

DIRECTIVES

DIRECTIVE 2008/51/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 21 May 2008

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 from the Commission,

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

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

(1) Directive 91/477/EEC ⁽³⁾ established an accompanying measure for the internal market. It creates a balance between on the one hand the undertaking to ensure a certain freedom of movement for some firearms within the Community, and on the other 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 United Nations Protocol on the illicit manufacturing of and trafficking in firearms, their parts, components and ammunition, annexed to the Convention against transnational organised crime ⁽⁴⁾, the Commission signed that Protocol (hereinafter referred to as the Protocol) on behalf of the Community on 16 January 2002.

(3) The accession of the Community to the Protocol requires amendments to certain provisions of Directive 91/477/EEC. Indeed, it is important to ensure the coherent, effective and rapid application of the international commitments affecting that Directive. Furthermore, it is necessary to take the opportunity of this revision in order to improve that Directive by addressing certain issues, in particular those that were identified in the report of the Commission to the European Parliament and the Council of 15 December 2000 on the implementation of Directive 91/477/EEC.

(4) 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 purposes of Directive 91/477/EEC.

(5) Firearms, their parts and ammunition, when imported from third countries, are subject to Community legislation and, accordingly, to the requirements of Directive 91/477/EEC.

(6) The notions of illicit manufacturing and trafficking of firearms, their parts and ammunition, as well as the notion of tracing, should therefore be defined for the purposes of Directive 91/477/EEC.

(7) 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/EEC refers only indirectly to the marking obligation. In order to facilitate the tracing of weapons, it is necessary to use alpha-numeric codes and to include in the marking the year of manufacture of the weapon (if not part of the serial number). The Convention of 1 July 1969 on Reciprocal Recognition of Proofmarks on Small Arms should, to the greatest extent possible, be used as a reference for the marking system in the Community as a whole.

⁽¹⁾ OJ C 318, 23.12.2006, p. 83.

⁽²⁾ Opinion of the European Parliament of 29 November 2007 (not yet published in the Official Journal) and Council Decision of 17 April 2008.

⁽³⁾ OJ L 256, 13.9.1991, p. 51. Text as corrected by OJ L 54, 5.3.1993, p. 22.

⁽⁴⁾ OJ L 280, 24.10.2001, p. 5.

- (8) Moreover, while the Protocol provides that the period during which registers containing information on weapons are to be kept must be increased to at least 10 years, it is necessary, in view of the dangerous nature and durability of weapons, to extend this period up to a minimum of 20 years in order to allow the proper tracing of firearms. It is also necessary that Member States keep a computerised data-filing system, either a centralised system or a decentralised system which guarantees access to authorised authorities to the data-filing systems in which the necessary information regarding each firearm is recorded. Access by police, judicial and other authorised authorities to the information contained in the computerised data-filing system must be subject to compliance with Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- (9) In addition, the brokering activities referred to in Article 15 of the Protocol should be defined for the purposes of Directive 91/477/EEC.
- (10) In some serious cases, compliance with Articles 5 and 6 of the Protocol requires the application of criminal sanctions and the confiscation of the weapons.
- (11) With regard to the deactivation of firearms, point (a) of Part III of Annex I to Directive 91/477/EEC simply refers to national legislation. The Protocol sets out more explicit general principles for the deactivation of weapons. Annex I to Directive 91/477/EEC should therefore be amended.
- (12) Due to the special nature of the activity of dealers, it is necessary that Member States exercise a strict control over this activity, in particular by verifying the professional integrity and abilities of dealers.
- (13) The acquisition of firearms by private individuals by means of distance communications, for example via the Internet should, where authorised, be subject to the rules laid down in Directive 91/477/EEC and, as a general rule, the acquisition of firearms by persons convicted by a final court judgment of certain serious criminal offences should be prohibited.
- (14) The European firearms pass functions in a satisfactory way on the whole and should be regarded as the main document needed by hunters and marksmen for the possession of a firearm during a journey to another Member State. Member States should not make the acceptance of the European firearms pass conditional upon the payment of any fee or charge.
- (15) In order to facilitate the tracing of firearms and efficiently to combat the illicit trafficking and manufacturing of firearms, their parts and ammunition, it is necessary to improve the exchange of information between Member States.
- (16) The processing of information is subject to compliance with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽¹⁾ and does not prejudice the level of protection of individuals with regard to the processing of personal data under Community and national law, and in particular does not alter the obligations and rights set out in Directive 95/46/EC.
- (17) The measures necessary for the implementation of Directive 91/477/EEC should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽²⁾.
- (18) Several Member States have simplified the way they classify firearms by switching from four categories to the following two: prohibited firearms and firearms subject to authorisation. Member States should fall into line with this simplified classification, although Member States which divide firearms into a further set of categories may, in accordance with the principle of subsidiarity, maintain their existing classification systems.
- (19) Authorisations for the acquisition and possession of firearms should, as far as possible, involve a single administrative procedure.
- (20) Article 2(2) of Directive 91/477/EEC among other things excludes from the scope of application of that Directive the acquisition or possession of weapons and ammunition in accordance with national law by collectors and bodies concerned with the cultural and historical aspects of weapons and recognised as such by the Member State in whose territory they are established.
- (21) In accordance with point 34 of the Interinstitutional Agreement on better law-making ⁽³⁾, Member States should draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and make them public.

⁽¹⁾ OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

⁽²⁾ OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

⁽³⁾ OJ C 321, 31.12.2003, p. 1.

(22) Directive 91/477/EEC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 91/477/EEC

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

1. Article 1 shall be amended as follows:

(a) paragraph 1 shall be replaced by the following:

'1. For the purposes of this Directive, "firearm" shall mean 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 for one of the reasons listed in Part III of Annex I. Firearms are classified in part II of Annex I.

For the purposes of this Directive, an object shall be considered as 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.;

(b) the following paragraphs shall be inserted:

'1a. For the purposes of this Directive, "part" shall mean any element or replacement element specifically designed for a firearm and essential to its operation, including a barrel, frame or receiver, slide or cylinder, bolt or breech block, and any device designed or adapted to diminish the sound caused by firing a firearm.

1b. For the purposes of this Directive, "essential component" shall mean the breach-closing mechanism, the chamber and the barrel of a firearm which, being separate objects, are included in the category of the firearms on which they are or are intended to be mounted.

1c. For the purposes of this Directive, "ammunition" shall mean 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 relevant Member State.

1d. For the purposes of this Directive, "tracing" shall mean the systematic tracking of firearms and, where possible, their parts 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.

1e. For the purposes of this Directive, "broker" shall mean any natural or legal person, other than a dealer, whose trade or business consists wholly or partly in the buying, selling or arranging the transfer of weapons.;

(c) paragraph 2 shall be replaced by the following:

'2. For the purposes of this Directive, "dealer" shall mean 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, parts and ammunition.;

(d) the following paragraphs shall be inserted:

'2a. For the purposes of this Directive, "illicit manufacturing" shall mean the manufacturing or assembly of firearms, their parts and ammunition:

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

(ii) 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

(iii) without marking the assembled firearms at the time of manufacture in accordance with Article 4(1).

2b. For the purposes of this Directive, "illicit trafficking" shall mean the acquisition, sale, delivery, movement or transfer of firearms, their parts or 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 assembled firearms are not marked in accordance with Article 4(1).;

(e) paragraph 4 shall be replaced by the following:

'4. A "European firearms pass" shall be issued on request by the 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 five 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.'

2. Article 4 shall be replaced by the following:

'Article 4

1. Member States shall ensure either that any firearm or part placed on the market has been marked and registered in compliance with this Directive, or that it has been deactivated.

2. For the purpose of identifying and tracing each assembled firearm, Member States shall, at the time of manufacture of each firearm, either:

(a) require a unique marking, including the name of the manufacturer, the country or place of manufacture, the serial number and the year of manufacture (if not part of the serial number). This shall be without prejudice to the affixing of the manufacturer's trademark. For these purposes, the Member States may choose to apply the provisions of the Convention of 1 July 1969 on Reciprocal Recognition of Proofmarks on Small Arms; or

(b) maintain any alternative unique user-friendly marking with a number or alphanumeric code, permitting ready identification by all States of the country of manufacture.

The marking shall be affixed to an essential component of the firearm, the destruction of which would render the firearm unusable.

Member States shall ensure that each elementary package of complete ammunition is marked so as to provide the name of the manufacturer, the identification batch (lot) number, the calibre and the type of ammunition. For these purposes Member States may choose to apply the provisions of the Convention of 1 July 1969 on Reciprocal Recognition of Proofmarks on Small Arms.

Furthermore, 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.

3. Member States shall make the pursuit of the activity of dealer within their territory conditional upon authorisation on the basis of at least a check of the private and professional integrity and of the abilities of the dealer. In the case of a legal person, the check shall be on the person who directs 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. This filing system shall record and maintain for not less than 20 years each firearm's type, make, model, calibre and serial number, as well as the names and addresses of the supplier and the person acquiring or possessing the firearm.

Throughout their period of activity, dealers shall be required to maintain a register in which all firearms subject to this Directive and which are received or disposed of by them shall be recorded, together with such particulars as enable the firearm to be identified and traced, in particular the type, make, model, calibre and serial number thereof and the names and addresses of the persons supplying and acquiring it. Upon the cessation of his activities, the dealer shall deliver the register to the national authority responsible for the filing system provided for in subparagraph 1.

5. Member States shall ensure that all firearms may be linked to their owner at any moment. However, as regards firearms classified in category D, Member States shall, as from 28 July 2010, put into place appropriate tracing measures, including, as from 31 December 2014, measures enabling linking at any moment to the owner of firearms placed on the market after 28 July 2010.;

3. the following articles shall be inserted:

'Article 4a

Without prejudice to Article 3, Member States shall allow the acquisition and possession of firearms only by persons who have been granted a licence or, with respect to categories C or D, who are specifically permitted to acquire and possess such firearms in accordance with national law.

Article 4b

Member States shall consider establishing a system for the regulation of the activities of brokers. Such a system might include one or more measures such as:

- (a) requiring the registration of brokers operating within their territory;
- (b) requiring the licensing or authorisation of the activity of brokering.;

4. Article 5 shall be replaced by the following:

'Article 5

Without prejudice to Article 3, Member States shall permit the acquisition and possession of firearms only by persons who have good cause and who:

- (a) are at least 18 years of age, except in relation to the acquisition, other than through purchase, and possession of firearms for hunting and target shooting, provided that in that case persons of less than 18 years of age have parental permission, or are under parental guidance or the guidance of an adult with a valid firearms or hunting licence, or are within a licenced or otherwise approved training centre;
- (b) are not likely to be a danger to themselves, to public order or to public safety. Having been convicted of a violent intentional crime shall be considered as indicative of such danger.

Member States may withdraw authorisation for possession of a firearm if any of the conditions on the basis of which it was granted are no longer satisfied.

Member States may not prohibit persons resident within their territory from possessing a weapon acquired in another Member State unless they prohibit the acquisition of the same weapon within their own territory.;

5. in Article 6, the following paragraph shall be added:

'Member States shall ensure that, except with respect to dealers, the acquisition of firearms and their parts and ammunition by means of distance communication, as defined in Article 2 of Directive 97/7/EC of the European

Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (*), shall, where authorised, be strictly controlled.

(*) OJ L 144, 4.6.1997, p. 19. Directive as last amended by Directive 2005/29/EC (OJ L 149, 11.6.2005, p. 22).;

6. in Article 7, the following paragraphs shall be added:

'4. Member States may consider granting persons who satisfy the conditions for the granting of an authorisation for a firearm a multiannual licence for the acquisition and possession of all firearms subject to authorisation, without prejudice to:

- (a) the obligation to notify the competent authorities of transfers;
- (b) the periodic verification that those persons continue to satisfy the conditions; and
- (c) the maximum limits for possession laid down in national law.

5. Member States shall adopt rules to ensure that persons holding authorisations for firearms of category B in force under national law as at 28 July 2008 do not need to apply for a licence or permit regarding firearms they hold in categories C or D due to the entry into force of Directive 2008/51/EC of the European Parliament and of the Council of 21 May 2008 (*). However, any subsequent transfer of firearms of categories C or D shall be subject to the transferee obtaining or having a licence or being specifically permitted to possess those firearms in accordance with national law.

(*) OJ L 179, 8.7.2008, p. 5.;

7. in Article 11(3), the second subparagraph shall be replaced by the following:

'Prior to the date of transfer, the dealer shall communicate to the authorities of the Member State from which the transfer is to be effected all the particulars listed in the first subparagraph of paragraph 2. Those authorities shall carry out inspections, where appropriate on the spot, to verify the correspondence between the information communicated by the dealer and the actual characteristics of the transfer. The information shall be communicated by the dealer within a period allowing sufficient time.;

8. in Article 12(2), the first subparagraph shall be replaced by the following:

‘Notwithstanding paragraph 1, hunters, in respect of categories C and D, and marksmen, in respect of categories B, C and D, may, without prior authorisation, be in possession of one or more firearms during a journey through two or more Member States with a view to engaging in their activities, provided that they are in possession of a European firearms pass listing such firearm or firearms and provided that they are able to substantiate the reasons for their journey, in particular by producing an invitation or other proof of their hunting or target shooting activities in the Member State of destination.

Member States may not make acceptance of a European firearms pass conditional upon the payment of any fee or charge.’;

9. Article 13(3) shall be replaced by the following:

‘3. For the purposes of the efficient application of this Directive, Member States shall exchange information on a regular basis. To this end, the Commission shall set up, by 28 July 2009, a contact group for the exchange of information for the purposes of applying this Article. Member States shall inform each other and the Commission of the national authorities responsible for transmitting and receiving information and for complying with the obligations set out in Article 11(4).’;

10. the following article shall be inserted:

‘Article 13a

1. The Commission shall be assisted by a committee.

2. Where reference is made to this paragraph, Articles 5 and 7 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (*) shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

(*) OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).’;

11. Article 16 shall be replaced by the following:

‘Article 16

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.’;

12. Article 17 shall be replaced by the following:

‘Article 17

The Commission shall, by 28 July 2015, submit a report to the European Parliament and the Council on the situation resulting from the application of this Directive, accompanied, if appropriate, by proposals.

The Commission shall, by 28 July 2012, carry out research and submit a report to the European Parliament and the Council on the possible advantages and disadvantages of a reduction to two categories of firearms (prohibited or authorised) with a view to the better functioning of the internal market for the products in question by means of possible simplification.

The Commission shall, by 28 July 2010, submit a report to the European Parliament and the Council presenting the conclusions of a study of the issue of the placing on the market of replica firearms in order to determine whether the inclusion of such products within the scope of this Directive is possible and desirable.’;

13. Annex I shall be amended as follows:

(a) in Part I, the first indent shall be replaced by the following:

‘— any firearm as defined in Article 1 of the Directive.’;

(b) Part III shall be amended as follows:

(i) point (a) shall be 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 a modification that would permit the firearm to be reactivated in any way’;

- (ii) the following paragraph shall be inserted after the first paragraph:

'Member States shall make arrangements for the deactivation measures referred to in point (a) to be verified by a competent authority in order to ensure that the modifications made to a firearm render it irreversibly inoperable. Member States shall, in the context of this verification, provide for the issuance of a certificate or record attesting to the deactivation of the firearm or the apposition of a clearly visible mark to that effect on the firearm. The Commission shall, acting in accordance with the procedure referred to in Article 13a(2) of the Directive, issue common guidelines on deactivation standards and techniques to ensure that deactivated firearms are rendered irreversibly inoperable.'

Article 2

Transposition

1. Member States shall, by 28 July 2010, bring into force the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those measures.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a

reference on the occasion of their official publication. Member States shall determine how such references are to be made.

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

Entry into force

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 4

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 21 May 2008.

For the European Parliament
The President
H.-G. PÖTTERING

For the Council
The President
J. LENARČIČ
