



COMMISSION OF THE EUROPEAN COMMUNITIES

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2006/0031 (COD)

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**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

### CONTEXT OF THE PROPOSAL

#### **Grounds for and objectives of the proposal**

On behalf of the European Community (and following Council authorisation of 16 October 2001<sup>1</sup>), the Commission signed the United Nations Protocol on the illicit manufacturing of and trafficking in firearms, their parts components and ammunition (the "Firearms Protocol", hereinafter referred to as "the Protocol"), annexed to the United Nations Convention against transnational organised crime<sup>2</sup>. Thanks to the inclusion of a deconnection clause, Community competence was preserved when adopting this international instrument.

The purpose of this Protocol is to "promote, facilitate and strengthen cooperation among States Parties in order to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition" (Article 2). It comprises a number of articles (21) that aim essentially to "prevent the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition". However, some provisions in the Protocol entail limited technical amendments, specifically to the Council Directive of 18 June 1991 on control of the acquisition and possession of weapons, even though the aim of the Protocol evidently differs from that of the Directive, which is applicable only to the legal trade in certain types of weapons (e.g. excluding military weapons), and solely in the context of the Internal Market.

This proposal does not, therefore, concern the aspects of the Protocol that fall outside the scope of Directive 91/477, such as the import/export arrangements applied by the Member States at the external borders of the EU.

#### **General context**

First of all, the very concepts of illicit manufacturing of and trafficking in firearms, their parts and components and ammunition should be specified in the Directive by using the definitions of these activities contained in the Protocol – Article 3 – in the aim, of course, of achieving legal clarity, certainty and coherence.

The fight against organised crime also makes the tracing of firearms particularly important. The technical amendments outlined below aim to facilitate the tracing under Directive 91/477 of the arms referred to therein.

For instance, the principle of marking firearms at the time of manufacture – those which fall within the scope of the Directive of course – appears only indirectly in the second paragraph of Article 4 of Directive 91/477, in references to identification particulars that must be recorded in the dealers' registers. In contrast, Article 8.1(a) of the Protocol clearly establishes a marking obligation ("marking of firearms"). This can be incorporated without modification into the Directive.

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<sup>1</sup> Published in the Official Journal of the European Communities, L 280 of 24 October 2001.

<sup>2</sup> <http://untreaty.un.org/English/TreatyEvent2003/index.htm>

Article 4 of the Directive should also include the instruction under 8.1.(c) of the Protocol to ensure also that firearms are marked at the time of transfer from government stocks to permanent civilian use.

This Article of Directive 91/477 requires dealers (defined in the Directive as "any natural or legal person whose trade or business consists wholly or partly in the manufacture, trade, exchange, hiring out, repair or conversion of firearms" – Article 1(2)) to conserve, for a period of at least five years, a register in which information on all firearms received or disposed of by him is recorded. To strengthen the security aspect of the Directive, the minimum 10-year period specified by the Protocol (Article 7) for keeping the registers should be adopted. Furthermore, it must be stated that brokering activities, as mentioned in Article 15 of the Protocol, fall within the definition of dealer given by the Directive.

Article 5 of the Protocol provides that each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences acts committed intentionally, in particular the illicit manufacturing of or trafficking in firearms. The language used in the Directive to describe the applicable penalties must therefore be strengthened, in order to increase their effectiveness.

Furthermore, Annex I to Directive 91/477 (point III (a)) states that the objects which correspond to the definition of a firearm but which have been permanently rendered unfit for use by the application of technical procedures will not be considered as weapons that fall within the scope of the Directive. However, Article 9 of the Protocol sets out more extensive general principles for the deactivation of firearms that must be incorporated into the amended Directive.

### **Nature of the proposed amendments**

The proposed amendments do not cover new problems in relation to the general economy of the Directive. They merely adapt the provisions of the Directive to the new legal context brought about by Community accession to the Protocol.

### **Consistency with the other EU policies and objectives**

The proposal is consistent with the EU policy against organised crime in particular. It is entirely in keeping with the Communication from the Commission on "measures to ensure greater security in explosives, detonators and firearms" – COM(2005) 329 final – which states: "a technical modification of Directive 91/477 will be proposed by the Commission in 2005, in order to integrate the appropriate provisions required by the Protocol as regards intra-Community transfers of weapons concerned by the Directive".

## **CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENTS**

### **Consultation of stakeholders**

There is no need for consultation in this case, as it would amount to validating an international obligation of the Community.

It should be remembered that the proposal affects only the technical aspects of the Directive; a technical assessment of the proposals put forward was provided by a group of national experts, as explained below.

## **Collection and use of expertise**

### Scientific/expertise domains concerned

The proposed amendments already received EU approval during the negotiations on the Protocol; this was a mixed agreement, negotiated in a dialogue between all the Member States and the Commission; they simply reflect the positions on the basis of which the Protocol was concluded.

### Methodology used

Meeting of an informal group of national experts on the application of Directive 91/477 on 23 May 2005, to examine the editorial consequences on the Directive of accession to the Protocol.

### Main organisations/experts consulted

Representatives of the Ministries of Justice, of the Interior and of Defence.

### Summary of advice received and used

The group deems it necessary to make the technical amendments proposed, especially as they ensue from an agreement (the Protocol) that has already been negotiated and concluded.

### Means used to make the expert advice publicly available

The Protocol has been widely published (see references above) and the interested parties have not expressed any reservations.

## **Impact assessment**

An impact assessment is not necessary for simple technical amendments ensuing from the Community's international commitments, as established in the document "Impact assessment guidelines" (SEC(2005) 791 of 15 June 2005).

Failure to incorporate these amendments would lead, in particular, to legal uncertainty for economic operators and a breach of the Community's international obligations.

## **LEGAL ELEMENTS OF THE PROPOSAL**

### **Summary of the proposed measures**

To define, within the scope of application of the Directive, the notions of illicit manufacturing and trafficking of firearms, to reaffirm the need for marking, to increase the period for keeping registers prescribed by the Directive, to clarify the applicable penalties and to set out the general principles on the deactivation of weapons defined by the United Nations Protocol.

### **Legal basis**

Article 95 of the EC Treaty.

### **Subsidiarity principle**

The Commission's action is justified by the signing of the Protocol, which of course contains the international obligations that must be observed.

### **Proportionality principle**

The proposed amendments are limited to the integration into the Directive of the provisions of the Protocol.

The financial and administrative burden incurred by these technical amendments is extremely limited.

In practice, for instance, economic operators already mark the weapons in question and the registers are mainly kept in computerised form; the general principles of deactivation offer a large choice of applicable techniques, and the establishment of applicable penalties is of no financial consequence.

### **Choice of instruments**

Proposed instrument(s): Directive.

As the original legal provision to be amended is a Directive, the appropriate legal instrument is therefore another Directive, in accordance with the principle of parallel forms.

The choice of another Community instrument, or recourse to national legislation to make the intended changes, would have deprived the Directive of part of its substance and even undermined its coherency and credibility.

Furthermore, it would be unjustifiable if the Community, which is party to the Protocol, did not bear the consequences in its internal legal system.

### **BUDGETARY IMPLICATION**

The proposal has no implications for the Community budget.

### **ADDITIONAL INFORMATION**

#### **Simplification**

With the guarantee of sufficient marking and a higher minimum duration for the keeping of registers, the public authorities at EU level may, in particular, expect improved traceability of the weapons covered by the Directive.

#### **Repeal of existing legislation**

No other current legislative provisions are likely to be repealed.

### **Detailed explanation of the proposal by chapter or by article**

This can be consulted in part 3) "legal elements of the proposal, summary of the proposed measures".

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 (1) thereof,

Having regard to the proposal of the Commission <sup>3</sup>,

Having regard to the opinion of the European Economic and Social Committee <sup>4</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>5</sup>,

Whereas:

- (1) Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons<sup>6</sup> established an accompanying measure for the internal market. It creates balance between the undertaking to ensure a certain freedom of movement for some firearms within the European Community, and the need to control this freedom using security guarantees suited to this type of product.
- (2) In accordance with Council Decision 2001/748/EC of 16 October 2001 concerning the signing on behalf of the European Community of the Protocol on the illicit manufacturing and trafficking of firearms, their parts, components and ammunition, annexed to the United Nations Convention against transnational organised crime<sup>7</sup>. The Commission has signed this Protocol (hereinafter referred to as the “Protocol”) on behalf of the Community.
- (3) The accession of the Community to the Protocol makes it necessary to amend certain provisions of Directive 91/477/EEC. Indeed, it is important to ensure the coherent, effective and rapid application of the international commitments affecting the Directive.

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<sup>3</sup> OJ C , , p. .

<sup>4</sup> OJ C , , p. .

<sup>5</sup> OJ C , , p. .

<sup>6</sup> OJ L 256, 13.9.1991, p. 51.

<sup>7</sup> OJ L 280, 24.10.2001, p. 5.

- (4) The notions of illicit manufacturing and trafficking of firearms, their parts, components and ammunition should therefore be defined for the purposes of this Directive.
- (5) Furthermore, the Protocol establishes an obligation to mark weapons at the time of manufacture, and at the time of transfer from government stocks to permanent civilian use, whereas Directive 91/477 refers only indirectly to the marking obligation.
- (6) Moreover, the period during which the registers containing information on the weapons are kept must be increased to at least ten years, as specified by the Protocol.
- (7) It must also be specified that brokering activities, as mentioned in Article 15 of the Protocol, fall within the definition of dealer given by the Directive.
- (8) In some serious cases, the Protocol requires the application of judicial penalties and confiscation of the weapons. Consequently, the penalties provided for in the Directive must be reinforced.
- (9) With regard to the deactivation of firearms, point III (a) of Annex I to the Directive simply refers to national legislation. The Protocol sets out more explicit general principles for the deactivation of weapons. Annex I to the Directive must therefore be completed.
- (10) Directive 91/477/EC should be amended accordingly.

HAVE ADOPTED THIS DIRECTIVE:

#### *Article 1*

Directive 91/477/EEC is hereby amended as follows:

- 1) In Article 1, after paragraph 2, the following two paragraphs shall be added:
  - “3. For the purposes of this Directive, “illicit manufacturing” shall mean the manufacturing or assembly of firearms, their parts and components or ammunition:
    - from parts and components illicitly trafficked;
    - without a licence or authorisation issued in compliance with national law by a competent authority of the Member State where the manufacture or assembly takes place; or
    - without marking the firearms at the time of manufacture, in accordance with Article 4(1).
  4. For the purposes of this Directive, “illicit trafficking” shall mean the acquisition, sale, delivery, movement or transfer of firearms, their parts and components and ammunition from or across 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 the terms of this Directive or if the firearms are not marked in accordance with Article 4(1).”



2) Article 4 is replaced by the following:

“1. For the purpose of identifying and tracing each firearm, the Member States, at the time of manufacture of each firearm, either require unique marking providing the name of the manufacturer, the country or place of manufacture and the serial number, or maintain any alternative unique user-friendly marking with simple geometric symbols in combination with a number or alphanumeric code, permitting ready identification by all States of the country of manufacture.

Furthermore, the Member States shall ensure, at the time of transfer of a firearm from government stocks to permanent civilian use, the appropriate unique marking permitting identification by States of the transferring country.

2. At least in respect of categories A and B, each Member State shall make the pursuit of the activity of dealer within its territory conditional upon authorisation on the basis of at least a check on the private and professional integrity of the dealer. In the case of a legal person, the check shall be on the person who directs the undertaking. In respect of categories C and D, each Member State which does not make the pursuit of the activity of dealer conditional upon authorisation shall make such activity subject to a declaration.

3. Dealers shall be required to keep a register in which information concerning all firearms classified in category A, B or C received or disposed of by them shall be recorded, including such particulars as enable the weapon to be identified, in particular the type, make, model, calibre and serial number thereof and the names and addresses of the person acquiring the weapon. The dealer shall conserve the register for a period of five years, even after he has ceased his activity. Each Member State shall ensure the maintenance of this information for not less than ten years.”

3) Article 16 is replaced by the following:

“ 1. Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented.. The penalties provided for must be effective, proportionate and dissuasive.

The Member States shall, in accordance with this Directive, establish as criminal offences the following conduct, when committed intentionally:

- illicit manufacturing of firearms, their parts and components and ammunition;
- illicit trafficking of firearms, their parts and components and ammunition;
- falsifying or illicitly obliterating, removing or altering the markings on firearms required by Article 4(1).

Such attempts, or participation as an accomplice in the latter shall also be considered as criminal offences, when committed intentionally.

These offences shall be punishable by a confiscation measure as provided for in Article 2 of Council Framework Decision 2005/212/JHA of 24 February 2005 on the Confiscation of Crime-Related Proceeds, Instrumentalities and Property.

2. The Member States shall notify the Commission of the provisions set out in paragraph 1 by no later than the date specified in Article 2 of this Directive and without delay of any subsequent amendments affecting them.”

4) Annex I is amended as follows:

a) Point III (a) is replaced by the following:

“a) 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”;

b) The following paragraph is inserted after the first paragraph:

“The Member States shall make arrangements for the deactivation measures set out under (a) to be verified by a competent authority, to ensure that the modifications made to a firearm render it permanently inoperable. The Member States shall provide, in the context of this verification, for the issue of a certificate or record attesting to the deactivation of the firearm or a clearly visible mark to that effect stamped on the firearm”.

#### *Article 2*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [...] at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

#### *Article 3*

This Directive shall enter into force on the day after its publication in the *Official Journal of the European Union*.

*Article 4*

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*