

Bratislava, 9. 3. 2016

Re.:
Response to the discussion paper

Please find below our brief response to the discussion paper issued to enable the Rapporteur to start preparing draft amendments to the Commission proposal of firearms directive. This response represents position of Legis Telum as major Slovak stakeholder. Legis Telum is a national association of firearms owners in Slovak republic, a recognized speaker of legally armed citizen and major national stakeholders and industry, currently representing over 80.000 individuals.

The original text of the discussion paper is in italics with our comments in blue.

1. Introduction

This document is a discussion paper to enable the Rapporteur to start preparing draft amendments to the Commission proposal.

It is important to recognise that the vast majority of owners of firearms in the EU do not present any danger to the public. Any changes to the 1991 Directive must be necessary, proportionate and targeted. The absence of an impact assessment is problematic since it is unclear which problems have been identified and what the evidence is for how they should best be addressed.

Comments: The absence of an impact assessment represents major flaw of the proposal. Due to lack of thereof there is a substantial risk of proposal causing major negative impact on security and economy of many member states. While providing exact figures is beyond of our expertise, based on our practice we are convinced that passing the proposal and its subsequent adoption of member states shall bring major losses to the involved industry stakeholders caused by the loss of EU market, translating to the loss of immense number of jobs. Many member states legislation, including Slovakia, currently allows its citizens to possess semiautomatic firearms and cat. A firearms. Should the proposal be passed, its adoption by member stated will present a security risk due to expected massive non-compliance by regulated subjects.

Besides the need of an assessment of direct impact of the proposal on member states, stakeholders and citizens, we also lack proper legal assessment of the document from the

perspective of principles of proportionality and subsidiarity. We believe, that it is highly questionable whether the proposal actually is in line with these principles.

Although the use of legally acquired firearms by criminals and terrorists is limited, there have been recorded cases. For example, a type of firearm used in the Charlie Hebdo attacks in Paris had been legally purchased in one Member State (MS) after conversion into a "blank-firing" acoustic firearm, which under the law of that MS before it was recently amended, did not require authorisation. It was then converted back into a live prohibited firearm.

It is clear that many stakeholders are concerned about the lack of clarity of some of the proposal and possible consequences for legal owners.

Any changes to the Directive must therefore balance the right to ownership of certain types of firearms with controls appropriate to the risk presented. This approach should take different forms. More precise criteria could assist free movement by further clarifying the controls applicable and reducing national differences. Clarifying requirements such as those needed for authorisation, for example on secure storage and museums, could ease free movement of licit firearms by approximating to the degree necessary the safety requirements across MS, increasing trust by reducing discrepancies between national laws. In so doing, the risk of legally acquired firearms being sold into the black market could be lessened.

However, in addition, the Commission adopted a Deactivation Regulation on the same day as its launch of the review of the Directive. Concerns have been expressed by stakeholders from many MS that the new Regulation may make it harder for law enforcement bodies to know if a firearm has been properly deactivated.

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The Rapporteur seeks your views on the following issues:

2. Characteristics v. appearance

The proposal includes replicas/imitations in category C and continued control of deactivated firearms. That (and the proposed move of category B7 to A7) touches on the appearance of an object, not its characteristics.

The Directive defines and controls "essential components". This could provide a basis for an approach based on technical characteristics instead of appearance.

The Rapporteur welcomes your views on the following:

i. exclude from scope firearms, including in category A, deactivated under the new Deactivation Regulation or alternative prior deactivation standard which has rendered the firearm irreversibly inoperable¹ (except for continued registration of an already registered firearm after its deactivation, for tracing purposes). This would remove the proposed category A8 and C6 in Annex I,

Comments: We do agree with the proposed measure. Nevertheless, the exception of continued registration of an already registered firearm after its deactivation seems unnecessary and we should rather concentrate on ensuring that firearms are deactivated properly under the new deactivation standards, which could be secured via mandatory check by a proof house before a deactivated piece is placed on market.

ii. exclude from scope other objects which do not contain any essential component which can also be used in a firearm,

Comments: We do agree with the proposed measure.

iii. keep in scope objects which have an essential component,

Comments: We do agree with the proposed measure.

iv. clarify that essential components are included in the highest category of firearm on which they are intended to be mounted,

Comments: Many essential components can be used in firearms of different categories, and especially barrels can be used in firearm of any category. Therefore, category of essential part must be derived from its intended use, not from its potential use, otherwise for example all barrels would be category A. The essential components should therefore fall under the same regulation as the firearm it is intended to be legally used in by respective user.

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v. clarify which components are "essential", regarding the proposal to add additional items to the list (e.g. silencers).

Comments: We suggest to keep the current wording of the directive and retain the current list of essential parts. That would ensure that for every firearm, at least two parts would be considered to be essential (barrel, breech block). We definitely recommend to leave silencers and magazines out of the list. In some MS, silencers are allowed for hunters, or even mandatory under certain circumstances. Magazines are not, by their nature, an essential part and are extremely prolific. Therefore it would be better to leave regulation of this part to MS. Listing the magazines would represent an example of legislation which shall hardly be enforced.

The above approach would specify the current text of Art 1 and the proposal on replicas (1h) could be dropped.

However, it may have an impact on certain objects such as airguns and airsoft, which might require clarification. The Rapporteur is interested in your suggestions.

3. Blank firing weapons (alarm/signal/salute/acoustic)

Defective implementation by some MS of the Directive has led to demonstrated problems particularly relating to the use of reconverted blank firing weapons.

As amended in 2008, Art 1 of the Directive means that an object which has been converted to fire blanks remains a firearm if it can be converted back. The Directive also provides that objects designed for alarm, signalling etc. are excluded if they “can be used for the stated purpose only”. In the Rapporteur's view this should already cover the situation. The Commission proposes to clarify primarily by introducing three new definitions, each of which could be discussed, and by including alarm/signal/salute/acoustic weapons as well as replicas in category C, regardless of their technical characteristics.

The Rapporteur believes there may be a simpler approach and welcomes views on the following:

i. firearms converted to firing blanks remain in their original categories, and

Comments: In our opinion, the directive could follow the example of new legislation of Slovak republic. The blank firing firearms converted from any category remain are classified as cat. D firearms, however their possession is mandatory registered by respective authorities and online sale is prohibited, ie. similarly as in the case of cat. C firearms.

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ii. objects originally manufactured to fire blanks, meeting requirements to be laid down by the Commission by a set date, remain outside scope.

Comments: We do agree with the proposed measure.

In addition, as outlined in 2 above, any other objects containing an essential component could be placed in the category for the firearm on which the component could be mounted. This might remove a need for definitions of alarm, signal, salute or acoustic weapons.

Comments: See our comments on essential parts.

4. Art 2(2), Art 6 authorisation, category A-B

The Commission proposes to move category B7 to A7, to delete the possibility in Art 6 for MS to grant category A authorisations in special cases, and to require all category A firearms are destroyed (save for "authorised bodies concerned with historical and cultural aspects", under extremely limited circumstances).

Under the current wording of the Directive, despite category A being described as “prohibited”, firearms listed in both category A and B are allowed, subject to authorisation, either under Art 6 (category A) or Art 5 and 7 (category B). Art 2(2), which states that the Directive does not apply to the armed forces, police etc., is also of relevance in this context.

Based on the discussion in the EP so far, and as she understands the situation in Council, the Rapporteur takes it that the proposal in this respect has little realistic prospect of approval.

The Rapporteur has considered the option to include all semi-automatics in category A unless they are included in category B or C. However she believes that this approach is unworkable.

Therefore, the Rapporteur would invite your views on the following alternatives:

4.1 to revert to the existing legislation,

Comments: We do agree with reverting back to existing legislation. We are deeply convinced that any other attempt is beyond principle of proportionality and subsidiarity from perspective of MS with more liberal legislation. There is no substantial evidence proving a need for implementing the proposed ban on semiautomatic firearms as introduced in the proposed new categories of A6, A7 and A8. Semiautomatic firearms currently falling under cat. B are all possessed based on authorization and purchase permit.

As emphasis is mostly made on the cat. B7 firearms, we feel the need to stress that the proposal also introduces total ban on „automatic firearms which have been converted into semi-automatic firearms“ which are to be listed in the new cat. A6. These often called demilitarized firearms are very prolific among sport shooters, private collectors, hunters and are also held by citizens and private security agencies for property protection in many countries including Slovakia and Czech republic. Unlike newly produced firearms, they are usually more affordable as originate from relatively inexpensive military surplus. Despite popular belief, they are not likely to be transformed back to automatic weapons. Statistics prove the fact, that licensed holders of these firearms do not illegally transform these weapons back to fully automatic state in order to commit violent crime. The proposed A6 firearms possess the same technical specifications as any other category B firearm. They are not more dangerous, and may only be acquired and kept subject to authorization. They are therefore totally controlled, traceable and are not available to general public without proper procedure. These are often mistaken with automatic firearms, however it has to be stressed that these are purely semiautomatic firearms.

Creating the proposed new category A6 firearms would result to inability to acquire these firearms for property protection, sport and hunting while many shooting sports would cease to exist. Proposed mandatory confiscation and destruction of these firearms constitutes public security risk as many holders shall not comply with new regulations and firearms shall transfer into illegal status. We believe that proposed mandatory confiscation and destruction of these firearms constitutes collision with provisions of the The Charter of Fundamental Rights of the EU and Constitutions of members states.

We suggest to leave these firearms in category B. Instead of classifying these firearms into prohibited A6 category, we suggest that authorities shall be granted legal capacity to order an owner of such firearm to hand it out for mandatory inspection for any signs of illegal attempt to transform such firearm to fully automatic state. Such measure has been adopted in Slovakia and proves to be the best measure to prevent any illegal attempts to transform a firearm back into automatic state.

or

4.2 to consider a package of

i. clarifying in Art 2(2) that “armed forces” cover the defence forces as defined under MS law with all units and persons under their command, including, where relevant, the home guard, reservists etc. if authorised or obliged to acquire or possess category A firearms,

Comments: We do agree with this as long as B7 firearms stay in B category and the proposed A6 category is not implemented, that is, semiautomatic firearms converted from automatic firearms remain in cat. B as well.

ii. maintaining the possibility for MS to grant authorisations also for category A in special cases, while clarifying possibly that with examples of types of persons which could be considered for authorisations (via an open list), and a further description in a recital of the nature of associated stringent requirements,

Comments: We do agree with the proposed measure, however, grounds for authorizations should be left to regulation by MS. An attempt to compile a list of such authorizations would probably fail to fully respect the principles of proportionality and subsidiarity. Since category A firearms are subject to stricter supervision than category B firearms, we believe this do not impose increased risks.

iii. ensuring that shortening a firearm (making it more easily concealable) is considered manufacturing, and therefore illicit unless done by an authorised dealer, and

Comments: We only agree with the measure if it solely imposes the regulation on shortening of a cat. C firearm that results in its re-categorization to cat. B or A firearm. (ie. shortening barrel or replacing of fixed stock with a collapsible stock which would result into a firearm shorter than 600 mm).

iv. rejecting the proposed move of category B7 to A7 (as B7 requires authorisation in any event).

Comments: We do agree with the proposed measure, please see also the above comments.

With respect to similar legislation adopted and subsequently cancelled in countries like USA and Germany clearly shows that differentiations by outward appearance indeed do not have any impact on security. There is no evidence that any firearm of Category B7 has been misused for terroristic acts or modified to automatic fire. So is the case when it comes to semiautomatic firearms legally converted from automatic firearms falling into the proposed new category A6.

4.3 Alternative wording for A7

The Rapporteur has considered a number of options, but has not yet been able to identify a viable alternative allowing e.g. to specifically identify a particular type of semi-automatic firearm by way of unique technical characteristics.

However, she would appreciate views on inserting one or more of the following options to replace the A7 text of the proposal:

i. "firearms and ammunition specially designed for military use" (cf Art 3(b) of Regulation 258/2012),

Comments: We do not agree with the proposed measure. Such definition would be inherently flawed especially when it comes to firearms. Once a military grade firearm has been properly converted to purely semiautomatic mode it is classified as cat. B firearm with all regulatory consequences. The definition would have to be much more precise when it comes to ammunition as most of the ammunition types in current use by civilians are identical with types of ammo used by military and police.

ii. "centerfire semi-automatic rifled long firearms specially designed for military use",

Comments: Please see comments above.

iii. "Semi-automatic firearms for civilian use which resemble weapons with automatic mechanisms except in the case of firearms for hunting or for target shooting, for persons entitled to use them",

Comments: We do not agree with the proposed measure. Appearance-based definitions are inherently flawed. Please see above comments.

iv. "semi-automatic firearms for civilian use which resemble weapons with automatic mechanisms, except where specially designed for hunting or target shooting",

Comments: We do not agree with the proposed measure. Again, any categorization based on outer appearance is nonsensical.

v. "semi-automatic long firearms for civilian use which have or can be equipped with a firing capacity exceeding 6 rounds without reloading, or which otherwise are constructed in a way that they are more appropriate for combat than for hunting".

Comments: We do not agree with the proposed measure. This would lead to a broad ban as majority of semiautomatic firearms use a feeding device with capacity exceeding 6 rounds. Legal definition stating that a firearm is more appropriate for combat than hunting represents a prime example of provision allowing for arbitrary application by authorities and is hence inappropriate.

A number of the above options are quite broad and would require clarification which firearms are not intended to be included, e.g. rimfire, .22 calibre. The Rapporteur is interested in drafting suggestions.

A further option could be to reinstate category B7 (rejecting the proposal to move it to A), plus possibly some higher standards related to authorisations for B7 e.g. regarding ammunition, training or storage.

Comments: We agree with rejecting the proposal to move cat. B7 firearms to cat. A. Standards for cat. B firearms for authorization, storage, training and ammunition are the very same for the whole category, including B7. There is no real need to impose stricter requirements on B7 simply based on their appearance. Truth to be told, the whole cat. B7 is based upon false assumption that cosmetic matter more than construction and performance.

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In addition, the Rapporteur invites your views with respect to the possibilities of introducing more stringent requirements for certain cases, including large capacity magazines, see below.

5. Authorisation requirements

5.1 The proposal includes "authorised bodies concerned with historical and cultural aspects" under the scope of the Directive (while granting a possibility to keep any category A firearms already held provided they are deactivated).

Deactivating historical collections would result in considerable costs and permanent damage to historical artefacts and it is important for museums to be able to add to their collections. The Rapporteur invites your views on:

i. clarifying the position of museums to enable them to hold category A firearms provided they have MS authorisation and that storage measures are in place to address risks to public safety and security,

Comments: We do agree with this. There is no known instance of cat. A firearm held by a museum or licensed collector to be used in an act of crime.

ii. whether this should be done as per the current text of the Directive by continuing to exclude museums (recognised by MS) from scope, or via Article 6.

Comments: We do believe that the current text of the Directive, which already excludes museums and collectors, should not be changed by the proposal.

In the current Directive, the word "collector" is used but not defined. The Commission proposes removing all exemptions for them. The Rapporteur is interested in your views on whether MS should continue to be able to exempt collectors in specific circumstances and if there should be any differentiation between "authorised bodies" and "collectors".

Comments: We do believe that the current text of the Directive, which already excludes museums and collectors, should not be changed by the proposal. Imposing any additional restrictions on collectors should be left on MS and their authorities. On this matter we fully support the position of FESAC which represents European collectors and is most knowledgeable on the subject.

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With respect to all persons, the Rapporteur invites your views on whether:

iii. controls on large capacity magazines would contribute to public safety, e.g. by permitting them only for recognised target shooting organisations, on condition that the magazines are kept by those organisations and only possessed under their control on their ranges,

Comments: We do not agree with any potential ban on large capacity magazines. First of all, the definition of large capacity magazine is flawed. Current standard capacity of modern semiautomatic pistol is 15-19 rounds. Magazine capacity bans were tried in certain jurisdiction to no apparent effect. Larger capacity magazines are extremely prolific as they have not been regulated firearm part in most MS. Such ban would only uselessly criminalize possession of a part that represents no inherent public security risk. Any attempt to regulate possession, enforce registration, let alone confiscation, would fail to succeed simply due to the sheer number of larger capacity magazines already in circulation. Measures like these would only re-establish illegal market.

iv. to introduce minimum requirements for safe storage of firearms (as 20 MS already have) and whether such storage requirements should correspond to the level of risk or danger posed.

Comments: We are convinced that safe storage rules will better be left up to regulation by MS. We are afraid that EC might attempt to re-introduce semiautomatic firearms ban simply

via establishing draconian storage rules by EC regulation that most individuals would not be able to follow.

5.2 The proposal changes Art 5 to ban the acquisition of firearms for persons under 18 through inheritance or gift (purchase is already banned). The Rapporteur invites your views on whether to retain the possibility for persons under 18 to acquire firearms other than through purchase.

Comments: Under a ruling of Constitutional Court of Slovak republic any ban on acquisition of firearms for anyone through inheritance violates basic human right to acquire property via inheritance. Individual must retain right to inherit ownership of firearms, however, the actual ownership may be limited and the firearm must remain in mandatory deposit with authorities until such individual either acquire authorization to possess the firearm or such individual transfers ownership to another authorized individual or legal entity.

In addition, “standard medical tests” for the issuing or renewal of authorisations are proposed, and a five-year limit for the duration of an authorisation.

The Rapporteur invites views on whether:

i. to replace the proposal by a system allowing MS to choose to implement either periodic medical and psychological review or a continuous monitoring system,

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Comments: We do agree with this measure. Slovakia has already implemented an elaborate system of periodic medical and psychological reviews combined by monitoring system over 5 years ago. Nevertheless, the practice shows that mandatory psychological reviews fail as a measure and would better be replaced by a system of mandatory firearms education by authorized entities.

ii. to clarify the language of “standard medical tests” or reject it, and if rejected,

iii. to develop the requirement in Art 7 for periodic verification by requiring MS to implement continuous monitoring to ensure that the conditions under which an authorisation was granted continue to apply.

Comments: We do believe that continuous monitoring system is the best measure possible which is much more effective than the proposed bans on semiautomatic firearms. Such system allows individuals to legally own any semiautomatic firearm as long as they keep the set regulations. Moreover, hence any illicit firearms market is dramatically reduced as most citizen still prefer to own firearms legally if allowed.

Aspects MS could consider for a system of monitoring include appropriate medical and psychological testing, time-limited licenses, in particular for certain categories of firearms,

verification of the continued need for possessing a firearm and continued practice in its use etc.

6. Distance sales

The proposal bans distance sales, other than between dealers and brokers.

Your views are invited on the following approach: To allow the use of distance communications while requiring that the actual handing over is done under conditions allowing for verifying the identity and authorisation of the buyer, for instance in the premises of a dealer, at the local police station or some other body authorised under MS law.

Comments: We do agree that the use of distance communications while requiring that the actual handing over is done under conditions allowing for verifying the identity and authorization of the parties in the premises of an authorized body under MS law represents a viable measure and as such has already been implemented in Slovak national regulations since 2003. Nevertheless, such measure must be limited only to essential parts of firearms and object including them. Regulating distant sales of non-essential parts like magazines, stocks, sights etc. would represent an inappropriate.

This would be in line with the distinction in Art 11 between mail order sales and the subsequent transfer of a firearm. Suggestions specific to remote areas would also be welcome.

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7. Ammunition

The Rapporteur invites your views on whether to:

i. introduce a possibility for dealers and brokers to refuse suspicious transactions (e.g. involving quantities unusual for private use) and an obligation to report attempted such transactions,

Comments: We disagree. Such measure will only result in arbitrary decisions. Limiting any purchase based purely on quantity of purchased items has no place in a free society. Some private users purchase 100 rounds of ammunition per 5 years, while many sport shooters consume over 20 000 rounds per year.

ii. clarify that only ammunition for the specific firearm/s held can be acquired.

Comments: Such measure has been implemented in our legislation since 2003 and is rather problematic. Once a firearm owner transfers his firearm, he is forced to sell his remaining stock of ammunition as long as the ammunition is specific to the transferred firearm. Many people sometime unwillingly fail to do so and are facing risk of criminal prosecution. We believe, that once an individual is authorized to own a firearm, there is no need to limit

ownership only to the ammunition specific to held firearms. The premise is that such individual meets all requirements for due firearms ownership.

8. *The European Firearms Pass (EFP)*

The December 2014 evaluation report identifies some areas where the functioning of the EFP could be improved. They include the number of firearms MS enter on the EFP, the possibility for an EFP holder to acquire ammunition in the MS of destination, the possibility for MS to require additional authorisations for entry, and widely varying fees for EFP issuance, unrelated to the actual costs of processing an application or later changes to and renewals of the EFP.

Comments: We welcome any measures that would improve and liberalize EFP regulations. With the common market, it appears that regulations on cross border warranty and repairs should be addressed in favor of legal firearms owners. Cross border movement for repair in case of an individual owner should not need new permits just as cross boarder traffic of firearms due to repair by authorized commercial legal entities are no longer subject to export/import licensing under respective EU regulations.

The Rapporteur invites your views also on this aspect.

9. *The Commission Deactivation Regulation*

The Rapporteur proposes to address what appear to be certain discrepancies between the Deactivation Regulation and the Directive, including to align the record-keeping obligation under the Regulation with the Directive.

In addition, the Rapporteur has been made aware of other issues, in particular the practical impossibility of re-deactivating some already deactivated firearms, the possibility that at least some existing national deactivation standards and procedures are at least as effective as the Regulation and that permanently welding together certain parts as required by the Regulation may make it more difficult to inspect that deactivation has actually taken place. She invites your views on the following:

- i. obliging the Commission to review the Regulation as a whole immediately on adoption of the amended Directive, and*
- ii. the possibility of introducing under Art 10b a way to acknowledge the equivalence of deactivations performed prior to the entry into force of the Regulation, on condition that they were done pursuant to recognised alternative national deactivation standards and procedures resulting in at least the same outcome of irreversible inoperability.*

Comments: We welcome believe that deactivations performed prior to the entry into force of the Regulation must be recognized legal on condition that they were done pursuant to national deactivation standards in effect in time of such prior deactivation.

General comment: Should adoption of the proposal lead to a ban on any kind of firearms or essential parts thereof in whatever form or set new technical standards for firearms conversion and any technical features and requirements on firearms, the new directive must include a clause stating that any firearms legally acquired to ownership and legally introduced to the market before the new directive imposes such ban and/or new technical standards, are not subject to the ban and/or new standards and are to remain in legal ownership and further transferable between individuals and legal entities. Legal owners must not be disowned of the firearms legally acquired under previous legal regulations, nor forced to retrofit their firearms and/or essential parts to new standards imposed by new regulations.

We believe that there must be a proper balance to the need of required regulation, yet maintaining highest possible level of individual freedoms, human and civil rights. The attempted ban on semiautomatic firearms in whatever form would severally disturb such balance, the proposed confiscation is a measure way beyond limits set forth by the standards of human rights recognized by all MS. We are convinced, that the new directive proposal should solely concentrate on cross border firearms trafficking, deactivation and registration standards.

We do hope that you find our comments helpful in your efforts to find the most appropriate approach to regulating such sensitive issue as is harmonizing firearms legislation across so many countries with different historical and social background.

Sincerely,

Legis Telum – Zdrúženie vlastníkov strelných zbraní,
JUDr. Boris Draškaba
predseda predstavenstva