Council Directive of 18 June 1991 on control of the acquisition and possession of weapons (91/477/EEC)

COUNCIL DIRECTIVE

of 18 June 1991

on control of the acquisition and possession of weapons

(91/477/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100a thereof,

Having regard to the proposal from the Commission[(1)],

In cooperation with the European Parliament[(2)],

Having regard to the opinion of the Economic and Social Committee[(3)],

Whereas Article 8a of the Treaty provides that the internal market must be established by not later than 31 December 1992; whereas the internal market comprises an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured, in accordance with the provisions of the Treaty;

Whereas, at its meeting in Fontainebleau on 25 and 26 June 1984, the European Council expressly set the objective of abolishing all police and customs formalities at intra-Community frontiers;

Whereas the total abolition of controls and formalities at intra-Community frontiers entails the fulfilment of certain fundamental conditions; whereas in its white paper 'Completing the internal market' the Commission stated that the abolition of controls on the safety of objects transported and on persons entails, among other things, the approximation of weapons legislation;

Whereas abolition of controls on the possession of weapons at intra-Community frontiers necessitates the adoption of effective rules enabling controls to be carried out within Member States on the acquisition and possession of firearms and on their transfer to another Member State; whereas systematic controls must therefore be abolished at intra-Community frontiers;

Whereas the mutual confidence in the field of the protection of the safety of persons which these rules will generate between Member States will be the greater if they are underpinned by partially harmonized legislation; whereas it would therefore be useful to determine category of firearms whose acquisition and possession by private persons are to be prohibited, or subject to authorization, or subject to declaration;

Whereas passing from one Member State to another while in possession of a weapon should, in principle, be prohibited; whereas a derogation therefrom is acceptable only if a procedure

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is adopted that enables Member States to be notified that a firearm is to be brought into their territory;

Whereas, however, more flexible rules should be adopted in respect of hunting and target shooting in order to avoid impeding the free movement of persons more that is necessary;

Whereas the Directive does not affect the right of Member States to take measures to prevent illegal trade in weapons,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER 1

Scope

Article 1

1 For the purposes of this Directive, the following definitions apply:

(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, unless it is excluded from that definition for one of the reasons listed in Part III of Annex I. Firearms are classified in Part II of Annex I.

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

(a) it has the appearance of a firearm; and

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

(2) 'essential component' means the barrel, the frame, the receiver, including both upper and lower receivers, where applicable, the slide, the cylinder, the bolt or the breech block, which, being separate objects, are included in the category of the firearms on which they are or are intended to be mounted;

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

(4) 'alarm and signal weapons' means devices with a cartridge holder which are designed to fire only blanks, irritants, other active substances or pyrotechnic signalling rounds and which are not capable of being converted to expel a shot, bullet or projectile by the action of a combustible propellant;

(5) 'salute and acoustic weapons' means firearms specifically converted for the sole use of firing blanks, for use such as in theatre performances, photographic sessions, film and television recordings, historical re-enactments, parades, sporting events and training;

(6) 'deactivated firearms' means firearms that have been rendered permanently unfit for use by deactivation, ensuring that all essential components of the firearm in question have been rendered permanently inoperable and incapable of removal, replacement or modification in a manner that would permit the firearm to be reactivated in any way;

(7) 'museum' means a permanent institution in the service of society and its development, open to the public, which acquires, conserves, researches and exhibits firearms, essential components or ammunition for historical, cultural, scientific, technical, educational, heritage or recreational purposes, and recognised as such by the Member State concerned;

(8) 'collector' means any natural or legal person dedicated to the gathering and conservation of firearms, essential components or ammunition for historical, cultural, scientific, technical, educational or heritage purposes, and recognised as such by the Member State concerned;

(9) 'dealer' means any natural or legal person whose trade or business consists wholly or partly of either of the following:

(a) the manufacture, trade, exchange, hiring out, repair, modification or conversion of firearms or essential components;

(b) the manufacture, trade, exchange, modification or conversion of ammunition;

(10) 'broker' means any natural or legal person, other than a dealer, whose trade or business consists wholly or partly of either of the following:

(a) the negotiation or arrangement of transactions for the purchase, sale or supply of firearms, essential components or ammunition;

(b) arranging the transfer of firearms, essential components or ammunition within a Member State, from one Member State to another Member State, from a Member State to a third country or from a third country to a Member State;

(11) 'illicit manufacturing' means the manufacturing or assembly of firearms, their essential components and ammunition:

(a) from any essential component of such firearms illicitly trafficked;

(b) without an authorisation issued in accordance with Article 4 by a competent authority of the Member State where the manufacture or assembly takes place; or

(c) without marking firearms at the time of manufacture in accordance with Article 4;

(12) 'illicit trafficking' means the acquisition, sale, delivery, movement or transfer of firearms, their essential components or ammunition from or through the territory of one Member State to that of another Member State if any one of the Member States concerned does not authorise it in accordance with this Directive or if the firearms, essential components or ammunition are not marked in accordance with Article 4;

(13) 'tracing' means the systematic tracking of firearms and, where possible, their essential components and ammunition from manufacturer to purchaser for the purpose of assisting the competent authorities of Member States in detecting, investigating and analysing illicit manufacturing and illicit trafficking.

2 For the purposes of this Directive, a person shall be considered to be a resident of the country indicated by the address appearing on an official document showing his or her place of residence, such as a passport or a national identity card, which, on a check on acquisition or on

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possession, is submitted to the competent authorities of a Member State or to a dealer or broker. If a person's address does not appear on his or her passport or national identity card, his or her country of residence shall be determined on the basis of any other official proof of residence recognised by the Member State concerned.

3 A 'European firearms pass' shall be issued on request by the competent authorities of a Member State to a person lawfully entering into possession of and using a firearm. It shall be valid for a maximum period of 5 years, which may be extended, and shall contain the information set out in Annex II. It shall be non-transferable and shall record the firearm or firearms possessed and used by the holder of the pass. It must always be in the possession of the person using the firearm and any change in the possession or characteristics of the firearm, as well as the loss or theft thereof, shall be indicated on the pass.**]**

Textual Amendments

F1 Substituted by 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).

[F1 Article 2

1 This Directive is without prejudice to the application of national provisions concerning the carrying of weapons, hunting or target shooting, using weapons lawfully acquired and possessed in accordance with this Directive.

2 This Directive shall not apply to the acquisition or possession of weapons and ammunition, in accordance with national law, by the armed forces, the police or the public authorities. Nor shall it apply to transfers regulated by Directive 2009/43/EC of the European Parliament and of the Council[(4)].**]**

Textual Amendments

F1 Substituted by 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).

Article 3

Member States may adopt in their legislation provisions which are more stringent than those provided for in this Directive, subject to the rights conferred on residents of the Member States by Article 12 (2).

CHAPTER 2

Harmonization of legislation concerning firearms

[F2 Article 4

[F1 1 With respect to firearms manufactured or imported into the Union on or after 14 September 2018, Member States shall ensure that any such firearm, or any essential component, placed on the market has been:

a provided with a clear, permanent and unique marking without delay after manufacture and at the latest before its placement on the market, or without delay after importation into the Union; and

b registered in compliance with this Directive without delay after manufacture and at the latest before its placement on the market, or without delay after importation into the Union.

2 The unique marking referred to in point (a) of paragraph 1 shall include the name of the manufacturer or brand, the country or place of manufacture, the serial number and the year of manufacture, if not already part of the serial number, and the model where feasible. This shall be without prejudice to the affixing of the manufacturer's trademark. Where an essential component is too small to be marked in compliance with this Article, it shall be marked at least with a serial number or an alphanumeric or digital code.

The marking requirements for firearms or essential components that are of particular historical importance shall be determined in accordance with national law.

Member States shall ensure that each elementary package of complete ammunition is marked in such a way as to indicate the name of the manufacturer, the identification batch (lot) number, the calibre and the type of ammunition.

For the purposes of paragraph 1 and this paragraph, Member States may choose to apply the provisions of the Convention for the Reciprocal Recognition of Proof Marks on Small Arms of 1 July 1969.

Furthermore, Member States shall ensure, at the time of transfer of a firearm or its essential components from government stocks to permanent civilian use, the unique marking, as provided for under paragraph 1, permitting identification of the transferring entity.

2a The Commission shall adopt implementing acts establishing technical specifications for the marking. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 13b(2).

3 Each Member State shall establish a system for the regulation of the activities of dealers and brokers. Such systems shall include at least the following measures:

a the registration of dealers and brokers operating within the territory of that Member State;

b the licensing or authorisation of the activities of dealers and brokers within the territory of that Member State; and

c a check of the private and professional integrity and of the relevant abilities of the dealer or broker concerned. In the case of a legal person, the check shall be both on the legal person and on the natural person or persons directing the undertaking.**]**

4 Member States shall, by 31 December 2014, ensure the establishment and maintenance of a computerised data-filing system, either a centralised system or a decentralised system which guarantees to authorised authorities access to the data-filing systems in which each firearm subject to this Directive shall be recorded. **[**[F1]That data-filing system shall record all information relating to firearms which is needed in order to trace and identify those firearms, including:

(a) the type, make, model, calibre and serial number of each firearm and the mark applied to its frame or receiver as a unique marking in accordance with paragraph 1, which shall serve as the unique identifier of each firearm;