunting or target shooting should apply.

(4) For the purposes of Directive 91/477/EEC, the definition of a broker should cover any natural or legal person, including partnerships, and the term ‘supply’ should be deemed to include lending and leasing. Since brokers provide services similar to those supplied by dealers, they should also be covered by Directive 91/477/EEC in respect of those obligations of dealers that are relevant to brokers' activities, to the extent that they are

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in a position to fulfil those obligations and in so far as these are not fulfilled by a dealer as regards the same underlying transaction.

(5) The activities of a dealer include not only the manufacturing but also the modification or conversion of firearms, essential components and ammunition, such as the shortening of a complete firearm, leading to a change in their category or subcategory. Purely private, non-commercial activities, such as hand-loading and reloading of ammunition from ammunition components for own use or modifications of firearms or essential components owned by the person concerned, such as changes to the stock or sight or maintenance to address wear and tear of essential components, should not be considered to be activities that only a dealer would be permitted to undertake.

(6) In order to increase the traceability of all firearms and essential components and to facilitate their free movement, all firearms or their essential components should be marked with a clear, permanent and unique marking and registered in the data-filing systems of the Member States.

(7) The records held in the data-filing systems should contain all information allowing a firearm to be linked to its owner and should record the name of the manufacturer or brand, the country or place of manufacture, the type, make, model, calibre and serial number of the firearm or any unique marking applied to the frame or receiver of the firearm. Essential components other than the frame or receiver should be recorded in the data-filing systems under the record relating to the firearm to which they are to be fitted.

(8) To prevent markings from being easily erased and to clarify which essential components the marking should be affixed to, common Union rules on marking should be introduced. Those rules should apply only to firearms or essential components that are manufactured or imported into the Union on or after 14 September 2018, when they are placed on the market, while firearms and parts manufactured or imported into the Union before that date should remain covered by the marking and registration requirements under Directive 91/477/EEC that are applicable until that date.

(9) In view of the dangerous nature and durability of firearms and essential components, in order to ensure that competent authorities are able to trace firearms and essential components for the purpose of administrative and criminal proceedings and taking into account national procedural law, it is necessary that records in the data-filing systems be retained for a period of 30 years after the destruction of the firearms or essential components concerned. Access to those records and all related personal data should be restricted to competent authorities and should be permitted only up until 10 years after the destruction of the firearm or essential components concerned for the purpose of granting or withdrawing authorisations or for customs proceedings, including the possible imposition of administrative penalties, and up until 30 years after the destruction of the firearm or essential components concerned where that access is necessary for the enforcement of criminal law.

(10) The efficient sharing of information between dealers and brokers, on the one hand, and national competent authorities, on the other, is important for the effective operation of the data-filing systems. Dealers and brokers should therefore provide information without undue delay to the national competent authorities. To facilitate that, national

competent authorities should establish a means of electronic connection accessible to dealers and brokers, which can include submission of the information by email or directly through a database or other registry.

(11) As regards Member States' obligation to have a monitoring system in place in order to ensure that the conditions for a firearms authorisation are met throughout its duration, Member States should decide whether or not the assessment is to involve a prior medical or psychological test.

(12) Without prejudice to national laws addressing professional liability, the assessment of relevant medical or psychological information should not be presumed to assign any liability to the medical professional or other persons providing such information where firearms possessed in accordance with Directive 91/477/EEC are misused.

(13) Firearms and ammunition should be stored in a secure manner when not immediately supervised. If stored otherwise than in a safe, firearms and ammunition should be stored separately from each other. When the firearm and ammunition are to be handed over to a carrier for transport, that carrier should be responsible for proper supervision and storage. Criteria for proper storage and for safe transportation should be defined by national law, taking into account the number and category of the firearms and ammunition concerned.

(14) Directive 91/477/EEC should not affect Member States' rules which allow lawful transactions involving firearms, essential components and ammunition to be arranged by means of mail order, the internet or distance contracts as defined in Directive 2011/83/EU of the European Parliament and of the Council[(4)], for example by way of online auction catalogues or classified advertisements, telephone or email. However, it is essential that the identities of parties to such transactions and their lawful ability to enter into such transactions be capable of being checked and actually checked. As regards purchasers, it is therefore appropriate to ensure that their identity and, where relevant, the fact of their authorisation to acquire a firearm, essential components or ammunition be checked by a licensed or authorised dealer or broker, or by a public authority or a representative of such authority, prior to, or at the latest upon, delivery.

(15) For the most dangerous firearms, stricter rules should be introduced in Directive 91/477/EEC in order to ensure that those firearms are, with some limited and duly reasoned exceptions, not allowed to be acquired, possessed or traded. Where those rules are not respected, Member States should take all appropriate measures, which might include the impounding of those firearms.

(16) Member States should, however, have the possibility to authorise the acquisition and possession of firearms, essential components and ammunition classified in category A when necessary for educational, cultural, including film and theatre, research or historical purposes. Authorised persons could include, inter alia, armourers, proof houses, manufacturers, certified experts, forensic scientists and, in certain cases, those involved in film or television recordings. Member States should also be allowed to authorise individuals to acquire and possess firearms, essential components and ammunition classified in category A for national defence, such as in the context of voluntary military training provided under national law.

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(17) Member States should be able to choose to grant authorisations to recognised museums and collectors for the acquisition and possession of firearms, essential components and ammunition classified in category A when necessary for historical, cultural, scientific, technical, educational or heritage purposes, provided that such museums and collectors demonstrate, prior to being granted such an authorisation, that they have taken the necessary measures to address any risks to public security or public order, including by way of proper storage. Any such authorisation should take into account and reflect the specific situation, including the nature of the collection and its purposes, and Member States should ensure that a system is in place for monitoring collectors and collections.

(18) Dealers and brokers should not be prevented from handling firearms, essential components and ammunition classified in category A in cases where the acquisition and possession of such firearms, essential components and ammunition is exceptionally allowed, where their handling is necessary for the purposes of deactivation or conversion, or whenever otherwise permitted under Directive 91/477/EEC, as amended by this Directive. Nor should dealers and brokers be prevented from handling such firearms, essential components and ammunition in cases not covered by Directive 91/477/EEC, as amended by this Directive, such as firearms, essential components and ammunition to be exported outside the Union or weapons to be acquired by the armed forces, the police or the public authorities.

(19) Dealers and brokers should be able to refuse to complete any suspicious transaction for the acquisition of complete rounds of ammunition or live primer components of ammunition. A transaction may be considered suspicious if, for example, it involves quantities uncommon for the envisaged private use, if the purchaser appears unfamiliar with the use of the ammunition or if the purchaser insists on paying in cash while being unwilling to provide proof of his or her identity. Dealers and brokers should also be able to report such suspicious transactions to the competent authorities.

(20) The risk of acoustic weapons and other types of blank-firing weapons being converted into real firearms is high. It is therefore essential to address the problem of such converted firearms being used in the commission of criminal offences, in particular by including them within the scope of Directive 91/477/EEC. Furthermore, to avoid the risk of alarm and signal weapons being manufactured in such a way that they are capable of being converted to expel a shot, bullet or projectile by the action of a combustible propellant, the Commission should adopt technical specifications in order to ensure that they cannot be so converted.

(21) Taking into consideration the high risk of reactivating improperly deactivated firearms and in order to enhance security across the Union, such firearms should be covered by Directive 91/477/EEC. A definition of deactivated firearms should be given that reflects the general principles of deactivation of firearms as provided for by the Protocol against the Illicit Manufacturing of and Trafficking of Firearms, their Parts and Components and Ammunition, attached to Council Decision 2014/164/EU[(5)], which transposes that Protocol into the Union legal framework.

(22) Firearms designed for military use, such as AK47 and M16, and which are equipped to operate on the basis of selective fire, where they may be manually adjusted between

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automatic and semi-automatic firing modes, should be classified as category A firearms and should therefore be prohibited for civilian use. If converted into semi-automatic firearms, they should be classified in point 6 of category A.

(23) Some semi-automatic firearms can easily be converted to automatic firearms, thus posing a threat to security. Even in the absence of such conversion, certain semi-automatic firearms might be very dangerous when their capacity, in terms of the number of rounds, is high. Therefore, semi-automatic firearms with a fixed loading device allowing a high number of rounds to be fired, as well as semi-automatic firearms in combination with a detachable loading device having a high capacity, should be prohibited for civilian use. The mere possibility of fitting a loading device with a capacity exceeding 10 rounds for long firearms and 20 rounds for short firearms does not determine the classification of the firearm in a specific category.

(24) Without prejudice to the renewal of authorisations in accordance with Directive 91/477/EEC, semi-automatic firearms which use rimfire percussion, including those with a calibre of.22 or smaller, should not be classified in category A unless they have been converted from automatic firearms.

(25) The provisions of Directive 91/477/EEC relating to the European firearms pass as the main document needed for their respective activities by target shooters and other persons authorised in accordance with that Directive should be improved by including in the relevant provisions thereof a reference to firearms classified in category A, without prejudice to Member States' right to choose to apply more stringent rules.

(26) Objects which have the physical appearance of a firearm (‘replica’), but which are manufactured in such a way that they cannot be converted to expel a shot, bullet or projectile by the action of a combustible propellant, should not be covered by Directive 91/477/EEC.

(27) Where Member States have national laws regulating antique weapons, such weapons are not subject to Directive 91/477/EEC. However, reproductions of antique weapons do not have the same historical importance or interest attached to them and may be constructed using modern techniques which can improve their durability and accuracy. Therefore, such reproductions should be brought within the scope of Directive 91/477/EEC. Directive 91/477/EEC is not applicable to other items, such as airsoft devices, which do not correspond to the definition of a firearm and are therefore not regulated by that Directive.

(28) In order to improve the functioning of the exchange of information between Member States, it would be helpful if the Commission could assess the necessary elements of a system to support such exchange of information contained in the computerised data-filing systems in place in Member States, including the feasibility of enabling each Member State to access such a system. That system may use a module of the internal market information system (‘IMI’) established by Regulation (EU) No 1024/2012 of the European Parliament and of the Council[(6)] specifically customised for firearms. Such exchange of information between Member States should take place in compliance with the rules on data protection laid down in Regulation (EU) 2016/679 of the European Parliament and of the Council[(7)]. Where a competent authority needs to have