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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

The placing on the market of replica firearms

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This report is drafted by virtue of Article 17 of Council Directive 91/477/EEC on the control of the acquisition and possession of weapons, as amended by Directive 2008/51/EC of the European Parliament and of the Council of 21 May 2008.

1. DIRECTIVE 2008/51/EC AMENDING DIRECTIVE 91/477/EEC AND THE MATTER OF REPLICA FIREARMS

1.1. The issue of replica firearms which arose during the legislative work leading to the adoption of Directive 2008/51/EC is largely due to the integration of security concerns in a Directive which was initially merely a Directive intended to simplify, with the requisite security guarantees, the circulation of firearms owned by civilians in the internal market.

1.2. However, during the discussion of the amended Directive in the European Parliament, a number of policy experts who had been invited by MEPs explained the potentially criminal use of, for example, alarm guns (or guns designed for firing blanks), when converted into real firearms by delinquents.

As a direct consequence of this concern, the definition of firearm in the amended Directive, extracted almost word-for-word from the "Firearms Protocol"¹, includes objects "*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.*"

1.3. The Directive therefore does not apply to other products which have the appearance of a firearm, such as replica firearms, for which no definitions are contained in the Directive.

2. REPLICA FIREARMS: DIFFERENT MEANINGS FROM ONE MEMBER STATE TO ANOTHER

2.1. The "Firearms Protocol" does not offer any truly operative criteria for this report in its definition of a "firearm": in Article 3, the definition of firearm includes in the assimilation to a firearm only objects which can be "*readily converted*" for that purpose.

2.2. The term "replicas" covers objects which differ considerably from one Member State to another and vary greatly in their nature, complexity and level of danger; several

¹ 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 - http://www.unodc.org/pdf/crime/a_res_55/255e.pdf.

objects can thus more or less be considered as replica firearms. In fact, the term "replica firearm" can apparently be used to describe objects ranging from those which simply resemble a firearm to those which are entirely identical to one.

- 2.3. Other terms can also have the same meaning as the term "replica": reproductions, imitations, copies. It therefore seems necessary to take an inventory of objects that common sense would lump together in the same category, to a greater or lesser degree, as replicas.
- 2.4. Some legislation uses the term "replica" for weapons with a strictly identical design, the same appearance and characteristics as the original weapon. We know that experienced craftsmen in different parts of the world can copy and, so to speak, "clone" a weapon from the original model. It is clear that if such weapons are not manufactured with a trade patent and in compliance with all the national and European regulations, their manufacture, possession and all the more so their use is completely illegal.
- 2.5. Other replicas are also types of "clones" of real weapons. However, unlike previous cases, they are said to be "inert" or sometimes "decorative" or "dummy" weapons. The frame can be made of metal or plastic, and they may be comparable in weight or much lighter but, in any case, these objects are entirely unsuitable for shooting or loading ammunition. They are appreciated mainly as collectors' items.
- 2.6. Some guns (mainly handguns), which are real firearms, become denatured products under a special and specific business licence. For instance, the manufacturer of a real gun may sell his licence to another manufacturer, who will make a true and legal copy of the model in question but just as a pellet gun and/or a gun intended simply to fire blanks or an alarm.
- 2.7. Indeed, alarm guns in general can often be a rather realistic imitation of firearms (without necessarily being a copy of any precise model). According to the Permanent International Commission for Portable Firearms Testing² (CIP), all portable guns not designed to shoot solid projectiles are considered to be alarm guns. An alarm gun can therefore shoot blanks, gas and teargas cartridges.

3. OTHER PRODUCTS RESEMBLE FIREARMS WITHOUT BEING COMMONLY CLASSIFIED AS REPLICAS

- 3.1. For instance, more or less realistic imitations of firearms are used for relatively new leisure or hobby activities, such as "*airsoft*"; this is a leisure activity which takes the form of a game generally involving two opposing teams of players equipped with imitation guns (generally made of plastic) which shoot 6mm or 8mm plastic pellets propelled by gas or compressed air. The propulsion power ranges in general from 2 to 7 joules.
- 3.2. Pellet guns can sometimes bear a resemblance to a real gun (but are not necessarily imitations of a particular model). They shoot cartridges containing small steel, lead

² The CIP is an international organisation involving 13 countries, 11 of which belong to the European Union.

or rubber pellets. The principle of gas-propulsion remains the same as for the *airsoft* guns, the essential difference being in the type of cartridge used.

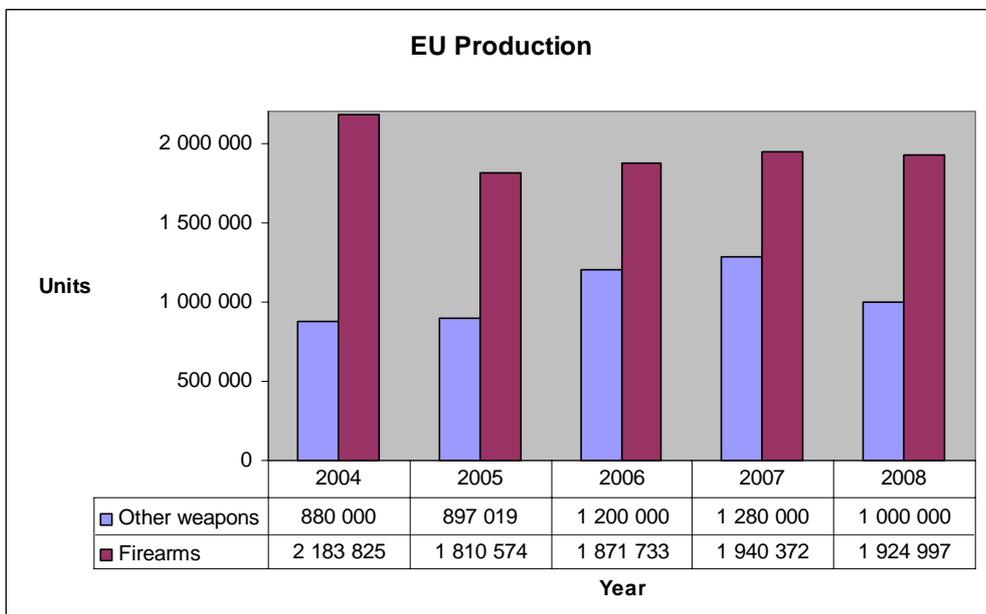
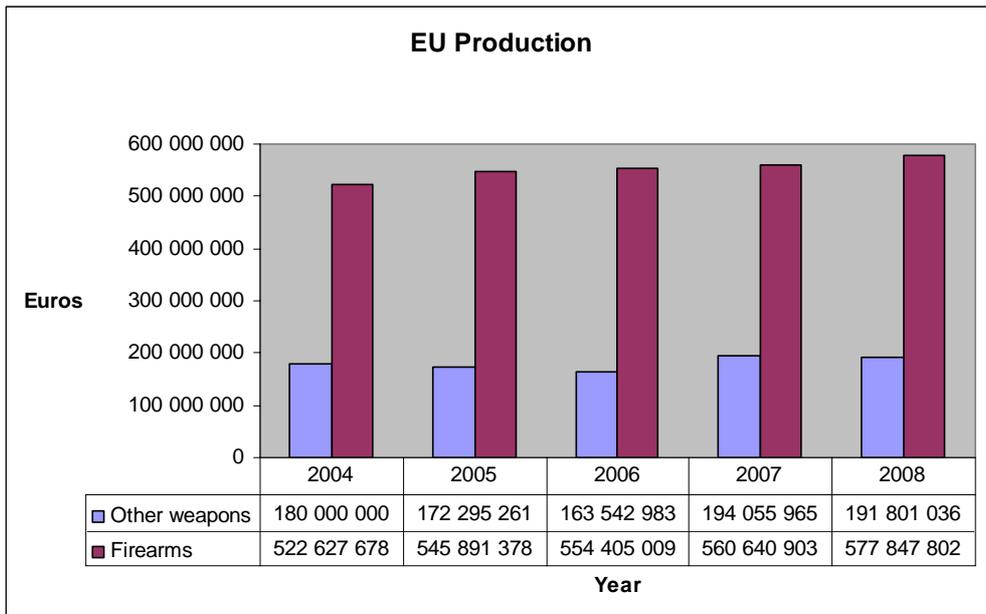
- 3.3. Other objects are similar in certain respects to firearms, without necessarily imitating them in a very realistic manner: take, for example, the launchers used for "paintball". This is a leisure activity practiced in privately-owned natural or urban settings and usually involving two opposing teams of players equipped with launchers which propel paint pellets by gas or compressed air. Paint pellets are projected by a force of between 10 and 13 joules.
- 3.4. Other objects can also bear a certain resemblance to real firearms, such as stun guns or distress/signal guns.
- 3.5. In some types of terminology, the word "replica" can also apply to reproductions of antique weapons: these objects are a more or less faithful (sometimes perfect) reproduction of historical models of weapons, borrowed for this purpose from museums and copied to be sold to collectors.
- 3.6. Lastly, it must be pointed out that a specific Directive clarifies the distinction which must be made between a "replica" firearm and a toy. Indeed, according to point 20 of Annex I to Directive 88/378/EEC, "*faithful reproductions of real firearms*" cannot be considered as toys³. Furthermore, this exclusion is further detailed and extended by the new Directive 2009/48/EC repealing Directive 88/378/EEC, and must be transposed into national law before 20 January 2011.

4. REPLICAS FIREARMS: SOME GENERAL ECONOMIC ASPECTS

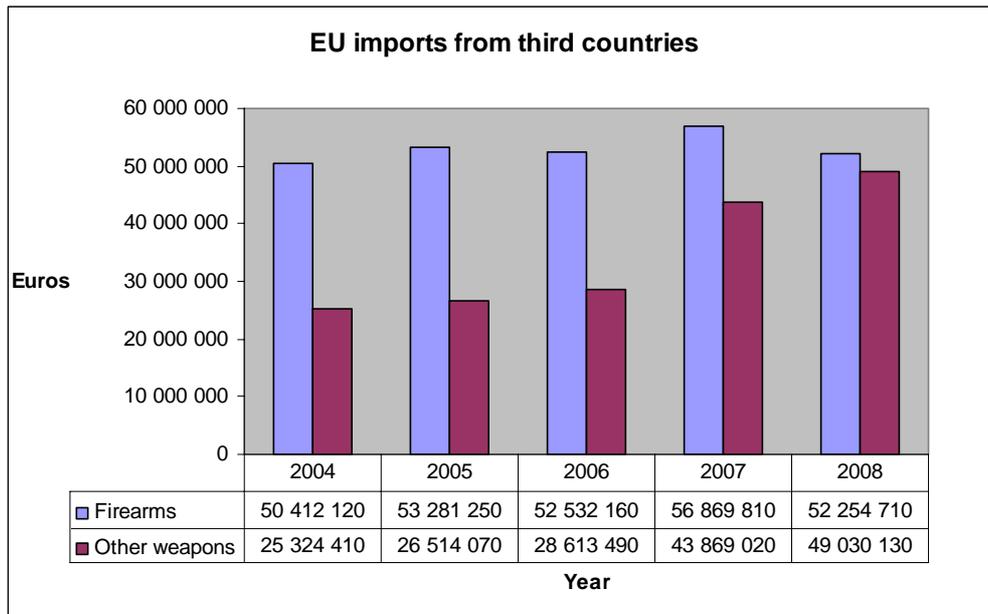
- 4.1. In Eurostat's data, spring, air or gas guns and truncheons are included in the same statistical category⁴.
- 4.2. With regard to EU production in this category, we can observe a relatively stable trend over the last five years, totalling some EUR 190 million in 2008. Production volume has risen somewhat to one million units in 2008. According to the available statistics, the four main producer countries in the EU are Germany (which has a large population of hobby marksmen – around 1.7 million licence-holders), Italy, the United Kingdom and Spain.

³ Article 1 of Directive 88/378/EEC: "This Directive shall apply to toys. A 'toy' shall mean any product or material designed or clearly intended for use in play by children of less than 14 years of age."

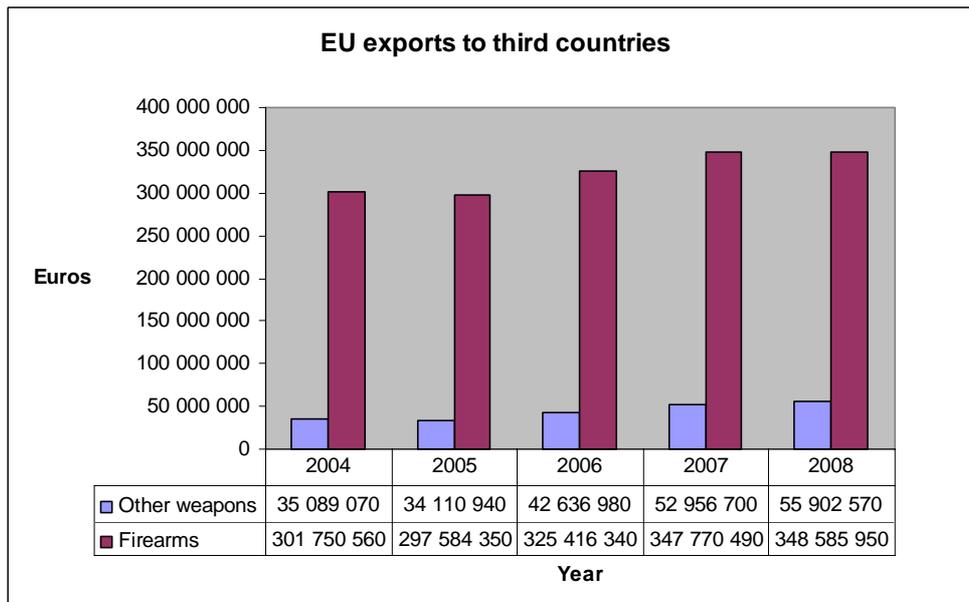
⁴ Eurostat statistics distinguish between the categories "Firearms" and "Other arms". *Firearms: Revolvers and pistols, hunting rifles, rifles, carbines and muzzle-loaders (excluding military use)*. *Other arms: spring, air or gas rifles and pistols and truncheons (excluding military use)*.



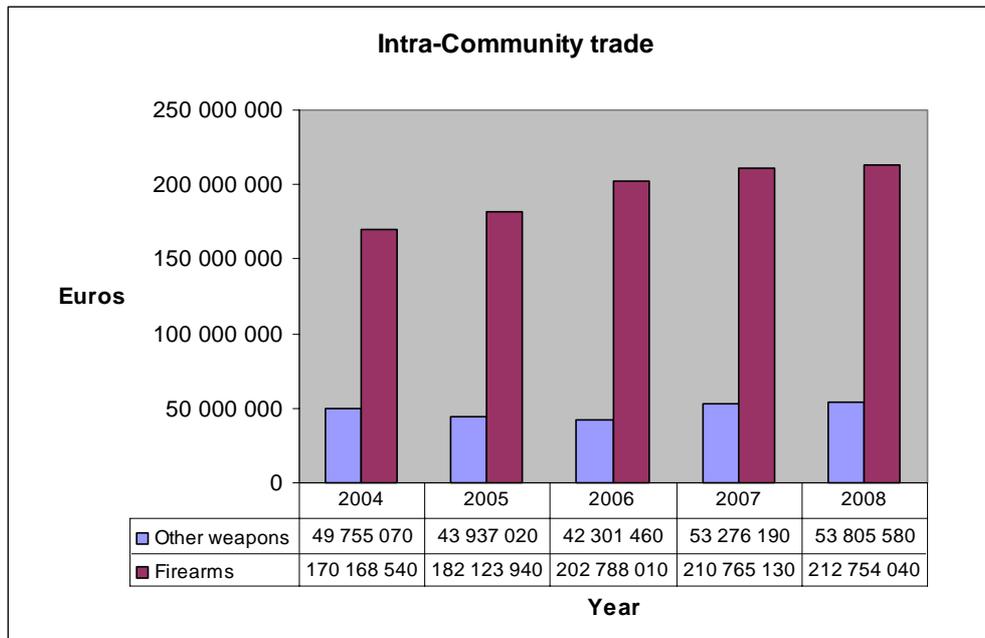
4.3. Imports into the EU from third countries totalled close to EUR 50 million in 2008. Again according to Eurostat, the main suppliers of the European market are China, the United States, Taiwan and Japan. It should also be pointed out that Turkey and Russia manufacture substantial volumes of pellet and alarm guns.



Exports from the EU to third countries total close to EUR 55 million. Their main destinations are the United States, Russia, the United Arab Emirates, Saudi Arabia and Ukraine.



4.4. The value of intra-EU trade remained relatively stable in 2008 at around EUR 53 million. The main suppliers are Germany and Spain. The main buyers are France, the Czech Republic and Italy.



5. QUESTIONNAIRE ON REPLICA FIREARMS DRAFTED BY THE EUROPEAN COMMISSION

5.1. With a view to understanding the issue of replica firearms as fully as possible, the Commission drafted a questionnaire which was sent to all the Member States in July 2009.

5.2. The field of questions raised was as broad as possible, and covered the following aspects:

- (a) security or policing aspects, (police statistics on crime and offences involving replicas, restrictions on carrying replicas or exhibiting them in public, etc.);
- (b) legislative and regulatory aspects, with the particular aim of finding out which Member States already referred specifically to replica firearms in their legislation and, in such cases, which provisions applied (placing on the market, application of these provisions to replicas imported and transferred from other Member States, etc.);
- (c) economic aspects, to try to estimate the economic importance of replicas;
- (d) aspects linked to the possible conversion of replicas, such as the existence of "anti-conversion" standards or procedures in manufacturing and/or distribution.

5.3. All the Member States replied to this questionnaire, which was supplemented by meetings with both the administrative authorities responsible for these issues (mainly the Ministries of the Interior and Ministries of Justice) and representatives of industry, retailers and the socioprofessional categories most affected by the developments of Directive 91/477/EEC.

5.4. Lastly, the results of the consultation of the Member States by questionnaire were presented in summary form to their representatives at the second meeting of the Contact Group established by Directive 2008/51/EC, which was held in Brussels on 8 March 2010.

6. THE MEMBER STATES' RESPONSES TO THE QUESTIONNAIRE, GROUPED INTO THREE CATEGORIES

6.1. The first category covers the Member States which do not, or not really, include the concept of a replica in their legislation: Luxembourg, Greece, Latvia, Estonia, Denmark, Cyprus, Slovenia, Bulgaria and Finland. These Member States show the following particularities:

- they have no large-scale problems of public order caused by the use of replicas;
- no distinction is made between the products in terms of their capacity in joules;
- this does not prevent them from adopting, in certain circumstances, very specific measures relating to public order or administrative policy, such as a ban on possessing or exhibiting objects which imitate firearms in public places.

6.2. 15 Member States are in the second category: France, Romania, Austria, Belgium, Czech Republic, Spain, Hungary, Ireland, Italy, Malta, Lithuania, Poland, Slovakia, Sweden and Germany. This category covers legislation in which the concept of replicas (or reproductions) of firearms may feature more explicitly, without there necessarily having been reported any particular or significant problems. The following can also be noted:

- the dividing line between what is classified as a replica and what falls more within the scope of legislation on real firearms (for example, as regards declaration, authorisation and transport formalities) is often a matter of a threshold in joules;
- the 7.5 joules mark is often used as a threshold, but legislation on firearms can already be applied as of 1 joule, or may be applicable only from 17 joules;
- the choice of threshold (1, 7.5, 17J) does not necessarily imply that replicas which exceed this threshold are in all points subject to the same restrictions as real firearms; thus, the application of legislation on firearms can simply mean that the sale of the replica is subject to the declaration or authorisation formalities, or simply that it cannot be sold to minors;
- additional measures can be applied to guarantee that this threshold is not exceeded. In the case of Germany, for example, an additional control takes the form of a hallmark⁵ from a particular body (*Physikalisch-Technische Bundesanstalt*), to be stamped during the production stage into certain types of alarm guns. The hallmark guarantees that the power of an alarm gun does not exceed the national limit of 7.5 joules.

⁵ It takes the form of the letters PTB inside a circle.

- 6.3. The third group is composed of three Member States (Portugal, the Netherlands, and the United Kingdom) whose legislation attempts to provide a stronger regulatory framework for the definition of replicas/reproductions/"realistic imitations". These Member States also express varying levels of concern with regard to the convertibility of certain replicas and their distribution on the market:
- Dutch legislation prohibits the sale and placing on the market of certain replica firearms, irrespective of whether they can shoot projectiles, or whether they can be converted into real firearms; it is not surprising in this context, then, that the customs authorities and police worry about their residents purchasing this type of product in neighbouring countries;
 - the United Kingdom and Portugal require specific colouring on certain replicas: realistic imitation firearms for the United Kingdom, and replicas for creative use for Portugal (essentially those used for "paintball" or "airsoft"), to try to prevent any confusion with real firearms; in this case, therefore, the criterion of being dangerous does not relate to the ability to shoot a projectile or to the degree of convertibility, but to the degree of imitation or realism in relation to a real weapon;
 - furthermore, the United Kingdom expresses a particular concern relating to the fact that neighbouring countries generally have less strict legislation on the marketing of certain alarm guns, the illegal conversion of which is considered possible. As it is illegal to place such alarm guns on the UK market (and therefore to import them), controlling this ban involves additional operations on the part of the responsible authorities.

7. THE MAIN LESSONS LEARNED FROM THE QUESTIONNAIRE

- 7.1. The first remark relates to the fact that statistical reality is not always easy to grasp by the administrative authorities themselves, in particular as regards the number of items in circulation or the threats to the safety of property and persons caused or facilitated by the use of replicas⁶, and even less so their seriousness.
- 7.2. Nevertheless, security problems in the majority of the cases reported by the Member States seem above all to be correlated to the illicit conversion of alarm guns with a view to making them capable of shooting real bullets. Antique arms or reproductions of such objects are not identified as threats to the security of property and persons.
- 7.3. The replies point out that an object which is a realistic imitation of a firearm (fake weapon imitating a pistol or revolver) can be intimidating and be used to commit an offence. Such usage can of course be even riskier for the offender involved due to the possibility of an armed response, in particular by police officers when acting in what they consider legitimate defence.

⁶ With the exception of the Netherlands which has precise statistics, albeit on less precisely defined objects categorised as "look-a-likes", and the United Kingdom, which reports some 1 500 crimes and offences for the year 2007/2008 committed with "realistic" or less realistic imitations.

- 7.4. However, reported cases of the illicit conversion of alarm guns and, more generally, the use of replicas with ill intent to intimidate or stage hold-ups must be seen in the context of the relatively high number of alarm guns (or guns which can be used to shoot blanks) in the European Union. If airsofts are added to these categories, an estimated 15 to 18 million replicas are owned in Germany, for example.
- 7.5. It must also be noted that certain replicas (alarm guns in particular) can sometimes be used in a context of self-defence; they can therefore discourage their owner, who could have more or less legitimate concerns for his or her personal safety, from applying for a licence to carry a real weapon or, worse, from purchasing a real weapon illegally.
- 7.6. Many EU countries do not manufacture objects of this type, report any major problems or have enlightening statistics on owners of replica firearms.
- 7.7. A few Member States report occasional concerns over cross-border movements of replica firearms, above all when their legislation is already very restrictive. Furthermore, certain alarm guns manufactured outside the EU give cause for particular concern, as they are manufactured in a manner which would make them too easily convertible, i.e. able to shoot real bullets.
- 7.8. It must also be pointed out that the member countries of the Permanent International Commission for Portable Firearms Testing (CIP), which includes most EU manufacturers, already subject alarm guns to tests for approval, type designation, conformity of key dimensions, resistance and operational safety.

8. OWNERS OF REPLICAS

- 8.1. There is very little overlap between owners of replicas and ordinary users of firearms, who are mainly hunters, hobby marksmen and other categories of firearm owners, as well as firearm manufacturers and retailers of course.
- 8.2. The second group of replica owners comprises collectors of weapons, irrespective of whether or not they are antique, or reproductions of weapons. It should be noted that some of them collect alarm guns which imitate real firearms. This category can therefore be affected by any national provisions governing replicas.
- 8.3. Retailers are probably the socioprofessional category which is most concerned by national legislation on the sale of replicas. In some countries, they can be sold only by professional gunsmiths or, at least, may not be sold in toy shops.

9. CONCLUSIONS

- 9.1. It should be borne in mind that nine Member States do not, or not really, include the concept of a replica in their legislation and do not have any major problems relating to public order caused by the use of replicas, whereas 15 others do not report any particular or significant problems with transfers or imports from other countries. Only a few Member States with more restrictive national legislation on replicas sometimes express concerns linked to cross-border movements of replica firearms. In these conditions, there is very little to suggest that European harmonisation of

national legislation on replicas would improve the functioning of the internal market by removing barriers to the free movement of goods or by eliminating distortions of competition.

- 9.2. Furthermore, the Member States already have a real degree of discretion in issuing rules on the placing on the market and use of replicas⁷. These national rules governing the marketing and use of replicas must respect the principle of the free movement of goods (Articles 34 to 36 of the Treaty on the Functioning of the European Union, TFEU) and of course be without prejudice to any specific police cooperation measures. Article 34 TFEU prohibits national measures which can or could, directly or indirectly, impede intra-Community trade. In this respect, regulations by one Member State prohibiting the importation, manufacture, sale or use of replica firearms could constitute a barrier to trade within the meaning of Article 34 TFEU.
- 9.3. However, it is equally clear that such regulations can, this time in compliance with Article 36 TFEU, be justified for reasons of public safety and the protection of the health and life of persons, albeit provided that the regulations in question do not undermine the principle of proportionality. In particular, it must not be possible for the pursued objective to be achieved by measures less restrictive to intra-Community trade.
- 9.4. With regard to replica firearms, various aspects therefore need to be taken into consideration when judging the proportionality of the measure: in particular, we must examine whether bans are absolute or whether derogations exist, the limitation of bans on sale to minors, Internet- or simply distance-selling, and the limitation of the ban on using or exhibiting replicas in public places.
- 9.5. Moreover, the free movement of replica firearms within the EU is also provided for by Regulation (EC) No 764/2008 of the European Parliament and of the Council of 9 July 2008 laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision No 3052/95/EC⁸. This Regulation is applicable as of 13 May 2009. It establishes the rules and procedures to be followed by the competent authorities of a Member State when they make or intend to make a decision referred to in Article 2(1) which would impede the free movement of a product legally placed on the market in another Member State and which falls within the scope of Article 34 TFEU.

⁷ It must be pointed out here that Directive 91/477/EEC establishes the following exclusion in Article 2(1): "This Directive is without prejudice to the application of national provisions concerning the carrying of weapons."

⁸ OJ L 218 of 13 August 2008, p. 21. Recital 14 of this Regulation specifies that "Weapons are products that can constitute a serious risk to the health and safety of persons and to the public security of the Member States. Several specific types of weapons lawfully marketed in one Member State might, on grounds of the protection of the health and safety of persons and the prevention of crime, be subject to restrictive measures in another Member State. Such measures might consist of specific controls or authorisations before weapons lawfully marketed in one Member State are placed on the market of another Member State. Member States should therefore be permitted to prevent weapons being placed on their markets until their national procedural requirements are fully met."

- 9.6. Consequently, Articles 34 and 36 TFEU and Regulation (EC) No 764/2008 already facilitate the free movement of these products within the EU, while taking account of the security concerns of the Member States. In this respect, it should be pointed out that Directive 91/477/EEC relates to the establishment and functioning of the internal market.
- 9.7. It must also be remembered that, in the absence of more specific provisions in EU legislation, all products intended for consumers are subject to the provisions of Directive 2001/95/EC on general product safety, which in certain cases allows the Member States to withdraw or recall certain dangerous products from the market.
- 9.8. Furthermore, the inclusion of all replicas in the field of application of Directive 91/477/EEC would automatically make them subject to all the provisions of the Directive. However, it should be remembered that, since its amendment by Directive 2008/51/EC, the Directive already applies to replicas which can be converted into firearms, namely certain alarm guns (or certain replicas intended simply to shoot blanks) which, due to their appearance and how they were produced, are so similar to a firearm that all the requirements of the Directive (marking, traceability, firearms register in particular) are easily applicable⁹.
- 9.9. Extending the Directive to other types of replica would be much more difficult, since this would mean that manufacturers, dealers and owners of these replicas would be subject to all the obligations of the Directive. However, at present, the Member States can already require authorisation for any possession, acquisition or transfer of a replica in accordance with Article 36 TFEU.
- 9.10. Moreover, and still on the basis of the above assumption, sensitive issues undoubtedly arise regarding in particular the breakdown of replicas included in the nomenclature set out in Annex I to Directive 91/477/EC, which divides firearms into different categories.
- 9.11. It is for these reasons that replicas, with their various characteristics and purposes, should not be included in the field of application of Directive 91/477/EC, especially as those which can be converted to a firearm and therefore treated as one are now covered by Directive 2008/51/EC.

⁹ Cf. recital 4 of Directive 2008/51/EC: "Police intelligence evidence shows an increase in the use of converted weapons within the Community. It is therefore essential to ensure that such convertible weapons are brought within the definition of a firearm for the purpose of Directive 91/477/EEC".