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From: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 12 December 2017

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of  
the European Union

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Subject: REPORT FROM THE COMMISSION TO THE COUNCIL AND THE  
EUROPEAN PARLIAMENT &lt;FMT:Bold>in accordance with  
Article 21(3) of Regulation (EU) No 258/2012 of the European Parliament  
and of the Council of 14 March 2012 implementing Article 10 of the United  
Nations' 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 (UN  
Firearms Protocol), and establishing export authorisation, and import and  
transit measures for firearms, their parts and components and ammunition

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Delegations will find attached document COM(2017) 737 final.

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Brussels, 12.12.2017  
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**REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN  
PARLIAMENT**

**in accordance with Article 21(3) of Regulation (EU) No 258/2012 of the European Parliament and of the Council of 14 March 2012 implementing Article 10 of the United Nations' 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 (UN Firearms Protocol), and establishing export authorisation, and import and transit measures for firearms, their parts and components and ammunition**

{SWD(2017) 442 final}

## 1. INTRODUCTION

### 1.1. BACKGROUND

- (1) Once they have been legally manufactured, firearms can be used for many years. Without appropriate measures, they can easily be diverted away from the legal market and smuggled illegally from one conflict zone to another, or into organised crime or the hands of terrorists. Their use is therefore a key element of terrorist activities, and more broadly of most criminal activities, which are often characterised by weapons use.
- (2) A fully traceable legal arms trade is a condition of the fight against the trafficking of firearms. It calls for close cooperation between the competent authorities at international level. To this end, a Protocol supplementing the ‘United Nations Convention against Transnational Organized Crime’ (the Firearms Protocol) focuses on preventing the illicit manufacturing and trafficking of firearms, their parts, components and ammunition. In particular, Article 10 seeks to promote, facilitate and strengthen cooperation at global level to eradicate arms trafficking and establish administrative mechanisms that bring firearms manufacturing, marking, imports and exports under effective control.
- (3) The European Union’s general policy on military small arms and light weapons is based on the strategy adopted by the European Council in 2005<sup>1</sup>. On civilian firearms, the European Union adopted Directive 91/477/EEC on control of the acquisition and possession of weapons in order to establish common rules on the possession and use of firearms for legitimate civilian purposes within the single market<sup>2</sup>. The Union therefore also has exclusive competence for the conclusion of international agreements on issues relevant to its internal competence. For that reason, in order to ratify the Firearms Protocol<sup>3</sup> and ensure firearms’ traceability at the EU’s external borders, the Union adopted Regulation (EU) 258/2012<sup>4</sup>.

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<sup>1</sup> EU Strategy to combat illicit accumulation and trafficking of small arms and light weapons (SALW) and their ammunition, 16 December 2005.

<sup>2</sup> Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons, OJ L 256 of 13.9.1991, p. 51, as amended by Directive (EU) 2017/853 of the European Parliament and of the Council of 17 May 2017 amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons, OJ L 137 du 24.5.2017, p. 22.

<sup>3</sup> Council Decision 2014/164/EU of 11 February 2014 on the conclusion, on behalf of the European Union, of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and

- (4) The overall strategic goal of combating illicit trafficking in civilian firearms has been enshrined in specific objectives<sup>5</sup>:
- Ensure harmonised implementation of the Regulation's provisions in all the Member States, in line with Article 10 of the Firearms Protocol;
  - Help improve firearms traceability in international trade (i.e. between the point of export and point of import) in order to better inform the national authorities and make it easier for them to combat trafficking by improving prevention and repression;
  - Improve information exchanges between national authorities in order to facilitate cooperation on the tracing and control of firearms, and to prevent and investigate possible diversions away from the legal market.
- (5) In addition, a fourth, less explicit objective relates to the potential impact of Regulation (EU) No 258/2012 in terms of facilitating legal international transactions. In this respect weapons production (mainly ammunition) and weapons exports have risen steadily on a highly concentrated market (large companies account for 4.8 % of the total number of firms, but for 78.8 % of the total turnover). In contrast, although the market share of European arms exports decreased, this fall is not correlated to the entry into force of the Regulation.

## 1.2. MAIN PROVISIONS OF THE REGULATION

- (6) In order to achieve these objectives, the Regulation subjects exports of civilian firearms to an 'export authorisation' principle. Member States can use a single procedure for exports containing both military weapons<sup>6</sup> and civilian firearms. The competent authorities have a maximum of 60 working days in which to respond to applications.

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Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (OJ L 89, 25.3.2014).

<sup>4</sup> Regulation (EU) No 258/2012 of the European Parliament and of the Council of 14 March 2012 implementing Article 10 of the United Nations' 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 (UN Firearms Protocol), and establishing export authorisation, and import and transit measures for firearms, their parts and components and ammunition (OJ L 94, 30.3.2012, pp. 1-15).

<sup>5</sup> As described in the impact assessment carried out in 2010 (SEC(2010) 662 final) and the adopted final text.

<sup>6</sup> In order to meet the obligations of Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment.

- (7) In the process, they are required to check whether the applicant holds an import authorisation in the third country of destination and, where applicable, in the third country of transit (Member States may choose to accept tacit agreement for transit).
- (8) The Member States must ensure that there is appropriate administrative cooperation on the refusal, suspension or amendment of authorisations in order to avoid circumvention and differential treatment.
- (9) The exporter has to supply the competent authority of the Member State with all the required documentation, translated where appropriate.
- (10) Simplified procedures can be applied to temporary exports, in particular for hunters or sport shooters.
- (11) The data relating to firearms, export authorisations and their beneficiaries must be retained for at least 20 years.
- (12) The penalties applicable to infringements of the Regulation must be effective, proportionate and dissuasive.

### **1.3. EVALUATION OBJECTIVES AND METHODOLOGY**

- (13) The evaluation set out to determine whether the current procedures and arrangements established by the Regulation achieved the expected results and whether the Regulation is still up to date. Where appropriate, the evaluation may lead to the identification of policy options that could conceivably address the challenges identified, subject to the findings of a subsequent impact assessment.
- (14) The evaluation was based on exchanges between and consultations of various stakeholders: competent national authorities (particularly within the Firearms Exports Coordination Group established by Article 20 of the Regulation), industry representatives, representatives of firearm users, and other experts. The Commission also organised an online public consultation from 1 March to 26 May 2017.
- (15) An externally commissioned evaluation study<sup>7</sup> was based on documentary sources (statistics, regulatory texts, open private data, reports and studies available online, and information provided by the stakeholders consulted), a detailed online survey and

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<sup>7</sup> Evaluation study on the implementation of Regulation 258, Ernst & Young, SIPRI, 2017.

48 in-depth interviews. Case studies involving 10 representative Member States allowed specific key questions to be analysed in greater detail. The Member States were consulted on the study's findings in order to avoid any factual error in relation to them.

## **2. IMPLEMENTATION OF THE REGULATION**

- (16) Regulation (EU) No 258/2012 applies directly in the Member States from the date of its publication and does not require transposition measures. The information gathered shows that the Member States have taken different approaches to its implementation. While some have amended their national legislation, by including a direct reference to the Regulation, others have left their existing laws unchanged and merely adapted their procedures and practices through administrative acts.
- (17) Overall, the Member States are correctly applying the definitions contained in the Regulation, at least in part, largely because they correspond to the definitions contained in Directive 91/477/EEC on firearms which had already been transposed earlier.
- (18) No Member State seems to be applying the rules and procedures of the Regulation to transactions, weapons or persons excluded from its scope. On the other hand, the reality may be different in practice, particularly with regard to deactivated weapons or alarm weapons<sup>8</sup>. Furthermore, the competent authorities often face major difficulties in pinpointing the civilian or military nature of firearms (in particular as regards weapons in category ML1)<sup>9</sup> based on their technical characteristics.
- (19) The authorities responsible for issuing export authorisations vary greatly from one Member State to the next. In 12 Member States, there are several authorities involved in the procedures granting export authorisations<sup>10</sup>.
- (20) The Regulation leaves the methods for submitting authorisation requests in the hands of the Member States. As a result, these methods vary. The use of electronic documents shows mixed results. Some countries appear to have successfully

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<sup>8</sup> Austria, Estonia, Finland, France, Germany, Hungary, Lithuania, Slovakia, Slovenia, and Spain. No information available for the other Member States.

<sup>9</sup> The ML1 list includes smooth-bore weapons with a calibre of less than 20 mm, other arms and automatic weapons with a calibre of 12.7 mm or less and accessories.

<sup>10</sup> Bulgaria, Estonia, Greece, Hungary, Ireland, Italy, Lithuania, Malta, Netherlands, Portugal and Romania and Spain.

implemented electronic procedures<sup>11</sup>, whereas frequent changes to the electronic licensing system in other countries place a considerable burden on companies.

- (21) 14 Member States and the Walloon Region opted for a single procedure to issue export authorisations, the arrangements for which vary greatly from one Member State to the next<sup>12</sup>.
- (22) Almost all the Member States apply the simplified procedures for hunters and sport shooters, who do not have to produce an export authorisation where the Regulation so allows. According to the external evaluator, however, the Regulation's provisions on simplified procedures are not being complied with systematically, notably in terms of re-export following temporary admission or storage, and where hunters or sport shooters are subject to export authorisations not provided for under the Regulation.
- (23) The Regulation offers the Member States the possibility to accept the tacit agreement of the third country of transit in order to simplify the Protocol's very strict procedure (written notification of non-objection). 13 Member States apply the 'tacit agreement' principle; another 13 require written agreement.
- (24) An infringement entered in the criminal record usually justifies a refusal to grant the export licence. However, an extract from the criminal record is not systematically requested and there is no indication that such an infringement is always checked, either in the national criminal records, or *a fortiori* in the criminal records of the other Member States.
- (25) 14 % of the national authorities consulted stated that they have already refused to grant an export authorisation (a very small proportion of the total number of requests). For information exchanges on authorisation refusals, 21 national authorities report using the COARM online system for conventional arms exports, less to notify refusals as to consult refusals issued by other Member States. More generally, communication and information exchanges between Member States are based on a very wide range of channels.
- (26) Arrangements for data retention show marked differences, and in some cases the minimum retention period does not meet the 20 years required by the Regulation<sup>13</sup>.

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<sup>11</sup> The industry-funded SIGMA system allows information to be exchanged on intra-EU and extra-EU transfers between national authorities and the profession.

<sup>12</sup> The procedure can range from a simple request for an opinion from other relevant Ministries to implementation of the same procedure for all firearms (civilian and military), as well as a single form (or website) to request authorisation for the two types of licences.

- (27) In cases of suspicion, the Regulation provides for the Member States to ask the third country of import to confirm receipt of the exported firearms. However, 11 Member States never ask for such confirmation, including two of the main exporters (France, United Kingdom). In contrast, other major exporters require it in all cases. These two types of systematic practices raise questions with regard to how requests are assessed on a case-by-case basis.
- (28) For imports, although nearly all the Member States ensure weapons are marked in accordance with the Protocol, thereby making it possible to identify the first country of import within the European Union in addition to the unique marking required under Directive 91/477/EEC, only one (NL) takes a less restrictive approach, as it can under the Regulation, by deeming the unique marking, which simply indicates the country of production, as sufficient when the product is brought to market.
- (29) Finally, the Commission notes the difficulties faced in collecting information and the often patchy nature of the information conveyed by the Member States, including in the context of preparing this report.

### **3. EVALUATION CONCLUSIONS**

#### **3.1. RELEVANCE**

- (30) The evaluation shows that the objectives and measures provided for in the Regulation are relevant on the whole. The international trafficking of firearms remains a major concern. Harmonised controls on imports of firearms in the customs territory remain a priority in order to control the conditions for legal trade. The Regulation remains fully relevant to exports<sup>14</sup>, probably even more so now than at the time of its adoption, given the political instability and armed conflicts in many countries near the European Union.
- (31) Only a European regulation is capable of ensuring the harmonised implementation of the rules in all the Member States, in accordance with Article 10 of the Firearms Protocol. The stakeholders agree that a non-harmonised approach would hamper law enforcement agencies in their efforts to counter arms trafficking. Moreover, rules are needed more than ever as regards information exchanges between authorities with a

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<sup>13</sup> 9 Member States according to the external evaluator.

<sup>14</sup> With particular regard to the Member States still to ratify the Protocol (France, Germany, Ireland, Luxembourg, Malta, United Kingdom).



view to intelligence gathering, risk analysis and ensuring uniform interpretation of the rules governing imports and exports of firearms in the customs territory of the European Union.

- (32) The definitions in Regulation (EU) No 258/2012 are deemed to be of overall relevance by the various stakeholders involved. Similarly, the export control procedures appear adequate in light of their purpose and the sensitive nature of the goods in question.
- (33) However, allowing the competent authorities to choose is a weakness of the Regulation, whose implementation and interpretation should in principle be uniform.
- (34) The Regulation does not establish a harmonised licensing system for imports and therefore has little relevance in this respect. The same applies to the rules of transit within the European Union, which is subject to customs law.

### **3.2. EU ADDED VALUE AND SUSTAINABILITY OF THE INTERVENTION**

- (35) The Regulation has enabled the EU as a whole to ratify the UN Firearms Protocol. This has plugged the existing legal loopholes that were open to criminal exploitation. Although most of the stakeholders consider that a repeal of the Regulation would have little impact, none felt this to be desirable. The Commission feels that the effect of any repeal of the Regulation would be to deregulate exports of civilian firearms, leading to greater disparities between national practices and rules in terms of import and export authorisations.
- (36) In contrast, the regulatory and administrative landscape remains very disparate because of: the lack of clarity of some provisions; complex articulations with other instruments; the leeway given to the Member States in their administrative procedures, in evaluating authorisation requests and in whether or not to recognise the tacit agreement of third countries of transit; the general nature of the provisions governing information exchanges and administrative cooperation. As the Commission is not an addressee of the information exchanges on authorisation refusals, it is unable to monitor the situation at European level and alert the competent authorities in cases where their respective approaches diverge. As a result, exporters are still not presented with a truly unified export control mechanism.
- (37) The evaluation also indicates that many rules were already in place at the time of the Regulation's adoption and that the national procedures in many Member States have remained largely the same.

(38) The rules, procedures and types of control governing imports and transit fall within the scope of customs legislation, not the Regulation<sup>15</sup>. This explains the lack of added value provided in this regard.

### **3.3. EFFECTIVENESS**

(39) A comparison between the situation in 2010 and now shows that the Member States have all made progress in uniformly applying the Protocol. The provisions of the Regulation have been instrumental in terms of monitoring the movements of firearms through the external borders of the EU.

(40) However, harmonisation is still patchy.

(41) In particular, the Regulation sought to make a clear distinction between military weapons<sup>16</sup> and civilian weapons in export, import and transit procedures. However, many of the Member States feel that the single procedure allows them to apply an identical procedure and identical criteria to all exports of weapons, civil and military alike, and not, as is its aim, to make the same export operation of civilian and military weapons subject to a single administrative procedure on an exceptional basis.

(42) The absence of any provisions for export markings in the case of deactivated weapons or alarm weapons makes traceability impossible. On the other hand, the traceability of the consignments is not guaranteed during transit operations through the customs territory of the European Union. (It is something that falls within the scope of customs legislation, not the Regulation.)

(43) According to the external evaluator, nine Member States do not appear to be complying with the minimum data retention period of 20 years, preventing the compilation of detailed records tracing the movements of firearms. In addition, the disparate practices in national records (no single national register) adversely affect traceability. Similarly, the absence of interconnectivity between intra-EU transfer files and files for export licences complicates the full reconstitution of movements.

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<sup>15</sup> A Commission analysis: ‘Conclusions on the strengths, gaps, weaknesses in the customs legislation, procedures and risk-based control practices related to the illicit trafficking of firearms – PCA Firearms, April 2017 – TAXUD/B2/031/2017 – LIMITED’ highlights a ‘systemic trend’ in Member States to treat shipments of firearms in the same way as any other cargo in transit, without any obligation to declare that the goods have been received and that the transit procedure can be closed.

<sup>16</sup> Subject to the rules of Common Position 2008/944/CFSP.

- (44) Although the initial Commission proposal<sup>17</sup> included specific provisions for information exchanges, the co-legislator opted for more general rules. These provisions have proved insufficient to meet the objective pursued. On the one hand, the Member States do not systematically check whether the applicant has had their authorisation refused or withdrawn in the other Member States. Furthermore, checks are mainly carried out in the COARM system, which is used to notify authorisation refusals and withdrawals by only a small number of Member States. Consequently, 43 % of national authorities report having already granted an export authorisation to exporters for essentially identical transactions which had been refused by another Member State.
- (45) Finally, although the Regulation's entry into force had no adverse effect on the steady growth in European exports of firearms, most exporters feel that the time needed to process applications, while consistent with the Regulation, remains too long. The leeway left open to Member States in how they approve authorisations produces disparities that have been unanimously criticised by professionals as they create additional burdens.

### **3.4. EFFICIENCY**

- (46) Although the economic operators feel that the costs outweigh the benefits, this perception is not based on an objective evaluation, but on a feeling not necessarily linked to the Regulation itself<sup>18</sup>. In the Commission's view, it has not been demonstrated that the Regulation's aims have been achieved at the price of unreasonable costs or difficulties. Most of the costs introduced by the Regulation are administrative and linked to the obligations to uphold the rules and ensure compliance, which is a direct consequence of the Member States' disparate practices. Public authorities bear the Regulation's costs relating to controls and implementation (including enforcement).
- (47) While the Commission's original proposal set out to address the problems of administrative costs generated by the diversity of national laws and procedures, the evaluation has not demonstrated that the impact of the Regulation, as adopted by the legislator, has been positive, in particular because harmonisation has been patchy. This finding is even more concerning since 76 % of operators are micro-businesses.

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<sup>17</sup> COM/2010/0273 final.

<sup>18</sup> This is the case, for example, of the transit rules imposed by third countries, or of export procedures that would exist even in the absence of any regulation.

- (48) Confidentiality and the patchy nature of commercial or government data make it difficult to analyse the Regulation's financial impact in detail. While the economic operators feel that the Regulation's cost-benefit balance is negative, the representatives of public authorities find the overall results to be slightly positive.

### **3.5. CONSISTENCY AND COMPLEMENTARITY**

- (49) Although the Regulation's consistency with various other regulatory provisions was guaranteed at the outset, in particular the concordance of the Regulation's definitions and scope with those of Directive 91/477/EEC, making it possible to attribute the same meaning to the various concepts, this has been impacted by the May 2017 amendments to the Directive<sup>19</sup>, which substantially altered its scope, both substantive (categories of prohibited weapons, marking requirement for deactivated weapons and alarm or 'show' weapons, notion of 'essential component') and personal (collectors, museums).
- (50) There are a number of overlaps between Regulation (EU) No 258/2012 and the Common Military List under EU Common Position 2008/944/CFSP. The interpretation of the scope of these overlaps varies from one Member State to the next, undermining equal treatment between transactions that are substantially the same. In contrast, the evaluation confirmed a positive articulation with the Union's Customs Code.

## **4. CONCLUSIONS AND OUTLOOK**

- (51) The rationale of the Regulation remains unchanged. The unstable international political environment in several regions of the world, and the strengthening of the European Union's internal rules continue to justify its existence in order to adequately control civilian firearms as they enter and leave the European Union. Although most of the weapons diverted are military, a robust framework for civilian firearms remains vital because of grey areas and to prevent the use of more flexible procedures in a related field promoting diversions of arms.
- (52) However, the Commission's findings on the implementation of Regulation (EU) No 258/2012 are mixed. Although it has broadly achieved its assigned goals, the Regulation is nevertheless also the victim of both its imprecision and its complex articulations with other EU law instruments.

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<sup>19</sup> Directive (EU) 2017/853 of 17 May 2017, OJ L 137, 24.5.2017.

- (53) The regular exchanges with the national authorities, the study carried out and the public consultation have pinpointed a number of possible answers to the challenges identified in the course of this exercise.
- (54) The Commission intends to fully assume its responsibilities in order to assist the Member States and guarantee the Regulation's full implementation, including, where appropriate, through formal exchanges should the evaluation reveal practices that are in breach of the Regulation.
- (55) Under its powers to adopt delegated acts, the Commission may intervene in order to update Annex 1 to the Regulation and adapt the correlation table of categories of firearms and Combined Nomenclature codes in order to take account of the revision of Directive 91/477/EEC (without affecting either the Regulation's scope or its definitions).
- (56) On the other hand, the externalised evaluation study has usefully recommended a number of non-legislative actions to improve exchanges of best practices, develop guidelines for the Regulation's implementation and make better use of the Firearms Exports Coordination Group.
- (57) In terms of information exchanges, improvements to the COARM system for exchanges relating to Regulation (EU) No 258/2012 and the principle of direct access for competent authorities are promising avenues. The arrangements for the involvement of customs authorities remain open, whether for external transit within the European Union, or between the customs clearance office and the office of exit, or between the office of entry and the office of clearance.
- (58) More generally, beyond any clarifications that might be made to improve the Regulation's application, certain difficulties call for possible revision, in line with the principles of better regulation. Subject to the Commission's final decisions, where necessary following an appropriate impact assessment, it is already possible to outline possible points of discussion.
- (59) The evaluation shows that certain definitions in the Regulation should be made more consistent with other pieces of legislation ('parts' and 'essential components', 'temporary export', 'deactivated firearms', etc.).
- (60) The provisions on simplified procedures could be made clearer. If the guidelines are found to be insufficient, possible options might notably include encouraging the use of global authorisations or a tie-in with the status of 'authorised economic operator for security and safety'.

- (61) In order to ensure reliable risk analysis, the methods used to process applications for export licences could be aligned, in particular through the systematic consultation of criminal records in the Member States (and not simply in the country in which the previous application was made).
- (62) In order to facilitate administrative procedures, in line with the rules of Directive 91/477/EEC on firearms, the Commission and the Member States should consider a computerised system for submitting applications. This would also facilitate information exchanges on refusals, allow interoperability between the various systems, and ensure reliable statistical collections. Such an interoperable system for the computerised management of applications could also make it less useful to provide translations of documents already required by a competent authority in another Member State.
- (63) The matter of generally applying the principle of tacit agreement of third countries of transit (or some of them) could also be raised insofar as it enabled shorter procedures for exporters.
- (64) Finally, as regards imports, the Regulation's provisions could usefully be clarified so that, in accordance with the Firearms Protocol, weapons imported are systematically marked along harmonised lines to enable identification of the first country of import.